

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900  
Larren M. Nashelsky  
Gary S. Lee  
Todd M. Goren  
Alexandra Steinberg Barrage

*Proposed Counsel for the Debtors and  
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**DEBTORS' MOTION PURSUANT TO 11 U.S.C. §§ 105, 363(b), (f), AND (m), 365 AND 1123, AND FED R. BANKR. P. 2002, 6004, 6006, and 9014 FOR ORDERS: (A)(I) AUTHORIZING AND APPROVING SALE PROCEDURES, INCLUDING BREAK-UP FEE AND EXPENSE REIMBURSEMENT; (II) SCHEDULING BID DEADLINE AND SALE HEARING; (III) APPROVING FORM AND MANNER OF NOTICE THEREOF; AND (IV) GRANTING RELATED RELIEF AND (B)(I) AUTHORIZING THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENTS THERETO; (III) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERE TO; AND (IV) GRANTING RELATED RELIEF**

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors")<sup>1</sup> hereby move this Court (the "Motion")<sup>2</sup> for approval of two sale transactions

<sup>1</sup> The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the Whitlinger Affidavit (defined below).



pursuant to sections 105(a), 363, 365, 503, 507, and 1123 of Title 11, United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and entry of three orders to be considered at two hearings:<sup>3</sup>

(A) The first order, substantially in the form annexed to the Motion as Exhibit A (the “Sale Procedures Order”), pursuant to 11 U.S.C. §§ 105(a), 363, and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, 9007, 9008, and 9014 requesting approval of the following sales procedures (the “Sale Procedures Relief”),

(i) authorizing and approving procedures (the “Sale Procedures”), with respect to two proposed sales pursuant to Bankruptcy Code section 363(b) and 1123(a)(5)(B) (the “Sale Transactions” or the “Sales”) by certain of the Debtors of:

(a) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Nationstar Mortgage LLC (“Nationstar”)<sup>4</sup> and certain of the Debtors (the “Nationstar APA”),<sup>5</sup> annexed hereto as Exhibit B)) including approval of the Break-Up Fee and the Expense Reimbursement as allowed administrative expenses with priority pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code (as such terms are defined below); and

---

(Footnote continued from previous page.)

<sup>2</sup> Creditors and parties-in-interest with questions or concerns regarding the Debtors’ Chapter 11 cases or the relief requested in this Motion may refer to <http://www.kccllc.net/rescap> for additional information.

<sup>3</sup> See In re Matter of Adoption of Amended Guidelines for the Conduct of Assets Sales (General Order Amending M-331 (M-383)) (Bankr. S.D.N.Y. Nov. 18, 2009) (the “Sale Guidelines”).

<sup>4</sup> As discussed below, a majority of Nationstar is owned by investment funds managed by affiliates of Fortress Investment Group, LLC.

<sup>5</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Nationstar APA or the AFI APA (defined below), as applicable.

(b) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Ally Financial Inc. (“AFI”) the Debtors’ non-debtor indirect parent, and BMMZ Holdings LLC (“BMMZ”) an indirect, wholly owned subsidiary of AFI, and certain of the Debtors (the “AFI APA,” together with the Nationstar APA, the “APAs”), annexed hereto as Exhibit C);

(ii) scheduling a Bid Deadline, an auction, and a hearing to consider approval of the Sale Transactions (the “Sale Hearing”) (which hearing may be one to confirm a reorganization plan) and setting objection and bidding deadlines with respect to the Sale Transactions;

(iii) approving the form and manner for an auction for the Purchased Assets that are the subject of the APAs (the “Auction”) and the form of Notice of Auction and the Sale Hearing, as described in the form of Notice of Auction and Sale Hearing, annexed to the Sale Procedures Order as Exhibit A-2;

(iv) approving the form and manner for the Assumption and Assignment Procedures (as defined below) and the Notice of Assumption and Assignment Procedures, annexed hereto as Exhibit F and annexed to the Sale Procedures Order as Exhibit A-3; and

(v) granting related relief; and

(B) The second and third orders (which may be incorporated into a confirmation order), subject to the terms of the Sale Procedures Order and the entry of orders substantially in the form annexed hereto as Exhibit D and Exhibit E (the “Nationstar Sale Approval Order” and the “AFI

Sale Approval Order,” together the “Sale Approval Orders”), pursuant to 11 U.S.C. §§ 105(a), 363(b), (f), and (m) and Fed. R. Bankr. P. 6004 and 6006,<sup>6</sup>

(i) authorizing the Sales, pursuant to:

(a) the Nationstar APA among the Sellers (as defined in the Nationstar APA) and Nationstar, as a stalking-horse bidder, free and clear of liens, claims, encumbrances, and other interests; and

(b) the AFI APA among the Sellers (as defined in the AFI APA), and AFI and BMMZ, as stalking-horse bidder, free and clear of liens, claims, encumbrances, and other interests; and

(ii) authorizing and approving the respective APAs thereto;

(iii) approving the assumption and assignment of executory contracts and unexpired leases (the “Assumed Contracts”) and cure amounts in connection with the Nationstar APA, as described in the proposed Notice of Assumption and Assignment, annexed hereto as Exhibit F; and

(iv) granting related relief.

In support of this Motion, the Debtors rely on (i) the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital, LLC in Support of the Chapter 11 Petitions and First Day Pleadings (the “Whitlinger Affidavit”), pursuant to Local Bankruptcy Rule 1007-2; (ii) the Declaration of Samuel M. Greene in Support of the Proposed Sale of the Debtors’ Assets (the “Greene Declaration”); and (iii) the Declaration of Tammy Hamzehpour in Support of the Proposed Sale of the Nationstar Purchased Assets Without a Privacy Ombudsman

---

<sup>6</sup> To the extent that the terms of any agreement regarding the Sales require modification of the proposed Sale Approval Orders, the Debtors will provide notice of the modified proposed Sale Approval Orders to this Court and interested parties in advance of the Sale Hearing.

(the “Hamzehpour Declaration”).<sup>7</sup> In further support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 365, 503, 507, and 1123 as supplemented by Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Bankruptcy Rules.

### **PRELIMINARY STATEMENT**

2. This Motion requests approval of two separate sale transactions, which combined are projected to yield approximately \$3.9 billion of cash for the Debtors’ estates. Specifically, the Debtors are selling their mortgage origination and servicing platform (effectively comprising the entirety of the Debtors’ operating business), including certain financial assets to Nationstar and legacy loan portfolio to AFI. These Sales represent the Debtors’ primary and most valuable assets.

3. The Debtors’ mortgage origination and servicing platform is one of the largest in the United States. These operations consist of servicing mortgage loans for investors and homeowners, including loans originated by the Debtors, non-debtor Ally Bank, and other third-party lenders. Due to the size, volatility, and critical nature of the Debtors’ platform to the functioning of the U.S. mortgage market, the Debtors have carefully constructed a strategy to maximize value to the Debtors’ estates and avoid any material disruption to the servicing of millions of residential mortgages.

---

<sup>7</sup> The Hamzehpour Declaration will be filed subsequent to the filing of this Motion.

4. Ultimately, the Debtors intend to implement a comprehensive reorganization by consummating the Sales through a plan of reorganization. If, however, the Debtors do not obtain confirmation by a specific date, this Motion will allow the Debtors to pursue an alternative course of action and immediately move forward with the Sales under Bankruptcy Code section 363(b).<sup>8</sup>

5. The Sales are the result of significant efforts by numerous parties, including the Debtors, AFI, Nationstar, and their respective professionals, to implement a reorganization of the Debtors with the goal of preserving and maximizing the value of their estates—a goal that the Debtors have been pursuing since the collapse of the housing and mortgage loan industries beginning in 2007. In structuring the Sales, the Debtors worked with a wide range of governmental constituencies, including (i) Fannie Mae, Freddie Mac, and Ginnie Mae;<sup>9</sup> and (ii) the U.S. Treasury. By any measure, the regulatory complexity, size, and nature of the Sales are almost unprecedented, and the Debtors are hopeful that they will continue to have the support of these governmental constituencies.

6. The terms of the Sales are contained in the Nationstar APA and the AFI APA, which the Debtors negotiated and executed prior to the filing of these Chapter 11 cases.

The APAs are generally summarized as follows:

---

<sup>8</sup> In either case, the proposed Sale Procedures shall govern the sale of the assets that are the subject of the APAs. Likewise, the terms of the proposed Sale Approval Orders shall apply in any sale pursuant to a Chapter 11 plan; however, in any case the terms of the Sale Approval Order may be incorporated into the confirmation order.

<sup>9</sup> As used herein, “Fannie Mae” means the Federal National Mortgage Association, “Freddie Mac” means the Federal Home Loan Mortgage Corporation, and “Ginnie Mae” means the Government National Mortgage Association. Fannie Mae and Freddie Mac are government-sponsored enterprises chartered by Congress that buy and securitize mortgage loans originated by mortgage lenders, enabling them to replenish their funds so that they can make loans to other homeowners. Ginnie Mae is a federal corporation within the Department of Housing and Urban Development, a federal agency, that guarantees investors the timely payment of principal and interest on mortgage-backed securities backed by federally insured or guaranteed loans, primarily loans insured by the Federal Housing Administration (“FHA”) or guaranteed by the Department of Veterans Affairs (“VA”) or the U.S. Department of Agriculture (“USDA”).

- **Nationstar APA.** Nationstar is the proposed stalking horse bidder for the sale of the Debtors' mortgage loan origination and servicing platform (the "Servicing Platform"). The Purchased Assets under the Nationstar APA (the "Nationstar Purchased Assets") also include mortgage servicing rights and servicer advances belonging to Ginnie Mae (the "Ginnie Mae MSR's"). Pursuant to the Nationstar APA, a Qualified Bidder can elect to bid on the Ginnie Mae MSR's independently or as part of their bid for all of the Nationstar Purchased Assets. As detailed below, the purchase price for the Nationstar Purchased Assets is approximately \$2.3 billion,<sup>10</sup> of which approximately \$200 million relates to the Ginnie Mae MSR's (in each case calculated as of February 29, 2012).<sup>11</sup>
- **AFI APA.** AFI is the proposed stalking horse bidder for the sale of the Debtors' legacy portfolio, which (as detailed below) consists mainly of mortgage loans and other residual financial assets (the "Legacy Portfolio Sale"). In consideration for the sale of the Purchased Assets under the AFI APA (the "AFI Purchased Assets") to BMMZ, Sellers will receive approximately \$1.6 billion if the sale is consummated pursuant to a Chapter 11 plan of the Debtors, subject to adjustment. If the sale is consummated pursuant to a section 363 sale outside of a Chapter 11 plan, Sellers will receive approximately \$1.4 billion, subject to adjustment.

7. This dual APA structure allows for certain combinations of sale transactions, ensuring that the Debtors will receive the highest or best value for the assets. A Qualified Bidder may bid on the Nationstar Purchased Assets and/or the AFI Purchased Assets (together with the Nationstar Purchased Assets, the "Purchased Assets"). Alternatively, a Qualified Bidder may bid solely on the Ginnie Mae MSR's, or the Ginnie Mae MSR's and the AFI Purchased Assets.

8. The purpose of this Motion is to obtain the necessary relief to facilitate orderly sales of the Debtors' most valuable assets. As set forth above, the Debtors contemplate and expect that the Sales will be consummated under a plan. The Debtors believe that orderly asset sales in conjunction with a plan are the best way to (i) maximize the value of the Debtors'

---

<sup>10</sup> All purchase price figures contained in this Motion are net of assumed liabilities, where applicable.

<sup>11</sup> The actual purchase price will be calculated as of Closing in accordance with the terms of the Nationstar APA and will vary from that set forth in this Motion.

assets for the benefit of creditors; (ii) preserve the Debtors' servicing business on a going concern basis for sale, thus preserving jobs, providing the best possible outcome for the more than 2.4 million homeowners whose loans are serviced by the Debtors and for the investors in securitization pools that own loans serviced by the Debtors; (iii) avoid disruption in the fragile housing market recovery; and (iv) provide a vehicle for distributing the proceeds of the Debtors' asset sales to creditors pursuant to the priority scheme under the Bankruptcy Code.

9. The result of the Sales will be the continuation of the Debtors' origination and servicing business. Should, for example, Nationstar emerge as the Successful Bidder<sup>12</sup> for the Nationstar Purchased Assets in any auction, Nationstar will become an industry leader in the mortgage servicing and origination industry, capable of servicing the full spectrum of mortgage products, including primary servicing, special servicing, and master servicing, without the burden of certain of the Debtors' prepetition liabilities.

10. Because of the significant funding needed to maintain the servicing business, the Debtors' very limited access to capital, and the ongoing concerns of various federal and state regulatory authorities, the Debtors believe that it is imperative to move forward with the sale process quickly. In addition, approval is critical to compliance with the Debtors' postpetition financing arrangements. The Debtors therefore request that the relief requested herein be expeditiously approved.

11. The Debtors' ability to obtain approval of, and consummate, the Sales at this juncture is critical to maintaining the confidence of the Debtors' employees, the millions of residential mortgage borrowers whose loans are serviced by the Debtors, the many investors who

---

<sup>12</sup> For purposes of this Motion, the term "Successful Bidder" shall include each of Nationstar and AFI, respectively, in the event there is no auction of the Nationstar Purchased Assets and/or the AFI Purchased Assets, respectively.



rely on the Debtors for servicing the securitizations in which they have invested, and Fannie Mae, Freddie Mac, and Ginnie Mae, who are essential parties in the mortgage loan industry. Any undue delay in consummating the Sales will in all likelihood negatively affect asset values and impair the progress of the Debtors' reorganization.

## **BACKGROUND**

12. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code. The Debtors are managing and operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee, examiner or statutory creditors' committee has been appointed in these Chapter 11 cases.

13. As of the Petition Date, the Debtors and their non-debtor affiliates operate one of the largest mortgage origination and servicing businesses in the United States. A more detailed description of the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in the Whitlinger Affidavit.

### **A. Business Operations**

14. The Debtors, together with their non-debtor subsidiaries, manage their businesses in two business lines: (i) the ongoing Origination and Servicing business and (ii) the Legacy Portfolio and Other operations,<sup>13</sup> the latter which is being wound down and sold pursuant to the terms of the AFI APA, as described below.

---

<sup>13</sup> AFI, which files periodic and other reports with the Securities and Exchange Commission, reports its results of operations on a line of business basis in five operating segments, two of which are "Mortgage – Origination and Servicing Operations" and "Mortgage – Legacy Portfolio and Other Operations."

15. Origination and Servicing. The principal activities of the Debtors' Origination and Servicing business are: (a) brokering, originating, purchasing, selling and securitizing residential mortgage loans throughout the United States; and (b) servicing residential mortgage loans throughout the United States for the Debtors, Ally Bank, and other investors in residential mortgage loan and mortgage-backed securities ("MBS").

16. Under the Debtors' loan brokerage and origination function, GMAC Mortgage, under the GMAC Mortgage brand, brokers and originates mortgage loans through a consumer lending business that consists of internet and telephone-based call center operations and, to a lesser extent, a retail network of loan officers who have direct contact with consumers, including through referrals from builders, realtors, and other third parties. GMAC Mortgage brokers its loan production in 47 states to Ally Bank.<sup>14</sup> Ally Bank underwrites and originates loans based on loan application packages submitted by GMAC Mortgage in accordance with applicable regulatory and industry standards. In recent years, substantially all of the Debtors' loan production has consisted of loans that meet the required guidelines of Fannie Mae, Freddie Mac, or Ginnie Mae, as applicable, and a limited number of prime nonconforming jumbo mortgage loans.

17. In the years ended December 31, 2010 and 2011 and the three months ended March 31, 2012, the Debtors brokered \$7.4 billion, \$7.3 billion and \$3.6 billion, respectively, of mortgage loans to Ally Bank. During the same periods, the Debtors purchased \$66.3 billion, \$56.7 billion and \$9.7 billion, respectively, of mortgage loans from Ally Bank. Over this entire period, the Debtors originated an aggregate of \$454.7 million of mortgage loans.

---

<sup>14</sup> GMAC Mortgage does not originate loans in Hawaii. Ally Bank does not have the licenses to originate mortgage loans in Nevada and Ohio, in which states, GMAC Mortgage originates and funds mortgage loans directly.

Prior to 2008, the Debtors' loan production also consisted of home equity mortgage loans, which allow borrowers to make draws from time to time subject to certain requirements.

18. In addition, a fundamental part of the Debtors' business strategy in connection with its loan brokerage and origination function consists of securitizing or selling substantially all of the mortgage loans they purchase or originate. The Debtors, through their capital markets function, participate in the securitization programs of Fannie Mae, Freddie Mac, and Ginnie Mae. Until April 30, 2012, the Debtors purchased the loans they brokered to Ally Bank and other eligible loans from Ally Bank and, together with mortgage loans originated by the Debtors in Nevada and Ohio, and either sold the mortgage loans to Fannie Mae and Freddie Mac, who in turn pool and deposit such loans into securitizations trusts or pooled and deposited such mortgage loans into securitization trusts backed by Ginnie Mae guarantees. Unlike Fannie Mae and Freddie Mac, Ginnie Mae does not buy mortgage loans or issue MBS, but instead provides guarantees of MBS with respect to loans (mainly loans insured by the FHA or guaranteed by the VA or USDA) that have been pooled and securitized by approved issuers such as the Debtors. The applicable GSE or Ginnie Mae guarantees that it will supplement amounts received by the relevant securitization trust (referred to herein collectively as, "Agency Securitization Trusts") as required in order to permit timely payments of principal and interest on the MBS or underlying certificates.

19. In addition, prior to the Petition Date, the Debtors originated or acquired and sold mortgage loans to private investors and securitization trusts for so-called "private label" securitization pools, which are referred to herein collectively as the "Non-Agency Securitization Trusts."<sup>15</sup> The Non-Agency Securitization Trusts are not guaranteed by the GSEs. Due to a

---

<sup>15</sup> The Debtors also sold loans to securitization trusts guaranteed by the following state and local housing agencies:  
(Footnote continues on next page.)

change in market conditions arising as a result of the financial crisis, with very limited exceptions, GMAC Mortgage no longer sells mortgage loans to Non-Agency Securitization Trusts. However, GMAC Mortgage continues to hold the servicing rights with respect to certain existing Non-Agency Securitization Trusts, and continues to service those mortgage loans.

20. As of the Petition Date, the Debtors continue to (i) originate loans in Nevada and Ohio, selling the Fannie Mae and Freddie Mac eligible loans to Ally Bank, (ii) broker loans to Ally Bank in 47 states, and (iii) purchase loans from Ally Bank that are eligible to be pooled into Agency Securitization Trusts guaranteed by Ginnie Mae along with loans originated by the Debtors in Nevada and Ohio.

21. The securities issued by Agency Securitization Trusts and Non-Agency Securitization Trusts are owned by a broad range of investors, including pension funds, money market funds, mutual funds, banks, insurance companies, governmental bodies and other public and private entities. All securitization trusts sponsored by the Debtors are distinct legal entities and are not included in the Debtors' Chapter 11 cases.

22. The Debtors' residential mortgage loan servicing function has since 2008 been the Debtors' main source of ongoing revenue. Mortgage servicing rights consist of either primary or master servicing rights. The Debtors retain the MSRs with respect to mortgage loans they have originated and sold, as well as for mortgage loans purchased from Ally Bank and sold into Ginnie Mae-guaranteed securitizations. Often, third parties and Ally Bank retain the MSRs

---

(Footnote continued from previous page.)

California Housing Finance Agency; City Of Northampton; Connecticut Housing Finance Authority; Minneapolis Comm. Devel. Agency 2; Neighborhood Housing Services; North Dakota Housing Finance Agency; Philadelphia Neighborhood Housing; San Diego Housing Commission; State of Oregon Housing; and Texas Veterans Land Board.

with respect to the mortgage loans they originate and engage the Debtors to service those loans in their capacities as subservicers.

23. Primary servicing rights are the Debtors' contractual right to service mortgage loans. As a primary servicer, the Debtors collect and remit mortgage loan payments, respond to borrower inquiries, account for and apply principal and interest, hold custodial and escrow funds for payment of property taxes and insurance premiums, provide ancillary products, counsel or otherwise work with delinquent borrowers (including helping borrowers modify their loans in accordance with federal programs and public policy intended to assist homeowners' efforts to remain in their homes in the face of the recession and housing market collapse), supervise foreclosures and property dispositions, remit payments due to investors and generally administer the mortgage loans consistent with contractual undertakings and business practices.

24. As primary servicer, the Debtors are typically obligated to make various types of advances. With respect to loans in foreclosure, the servicer is typically obligated to advance all reasonable, customary, and necessary costs and expenses (including reasonable legal fees) incurred in the performance of its servicing obligations, which may include, without limitation: (i) fees and expenses to various servicing vendors, including but not limited to, property inspectors and maintenance contractors; (ii) fees and expenses associated with enforcement or judicial proceedings, including foreclosures, bankruptcy, eviction, or litigation actions; (iii) costs and expenses associated with the management, maintenance, and liquidation of property that has been foreclosed upon; and (iv) costs to preserve foreclosed property prior to liquidation (collectively, "Corporate Advances"). The Debtors carry these Corporate Advances until the property can be liquidated. After the underlying property is liquidated, the Debtors submit claims for reimbursement of the Corporate Advances.

25. In addition to Corporate Advances, from time to time, to the extent funds available from the Debtors' custodial accounts are insufficient to cover required remittances to investors, the Debtors, as primary servicer, may be required to advance funds to investors or other third parties with respect to MBS and mortgage-related asset backed securities and whole-loan packages in order to cover delinquent principal and interest payments on the related pool of mortgage loans ("P&I Advances") and taxes, insurance premiums, and other charges against property securing the loans ("T&I Advances" and, together with the P&I Advances and the Corporate Advances, the "Advances").

26. The Debtors are required to use their own funds to pay the Advances. Moreover, when a loan becomes delinquent, the Debtors must continue making P&I Advances until they are determined to be nonrecoverable from the related loans. At that time, the Debtors may stop making P&I Advances, although they are required to continue to make the T&I Advances and Corporate Advances in order to protect the lien on the property. The P&I and T&I Advances are generally reimbursable to the Debtors on a priority basis, either from amounts paid by the borrower or from the proceeds of insurance policies or the liquidation of the related loan. Advances constitute the single largest use of the Debtors' cash.

27. Although most Advances are reimbursable, the primary servicer is responsible for any loss in excess of the guarantee on an FHA-insured or VA- or USDA-guaranteed mortgage loan. The primary servicer also may incur losses for other reasons, such as costs of services exceeding expense caps or allowable amounts set forth in servicing agreements, making certain interest payments, penalties for failure to comply with required foreclosure timelines. Costs related to restarting suspended foreclosures and assuming losses relating to Fannie Mae loans if the loss resulted from a rescinded mortgage insurance policy.

28. The Debtors contract with third party owners of MSRs to act as subservicers. As subservicers, the Debtors perform the responsibilities of a primary servicer and receive a fee from the primary servicer for such services but do not own the corresponding MSRs. A subservicer generally has the same operational responsibilities as a primary servicer including the obligation to make Advances.

29. In master servicing, the Debtors service the MBS, mortgage-related asset-backed securities or whole-loan packages owned by investors. In this capacity, the Debtors interact with investors, not homeowners. When the Debtors act as master servicer, they collect mortgage loan payments from primary servicers or subservicers and distribute those funds to the investors. Master servicers also work with third parties that perform functions for securitization trusts, such as mortgage insurance providers, interest rate swap providers, bond insurance providers and rating agencies. Additional key services provided by master servicers include advancing principal and interest on REO properties,<sup>16</sup> and performing claims administration, oversight of primary servicers and subservicers, loss mitigation, bond administration, cash flow waterfall calculations, investor reporting, tax reporting compliance, and other contractual and oversight functions. In most cases, master servicers must make Advances to the extent the primary servicer does not make such advances. Master servicing advances are priority cash flows in the event of a default by the underlying borrower, thus making their collection reasonably assured. In most cases, unless there is a determination that the Advances will be nonrecoverable, the master servicer is also required to make P&I Advances until such time as the

---

<sup>16</sup> Properties that have been foreclosed upon that remain on Debtors' balance sheet until sold to a third party are referred to as "real estate owned" or "REO."

loan is liquidated or the related REO is disposed of, and the Advances are reimbursed from the proceeds thereof.

30. In many cases, the Debtors (through separate legal entities) act as both the primary and master servicer. However, in certain cases, the Debtors also service loans that have been purchased and subsequently sold through a securitization trust or whole-loan sale in which the originator of the loans retained the primary servicing rights and the Debtors retained the master servicing rights.

31. The Debtors receive a fee based on the unpaid principle balance (“UPB”) of the mortgage pool or, in some cases, for each loan serviced. These servicing fees are typically paid from the monthly payments made by the borrowers on the loans or if the Debtors act as a subservicer, they may bill the subservicing clients. In addition, the Debtors may receive other remuneration for loan servicing, including borrower-contracted fees such as late charge fees, assignment transfer fees, insufficient funds check charges and assumption fees, loss mitigation incentive fees and other incidental fees and charges. When acting as a subservicer, the Debtors typically receive a monthly per-loan fee. As described above, the Debtors are generally required to continue making Advances as part of their servicing (or subservicing) obligations, unless such amounts are determined to be nonrecoverable from the related loans; however, in many cases, the Debtors’ right to servicing fees with respect to delinquent mortgage loans may be subordinate to other obligations of the securitization trusts with respect to such loans. In addition, when borrowers repay their loans prior to the end of an interest period, the Debtors are responsible for covering the interest payment with respect to such loans for the full interest period.

32. As of March 31, 2012, the Debtors acted as the primary servicer for approximately 1.52 million loans having an aggregate UPB of approximately \$2.0 billion. In



addition, as of March 31, 2012, the Debtors acted as subservicer for over 847,000 loans having an aggregate UPB of approximately \$1.7 billion, including mortgage loans for which Ally Bank retains the MSRs and whole loans owned by Ally Bank. The Debtors are the master servicer for approximately 439,000 loans having an aggregate UPB of approximately \$58.7 billion as of March 31, 2012, including loans having an aggregate UPB of \$7.8 billion for which the Debtors are the master servicer but not the primary servicer.

33. The Debtors' master servicing operations work with 925 mortgage loan securitization trusts. As of March 31, 2012, these securitization trusts have an aggregate UPB of \$102.6 billion.

34. Legacy Portfolio and Other. The Debtors' legacy portfolios principally consist of the remaining mortgage loan assets from their historical non-conforming domestic residential mortgage loan origination and securitization activities (the "Domestic Non-core"), the Debtors' remaining international operations, and the Debtors' captive mortgage reinsurance operation. The legacy portfolios are being wound down through opportunistic asset sales, workouts or other strategic disposition transactions, including by virtue of the AFI APA, as described below.

35. First, the Domestic Non-core mortgage loan portfolio activities primarily consist of loss mitigation and sales of mortgage loan assets (which are serviced by either the Debtors or third party subservicers). The mortgage loans consist primarily of mortgage loans repurchased by Debtors pursuant to representation and warranty obligations, distressed mortgage loans, loans contributed to the Debtors by AFI in 2009, and mortgage loans originated prior to January 1, 2009 of types that are no longer being offered by the Debtors or that were not

securitizable. As of March 31, 2012, the aggregate carrying value of these mortgage loans was \$2.1 billion and their UPB was \$5.2 billion.

36. Second, the Debtors' international business operates through international, non-Debtor subsidiaries, all of which are being wound down. In Mexico, which is currently the Debtors' only significant international operation, at March 31, 2012, the carrying value of its total assets was approximately \$401.0 million but it had negative stockholder's equity of \$18.3 million. In addition, Residential Funding Company, LLC ("RFC"), a Debtor, owns interests in the cash flow from certain loans on properties in Canada, which loans are held by a Canadian-organized subsidiary. The carrying value of those interests at March 31, 2012 was \$1.6 million.

#### **B. Prepetition Marketing and Sale Efforts**

37. As described in the Whitlinger Affidavit, by August 2011, ResCap was focused on (i) concerns regarding its liquidity and inability to satisfy its (or its subsidiaries') tangible net worth and liquidity covenants under credit facilities and agreements with Fannie Mae, Freddie Mac, and Ginnie Mae; (ii) looming expirations of credit facilities, unsecured note maturities and interest payments; (iii) the magnitude of the Debtors' potential liability for representations and warranties the Debtors made related to mortgage loans sold by them, and the significant time and defense costs in respect of litigation claims alleged with respect to such mortgage loans and sales; (iv) the continuing volatility in the interest rate markets, which affects the Debtors' ability to hedge the value of their MSRs and to comply with the financial covenants in their credit facilities and other agreements; and (v) continued uncertainty over the future of ResCap and how such uncertainty could negatively impact business performance. During this period, ResCap continued reviewing its strategic alternatives and began to contemplate a sale of its business operations and a potential filing under Chapter 11.

38. As detailed more fully in the Greene Declaration, in August 2011, as part of the Debtors' continuing review of its strategic alternatives, the Debtors began to contemplate a broader range of options, including a potential Chapter 11 filing.

39. In October 2011, ResCap interviewed potential investment advisors and retained Centerview Partners LLC ("Centerview"). Between October 2011 and January 2012, ResCap and its advisors, led by Centerview, began preparing for a potential auction of ResCap's business.

40. Over several months, Centerview evaluated a broad range of strategic alternatives, conducted extensive due diligence on the Debtors' assets and operations, including frequent on-site meetings and constant dialogue with the Debtors' senior management team and personnel in servicing, origination, risk, accounting, and the Debtors' other functional groups, and evaluated in-court transaction alternatives. Centerview worked with the Debtors to develop an understanding of the value embedded in the assets individually and as part of the broader platform, and constructed a variety of presentation materials for both the Debtors and their Board of Directors that illustrated the highlights of and challenges associated with marketing the Purchased Assets in various combinations. (Greene Decl. ¶ 20)

41. On or about January 23, 2012, Centerview launched a targeted marketing process for the Debtors' assets. On or about February 13, 2012, Centerview received three preliminary indications of interest, including one from Nationstar. A majority of Nationstar is owned by investment funds managed by affiliates of Fortress Investment Group, LLC (collectively, the public company and its affiliates and funds managed by such affiliates, "Fortress"). (Greene Decl. ¶ 23) On February 17, 2012, after careful evaluation of the assets contemplated to be purchased under each of the three bids, the associated bid values and the

contingencies associated with each bid, Centerview, the Debtors, and their other advisors determined that proceeding with two of the three bidders was most prudent. After the Debtors elected to proceed with two bidders, Centerview approached each with a detailed request for supplemental information. (Greene Decl. ¶ 26)

42. After receipt of the requested information from the bidders, the value of Nationstar's initial bid compared to the other bid, and an analysis of the assets Nationstar proposed to acquire compared to other bidders, the Debtors and their professionals, determined, in their business judgment, to negotiate exclusively with Nationstar. Nationstar's offer was the highest and best offer for the Debtors' business as a whole and represented the value maximizing proposal for a number of reasons, including: (i) Nationstar's offer was the highest bid for the largest portion of the Debtors' assets and operations; (ii) Nationstar represented an ideal bidder because it is a strategic purchaser with a recent track record of purchasing mortgage assets, with access to Fortress as a funding source; (iii) Nationstar holds substantially all the mortgage operations licenses necessary to run the Purchased Assets; (iv) Nationstar offered the largest "equity" amount with the smallest debt financing requirements and contingencies; (v) Nationstar has strong relationships with Fannie Mae, Freddie Mac and Ginnie Mae; and (vi) Nationstar's working knowledge of the Debtors, its operations and management from involvement in previous sales processes, assisted in an expedited diligence process. (Greene Decl. ¶ 27)

43. The Debtors and Centerview concluded that working exclusively with one bidder would increase the likelihood that the Debtors would be able to consummate a transaction in a limited amount of time due to looming maturities and debt service obligations. In addition, the Debtors believed that the successful negotiation of a purchase agreement would require the

involvement and support of Fannie Mae, Freddie Mac, Ginnie Mae, and U.S. Treasury, among others, each of whom were likely to engage with a single third-party bidder. (Greene Decl. ¶ 28)

44. Upon selection of Nationstar as the exclusive bidder, the Debtors and Centerview facilitated extensive due diligence for Nationstar and Fortress over a 12-week time period. Nationstar and Fortress were provided access to over 1.2 million pages of electronic diligence materials and additional presentation materials describing the Debtors' operations and assets. (Greene Decl. ¶ 29)

45. In order to facilitate a sale of the Debtors' platform in full and protect against any erosion in value of the Debtors' assets and operations, the Debtors and their advisors negotiated extensively with AFI and its affiliates to allow the Debtors to originate mortgage loans in the months leading up to the Petition Date and subsequently during the Chapter 11 cases. The Debtors comprehensively reorganized the manner in which the Debtors and AFI originate and sell mortgage loans to preserve the value of the origination platform and the attractiveness of the Debtors' assets to a potential buyer. (Greene Decl. ¶ 30)

46. Between March 2, 2012 and May 13, 2012, the Debtors, together with Centerview and its other advisers, negotiated the terms of the Nationstar APA and Nationstar completed its analysis of the Debtors' business. The parties and their advisors also engaged in extensive discussions with various government entities in respect of the proposed agreement and plans for maintaining the Debtors' origination and servicing operations as a going concern throughout the Debtors' Chapter 11 cases and upon sale to the successful bidder. (Greene Decl. ¶ 33)

47. Concurrently with the sale process and starting in February 2012, the Debtors, AFI, and their respective advisers began discussing a potential settlement of all claims

and disputes the Debtors might have against AFI (the “Settlement Agreement”), and a process to develop a comprehensive plan of reorganization for the Debtors (in contrast to a sale under section 363 of the Bankruptcy Code). As part of these settlement discussions, AFI offered to purchase the Debtors’ “legacy” whole loan portfolio as well as certain “trading securities and other financial assets” for a purchase price, based on such assets at December 31, 2011, of approximately \$1.6 billion, provided that the Sale is consummated in connection with confirmation of a Chapter 11 plan incorporating the terms of the Settlement Agreement with AFI, and approximately \$1.4 billion if such Sale occurs pursuant to section 363 of the Bankruptcy Code. This offer was approximately \$200 million higher than the next highest bid. As a result, ResCap and its advisers determined it was in the Debtors’ best interest to negotiate a sale of these assets to AFI. (Greene Decl. ¶ 34)

## **THE APAs AND THEIR EXTRAORDINARY PROVISIONS**

### **A. The Nationstar APA**

48. After significant negotiations, on May 13, 2012, the Nationstar APA was executed and delivered by the parties. From the start of the sales process, the Debtors and their advisers spent significant time with the government entities with which the Debtors conduct business, including but not limited to Fannie Mae, Freddie Mac, Ginnie Mae, the Federal Housing Finance Agency, and the United Services Automobile Association in an effort to obtain their support for a transaction. In order to garner the support of such organizations, the Debtors and their advisers engaged in constant dialogue, consisting of multiple weekly update strategy calls with certain GSEs and frequent update calls with other government-related organizations, in-person management presentations and substantive discussions, including with Nationstar. Obtaining government support was viewed as paramount by both the Debtor and its advisers to consummating a value-maximizing sale of the Debtors’ assets and operations.

49. Pursuant to the Nationstar APA, Nationstar agreed to acquire the Nationstar Purchased Assets. Pertinent terms of the Nationstar APA are summarized and attached hereto as Exhibit B-1.<sup>17</sup>

50. Generally, the Nationstar Purchased Assets include the Debtors' Servicing Platform, including the Ginnie Mae MSRs. Subject to a higher bid, the Ginnie Mae MSRs may be sold separately from the remainder of the Nationstar Purchased Assets.

51. Extraordinary Provisions. The Nationstar APA contains the following terms, conditions and provisions, which may be considered "Extraordinary Provisions" under the Sale Guidelines:

- **Good Faith Deposit.** In light of the extensive prepetition negotiations culminating in the Nationstar APA and Nationstar's deposit in the amount of \$72 million in connection with its execution of the Nationstar APA (the "Nationstar Deposit"), the Debtors request that Nationstar be excused from submitting an additional deposit. The Debtors request that the Nationstar Deposit be deemed Nationstar's Good Faith Deposit (as defined in the Sale Procedures) for all purposes under the Sale Procedures.
- **Record Retention.** The Debtors confirm they will retain, or have reasonable access to, their books and records to enable them to administer their bankruptcy cases.
- **Successor Liability.** In light of the significant consideration provided to the estates, except for the Assumed Liabilities expressly set forth in the Nationstar APA, the Debtors request a finding that neither Nationstar, nor any of its successors, assigns, nor any affiliates shall have any successor liability. In addition to the aforementioned estate consideration provided by Nationstar, Nationstar and the Debtors have developed a far reaching notice protocol—as detailed in ¶ 57 below—which will apprise all interested parties of the proposed successor liability provisions in the Nationstar Sale Approval Order. In addition, the Debtors will be publishing the Notice of Auction and Sale Hearing in the global edition of *The Wall Street Journal*, the national edition of *The New York Times*, and on the website of the Debtors' proposed claims and noticing agent Kurtzman Carson Consultants, LLC at <http://www.kccllc.net>. The Notice of Auction and Sale Hearing appraises parties that the sale to Nationstar will be free and clear of all

---

<sup>17</sup> The description of the terms of the Nationstar APA provided herein is intended as a summary only. To the extent that the description provided in this Motion differs in any respects from the terms of the Nationstar APA, the terms of the Nationstar APA shall govern. Capitalized terms used in this paragraph that are not otherwise defined herein shall have the meanings ascribed to them in the Nationstar APA.

claims, liabilities, interests, liens, obligations and encumbrances, including those that are based upon, without limitation, any successor or transferee theory of liability. Accordingly, the Debtors submit that no further notice concerning this provision need be provided and that good cause exists for the approval of the Nationstar Sale Approval Order's successor liability findings.

- **Relief from Bankruptcy Rule 6004(h).** For the reasons discussed below, the Debtors request relief from the 14-day stay imposed by Bankruptcy Rule 6004(h). The Debtors submit that such relief is necessary and supported by legitimate business reasons because the value of the Debtors' businesses would rapidly decline in value if the transactions subject of the Nationstar APA are not promptly consummated.

## **B. The AFI APA**

52. After significant negotiations, certain of the Debtors, AFI, and BMMZ entered into the AFI APA, whereby BMMZ agreed to acquire the AFI Purchased Assets pursuant to the terms of the AFI APA. Pertinent terms of the AFI APA and the Legacy Portfolio Sale are summarized and attached hereto as Exhibit C-1.<sup>18</sup>

53. Generally, the AFI Purchased Assets consist mainly of first and second lien mortgage loans, home equity lines of credit, and other residual financial assets. Subject to a higher bid, the AFI Purchased Assets may be sold separately or together with the Nationstar Purchased Assets.

54. Extraordinary Provisions. The AFI APA contains the following terms, conditions and provisions, which may be considered "Extraordinary Provisions" under the Sale Guidelines:

- **Sale to Insider.** The AFI APA proposes a sale to BMMZ, an insider of the Debtors, guaranteed with respect to payment by AFI. Extensive measures have been taken to ensure the fairness of the sale process and the proposed Sale pursuant to the AFI APA. In negotiating the AFI APA, AFI sought to conform its APA with that of the Nationstar

---

<sup>18</sup> The description of the terms of the AFI APA provided herein is intended as a summary only. To the extent that the description provided in this Motion differs in any respects from the terms of the AFI APA, the terms of the AFI APA shall govern. Capitalized terms used in this paragraph that are not otherwise defined herein shall have the meanings ascribed to them in the AFI APA.



APA, to the extent applicable. As with the Nationstar APA, the AFI APA does not contain special treatment for ResCap, ResCap's estate, AFI, or their respective affiliates and insiders. The AFI APA specifically provides for overbids, as set forth in section 7.1, ensuring that ResCap will realize the highest or best price for the AFI Purchased Assets. In addition, AFI will not receive a break-up fee or expense reimbursement. Both the AFI and Nationstar APAs were unanimously approved by ResCap's Board of Directors, which consists of a majority of independent directors. In approving the AFI APA, ResCap itself and the independent members of its board of directors consulted with separate legal counsel, who do not represent AFI or any of its subsidiaries or affiliates (other than the Debtors).

- **Good Faith Deposit.** Sellers request that AFI be excused from submitting a good faith deposit required of Qualified Bidders in light of the extensive prepetition negotiations culminating in the AFI APA, and in light of AFI's irrevocable, absolute, and unconditional guarantee (as described in section 10.15 of the AFI APA) to Sellers of the prompt and full payment by BMMZ's of all of BMMZ's monetary obligations under the AFI APA and any Ancillary Agreements as and when payment is due and payable in accordance with the terms under the AFI APA.
- **Successor Liability.** In light of the significant consideration provided to the estates, except for the Assumed Liabilities expressly set forth in the AFI APA, the Debtors request a finding that neither AFI, nor any of its successors, assigns, nor any affiliates shall have any successor liability. In addition to the aforementioned estate consideration provided by AFI, AFI and the Debtors have developed a far reaching notice protocol—as detailed in ¶ 57 below—which will apprise all interested parties of the proposed successor liability provisions in the AFI Sale Approval Order. In addition, the Debtors will be publishing the Notice of Auction and Sale Hearing in the global edition of *The Wall Street Journal*, the national edition of *The New York Times*, and on the website of the Debtors' proposed claims and noticing agent Kurtzman Carson Consultants, LLC at <http://www.kccllc.net>. The Notice of Auction and Sale Hearing appraises parties that the sale to AFI will be free and clear of all claims, liabilities, interests, liens, obligations and encumbrances, including those that are based upon, without limitation, any successor or transferee theory of liability. Accordingly, the Debtors submit that no further notice concerning this provision need be provided and that good cause exists for the approval of the AFI Sale Approval Order's successor liability findings.
- **Relief from Bankruptcy Rule 6004(h).** For the reasons discussed below, the Debtors request relief from the 14-day stay imposed by Bankruptcy Rule 6004(h). The Debtors submit that such relief is necessary and supported by legitimate business reasons because the value of the Debtors' businesses would rapidly decline in value if the transactions subject of the AFI APA are not promptly consummated.

## DESCRIPTION OF PROPOSED SALE PROCEDURES

55. The Debtors believe that the best interests of their estates are preserved by conducting a public Auction to identify the highest or otherwise best offer for their assets to be sold pursuant to the Sales. Accordingly, the Debtors seek this Court's approval of the following Sale Procedures, which are also attached as Exhibit A-1 to the proposed Sale Procedures Order.<sup>19</sup>

56. The Debtors reserve the right to seek approval of the Sales through separate asset purchase agreements with different purchasers in the event that the combination of such sales are determined by the Debtors, in their sole discretion, to obtain the highest value for the assets. As described above, this multiple asset purchase agreement structure may include, for example, a separate auction process for the Ginnie Mae MSRs currently subject of the Nationstar Purchased Assets, as detailed in Exhibit B.

57. The Sale Procedures contemplate an Auction process pursuant to which bids for the Nationstar and AFI Purchased Assets will be subject to higher or better offers, whether pursuant to a Chapter 11 plan or a section 363 sale. As described below and more fully in the Sale Procedures, only Qualified Bidders that timely submit Qualified Bids may be eligible to participate in the Auction.<sup>20</sup> The Auction will be conducted as a closed auction, open only to Qualified Bidders, due to the sensitive nature of the assets being sold.

58. The Sale Procedures provide, in relevant part, as follows:

---

<sup>19</sup> To the extent the description of the Sale Procedures set forth herein differs from those set forth in Exhibit A-1 to the Sale Procedures Orders, the terms of Exhibit A-1 to the Sale Procedures Order shall control.

<sup>20</sup> The Sale Procedures define a Qualified Bidder as a Potential Bidder whose Financials (or the Financials of its equity holder(s), if applicable) demonstrate the financial capability to consummate the Sale(s), whose bid meets all of the Bid Requirements described in the Sale Procedures, and who the Debtors, in their discretion, after consultation with any creditors' committee appointed in these Chapter 11 cases, determine is likely to consummate the Sale(s), if selected as the Successful Bidder, after taking into account all relevant legal, regulatory, and business considerations. Notwithstanding anything herein to the contrary, Nationstar and AFI shall each be deemed a Qualified Bidder.

(a) **Notice:** Not later than ten days after the entry of the Sale Procedures Order, the Debtors will serve copies of the Notice of Auction and Sale Hearing, the Sale Procedures, and the Sale Procedures Order on the following parties (a) by overnight, postage prepaid to: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for ResCap's prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' Chapter 11 cases (the "Creditors' Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vi) the attorneys for the ad hoc bondholders' committee, (vii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, (viii) any party who, in the past year, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the APA, (ix) each non-debtor counterparty to the Assumed Contracts, any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements; (x) all parties who are known to have asserted or believed by Debtors to hold any lien, claim, encumbrance, or interest in or on the Purchased Assets, (xi) the Securities and Exchange Commission, (xii) the Internal Revenue Service, (xiii) all applicable state attorneys' general, and local authorities, (xiv) all applicable state and local taxing authorities, (xv) the Federal Trade Commission, (xvi) the United States Department of Justice, (xvii) the United States Attorney's Office, (xviii) the office of the New York Attorney General; and (xix) all entities that requested notice in these Chapter 11 cases under Bankruptcy Rule 2002

Three days after entry of the Sale Procedures Order or as soon as practicable thereafter, pursuant to Bankruptcy Rule 2002(l), the Debtors propose that the Notice of Auction and Sale Hearing be published (i) once in the (a) global edition of *The Wall Street Journal* and (b) the national edition of *The New York Times*; and (ii) on the website of the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants, at <http://kccllc.com/rescap>, which methods shall be deemed proper notice to any other interested parties whose identities are unknown to the Debtors.

(b) **Access to Information:** To obtain due diligence access or additional information regarding the Purchased Assets or the Sellers, a Qualified Bidder must provide the Debtors with a written nonbinding expression of interest (the "Expression of Interest") regarding (i) the Qualified Bidder's proposed Sale

Transaction; (ii) the purchase price range; and (iii) the structure and financing of the Sale Transaction. The Debtors, in their business judgment, will determine whether a Qualified Bidder that has submitted an Expression of Interest is reasonably likely to make a bona fide offer (a “Qualifying Expression of Interest”). The Debtors will notify each party that submits an Expression of Interest as to whether such party has made a Qualifying Expression of Interest within 5 business days of the Debtors’ receipt of the Qualifying Expression of Interest. Such Qualified Bidder will be afforded reasonable due diligence, including access to information concerning the Purchased Assets subject of the relevant APA(s) from a confidential electronic data room (the “Data Room”). All reasonable requests for additional information and due diligence access from Qualified Bidders who make a Qualifying Expression of Interest shall be posted in the Data Room. The Debtors will promptly give Nationstar (in the case of the Nationstar Purchased Assets) and AFI (in the case of the AFI Purchased Assets) any confidential memoranda containing information and financial data and any other relevant materials or information that Nationstar or AFI, as applicable, may reasonably request with respect to the Purchased Assets subject of the relevant APA and access to all due diligence provided to any other Qualified Bidder. Availability of additional due diligence to a Qualified Bidder who has made a Qualifying Expression of Interest will cease after the Bid Deadline. The Debtors and their advisors shall be entitled to due diligence from a Qualified Bidder, upon execution of a confidentiality agreement that is reasonably satisfactory to the Debtors. Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors.

(c) **Qualified Bid.** Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid shall deliver to the parties set forth in the Sale Procedures each of the following, which shall be referred to collectively as a “Qualified Bid Package”: (i) one written copy of its bid (a “Bid Proposal”); (ii) a copy of such bidder’s proposed APA(s) that has been marked to show amendments and modifications to the Nationstar APA and/or the AFI APA, as applicable, including price and terms (including a separate bid for the Ginnie Mae MSR, if applicable), and with respect to which the Qualified Bidder agrees to be bound (each a “Marked Agreement”); and (iii) a list of executory contracts and leases that the Qualified Bidder intends to assume (the “Proposed Assumption Contracts” and together with a Bid Proposal and a Marked Agreement(s), a “Bid Package”). A bid must be a written irrevocable offer from a Qualified Bidder (i) stating that the Qualified Bidder offers to consummate the Sale Transaction(s) pursuant to the Marked Agreement(s); (ii) confirming that the offer shall remain open until the closing of the Sale Transactions to the Successful Bidders; (iii) enclosing a copy of the Marked Agreement(s); and (A) in the case of the Nationstar APA, including a certified or bank check, or wire transfer, in the amount of \$72 million (of which \$6,076,799 applies to the Ginnie MSR) to be held in escrow as a “Good-Faith Deposit”; (B) in the case of the AFI APA including a certified or bank check, or wire transfer, in the amount of \$25 million to be held in escrow as a Good-Faith Deposit.

A Qualified Bidder may submit Bid Proposals and Bid Packages either for both of the Nationstar Purchased Assets or the AFI Purchased Assets; provided, however, that a Qualified Bidder that bids on both the Nationstar Purchased Assets and the AFI Purchased Assets must provide separate Bid Proposals for the Nationstar Assets and the AFI Purchased Assets. As noted herein, the Debtors will consider Qualified Bids for all of the Nationstar Purchased Assets or for only the Ginnie Mae MSR; provided that to the extent a Qualified Bidder seeks to bid only on the Ginnie Mae MSR, such bid must also be provided separately. Under no other circumstances may a Qualified Bidder submit separate bids for any portion of the Nationstar Purchased Assets (other than in respect of the Ginnie Mae MSR) or the AFI Purchased Assets. Only bulk bids for these assets will be deemed Qualified Bids provided the other requirements are met.

(d) **Bid Deadline.** The deadline for submitting a Qualified Bid Package by a Qualified Bidder shall be September 14, 2012 at 4:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”). Prior to the Bid Deadline, a Qualified Bidder that desires to make a bid shall deliver written copies of its bid to: (i) Residential Capital, LLC, 1100 Virginia Drive, Fort Washington, Pennsylvania 19034, Attn: Mr. Thomas Marano (tom.marano@gmacfs.com) and Tammy Hamzehpour, Esq. ([tammy.hamzehpour@ally.com](mailto:tammy.hamzehpour@ally.com)); (ii) Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104; Attn: Darren M. Nashelsky, Esq. (lnashelsky@mofo.com), Gary S. Lee, Esq. (glee@mofo.com), proposed counsel to the Debtors; (iii) Centerview Partners, 31 West 52nd street, 22nd floor, New York, New York 10019; Attn: Samuel M. Greene ([sgreene@centerviewpartners.com](mailto:sgreene@centerviewpartners.com)) and Marc Puntus ([mpuntus@centerviewpartners.com](mailto:mpuntus@centerviewpartners.com)), proposed financial advisors to the Debtors, and (iv) counsel to the statutory committee of unsecured creditors in these Chapter 11 cases (the “Creditors’ Committee”), when appointed.

(e) **Auction.** If one or more Bid Packages are received from Qualified Bidder(s) by the Bid Deadline in addition to Nationstar’s Qualified Bid or AFI’s Qualified Bid, the Auction will take place on September 25, 2012 at 10:00 a.m. (prevailing Eastern Time) at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, 39th Floor, New York, New York 10104, or such other place and time as the Debtors shall notify all Qualified Bidders, the Creditors’ Committee, and the DIP Lenders. Unless otherwise determined by the Debtors, only the Debtors, Nationstar (in the case of the Nationstar APA), AFI (in the case of the AFI APA), a representative of each of any official creditors’ committee and any Qualified Bidder (and the legal and financial advisors to each of the foregoing) will be entitled to attend the Auction, and only Nationstar (in the case of the Nationstar APA), AFI (in the case of the AFI APA), and Qualified Bidders will be entitled to make any subsequent bids at the Auction.

(f) **Auction Procedures.** Bidding at the Auction will begin with the initial bid selected and announced by the Debtors (the “Starting Bid”) and continue, in

one or more rounds of bidding. With respect to the assets subject of the Nationstar APA (including the Ginnie Mae MSR's), the initial minimum bid increment at the Auction shall be \$25 million, and cannot be reduced or increased without the consent of Nationstar. To the extent applicable, and only for the Ginnie Mae MSR's, the initial minimum bid increment at the Auction shall be \$2 million, and cannot be reduced or increased without the consent of Nationstar. With respect to the assets subject of the AFI APA, the initial minimum bid increment at the Auction shall be \$15 million, and cannot be reduced or increased without the consent of AFI. Thereafter, in each circumstance, minimum bid increments at the Auction shall be determined by the Debtors in their discretion. For purposes of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by Nationstar), the Debtors will give Nationstar a credit equal to the Break-Up Fee. No additional bids may be considered after the Auction is closed.

If (i) no Qualified Bids with respect to the Nationstar Purchased Assets are timely received, or (ii) the Debtors only timely receive Qualified Bids for the Ginnie Mae MSR's and do not timely receive a Qualified Bid for the remaining Nationstar Purchased Assets other than Nationstar's Qualified Bid, the Debtors shall not conduct the Auction with respect to such Nationstar Purchased Assets for which no Qualified Bids were received (other than Nationstar's Qualified Bid) and instead shall seek approval of the relevant Nationstar Purchased Assets pursuant to the provisions of the Nationstar APA at the Sale Hearing.

(g) **Acceptance of the Sale.** Following any Auction, the Debtors, in their sole discretion, in consultation with any official creditors' committee, shall determine the highest and best bid (the "Successful Bid") and the bidder with respect thereto, the ("Successful Bidder") in connection with each of the APAs. The next highest bidder after the Successful Bidder shall be deemed the ("Next-Highest Bidder"). The Next-Highest Bidder shall be required to hold open its bid until the earlier of (i) the closing of the sale to the Successful Bidder, and (ii) the Confirmation Hearing (the "Back-Up Bid Release Date"). The Debtors shall present to the Bankruptcy Court at the Sale Hearing or the Confirmation Hearing, as applicable, the Successful Bid. At the Sale Hearing or the Confirmation Hearing, as applicable, certain findings will be sought from the Bankruptcy Court, including that (i) the Successful Bidder was selected in accordance with the Sale Procedures, and (ii) consummation of the Sales as contemplated by the Successful Bid will provide the highest or otherwise best result and is in the best interests of the Sellers and their estates in these Chapter 11 cases.

(h) **Return of Good Faith Deposit.** All Good Faith Deposits will be non-refundable if the Qualified Bidder is selected as the Successful Bidder and fails to consummate the Sale Transaction (other than as a result of a breach by the respective Sellers under the APAs) and refundable if it is not selected as the Successful Bidder (other than as a result of its own breach).

Except as otherwise provided in this paragraph with respect to the Successful Bidder and the Next-Highest Bidder, the Good Faith Deposits of all Qualified Bidders required to submit such a deposit under the Sale Procedures shall be returned upon or within two (2) business days after entry of the Sale Order. The Good Faith Deposit of the Successful Bidder shall be held until the closing of the Sale Transaction and applied in accordance with the Successful Bid. The Good Faith Deposit of the Next-Highest Bidder shall be retained in escrow until the Back-Up Bid Release Date and returned to the Next-Highest Bidder within two (2) business days of such date. Until the return of the Good Faith Deposit in accordance with the above, the Debtors shall hold such deposits in an interest-bearing escrow account. If the closing does not occur, the disposition of Good Faith Deposits shall be as provided in the Successful Bid and Next-Highest Bidder Bid, as applicable. The Nationstar APA (including any escrow agreement entered into in connection therewith) shall apply in all respect to the application or return of the Good Faith Deposit of Nationstar and the provisions of this paragraph shall not apply.

(i) **Break-Up Fee.** Only with respect to the Nationstar APA, if Nationstar's bid is not the Successful Bid, Nationstar shall be entitled to receive a break-up fee in the amount of \$72 million (of which 8.44% is allocable to the Ginnie Mae MSR and 91.56% is allocable to the remaining Nationstar Purchased Assets) under the terms set forth in the Nationstar APA, without the need for any application, motion, or further order of this Court (the "Break-Up Fee"), plus reimbursement of Nationstar's actual, reasonable, out-of-pocket expenses incurred in connection with transactions contemplated by the APA, not to exceed \$10 million (the "Expense Reimbursement"). This Motion seeks approval of the Break-Up Fee and Expense Reimbursement, and seeks to have these expenses deemed administrative expenses under sections 503(b) and 507 of the Bankruptcy Code.

59. Subject to this Court's calendar, the Debtors seek to have the Sale Hearing scheduled for a date during the week of October 15, 2012, or such other date before October 31, 2012 that the Court conducts the Confirmation Hearing.

#### **DESCRIPTION OF PROPOSED ASSUMPTION AND ASSIGNMENT PROCEDURES**

60. The assumption and assignment of the Assumed Contracts are part and parcel of the Sale Transaction with Nationstar. Accordingly, the Debtors seek this Court's approval of the Assumption and Assignment Notice and related procedures. Each non-debtor counterparty to the Assumed Contracts, any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any

parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements (collectively, the “Interested Contract Parties”) shall receive the Assumption and Assignment Notice. The Assumption and Assignment notice shall apprise Interested Contract Parties of the following:

- the Debtors’ estimate of the Cure Amount associated with each such contract;
- that Nationstar is not assuming and parties will be enjoined from asserting against Nationstar any claims or obligations relating to the pre-closing period under any Assumed Contract, whether such claims or obligations are known, unknown, fixed, contingent, unliquidated or liquidated at the time of the Closing, including, without limitation, any claims or liabilities relating to any act or omission of any originator, holder or servicer of mortgage loans prior to the Closing Date, and any indemnification claims or liabilities relating to any act or omission of the Sellers or any other person prior to the Closing Date. Any parties holding such claims or obligations will be required to respond to the Debtors’ cure notice if they disagree with the amounts set forth therein;
- The deadline for objecting to approval of any Cure Amounts, the severing of any multi-agreement document (as described below) and/or the assumption by the Debtors and assignment to Nationstar of an Assumed Contract, shall be **August 30, 2012, at 5:00 p.m.** (Eastern Time) (the “Contract Objection Deadline”), *provided, however*, that in the event the Sale Procedures result in a Successful Bidder other than Nationstar, the deadline for objecting to the sale of the Purchased Assets to such Successful Bidder shall be at the Sale Hearing;
- Any objection that challenges a Cure Amount, or otherwise asserts that there exist outstanding defaults under an Assumed Contract, must set forth with specificity the Cure Amount being claimed by the objecting party or the nature of the asserted default, as applicable, and must include appropriate documentation in support thereof satisfactory to the Debtors and Nationstar. If no objection to the Cure Amount or the proposed assumption and assignment of an Assumed Contract is timely filed and served, the pertinent Debtor may assume and assign the Assumed Contract to Nationstar (or, alternatively, to the Successful Bidder for the applicable



Purchased Assets), and the Cure Amount set forth in the Assumption and Assignment Notice shall be binding for all purposes in such Debtor's Chapter 11 cases; and

- The Nationstar Sale Approval Order will generally provide that, in cases where a Servicing Agreement is contained within the same writing as an agreement related to origination or loan sales, that the Debtors intend to assume and assign to Nationstar only the Servicing Agreement and that the origination agreements and/or loan sale documents will be severed from the multi-agreement document pursuant to the Sale Order. Further, the Sale Order will generally require that no delay or failure of performance by the Debtors under or in respect to any origination agreement will (i) affect any right of Nationstar under any Servicing Agreement or (ii) permit, result in or give rise to any setoff, delay, deferral, defense, recoupment, claim, counterclaim, default or other impairment of the rights of Nationstar under any Servicing Agreement.<sup>21</sup>

### **APPLICABLE AUTHORITY**

61. The Debtors have filed a Memorandum of Law in Support of this Motion (the "Memorandum of Law") that discusses more fully the authority for requested relief. As detailed in the Memorandum of Law, if a valid business justification exists, the applicable principle of law embeds the debtor's decision to sell property out of the ordinary course of business with a strong presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interests of the company.'" Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992). A sale under section 363 of the Bankruptcy Code should be approved if the court is satisfied that the debtor has exercised sound business judgment; adequate and reasonable notice of the sale has

---

<sup>21</sup> See DB Structured Prods. v. Am. Home Mortg. Holdings, Inc. (In re Am. Home Mortg. Holdings, Inc.), 402 B.R. 87 (Bankr. D. Del. 2009) (holding that mortgage servicing rights included in the same document as other commitments are severable from loan sale commitments).

been provided to interested parties; the purchase price is fair; and the purchaser is proceeding in “good faith.”

**A. The Sales Are Within the Sound Business Judgment of the Debtors and Should be Approved**

62. Section 1123(a)(5)(B) of the Bankruptcy Code provides that “Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . . provide adequate means for the plan’s implementation, such as . . . transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan . . .” 11 U.S.C. § 1123(a)(5)(B). In addition, section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s purchased assets prior to confirmation of a plan. However, courts in this Circuit and others have required that the decision to sell Purchased Assets outside the ordinary course of business be based upon the sound business judgment of the debtors. See Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 466 (2d Cir. 2007); In re Lionel Corp., 722 F.2d at 1063.

63. The “sound business judgment” test requires a debtor to establish three elements in order to justify the sale or lease of property outside the ordinary course of business, namely, (a) that adequate and reasonable notice has been provided to interested persons, (b) that the debtors have obtained a fair and reasonable price, and (c) that the purchaser is proceeding in “good faith.” See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983). The Debtors submit that the decision to proceed with the Sales of the

Purchased Assets and the Sale Procedures related thereto are based upon their sound business judgment and should be approved.

64. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor’s Purchased Assets. See, e.g., Chinichian v. Campolongo (In re Chinichian), 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”).

65. The Debtors submit that ample business justification exists to sell the Purchased Assets under the APAs to the Successful Bidders (or Next Highest Bidders) pursuant to the Sale Procedures. For the reasons identified more fully above, the Debtors believe that it is essential to sell the Purchased Assets, and that those Sales be consummated as part of the plan confirmation process or, to the extent a Chapter 11 plan is not confirmed, by October 31, 2012, then as promptly as practicable thereafter in order to preserve the viability of the businesses to which the Purchased Assets relate as a going concern. The Debtors also believe that a targeted sale process involving potential end users of the Purchased Assets is most likely to achieve the highest and best price for the Purchased Assets.

66. **Adequate and Reasonable Notice.** The notice described herein and the Sale Procedures is designed to provide adequate notice to all potentially interested parties, including those who have previously expressed an interest in purchasing the Purchased Assets. Accordingly, the proposed Sales satisfy the notice requirement. Further, a reasonable opportunity to object or be heard with respect to the Sale Procedures, Cure Amounts, and ultimately the Sales will be afforded to all interested persons, including the Notice Parties.

67. **Fair and Reasonable Price.** Moreover, the Sale Procedures are designed to maximize the value received for the Purchased Assets. The process proposed by the Debtors allows for a timely auction process while also providing bidders and consultants with ample time and information to conduct due diligence and submit a Qualified Bid. The Sale Procedures are designed to ensure that the Purchased Assets will be sold for the highest or otherwise best possible purchase price. The Debtors are subjecting the value of the Purchased Assets to market testing and permitting prospective purchasers to bid on the Purchased Assets. The proposed Sales will be further subject to a market check through the solicitation of competing bids in a court-supervised Auction process as set forth in the Sale Procedures. Courts frequently approve the implementation of competitive bidding procedures to facilitate an asset sale outside of the ordinary course of business as a means to ensure that such sale will generate the highest return for a debtor's estate. See In re Fin. News Networks, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991).

68. Further, Nationstar's involvement will ensure that the Sale of the Purchased Assets subject of the Nationstar APA will yield the highest possible bid by encouraging bidding. The payment of the Break-Up Fee and Expense Reimbursement is within the Debtors' business judgment. Bankruptcy courts have approved incentives similar to the

Break-Up Fee under the “business judgment rule,” and such arrangements are presumptively valid provided that (i) the Debtors’ decision to agree to the break-up fee is not tainted by bad faith or self-dealing; (ii) the break-up fee does not hamper bidding; and (iii) the amount of the break-up fee is reasonable. See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650 at 656-57 (S.D.N.Y. 1992). Accord In re Metaldyne Corp., 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009). The Break-Up Fee meets each of these requirements. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Purchased Assets will be fair and reasonable.

69. **Good Faith.** The Second Circuit has indicated that a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 277 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”).

70. When evaluating sales to insiders, courts in this circuit and others have considered whether the sale involved full disclosure to the court and to the parties involved in the proceeding. In re Betty Owens Schools, Inc., 1997 WL 188127, at \*11 (S.D.N.Y. April 16, 1997) (“[A] debtor-in-possession who proposes a sale of all of its assets to an insider must fully disclose the relationship between the buyer and seller.”); In re Sasson Jeans, Inc., 90 B.R. 608, 610 (S.D.N.Y. 1988) (where court was “hard pressed” to find bad faith when challenged relationship between bidder and debtor “was fully disclosed to the Bankruptcy Court”).

71. Despite AFI's status as the Debtors' indirect parent and hence an "insider," the sale of the Purchased Assets subject of the AFI APA, under applicable heightened scrutiny, is still in "good faith." See In re Bidermann Indus. U.S.A., Inc., 203 B.R. 547, 551 (Bankr. S.D.N.Y. 1997) ("[S]ales to fiduciaries in chapter 11 cases are not *per se* prohibited, but [they] are necessarily subjected to heightened scrutiny.") (quoting C&J Clark Am., Inc. v. Carol Ruth, Inc. (In re Wingspread Corp.), 92 B.R. 87, 93 (Bankr. S.D.N.Y. 1988)).

72. AFI has fully disclosed its status as an "insider" and the Sale Notice will provide parties in interest with adequate and reasonable notice of the Sale and the relationship between the Debtors and AFI.

73. The AFI APA has been negotiated by ResCap and its advisers and AFI and its advisers at arm's-length. Except where the specific requirements of the assets being purchased required different terms, the terms of the AFI APA are substantially similar or more favorable to the Debtors than the Nationstar APA. The AFI APA was negotiated in a process that also approximates arm's length despite ResCap being a wholly owned subsidiary of AFI. ResCap and the independent members of its board of directors each have separate legal counsel, who do not represent AFI or any of its subsidiaries or affiliates (other than the Debtors). In negotiating its APA, AFI sought to conform its APA with that of the Nationstar APA, to the extent applicable. As with the Nationstar APA, the AFI APA does not contain special treatment for ResCap, ResCap's estate, AFI, or their respective affiliates and insiders and it specifically provides for overbids, ensuring that ResCap will realize the highest or best price for the AFI Purchased Assets. In addition, AFI will not receive a break-up fee or expense reimbursement. The Nationstar APA and the AFI APA were unanimously approved by the ResCap Board of Directors.

74. As further discussed below, the “good faith” prong of the Lionel standard is also satisfied here.

**B. The Sales Are Proposed in “Good Faith” Under Section 363(m) of the Bankruptcy Code**

75. The Debtors request that the Court find that the Successful Bidders (or Next Highest Bidders) (each as defined in the Sale Procedures) are entitled to the protections of a good faith purchaser under section 363(m) of the Bankruptcy Code.

76. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under subsection (b) ... of this section of a sale . . . of property does not affect the validity of a sale ... under such authorization to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

77. As required by section 363(m) of the Bankruptcy Code, the Sale Procedures have been proposed in good faith and provide for both the Debtors and the potential purchaser to act in good faith in negotiating the Sales and the assignment of the Assumed Contracts (as defined below) in the case of the Nationstar APA.

78. Although the Bankruptcy Code does not define “good faith purchaser,” the Second Circuit, construing section 363(m) of the Bankruptcy Code, has explained that “[g]ood faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings; where there is a lack of such integrity, a good faith finding may not be made. A purchaser’s good faith is lost by ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’” Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 390 (2d Cir. 1997) (quoting In re Rock Indus. Mach.

Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)). Here, the sale of the Purchased Assets is in good faith. There is no evidence of fraud or collusion in the terms of the Sales. To the contrary, as discussed herein, and as will be further demonstrated at the Sale Hearing, the APAs represent the culmination of a solicitation and negotiation process in which all parties will have the benefit of sophisticated counsel and financial advisors.

79. Here, all negotiations have been and will continue to be conducted at an arm's-length, on a good-faith basis. With respect to the potential bidders, the Sale Procedures are designed to ensure that no party is able to exert undue influence over the process. Under the circumstances, the Successful Bidders (or Next-Highest Bidders) should be afforded the protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser. Furthermore, the Sale Procedures are designed to prevent the Debtors or the Successful Bidders (or Next-Highest Bidders) from engaging in any conduct that would, cause or permit the APAs, or the Sales of the Purchased Assets to the Successful Bidders (or Next-Highest Bidders) pursuant thereto and hereto, to be avoided under section 363(n) of the Bankruptcy Code.

80. All creditors and parties in interest will receive notice of the Sales and will be provided with an opportunity to be heard. Additionally, all counterparties to Assumed Contracts will be provided notice of assumption and assignment and an opportunity to be heard. The Debtors submit that such notice is adequate for entry of the Sale Approval Orders and satisfies the requisite notice provisions required under sections 363(b) and 365 of the Bankruptcy Code.

**C. The Sales Should Be Free and Clear of Liens, Claims, and Encumbrances Because the Sales Satisfy the Requirements of Section 363(f) of the Bankruptcy Code**

81. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such



property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a *bona fide* dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f). See also Abir v. Stern, 2010 WL 1170060 (E.D.N.Y. March 22, 2010) (“Section 363(f) is in the disjunctive, such that the sale of the interest concerned may occur if any one of the conditions of [section] 363(f) have been met”) (quoting In re Dundee Equity Corp., 1992 WL 53743, at \*4 (Bankr. S.D.N.Y. Mar. 6, 1992)). Approval of a proposed sale of assets free and clear of interests requires only that one of the five requirements be satisfied with respect to each such interest. In re Borders Grp, Inc., 453 B.R. 477, 483 (Bankr. S.D.N.Y. 2011). Because the Debtors expect that they will satisfy the second and fifth of these requirements, if not others as well, approving the sale of the Purchased Assets free and clear of all adverse interests is warranted.

**D. Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Approved**

82. To facilitate and effect the Sale Transactions and the Nationstar APA, the Debtors seek authority to assume and assign various executory contracts and unexpired leases related to the Nationstar APA (as may be identified by separate notice prior to the Sale Hearing, the “Notice of Assumption and Assignment,” annexed hereto as Exhibit F) to the Successful Bidders (or the Next Highest Bidders) to the extent required by such Successful Bidder (or Next Highest Bidder).

83. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the Bankruptcy

Court, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. A debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. See In re Old Carco LLC, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009) ("Moreover, the business judgment standard as applied to a bankrupt's decision to reject an executory contract because of perceived business advantage requires that the decision be accepted by courts unless it is shown that the bankrupt's decision was one taken in bad faith or in gross abuse of the bankruptcy retained business discretion") (internal quotations omitted).

84. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when the prospective assignee of a lease from the debtors has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding; "chief determinant of adequate assurance of future performance is whether rent will be paid").

85. The Successful Bidders (or the Next Highest Bidders) under the Nationstar APA may wish to take assignment of certain executory contracts and unexpired leases related to the Debtors' business (the "Assumed Contracts"). To the extent Assumed Contracts are identified, the Debtors believe that they can and will demonstrate that all requirements for

assumption and/or assignment of the Assumed Contracts will be satisfied at the Sale Hearing.

The Debtors, as required by the Sale Procedures, will evaluate the financial wherewithal of all potential bidders before qualifying such bidders to bid for the Business. Further, for the reasons stated throughout this Motion, the Debtors, in exercising their sound business judgment, believe that selling the Debtors' business and assuming and assigning to the Successful Bidders (or the Next Highest Bidders) the Assumed Contracts would be in the best interests of their estates.

86. Moreover, the Debtors will provide to all parties to the Assumed Contracts an opportunity to be heard. The Debtors will maintain a schedule of Executory Contracts and Leases that Nationstar has designated as Assumed Contracts. Following the designation of an Executory Contract or Lease as an Assumed Contract, the Debtors will provide an Assumption and Assignment Notice to each non-debtor counterparty to the Assumed Contracts (including the Servicing Agreements) and all trustees that are parties to the Pooling and Servicing Agreements, substantially in the form annexed hereto as Exhibit F and annexed to the Sale Procedures Order as Exhibit A-3, setting forth (i) the proposed Cure Amount, if any and (ii) the procedures for objecting to the proposed assumption and assignment of the Assumed Contract and the proposed Cure Amount, if any. Each non-debtor party to an Assumed Contract will receive notice as soon as reasonably practicable to object to such assignment and/or cure amount. Additionally, all investors, to the extent known by the Sellers, will be provided with notice of the terms of the proposed assumption and assignment of the relevant Assumed Contracts.

87. Thus, the Debtors respectfully submit that by the conclusion of the Sale Hearing, assumption and assignment of the Assumed Contracts should be approved.

**E. Sufficient “Cause” Exists for Denying Credit Bidding to Qualified Bidders Regarding the Nationstar Purchased Assets**

88. Section 363(k) of the Bankruptcy Code permits secured lenders holding “allowed claims” to credit bid and offset their claim against the purchase price of the property sold if they are the successful bidder—unless the Court, “for cause,” orders otherwise.<sup>22</sup> The Bankruptcy Code does not define “cause” under section 363(k). “Cause” is “intended to be a flexible concept enabling a court to fashion an appropriate remedy on a case-by-case basis.” In re NJ Affordable Homes Corp., No. 05-60442 (DHS), 2006 WL 2128624, at \*16 (Bankr. D.N.J. June 29, 2006); cf. In re Theroux, 169 B.R. 498, 499 n.3 (Bankr. D.R.I. 1994) (noting there is no absolute entitlement to credit bid.) Credit bidding may be denied in the interest of any policy advanced by the Bankruptcy Code, such as to ensure the success of the reorganization, or to foster a competitive bidding environment. 3 COLLIER ON BANKRUPTCY ¶ 363.09[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

89. Here, sufficient “cause” exists to exclude otherwise Qualified Bidders from credit bidding, as specifically provided under the “Bid Requirements” and related “Bid Proposal” provisions of the Sale Procedures. First, in order for the Debtors to maximize value to their estates, the Debtors seek approval of sale procedures that are designed to result in the highest or best value for the Purchased Assets. To that end, the Sale Procedures permit Qualified Bidders to bid on various combinations of Purchased Assets pursuant to two asset purchase

---

<sup>22</sup> “At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.” 11 U.S.C. 363(k).

agreements, as described above. The Debtors' capital structure is highly complex, and the Nationstar Purchased Assets are subject to liens under five of the Debtors' credit facilities, including the DIP Facility (as defined in the Financing Motions), AFI Senior Secured Facility, AFI LOC, Citi MSR Facility, and the Junior Secured Notes. As a result, allowing a bidder to credit bid in these circumstances would introduce needless complexity into any auction process and complicate the Debtors' ability to assess competing bids.

90. Second, denying Qualified Bidders the opportunity to credit bid in these unique circumstances is likely to be uncontroversial as the possibility for credit bidding is at best remote. AFI, the largest secured creditor in these Chapter 11 Cases, is theoretically the entity in the best position to credit bid, and they have expressly agreed to waive such right. Assuming any junior lienholder had standing to credit bid, such lienholder would only have the opportunity to credit bid if it satisfied any senior debt in full in cash — an unlikely scenario. For these reasons, “cause” exists to prohibit credit bidding on these facts as a means of furthering a robust and fair auction process.

**F. Anti-Assignment Provisions in the Assumed Contracts Should Be Deemed Unenforceable**

91. To assist in the assumption, assignment, and sale of the Assumed Contracts, the Sale Approval Order with respect to the Nationstar APA should provide that certain anti-assignment provisions shall not restrict, limit, or prohibit, the assumption, assignment, and sale of the Assumed Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

92. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign executory contracts and Leases free from such anti-assignment restrictions:

[N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits,

restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

11 U.S.C. § 365(f)(1).

93. Section 365(f) prohibits three distinct types of anti-assignment provisions that are not enforceable in the context of assignments effected under section 365 of the Bankruptcy Code: (i) provisions that “prohibit” the assignment of an executory contract or unexpired lease are unenforceable; (ii) provisions that seek to “restrict” the ability of a debtor to assume and assign an executory contract or unexpired lease are not given effect; and (iii) provisions that “condition” the ability of a debtor to assume and assign an executory contract or unexpired lease are unenforceable.

94. Section 365(f)(1), by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. See, e.g., Coleman Oil Co., Inc. v. The Circle K Corp. (In re The Circle K Corp.), 127 F.3d 904, 910-11 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365”).

95. Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. 11 U.S.C. § 365(f)(3). See, e.g., In re Jamesway Corp., 201 BR 73 (Bankr. S.D.N.Y. 1996) (section 365(f)(3) prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect). Many courts have recognized that provisions that have the effect of restricting assignments cannot be

enforced. See In re Rickel Home Ctrs., Inc., 240 B.R. 826, 831 (D. Del. 1998) (“In interpreting Section 365(f), courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions.”), aff’d, 209 F.3d 291 (3d Cir.), cert. denied, 531 U.S. 873 (2000). Similarly, in In re Mr. Grocer, Inc., the court noted that:

[the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves *ipso facto* anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Consequently, any anti-assignment provisions should not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts and should be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

#### **G. No Consumer Privacy Ombudsperson Is Required**

96. Section 363(b)(1) of the Bankruptcy Code states that if a debtor is selling personally identifiable information (“PII”) in bankruptcy and the debtor has a privacy policy in place that limits the transfer of PII to unaffiliated parties, then a debtor must either (i) comply with its privacy policies in connection with the sale, or (ii) a consumer privacy ombudsman must be appointed. 11 U.S.C. § 363(b)(1).

97. Separately, the Gramm-Leach-Bliley Act (the “GLBA”), as implemented by rules made by the Consumer Financial Protection Bureau, requires that a financial institution deliver to any individual with whom it has a “customer relationship,” an annual notice describing

its practices with respect to the disclosure of PII to nonaffiliated third parties. See 12 C.F.R. 1016.5. The GLBA prohibits financial institutions from disclosing PII to non-affiliated third parties, except as provided in their privacy notice. See 12 C.F.R. 1016.10. The GLBA, however, specifically permits a financial institution to disclose PII to unaffiliated third parties “[i]n connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of [PII] concerns solely consumers of such business or unit.” 12 C.F.R. 1016.15(a)(6). In this regard, the GLBA specifically permits the disclosure of customer PII as part of the sale of a going concern.

98. Section 2.13 of the Nationstar APA notes that the sale, if any, of customer lists, customer data and other consumer privacy information pursuant to the Nationstar APA is subject to and shall conform to the recommendations of any consumer privacy ombudsperson that may be appointed pursuant to section 332 of the Bankruptcy Code (the “Consumer Privacy Ombudsperson”). As set forth in further detail in the Hamzehpour Declaration, the Debtors maintain that in connection with the sale of the Purchased Assets pursuant to the Nationstar APA, including the sale of Mortgage Loans and MSRs, the Debtors will be able to comply with existing privacy policies in connection with the Sales. The Debtors also maintain that the disclosure of PII pursuant to the Nationstar APA will comply with the GLBA and the terms of the privacy notices delivered by the Debtors to mortgage borrowers. In turn, the Debtors believe that borrower data can be disclosed in connection with the sale pursuant to the Nationstar APA without the need for a Consumer Privacy Ombudsman.

**H. Relief from the Fourteen-Day Waiting Periods Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate**

99. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless



the court orders otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Sale Procedures Order and the Sale Approval Orders be effective immediately by providing that the fourteen (14) day stays under Bankruptcy Rules 6004(h) and 6006(d) be waived.

100. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen (14) day stay period, Collier on Bankruptcy suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY ¶ 6004.11 (Alan N. Resnick & Henry J. Sommers eds., 16th ed.). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

101. The Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

### **NOTICE**

102. No trustee or examiner has been appointed in these Chapter 11 cases. Notice of this Motion will be given to the following parties, or in lieu thereof, to their counsel: (i) the Office of the United States Trustee for the Southern District of New York; (ii) the office

of the United States Attorney General; (iii) the office of the New York Attorney General; (iv) the office of the United States Attorney for the Southern District of New York; (v) the Internal Revenue Service; (vi) the Securities and Exchange Commission; (vii) each of the Debtors' prepetition lenders, or their agents, if applicable; (viii) each of the indenture trustees for the Debtors' outstanding notes issuances; (ix) AFI and its counsel; (x) the administrative agent for the Debtors' proposed providers of debtor in possession financing and its counsel; (xi) Nationstar Mortgage LLC and its counsel; and (xii) the parties included on the Debtors' list of fifty (50) largest unsecured creditors.

103. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

### CONCLUSION

WHEREFORE the Debtors respectfully request that this Court (i) enter the proposed Sale Procedures Order, substantially in the form attached hereto as Exhibit A; (ii) enter the proposed Sale Approval Orders, substantially in the forms attached hereto as Exhibits D and E; and (iii) grant such other and further relief as this Court deems just and proper.

Dated: May 14, 2012  
New York, New York

/s/ Darren M. Nashelsky  
Darren M. Nashelsky  
Gary S. Lee  
Todd M. Goren  
Alexandra Steinberg Barrage

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Proposed Counsel for the Debtors and  
Debtors in Possession*

**EXHIBIT A**

**PROPOSED SALE PROCEDURES ORDER**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**ORDER UNDER 11 U.S.C. §§ 105, 363(b) AND 365 (I) AUTHORIZING AND  
APPROVING SALE PROCEDURES, INCLUDING BREAK-UP FEE AND EXPENSE  
REIMBURSEMENT; (II) SCHEDULING BID DEADLINE, AUCTION (IF NECESSARY)  
AND SALE HEARING; (III) ESTABLISHING ASSUMPTION AND ASSIGNMENT  
PROCEDURES, INCLUDING PROCEDURES FOR FIXING CURE AMOUNTS; AND  
(IV) ESTABLISHING NOTICE PROCEDURES AND APPROVING  
FORMS OF NOTICE**

Upon the motion, dated May 14, 2012 (the “Motion”),<sup>1</sup> of Residential Capital, LLC (“ResCap”) and certain of its affiliates, as debtors in possession (collectively, the “Debtors”) for entry of an Order,<sup>2</sup> under Bankruptcy Code sections 105, 363, 365, 503, 507 and 1123 of title 11, United States Code and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014 for, among other things: (i) authorizing and approving the proposed sale procedures annexed hereto as Exhibit A-1 (the “Sale Procedures”) and the payment of the Break-Up Fee and Expense Reimbursement to Nationstar under the terms set forth in the Nationstar APA, (ii) scheduling a Bid Deadline, Auction (if necessary) and Sale Hearing, (iv) establishing procedures for assuming and assigning the Assumed Contracts, including procedures for fixing cure amounts (the “Cure Amounts”) to be paid under section 365 of the Bankruptcy Code, determining whether alleged defaults (if any) exist and evaluating the Purchaser’s ability to provide adequate assurance of

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the Sale Procedures, or the APAs (as defined in the Motion). Creditors and parties-in-interest with questions or concerns regarding the Debtors’ Chapter 11 cases or the relief granted herein may refer to <http://www.kccellc.net/rescap> for additional information.

future performance (the “Assumption and Assignment Procedures”), and (v) establishing notice procedures and approving forms of notice; and upon the (a) Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital LLC in Support of the Chapter 11 Petitions and First Day Pleadings, pursuant to Local Bankruptcy Rule 1007-2, (b) the Declaration of Samuel M. Greene in Support of the Proposed Sale of the Debtors’ Assets, and (c) the Declaration of Tammy Hamzehpour in Support of the Proposed Sale of the Nationstar Purchased Assets Without a Privacy Ombudsman; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the proceeding on the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b); and sufficient notice of the Motion having been given under the particular circumstances and it appearing that no further notice need be provided; and a hearing having been held on June 18, 2012, to consider the relief requested in the Motion (the “Sale Procedures Hearing”); and upon the record of the Sale Procedures Hearing, and all of the proceedings before this Court; and this Court having reviewed the Motion and any objections thereto (the “Objections”) and found and determined that the relief sought in the Motion with respect to the Sale Procedures as provided herein is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefore, it is FOUND AND DETERMINED THAT:<sup>3</sup>

A. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363, 365, 503, 507 and 1123(a) of the Bankruptcy Code, and rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy

---

<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

Rules”), and Rule 6004-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

B. The Motion and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Guidelines for the Conduct of Asset Sales established by the Bankruptcy Court on November 18, 2009 pursuant to General Order M-383.

C. The Sale Procedures comply with the requirements of Local Rule 6004-1.

D. The Debtors have articulated compelling and sound business justifications for this Court to grant the Sale Procedures Relief, including this Court’s (i) approval of payment of the Break-Up Fee and Expense Reimbursement under the circumstances, timing, and procedures set forth herein, in the Motion, and in the Nationstar APA; (ii) approval of the Sale Procedures; (iii) scheduling of the Bid Deadline, Auction, and Sale Hearing; (iv) approval of and authorization to serve the Sale Notice and the Assumption and Assignment Notice (each as hereinafter defined); and (v) approval of and authorization to publish the Sale Notice.

E. The Debtors have set a Sale Hearing (as described below), where they will seek authorization of the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts subject of the APAs free and clear of all liens, encumbrances, and interests to Nationstar and AFI, respectively, or such other Successful Bidders as may result from the Auction.

F. Entry into each of the APAs with Nationstar and AFI, respectively, is in the best interest of the Debtors and the Debtors’ estates and creditors. The APAs will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors’ estates. The terms of the Nationstar APA were negotiated by the Debtors and

Nationstar in good faith and at arm's length. The terms of the AFI APA were negotiated by the Debtors and AFI in good faith and at arm's length.

G. The Break-Up Fee and Expense Reimbursement subject of the Nationstar APA are fair and reasonable and provide a benefit to the Debtors' estates and creditors.

H. The Debtors' payment of the Break-Up Fee and Expense Reimbursement to Nationstar under the conditions set forth in the Nationstar APA was negotiated by the parties in good faith and at arm's length and is (i) an actual and necessary cost of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code; (ii) of substantial benefit to the Debtors' estates and creditors and all parties in interest; (iii) reasonable and appropriate; and (iv) necessary to ensure that Nationstar will continue to pursue the proposed Nationstar APA to undertake the sale of the Purchased Assets subject of the Nationstar APA. Notwithstanding anything to the contrary in this or any other order of this Court, the Break-Up Fee and Expense Reimbursement shall constitute allowed administrative expenses with priority pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.

I. The Sale Procedures, a copy of which is annexed hereto as Exhibit A-1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Purchased Assets subject of the APAs.

J. The Notice of Auction and Sale Hearing (the "Sale Notice"), a copy of which is annexed hereto as Exhibit A-2, is reasonably calculated to provide parties in interest with proper notice of the proposed sale of the Purchased Assets subject of each APA, the Sale Procedures, the Sale Transactions, the Auction (if necessary), and the Sale Hearing, and no other or further notice is required.



K. Publication of the Sale Notice is reasonably calculated to provide all unknown creditors and parties not otherwise required to be served with a copy of the Sale Notice pursuant to this Order with proper notice of the proposed sale of the Purchased Assets subject of each APA, the Sale Procedures, the Sales, the Auction (if necessary), and the Sale Hearing, and no other or further notice is required.

L. The Assumption and Assignment Notice, a copy of which is annexed hereto as Exhibit A-3, is reasonably calculated to provide all counterparties to the Assumed Contracts with proper notice of the potential assumption and assignment of their respective executory contracts or Leases, any Cure Amounts relating thereto, and the Assumption and Assignment Procedures.

M. Due, sufficient, and adequate notice of the relief requested in the Motion and granted herein has been given to parties in interest and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including with respect to the proposed Sale Procedures, the Break-Up Fee, and the Expense Reimbursement) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 6004(a).

N. Although the Sale Transactions include the transfer of “personally identifiable information” (as defined in 101(41)(A) of the Bankruptcy Code), the transfer of such information is consistent with the Debtors existing privacy policies. No consumer privacy ombudsman is required and the Debtors may disclose customer “personally identifiable information” to a purchaser of its assets in a bankruptcy sale in a manner that is consistent with applicable federal requirements.

O. This Order constitutes a final order within the meaning of  
28 U.S.C. § 158(a).

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED THAT:

**The Sale Procedures**

1. The Sale Procedures Relief requested in the Motion is granted as provided herein.
2. The [Objections] are overruled.
3. The Sale Procedures, attached hereto as Exhibit 1, which are incorporated herein by reference, are approved and shall govern all bids and sale procedures relating to the Purchased Assets subject of each APA. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Sale Procedures.
4. This Order and the Sale Procedures shall govern the sale of the Purchased Assets under any sale pursuant to a Chapter 11 plan.
5. The Sale Procedures shall apply to (i) except as otherwise provided in the Sale Procedures or the respective APAs, Nationstar and AFI, respectively; (ii) Potential Bidders and Qualified Bidders; (iii) the conduct of the Sales; and (iv) the Auction.
6. Each of Nationstar and AFI, respectively, shall constitute a Qualified Bidder for all purposes and in all respects with respect to the Sale Procedures.
7. In light of the extensive prepetition negotiations culminating in the Nationstar APA in addition to Nationstar's payment of the Nationstar Deposit, Nationstar is excused from submitting an additional deposit. The Nationstar Deposit shall be deemed

Nationstar's Good Faith Deposit (as defined in the Sale Procedures) for all purposes under the Sale Procedures.

8. AFI shall be excused from submitting a Good Faith Deposit (as defined in the Sale Procedures) required of Qualified Bidders in light of the extensive prepetition negotiations culminating in the AFI APA, in addition to AFI's irrevocable, absolute, and unconditional guarantee (as described in section 10.15 of the AFI APA) to Sellers (as defined in the AFI APA) of the prompt and full payment by BMMZ of all of BMMZ's monetary obligations under the AFI APA and any Ancillary Agreements as and when payment is due and payable in accordance with the terms under the AFI APA.

9. The deadline for submitting a Qualified Bid shall be September 18, 2012 (the "Bid Deadline"), as further described in the Sale Procedures.

**The Break-Up Fee and Expense Reimbursement**

10. The Debtors are authorized and directed to pay to Nationstar the Break-Up Fee of \$72 million (of which 8.44% is allocable to the Ginnie Mae MSR's and 91.56% is allocable to the remaining Nationstar Purchased Assets) and the Expense Reimbursement under the terms set forth in the Nationstar APA, without the need for any application, motion, or further order of this Court.

11. The Debtors' obligations to pay the Break-Up Fee and Expense Reimbursement in accordance with the terms of the Nationstar APA, shall survive termination of the Nationstar APA, shall constitute allowed administrative expense claims against each Debtor's estate, shall be entitled to priority under sections 503(b)(1)(A) and 507(a) of the Bankruptcy Code, and shall be (i) fully payable from proceeds of the Successful Bid upon

closing or (ii) payable from proceeds of any deposit forfeited to the Debtors in the event that the Successful Bid does not close or otherwise by the Debtors if any such deposit is insufficient.

**Notice Procedures**

12. The Assumption and Assignment Notice is sufficient to provide effective notice of the assumption and assignment of the Assumed Contracts and Cure Amounts to all non-debtor parties to the Assumed Contracts, any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any other parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements, pursuant to Bankruptcy Rules 2002 and 6006, and are hereby approved.

13. The Sale Notice and the Publications Notice are sufficient to provide effective notice to all interested parties of the Sale Procedures, the Auction (if any), and the Sale Transactions, pursuant to Bankruptcy Rules 2002(a)(2) and 6004, and are hereby approved.

14. The notices described in subparagraphs (a)-(d) below are approved and shall be good and sufficient, and no other or further notice shall be required if given as follows:

- (a) The Debtors (or their agent) serve, within three (3) days after entry of this Order (the "Mailing Deadline"), by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a copy of this Order and the Notice of Auction and Sale Hearing upon: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for ResCap's prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' Chapter 11 cases (the "Creditors' Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vi) the attorneys for the ad hoc bondholders' committee, (vii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, (viii) any party who, in the

past year, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the APA, (ix) each non-debtor counterparty to the Assumed Contracts, any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements; (x) all parties who are known to have asserted or believed by Debtors to hold any lien, claim, encumbrance, or interest in or on the Purchased Assets, (xi) the Securities and Exchange Commission, (xii) the Internal Revenue Service, (xiii) all applicable state attorneys' general, and local authorities, (xiv) all applicable state and local taxing authorities, (xv) the Federal Trade Commission, (xvi) the United States Department of Justice, (xvii) the United States Attorney's Office, (xviii) the office of the New York Attorney General; and (xix) all entities that requested notice in these Chapter 11 cases under Bankruptcy Rule 2002; and

- (b) On or before the Mailing Deadline, the Debtors (or their agent) serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, the Sale Notice, substantially in the form annexed hereto as Exhibit A-2, upon any other known creditors and interestholders.
- (c) On the Mailing Deadline, or as soon as practicable thereafter, the Debtors shall cause the Sale Notice, substantially in the form annexed hereto as Exhibit A-2, to be published (i) once (a) in the global edition of *The Wall Street Journal* and (b) the national edition of *The New York Times*, and (ii) on the website of the Debtors' proposed claims and noticing agent Kurtzman Carson Consultants, LLC at <http://www.kccllc.net>.
- (d) On or before June 25, 2012 the Debtors shall file a schedule (the "Schedule") of Assumed Contracts that Nationstar has designated as Assumed Contracts, including the cure amounts relating such Assumed Contracts (the "Cure Amount"), and serve by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, a notice of the assumption and assignment of the Assumed Contracts and the proposed Cure Amounts relating to the Assumed Contracts (the "Assumption and Assignment Notice"), substantially in the form annexed hereto as Exhibit A-3, upon (i) each counterparty to the Assumed Contracts (including the Servicing Agreements); (ii) any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements and (iii) all trustees that are parties to

the Pooling and Servicing Agreements. In addition, Debtors will use their commercially reasonable efforts to identify and provide notice of the terms of the proposed assumption and assignment of the relevant Assumed Contracts to investors and certificateholders.

15. Subject to certain exceptions expressly provided for in the Nationstar APA, Nationstar shall be entitled to remove any Assumed Contract from the relevant Schedule until two business days prior to the Closing Date, in which case the contract or lease shall cease to be an Assumed Contract. The counterparty to such removed Assumed Contract shall be furnished promptly with notice of such removal.

### **Objection Deadlines**

16. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the Sales shall file a formal objection that complies with the objection procedures as set forth in the Motion. Each objection shall state the legal and factual basis of such objection.

17. Any and all objections as contemplated by this Order must be: (i) in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the Bankruptcy Rules, the Local Rules, and the Order Under Bankruptcy Code Sections 102(2), 105(a) and 105(d), Bankruptcy Rules 1015(c), 2002(m) and 9007 and Local Bankruptcy Rule 2002-2 Establishing Certain Notice, Case Management and Administrative Procedures (the “CMO”); (iv) filed with the Bankruptcy Court; and (v) served on (a) the Debtors; (b) Morrison & Foerster LLP, counsel to the Debtors; (c) Sidley Austin LLP, counsel to Nationstar; (d) Kirkland & Ellis LLP, counsel to AFI; and (e) the Notice Parties in accordance with the CMO (the “Objection Notice Parties”) so as to be received on or before the appropriate deadline as set forth below.

18. The deadline for objecting to approval of (i) any Cure Amounts, and/or (ii) the assumption by the Debtors and assignment to Nationstar of an Assumed Contract shall be **August 30, 2012, at 5:00 p.m.** (Eastern Time) (the “Cure Objection Deadline”), *provided, however,* that in the event the Sale Procedures result in a Successful Bidder other than Nationstar, the deadline for objecting to the sale of the Purchased Assets to such Successful Bidder shall be at the Sale Hearing. The deadline for objecting to approval of the Sale Transactions, including the sale of the Purchased Assets free and clear of liens, claims, encumbrances, and interests (including rights or claims based on any successor or transferee liability) shall be **October 8, 2012, at 5:00 p.m.** (Eastern Time).

19. Failure to object to the relief requested in the Motion shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code and shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Motion, and to the consummation and performance of the Sale Transactions contemplated by the APAs (including the transfer free and clear of all liens, claims, encumbrances, and interests, including rights or claims based on any successor or transferee liability, of each of the Purchased Assets transferred as part of the Sale Transactions).

20. If a timely objection is raised either to the proposed assumption and assignment of an Assumed Contract or to the proposed Cure Amount (a “Contract Objection”), (i) the Debtors; (ii) Nationstar; and (iii) the objecting party may meet and confer in good faith to attempt to resolve any such objection without Court intervention. If (i) the Debtors; (ii) Nationstar; and (iii) the objecting party resolve any Contract Objection, they may enter into a written stipulation, which stipulation is not required to be filed with or approved by the Court. If a Contract Objection cannot be consensually resolved, it shall be heard by the Court at the

discretion of the Debtors and Nationstar or AFI, respectively, either at the Sale Hearing or such other date as determined by the Court (such other date being no later than the Sale Hearing).

21. Any Contract Objection that challenges a Cure Amount, or otherwise asserts that there exist outstanding defaults under an Assumed Contract, must set forth with specificity the Cure Amount being claimed by the objecting party or the nature of the asserted default, as applicable, and must include appropriate documentation in support thereof satisfactory to the Debtors and Nationstar. If no objection to the Cure Amount or the proposed assumption and assignment of an Assumed Contract is timely filed and served, the pertinent Debtor may assume and assign the Assumed Contract to Nationstar (or, alternatively, to the Successful Bidder for the applicable Purchased Assets), and the Cure Amount set forth in the Assumption and Assignment Notice shall be binding upon all non-debtor parties to the Assumed Contracts, any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements (collectively, the “Assumption Notice Parties”), for all purposes in such Debtor’s Chapter 11 cases. The respective Assumption Notice Parties shall be forever barred from (i) objecting to the assumption and assignment of the relevant Assumed Contract and/or Cure Amount, and (ii) asserting at any time any condition to assignment, default, claims, obligations or breach and/or any additional cure, damage or other amount with respect to the respective Assumed Contract on the basis of events of any kind of nature occurring or arising prior to the Closing Date, whether such events constituted acts or omissions by the Debtors or other person and regardless of whether such events are known or unknown, including, without limitation, claims or liabilities relating to any act or omission of



any originator, holder or servicer of mortgage loans prior to the Closing Date, and any indemnification obligations, claims or liabilities relating to any act or omission of the Sellers or any other person prior to the Closing Date.

22. All Assumed Contracts will be assumed and assigned to Nationstar on the Closing Date of the Nationstar APA, except as may be otherwise set forth therein or agreed between the Debtors and Nationstar.

23. The Court shall conduct the Sale Hearing on **October 15, 2012 at \_:00 \_m.** (Eastern Time) or such other date before October 31, 2012 that the Court conducts the Confirmation Hearing, at which time the Court will consider approval of the Sale Transactions to the Successful Bidder. The Sale Hearing shall, if applicable, be conducted in connection with, and as part of, any hearing to consider confirmation of a plan of reorganization under section 1129 of the Bankruptcy Code; provided, however, that if Nationstar is the Successful Bidder and a plan of reorganization is not confirmed by the Bankruptcy Court on or before October 31, 2012 or if a plan of reorganization that is confirmed by such date does not become effective on or before December 15, 2012, the Debtors shall seek to consummate the Sale Transactions to Nationstar and AFI, respectively, pursuant to section 363 of the Bankruptcy Code.

24. In the event the Successful Bidder is not Nationstar or AFI, respectively, non-debtor parties to the Assumed Contracts may raise objections to adequate assurance of future performance at the Sale Hearing, but shall not be permitted to raise objections to the Cure Amount if not asserted by the Cure Objection Deadline. The Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda.

**Other Relief Granted**

25. In the event the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids in addition to the Nationstar or AFI bid, the Debtors will conduct an Auction, commencing at **10:00 a.m. (Eastern Time) on September 25, 2012** at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104, or such later time on such date or other location as shall be timely communicated in accordance with the Sale Procedures. If (i) no Qualified Bids with respect to the Nationstar Purchased Assets other than Nationstar's Qualified Bid are timely received or (ii) the Debtors only timely receive Qualified Bids for the Ginnie Mae MSRs and do not timely receive a Qualified Bid for the remaining Nationstar Purchased Assets other than Nationstar's Qualified Bid, the Debtors shall not conduct the Auction with respect to such Nationstar Purchased Assets for which no Qualified Bids were received (other than Nationstar's Qualified Bid), and instead shall seek approval of the sale of the relevant Nationstar Purchased Assets to Nationstar pursuant to the provisions of the Nationstar APA at the Sale Hearing.

26. The Debtors are authorized to conduct the Sale Transactions without the necessity of complying with any state or local bulk transfer laws or requirements.

27. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

28. Notwithstanding any possible applicability of Bankruptcy Rules 6004 or 6006, or otherwise, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry. For the avoidance of doubt, the Break-Up Fee and Expense Reimbursement approved by this Order shall be immediately appealable and failure to appeal in

accordance with the Bankruptcy Rules or other applicable law shall constitute a waiver of such rights.

29. Subject to the provisions of this Order governing payment of the Break-Up Fee and Expense Reimbursement, all net proceeds from the consummation of the Sale Transactions or a Competing Transaction (as defined in the APAs) shall be treated in accordance with the terms of the Debtors' proposed postpetition secured debtor-in-possession financing (the "DIP Financing") and any order of this Court approving the DIP Financing.

30. With the exception of this Order's provisions pertaining to the Break-Up Fee and Expense Reimbursement, to the extent that any inconsistency exists between this Order and the terms of the DIP Financing or any order of this Court approving such DIP Financing, the terms of the DIP Financing and the order approving the same shall control.

31. The requirements set forth in Local Rule 9013-1(b) are satisfied.

32. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

33. Notwithstanding anything herein to the contrary, this Order shall not modify or affect the terms and provisions of, nor the rights and obligations under, (i) the Board of Governors of the Federal Reserve System Consent Order, dated April 13, 2011, by and among AFI, Ally Bank, ResCap, GMAC Mortgage, LLC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, (ii) the consent judgment entered April 5, 2012 by the District Court for the District of Columbia, dated February 9, 2012, (iii) the Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, dated February 10, 2012, and (iv) all related agreements with AFI and Ally Bank and their respective subsidiaries and affiliates (excluding ResCap and its subsidiaries).

34. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, York  
[ ], 2012

---

The Honorable Martin Glenn  
United States Bankruptcy Judge

**EXHIBIT A-1**

**PROPOSED SALE PROCEDURES**

### **SALE PROCEDURES**

By motion dated May 14, 2012 (the “Motion”), Residential Capital LLC (“ResCap”) and its debtor subsidiaries, as debtors in possession (collectively, the “Debtors” or the “Company”), requested, among other things, approval of the process and procedures through which it will determine the highest or otherwise best price for the purchase of certain assets (collectively, the “Purchased Assets”) of the Debtors under two separate asset purchase agreements, each as described below. On \_\_\_, 2012, the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) entered an order (the “Sale Procedures Order”), which, among other things, authorized the Debtors to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the “Sale Procedures”).

On \_\_\_, 2012, as further described below, in the Motion, and in the Sale Procedures Order, the Bankruptcy Court shall conduct a hearing (the “Sale Hearing”), at which the Debtors shall seek entry of an orders (each, a “Sale Order”) authorizing and approving the sale of the Purchased Assets (the “Sale Transactions”) pursuant to (i) that certain Asset Purchase Agreement (the “Nationstar APA”) between certain of the Debtors and Nationstar Mortgage LLC (“Nationstar”), providing for the sale of certain assets as identified therein (the “Nationstar Purchased Assets”) substantially in the form annexed as Exhibit B to the Motion, subject to the submission of higher or better offers in an auction process (the “Auction”); and (ii) that certain Asset Purchase Agreement (the “AFI APA”, together with the Nationstar APA, the “APAs”) between certain of the Debtors and (a) Ally Financial Inc. (“AFI”) and (b) BMMZ Holdings LLC (“BMMZ”), providing for the sale of certain assets identified therein (the “AFI Purchased Assets”) substantially in the form annexed as Exhibit C to the Motion, subject to the submission of higher or better offers in an Auction. The Sale Hearing may be conducted in connection and in accordance with a hearing to consider confirmation of a plan of reorganization proposed in these Chapter 11 cases by the Debtors (the “Confirmation Hearing”).

### **Participation Requirements**

In order to participate in the bidding process or otherwise be considered for any purpose hereunder, a person interested in purchasing the Purchased Assets (a “Potential Bidder”) must first deliver the following materials to the Debtors, c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee and Darren M. Nashelsky) and Centerview Partners, 31 West 52nd Street, New York, NY 10019 (Attn: Samuel M. Greene and Marc D. Puntus):

- (i) An executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors; and
- (ii) Evidence of corporate authority to commit to the Sale Transaction(s), including the most current audited and latest unaudited financial statements (collectively, the “Financials”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of the Sale Transaction(s), (a) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors, and (b) a written commitment acceptable to the

Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale Transaction(s).

A "Qualified Bidder" is a Potential Bidder whose Financials (or the Financials of its equity holder(s), if applicable) demonstrate the financial capability to consummate the Sale Transaction(s), whose bid meets all of the Bid Requirements described below *and* that the Debtors, in their discretion, but after consulting with the statutory committee of unsecured creditors appointed in these Chapter 11 cases (the "Creditors' Committee"), determine is likely to consummate the Sale Transaction(s), if selected as the Successful Bidder, after taking into account all relevant legal, regulatory, and business considerations.

### **Obtaining Due Diligence Access**

To obtain due diligence access or additional information regarding the Purchased Assets or the Sellers subject of the APAs, a Qualified Bidder (other than Nationstar or AFI) must first provide the Debtors with a written nonbinding expression of interest (the "Expression of Interest") regarding (i) the Qualified Bidder's proposed Sale Transaction(s), (ii) the purchase price range, (iii) the structure and financing of the Sale Transaction(s), (iv) any conditions to closing that it may wish to impose, and (v) the nature and extent of additional due diligence it may wish to conduct. If the Debtors, in their business judgment, determine that a Qualified Bidder that has submitted an Expression of Interest is reasonably likely to make a bona fide offer (a "Qualifying Expression of Interest"), then the Debtors shall afford such Qualified Bidder reasonable due diligence, including the ability to access information from a confidential electronic data room concerning the Purchased Assets (the "Data Room"). The Debtors will notify each party that submits an Expression of Interest regarding whether such party has made a Qualifying Expression of Interest within five (5) business days of the Debtors' receipt of the Qualifying Expression of Interest.

Neither the Debtors nor any of their affiliates (or any of their respective representatives) are obligated to furnish any information relating to the Sellers subject of the APAs, the Purchased Assets, and/or the Sale Transactions to any person except to Nationstar and AFI, respectively, or another Qualified Bidder who makes a Qualifying Expression of Interest. The Debtors shall promptly give Nationstar and AFI, respectively, any confidential memoranda (the "Confidential Memoranda") containing information and financial data and any other relevant materials or information that Nationstar or AFI, as applicable, may reasonably request with respect to the Purchased Assets and access to all due diligence information provided to any other Qualified Bidder.

The Debtors shall coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders who make a Qualifying Expression of Interest. If the Debtors determine that due diligence material requested by such Qualified Bidder is reasonable and appropriate under the circumstances, but such material has not previously been provided to any other Qualified Bidder who has made a Qualifying Expression of Interest, the Debtors shall post such materials in the Data Room and provide notification of such posting by electronic transmission to such Qualified Bidders and Nationstar and AFI, respectively.

Unless the Debtors determine otherwise, the availability of additional due diligence to a Qualified Bidder who has made a Qualifying Expression of Interest will cease after the Bid Deadline (as defined below).

### **Bid Deadline**

**The deadline for submitting Bid Packages (as defined below) by a Qualified Bidder shall be September 18th, 2012, at 5:00 p.m. (Eastern Time) (the “Bid Deadline”).**

On or prior to the Bid Deadline, a Qualified Bidder that desires to make a bid shall deliver (i) one written copy of its bid (a “Bid Proposal”); (ii) a copy of such bidder’s proposed APA(s) that has been marked to show amendments and modifications to the Nationstar APA and/or the AFI APA, as applicable, including price and terms, and with respect to which the Qualified Bidder agrees to be bound (each a “Marked Agreement”); and (iii) a list of executory contracts and leases that the Qualified Bidder intends to assume (the “Proposed Assumption Contracts” and together with a Bid Proposal and a Marked Agreement, a “Bid Package”) to the Debtors, c/o Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104 (Attn: Gary S. Lee ([glee@mofo.com](mailto:glee@mofo.com)) and Larren M. Nashelsky ([lnashelsky@mofo.com](mailto:lnashelsky@mofo.com)), Centerview Partners, 31 West 52nd Street, New York, NY 10019 (Attn: Samuel M. Greene ([sgreene@centerviewpartners.com](mailto:sgreene@centerviewpartners.com)) and Marc Puntus ([mpuntus@centerviewpartners.com](mailto:mpuntus@centerviewpartners.com)), and counsel to the Creditors’ Committee, when formed.

On the Bid Deadline, the Debtors will provide copies of the Bid Packages to counsel to the Creditors’ Committee, Nationstar (with respect to the Nationstar Purchased Assets), and AFI (with respect to the AFI Purchased Assets).

A Qualified Bidder may submit Bid Proposals and Bid Packages for the Nationstar Purchased Assets and/or the AFI Purchased Assets; provided, however, that a Qualified Bidder that bids on both the Nationstar Purchased Assets and the AFI Purchased Assets must provide separate Bid Proposals for the Nationstar Purchased Assets and the AFI Purchased Assets. The Debtors will consider Qualified Bids for all of the Nationstar Purchased Assets or for only the Ginnie Mae MSR (as defined in the Nationstar APA); provided that to the extent a Qualified Bidder seeks to bid only on the Ginnie Mae MSR, such bid must also be provided separately. Under no other circumstances may a Qualified Bidder submit separate bids for any portion of the Nationstar Purchased Assets (other than in respect of the Ginnie Mae MSR) or the AFI Purchased Assets. Only bulk bids for these assets will be deemed Qualified Bids (as defined below) provided the other requirements are met.

### **Due Diligence from Bidders**

The Debtors and their advisors shall be entitled to due diligence from a Qualified Bidder, upon execution of a confidentiality agreement that is reasonably satisfactory to the Debtors. Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors. Failure of a Qualified Bidder to fully comply with requests for additional information and due diligence access will be a basis for the Debtors to determine that a bid made by the Qualified Bidder is not a Qualified Bid.



### **Bid Requirements**

A Bid Proposal must be a written irrevocable offer from a Qualified Bidder (i) stating that the Qualified Bidder offers to consummate a Sale Transaction pursuant to the Marked Agreement(s), (ii) confirming that the offer shall remain open until the closing of a Sale Transaction to the Successful Bidder (as defined below), (iii) enclosing a copy of the Marked Agreement(s) and Proposed Assumption Contracts, and (iv)(A) in the case of the Nationstar APA, including a certified or bank check, or wire transfer, in the amount of \$72 million (of which \$6,076,799 shall apply only to the Ginnie Mae MSR's) to be held in escrow as a "Good Faith Deposit"; (B) in the case of the AFI APA including a certified or bank check, or wire transfer, in the amount of \$25 million to be held in escrow as a Good Faith Deposit. Nationstar has made a deposit in the amount of \$72 million in connection with its execution of the Nationstar APA, which shall be deemed to be its Good Faith Deposit for all purposes under these Sale Procedures.

All Good Faith Deposits will be non-refundable if the Qualified Bidder is selected as the Successful Bidder and fails to consummate the Sale Transaction (other than as a result of a breach by the respective Sellers under the APAs) and refundable if it is not selected as the Successful Bidder (other than as a result of its own breach).

In addition to the foregoing requirements, a Bid Proposal or Bid Proposals must:

- (i) not be conditioned on the outcome of unperformed due diligence by the bidder;
- (ii) not request or entitle the bidder to any breakup fee, expense reimbursement, or similar type of payment;
- (iii) fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation;
- (iv) for a Bid Proposal on the Nationstar Purchased Assets, except as provided in subclause (v) below, provide consideration for the Purchased Assets solely in the form of cash;
- (v) for a Bid Proposal on the Nationstar Purchased Assets provide consideration for the Purchased Assets in a combination of cash and seller debt financing excluding credit bidding ("Seller Financing") if, prior to or contemporaneous with the submission of such bid, the Debtors have permitted Nationstar to modify the APA to substitute Seller Financing, on terms identical to those contained in such bid, for cash consideration on a dollar for dollar basis; and
- (vi) (a) for a Bid Proposal on all of the Nationstar Purchased Assets, provide for the aggregate cash and Seller Financing (if any) portions of such bid being at least equal to the sum of (1) the cash portion of the consideration provided for in the Nationstar APA, plus (2) the Seller Financing portion (if any) of the consideration provided for in the Nationstar APA following a permitted amendment under subclause (v) above, plus (3) the amount of the Break-Up Fee and Expense

Reimbursement, plus (4) an amount of cash equal to 1% of the sum of the amounts provided for in subsections (1) and (2) of this subclause (vi)(a); or

(b) for a Bid Proposal on only the Ginnie Mae MSRs, provide for the aggregate cash and Seller Financing (if any) portions of such bid being at least equal to the sum of (1) the cash portion of the consideration provided for in the Nationstar APA for the Ginnie Mae MSRs, plus (2) the Seller Financing portion (if any) of the consideration provided for in the Nationstar APA following a permitted amended under subclause (v) above, plus (3) the proportional amount of the Break-Up Fee and Expense Reimbursement allocable to the Ginnie Mae MSRs based upon the allocation of the Purchase Price (as defined in the Nationstar APA) between the Ginnie Mae MSRs and the other Nationstar Purchased Assets, plus (4) an amount of cash equal to 1% of the sum of the amounts provided for in subsections (1) and (2) of this subclause (vi)(b).

A timely Bid Proposal received from a Qualified Bidder and that meets the requirements set forth above (collectively, the "Bid Requirements") will be considered a Qualified Bid if the Debtors and their advisors, in consultation with the Creditors' Committee, reasonably believe that such bid would be consummated if selected as the Successful Bid (as defined below). For all purposes hereof, Nationstar's and AFI's respective offers to acquire the Purchased Assets in accordance with each of the APAs, shall each constitute a Qualified Bid. The Debtors shall notify Nationstar promptly after qualifying any bidder as a Qualified Bidder or receiving any Qualified Bids for the Nationstar Purchased Assets or the Ginnie Mae MSRs. The Debtors shall notify AFI promptly after qualifying any bidder as a Qualified Bidder or receiving any Qualified Bids for the AFI Purchased Assets.

### **Auction**

In the event that, on or before the Bid Deadline, the Debtors receive one or more Qualified Bid Packages, the Debtors will conduct one or more separate auctions in accordance with the following procedures upon notice to all Qualified Bidders. The Auction will commence at 10:00 a.m., Eastern Time, on September 25, 2012, at the offices of Morrison & Foerster LLP, 1290 Avenue of the America, New York, NY 10104 or such later time on such date or other place as the Debtors shall timely notify Nationstar, AFI, all other Qualified Bidders and the Notice Parties. The Auction shall conclude within seven (7) business days following the Bid Deadline. If (a) no Qualified Bids with respect to the Nationstar Purchased Assets other than Nationstar's Qualified Bid are timely received or (b) the Debtors only timely receive Qualified Bids for the Ginnie Mae MSRs and do not timely receive a Qualified Bid for the remaining Nationstar Purchased Assets other than Nationstar's Qualified Bid, no auction will be held with respect to such Nationstar Purchased Assets for which no Qualified Bids were received (other than Nationstar's Qualified Bid), and the Debtors will request that the Bankruptcy Court enter a Sale Order approving the sale of the relevant Nationstar Assets to Nationstar pursuant to the Nationstar APA.

Unless the Debtors otherwise determine, only the Debtors, Nationstar (in the case of the Nationstar APA), and AFI (in the case of the AFI APA), a representative of each of the Creditors' Committee and any Qualified Bidder (and the legal and financial advisors to each of

the foregoing), will be entitled to attend the Auction, and only Nationstar and AFI, respectively, and Qualified Bidders will be entitled to make any subsequent bids at the Auction.

The Debtors may employ and announce at the Auction additional procedural rules that they determine appropriate under the circumstances for conducting the Auction, provided that such rules (i) are not inconsistent with the Sale Procedures Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court entered in connection herewith; (ii) are disclosed to each Qualified Bidder; and (iii) do not provide any Qualified Bidder with more favorable treatment than that afforded to Nationstar or AFI.

Each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale Transaction(s).

Bidding at the Auction for the Nationstar Purchased Assets and the AFI Purchased Assets will begin with the Qualified Bid selected and announced by the Debtors (the "Starting Bid") and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid"), and (ii) the Debtors determine that such Subsequent Bid is (a) for the first round, a higher or otherwise better offer than the Starting Bid, and (b) for subsequent rounds, a higher or otherwise better offer than the leading bid. In the case of the Nationstar Purchased Assets, for purposes of determining whether a Subsequent Bid is a higher or otherwise better offer, the AFI Purchased Assets shall be excluded.

With respect to the Nationstar Purchased Assets (including the Ginnie Mae MSR's), the initial minimum bid increment at the Auction shall be \$25 million, and cannot be reduced or increased without the consent of Nationstar. To the extent applicable, and only for the Ginnie Mae MSR's, the initial minimum bid increment at the Auction shall be \$2 million, and cannot be reduced or increased without the consent of Nationstar. With respect to the AFI Purchased Assets, the initial minimum bid increment at the Auction shall be \$15 million, and cannot be reduced or increased without the consent of AFI. Thereafter, in each circumstance, minimum bid increments at the Auction shall be determined by the Debtors in their discretion.

For purposes of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by Nationstar), the Debtors will give Nationstar a credit equal to the sum of the Break-Up Fee and Expense Reimbursement. To the extent the Ginnie Mae MSR's may be sold under a separate auction process, the Break-Up Fee and Expense Reimbursement may be proportionally allocated between the Ginnie Mae MSR's and the other assets subject of the Nationstar APA based on the allocation of the Purchase Price (as such term is defined in the Nationstar APA) between the Ginnie Mae MSR's and the other assets subject of the Nationstar APA.

No additional bids may be considered after the Auction is closed.

Following any Auction, the Debtors, in their sole discretion, in consultation with the Creditors' Committee, shall determine the highest or best bid (the "Successful Bid") and the bidder with respect thereto, the ("Successful Bidder"). The next highest bidder after the

Successful Bidder shall be deemed the (“Next-Highest Bidder”). The Next-Highest Bidder shall be required to hold open its bid until the earlier of (i) the closing of the sale to the Successful Bidder; and (ii) the Confirmation Hearing (the “Back-Up Bid Release Date”); provided, however, that the terms of the Nationstar APA shall apply in all respects with respect to the period of time Nationstar is required to hold its bid open.

#### **Acceptance of Qualified Bids**

No later than October 31, 2012, the Debtors shall present to the Bankruptcy Court at the Sale Hearing or the Confirmation Hearing, as applicable, the Successful Bid. At the Sale Hearing or the Confirmation Hearing, as applicable, certain findings will be sought from the Bankruptcy Court, including that (i) the Successful Bidder was selected in accordance with these Sale Procedures, and (ii) consummation of the Sale Transactions as contemplated by the Successful Bid will provide the highest or otherwise best result and is in the best interests of the Sellers and their estates in these Chapter 11 cases.

In the event that, for any reason, the Successful Bidder fails to close the relevant Sale Transaction contemplated by its Successful Bid, then, without notice to any other party or further Bankruptcy Court order, the Debtors shall be authorized to close with the Next-Highest Bidder.

#### **Return of Good Faith Deposit**

Except as otherwise provided in this paragraph with respect to the Successful Bidder and the Next-Highest Bidder, the Good Faith Deposits of all Qualified Bidders required to submit such a deposit under the Sale Procedures shall be returned upon or within two (2) business days after entry of the Sale Order. The Good Faith Deposit of the Successful Bidder shall be held until the closing of the Sale Transaction and applied in accordance with the Successful Bid. The Good Faith Deposit of the Next-Highest Bidder shall be retained in escrow until the Back-Up Bid Release Date and returned to the Next-Highest Bidder within two (2) business days of such date. Until the return of the Good Faith Deposit in accordance with the above, the Debtors shall hold such deposits in an interest-bearing escrow account. If the closing does not occur, the disposition of Good Faith Deposits shall be as provided in the Successful Bid and Next-Highest Bidder Bid, as applicable. The Nationstar APA (including any escrow agreement entered into in connection therewith) shall apply in all respects to the application or return of the Good Faith Deposit of Nationstar and the provisions of this paragraph shall not apply.

**EXHIBIT A-2**

**PROPOSED NOTICE OF AUCTION AND SALE HEARING**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**NOTICE OF PUBLIC AUCTION AND SALE HEARING TO SELL CERTAIN OF  
DEBTORS' ASSETS PURSUANT TO ASSET PURCHASE AGREEMENTS WITH  
NATIONSTAR MORTGAGE LLC AND ALLY FINANCIAL INC.  
AND RELATED RELIEF AND DATES**

PLEASE TAKE NOTICE THAT upon the motion (the "Motion") of Residential Capital LLC ("ResCap") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"), dated May 14, 2012, the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") has issued an order dated [ ], 2012 (the "Sale Procedures Order"), among other things, (i) authorizing and approving certain procedures for the submission and acceptance of any competing bids (the "Sale Procedures"); (ii) scheduling a bid deadline, an auction and sale hearing (the "Sale Hearing") to approve asset sales by certain of the Debtors of: (a) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Nationstar Mortgage LLC ("Nationstar") and certain of the Debtors (the "Nationstar APA") and (b) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Ally Financial Inc. ("AFI") and BMMZ Holdings LLC ("BMMZ") and certain of the Debtors (the "AFI APA," together with the Nationstar APA, the "APAs"), free and clear of all liens, claims, encumbrances, and other interests, and subject to higher or better offers (the "Sale Transactions" or the "Sales") subject to the submission of higher or better offers in an auction process (the "Auction"); (iii) approving the Break-Up Fee and the Expense Reimbursement; (iv) approving forms of notice; and (v) granting related relief.

A. AUCTION

**PLEASE TAKE FURTHER NOTICE** that the Auction and sales of the Purchased Assets by the Debtors will occur in accordance with procedures established by the Sale Procedures Order, entered on [\_\_\_], 2012 [Docket No. [\_\_\_]], attached hereto as Exhibit 1.

**PLEASE TAKE FURTHER NOTICE** that, pursuant to the Sale Procedures Order, any party wishing to participate in the Auction must do so in accordance with the Sale Procedures Order, including, without limitation, the requirements for qualifying as a “Qualified Bidder” and submitting a “Qualified Bid” such that it is actually **received not later than [September 18, 2012,] at \_\_:00 p.m. (ET)** by the parties identified in the Sale Procedures Order.

**PLEASE TAKE FURTHER NOTICE** that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Sale Procedures, the Debtors will conduct the Auction on **[September 25, 2012 at \_\_:00 .m. (ET)]** at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, NY 10104, or such later time on such date or other place as the Debtors shall timely notify all Qualified Bidders and the Notice Parties (as defined in the Sale Procedures Order).

B. SALE HEARING

**PLEASE TAKE FURTHER NOTICE** that the Sale Hearing will be held before the Honorable Martin Glenn, United States Bankruptcy Judge, in Courtroom [\_\_\_] of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408, on **[October 15, 2012], at \_\_: \_\_ .m. (ET)**. The Sale Hearing may be conducted in connection with, and as part of, a hearing to consider confirmation of a plan of reorganization under section 1129 of the Bankruptcy Code and may be adjourned without notice by an announcement of the adjourned date at the Sale Hearing.

C. SALE FREE AND CLEAR

**PLEASE TAKE FURTHER NOTICE** that the order approving each of the Sale Transactions will provide that, except for any Assumed Liabilities set forth in each of the Nationstar APA and AFI APA, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets purchased by Nationstar and AFI, respectively, shall be transferred to Nationstar and AFI and the Assumed Contracts under the Nationstar APA shall be assumed and assigned to Nationstar, and such transfer and assignment shall be free and clear of all claims, liabilities, interests, liens, obligations, and encumbrances of any Person (including, without limitation, claims, obligations or liabilities based on any successor or transferee theory of liability or relating to any act or omission of any originator, holder or servicer of mortgage loans prior to the Closing Date, and any indemnification claims, obligations or liabilities relating to any act or omission of the Sellers or any other person prior to the Closing Date) and any and all rights and claims under any bulk transfer statutes and similar laws, whether arising by agreement,

by statute or otherwise and whether occurring or arising before, on or after the date on which the Chapter 11 cases were commenced, whether known, unknown, contingent or unliquidated, arising prior to the Closing Date. Any person holding any such claims, liabilities, interests, liens, obligations, or encumbrances shall be enjoined and forever barred from asserting such claims, liabilities, interests, liens, obligations, or encumbrances against Nationstar or AFI, respectively, the Purchased Assets purchased by Nationstar and AFI and any of their affiliates, as more particularly described and provided for in the proposed order approving the Sale Transactions to Nationstar and AFI, respectively.

D. OBJECTIONS

**PLEASE TAKE FURTHER NOTICE THAT RESPONSES OR OBJECTIONS, IF ANY, TO THE RELIEF SOUGHT IN THE MOTION SHALL BE FILED** with the Clerk of the Bankruptcy Court and served upon: (i) Morrison & Foerster LLP, attorneys for the Debtors, 1290 Avenue of the Americas, New York, New York 10104 (Attn: Larren M. Nashelsky, Esq. (lnashelsky@mofo.com) and Gary S. Lee, Esq. and glee@mofo.com)); (ii) Sidley Austin LLP, attorneys for Nationstar, One South Dearborn, Chicago Illinois 60603 (Attn: Richard M. Cieri ([richard.cieri@kirkland.com](mailto:richard.cieri@kirkland.com)), Larry Nyhan ([lnyhan@sidley.com](mailto:lnyhan@sidley.com)) and Stephen E. Hessler (stephen.hessler@kirkland.com)); (iii) Kirkland & Ellis LLP, attorneys for AFI, (Attn: Ray C. Schrock (rschrock@kirkland.com)); (iv) Mayer Brown LLP, attorneys for AFI, 71 South Wacker Drive, Chicago, Illinois 60606 (Attn: Elizabeth A. Raymond (eraymond@mayerbrown.com)); (v) [\_\_\_\_], attorneys for the Creditors' Committee; and (vi) the Office of the United States Trustee for the Southern District of New York (Attn: [\_\_\_\_]), 33 Whitehall Street, 21st Floor, New York, New York 10004, **SO AS TO BE RECEIVED NO LATER THAN** [October 8, 2012], **AT 5:00 P.M. (EASTERN TIME) (the "Objection Deadline")**.

**PLEASE TAKE FURTHER NOTICE** that the failure of any person or entity to file a response or objection on or before the Objection Deadline shall be deemed a consent to the Sale Transactions and the other relief requested in the Motion, and shall bar the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Procedures, the Motion, the Sale Transactions, the approval of related agreements, and the Debtors' consummation of the Sale Transactions.

E. COPIES OF THE MOTION AND RELATED SALE DOCUMENTS

**PLEASE TAKE FURTHER NOTICE** that this Notice provides only a partial summary of the relief sought in the Motion, the terms of the Sale Procedures Order and the Sale Approval Orders. Copies of such documents are available for inspection (i) by accessing (a) the website of the Bankruptcy Court at <http://www.nysb.uscourts.gov>, or (b) the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants, at [www.kccllc.net/rescap](http://www.kccllc.net/rescap) or (ii) by visiting the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004-1408. Copies also may be obtained by faxing a written request to the attorneys for the Debtors, Morrison & Foerster LLP (Attn: Larren M. Nashelsky, Esq. and Gary S. Lee, Esq. at (212) 468-7900). The terms of such documents shall control in the event of any conflict with this Notice.



Dated: New York, New York  
[\_\_\_\_], 2012

---

Larren M. Nashelsky  
Gary S. Lee  
Todd M. Goren  
Alexandra Steinberg Barrage  
MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900  
*Proposed Counsel for the Debtors and  
Debtors in Possession*

**EXHIBIT A-3**

**PROPOSED NOTICE OF ASSUMPTION AND ASSIGNMENT**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN  
EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY,  
AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND  
(II) CURE AMOUNTS RELATED THERETO**

PLEASE TAKE NOTICE THAT:

1. By the motion dated May 14, 2012 (the "Motion"), Residential Capital LLC ("ResCap") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"),<sup>1</sup> sought, among other things, (i) authorization and approval of certain proposed procedures (the "Sale Procedures") with respect to two proposed sales (the "Sale Transactions" or "the Sales") by certain of the Debtors of (a) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Nationstar Mortgage LLC and certain of the Debtors (the "Nationstar APA")); and (b) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Ally Financial Inc. ("AFI") and BMMZ Holdings LLC ("BMMZ") and certain of the Debtors (the "AFI APA," together with Nationstar APA, the "APAs"); (ii) scheduling of a hearing on the Sales (the "Sale Hearing") and setting objection deadlines and bidding deadlines with respect to the Sales and Auction; (iii) approving the form and manner of notices for (a) an auction of the purchased assets (the "Auction") and (b) the Sale Hearing; and (iii) the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Assumed Contracts") in connection with the sale of the Purchased Assets pursuant to the Nationstar APA (the "Assumption and Assignment Procedures").

2. The Nationstar APA, together with its respective ancillary agreements, contemplates (i) the sale of the Purchased Assets subject to higher or better offers (the "Nationstar Sale Transaction") and (ii) the assumption and assignment of the Assumed Contracts.

<sup>1</sup> The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital LLC in Support of the Chapter 11 Petitions and First Day Pleadings.

3. The Nationstar APA contemplates, and the proposed order approving the Nationstar Sale Transaction (the “Nationstar Sale Approval Order”), which may be incorporated into a confirmation order, if approved, shall authorize the assumption and assignment of certain executory contracts and leases pursuant to the Nationstar APA, to the Purchaser (as defined in the Nationstar APA). The Sellers maintain schedules (the “Schedules”) containing the Assumed Contracts that the Purchaser has designated as Assumed Contracts (the “Designated Agreements”). You are receiving this Notice because you are a party to one or more of the Designated Agreements.

4. **THE ATTACHED SCHEDULES CONTAIN A LIST OF ASSUMED CONTRACTS THAT MAY BE ASSUMED. SUBJECT TO CERTAIN EXCEPTIONS EXPRESSLY PROVIDED FOR IN THE NATIONSTAR APA, THE PURCHASER RESERVES ITS RIGHTS UNDER THE NATIONSTAR APA TO EXCLUDE ANY ASSUMED CONTRACT FROM THE LIST OF ASSUMED CONTRACTS TO BE ASSUMED AND ASSIGNED BY NO LATER THAN THE DESIGNATION DEADLINE THAT IS TWO BUSINESS DAYS PRIOR TO THE CLOSING DATE, AS DISCUSSED IN PARAGRAPH 14 BELOW.**

5. Bankruptcy Code section 365(b)(1) requires a chapter 11 debtor to cure, or provide adequate assurance that it will promptly cure any defaults under executory contracts and unexpired leases at the time of assumption. The required cure amount (the “Cure Amount”) for each Designated Agreement calculated by the Debtors is listed on the Schedule attached hereto. Please note that if no amount is stated for a particular Designated Agreement, the Debtors believe that there is no Cure Amount outstanding for such Designated Agreement.

6. Please review the Cure Amount for your Assumed Contract. In some instances, additional terms or conditions of assumption and assignment with respect to a particular Assumed Contract are provided.

7. In cases where a Servicing Agreement is contained within the same writing as an agreement related to origination, (i) the Debtors intend to assume and assign to the Purchaser only the Servicing Agreement; (ii) the origination agreement shall be severed from the multi-agreement document pursuant to the Nationstar Sale Approval Order; and (iii) the Purchaser shall have no liability under any origination agreement. The Nationstar Sale Approval Order will also generally provide that no delay or failure of performance by the Debtors under or in respect to any origination agreement will (i) affect any right of Nationstar under any Servicing Agreement or (ii) permit, result in or give rise to any setoff, delay, deferral, defense, recoupment, claim, counterclaim, default or other impairment of the rights of the Purchaser under any Servicing Agreement.

8. Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, (a) objections related to adequate assurance of future performance or whether applicable law excuses the non-debtor counterparty to the Designated Agreement (the “Non-debtor Counterparty”) from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code (an “Assignment Objection”), (b) the severing of a Servicing Agreement from any multi-agreement document or (c) the proposed Cure Amount (a “Cure Amount Objection,” and,

together with an Assignment Objection and an objection described in clause (b), a “Contract Objection”) must be made in writing and filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) so as to be received **[August 30, 2012]** (the “Assignment Objection Deadline”) by (i) the Debtors, Residential Capital, LLC, 1100 Virginia Drive, Fort Washington, Pennsylvania 19034, Attn: Tammy Hamzehpour, Esq. ([tammy.hamzehpour@ally.com](mailto:tammy.hamzehpour@ally.com)); (ii) Morrison & Foerster LLP, attorneys for the Debtors, 1290 Avenue of the Americas, New York, New York 10104 (Attn: Darren M. Nashelsky and Gary S. Lee); (iii) with respect to Assumed Contracts listed in the Nationstar APA, Sidley Austin LLP, attorneys for the Nationstar, One South Dearborn, Chicago, Illinois 60603 (Attn: Jessica C.K. Boelter [jboelter@sidley.com](mailto:jboelter@sidley.com)); (vi) the attorneys for the Creditors’ Committee; and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: [ ]), 33 Whitehall Street, 21st Floor, New York, New York 10004. Any objection that challenges a Cure Amount, or otherwise asserts that there exist outstanding defaults under an Assumed Contract, must set forth with specificity the Cure Amount being claimed by the objecting party or the nature of the asserted default, as applicable, and must include appropriate documentation in support thereof satisfactory to the Debtors and Nationstar.

9. Upon the filing of any Contract Objection, the Debtors, the Purchaser, and the objecting non-debtor counterparty shall meet and confer in good faith to attempt to resolve any such Objection without Bankruptcy Court intervention, with any resolution memorialized in a joint stipulation or as otherwise agreed by the parties. If the Contract Objection is solely as to the Cure Amount, then the Assumed Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date (as defined in paragraph 16), the Sellers shall pay the undisputed portion of the Cure Amount, and the disputed portion of the Cure Amount shall be determined via the meet and confer process or by the Bankruptcy Court as described herein. The Purchasers shall have no liability to any contract counter-party for any Cure Amount (whether disputed or undisputed).

10. All objections to the assumption and assignment of the Assumed Contracts and the Cure Amounts shall be resolved by no later than the conclusion of the Sale Hearing. The Debtors will request that Contract Objections to the proposed Cure Amounts based upon unquantifiable or unknown pre-closing liability be overruled; provided, however, that no such liabilities may asserted against the Purchaser or the Purchased Assets, as further described in the Sale Approval Order.

11. If the Debtors, Purchaser, and the non-debtor counterparty determine that the Contract Objection cannot be resolved without judicial intervention, then such Contract Objection shall be determined by the Bankruptcy Court either at the Sale Hearing or such other date as determined by the Bankruptcy Court, unless the Debtors, the Purchaser, and the non-debtor counterparty to the Assumed Contract agree otherwise; if the Bankruptcy Court determines at such hearing that the Assumed Contract should not be assumed and assigned, then such contract or lease shall no longer be considered an Assumed Contract.

12. If you agree with the respective Cure Amount(s) listed in the Schedules with respect to your Assumed Contract(s), and otherwise do not object to the Debtors’ assumption and assignment of your Assumed Contract, you are not required to take any further action.

13. Unless an Objection is filed and served before the Objection Deadline, you shall be deemed to have consented to the assumption and assignment of your Assumed Contract and the Cure Amount(s) for your Assumed Contract(s), and acknowledged that no default exists under the Assumed Contract other than those being cured by the Cure Amounts or defaults that are not required to be cured under section 365(b)(2). You shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Debtors, their estates, or the Purchaser.

14. No later than two business days prior to the Closing Date under the Nationstar APA (the "Contract Designation Deadline"), the Purchaser may, in its sole discretion, subject to certain limitations specified in the Nationstar APA (applicable only as between the parties thereto), exclude any of the Assumed Contracts by providing notice to the Sellers. Upon such designation, the contract or Lease referenced therein shall no longer be considered an Assumed Contract, shall not be deemed to be, or to have been, assumed or assigned, and shall remain subject to assumption, rejection, or assignment by the Debtors. Until the Contract Designation Deadline, the Purchaser also may, subject to certain limitations specified in the Nationstar APA (applicable only as between the parties thereto), designate additional contracts or leases as Assumed Contracts to be assumed and assigned by providing notice to the affected non-debtor counterparties indicating that the Debtors intend to assume and assign additional Assumed Contracts.

15. The Debtors' decision to assume and assign the Assumed Contracts is subject to Bankruptcy Court approval and consummation of the Nationstar Sale Transaction, and, absent such consummation, each of the Assumed Contracts will not be assumed or assigned to the Purchaser and shall in all respects be subject to further administration under the Bankruptcy Code.

16. All Assumed Contracts will be assumed by and assigned to the Purchaser on the Closing Date, except as may be otherwise set forth in the APA.

17. Until the Assumption Effective Date, assumption and assignment thereof is subject to the Purchaser's rights to modify the designation of Assumed Contracts as set forth in paragraph 14 above. Except as otherwise provided by the APA, the Purchaser shall have no rights in and to a particular Assumed Contract until such time as the particular Assumed Contract is assumed and assigned in accordance with the procedures set forth herein.

18. The inclusion of any document on the list of Designated Agreements shall not constitute or be deemed to be a determination or admission by the Debtors or the Purchaser that such document is, in fact, an executory contract or Lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

19. Any Assignment Objection or Cure Amount Objection shall not constitute an objection to the relief generally requested in the Motion (e.g., the sale of the Purchased Assets by the Debtors to the Purchaser free and clear of liens, claims, encumbrances, and interests), and parties wishing to object to the relief generally requested in the Motion must file and serve a separate objection in accordance with the procedures approved and set forth in the order of the Bankruptcy Court approving the Sale Procedures (the "Sale Procedures Order").

20. If a party other than Nationstar is determined to be the highest and best bidder for the assets to be sold pursuant to the Nationstar Sale Transactions, you will receive a separate notice providing additional information regarding the treatment of your contract(s) or Lease(s); *provided, however*, that if the applicable Cure Amount has been established pursuant to the procedures set forth in this Notice, it shall not be subject to further dispute if the new purchaser seeks to acquire such contract or Lease.

21. Nationstar is not assuming and parties will be enjoined from asserting against Nationstar any claims or obligations relating to the pre-closing period under any Assumed Contract (including any Servicing Agreement), whether such claims or obligations are known, unknown, fixed, contingent, unliquidated or liquidated at the time of the Closing, including, without limitation, any claims or liabilities relating to any act or omission of any originator, holder or servicer of mortgage loans prior to the Closing Date, and any indemnification claims or liabilities relating to any act or omission of the Sellers or any other person prior to the Closing Date. Any parties holding such claims or obligations will be required to file a Contract Objection if they disagree with the Cure Amount set forth on the Schedule.

22. This Notice is subject to the full terms and conditions of the Sale Procedures Order, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Dated: New York, New York  
[ ], 2012

---

Larren M. Nashelsky  
Gary S. Lee  
Todd M. Goren  
Alexandra Steinberg Barrage

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Proposed Counsel for the Debtors and  
Debtors in Possession*

**EXHIBIT B**

**NATIONSTAR ASSET PURCHASE AGREEMENT**



**ASSET PURCHASE AGREEMENT**

**between**

**NATIONSTAR MORTGAGE LLC**

**and**

**RESIDENTIAL CAPITAL, LLC,**

**RESIDENTIAL FUNDING COMPANY, LLC,**

**GMAC MORTGAGE, LLC,**

**EXECUTIVE TRUSTEE SERVICES, LLC,**

**ETS OF WASHINGTON, INC.,**

**EPRE LLC**

**and**

**THE ADDITIONAL SELLERS IDENTIFIED ON SCHEDULE A HERETO**

**dated as of**

**MAY 13, 2012**

## Table of Contents

	Page
ARTICLE I DEFINITIONS AND INTERPRETATION .....	1
Section 1.1    Definitions .....	1
Section 1.2    Interpretation .....	29
ARTICLE II PURCHASE AND SALE OF ASSETS .....	30
Section 2.1    Purchase and Sale of Assets .....	30
Section 2.2    Assignment of Contracts, Leases and Other Assets .....	32
Section 2.3    Excluded Assets .....	33
Section 2.4    Post-Closing Asset Deliveries .....	35
Section 2.5    Conveyance of Assets by Affiliate Sellers .....	35
Section 2.6    Non-Assignable Purchased Assets; Necessary Consents .....	36
Section 2.7    Assumption of Certain Liabilities .....	36
Section 2.8    Retained Liabilities .....	36
Section 2.9    Closing .....	37
Section 2.10    Ancillary Agreements .....	37
Section 2.11    Deliveries by Purchaser .....	38
Section 2.12    Deliveries by Sellers .....	38
Section 2.13    Consumer Privacy Matters .....	39
Section 2.14    “As Is, Where Is” Transaction .....	39
Section 2.15    Exclusion of Assumed Contracts .....	39
Section 2.16    Ginnie Mae MSR Assets Auction .....	40
Section 2.17    Indemnity Escrow Agreement .....	40
ARTICLE III PURCHASE PRICE; ADJUSTMENT; ALLOCATION .....	40
Section 3.1    Purchase Price; Payment of Purchase Price .....	40
Section 3.2    Purchase Price Adjustment; Final Payment .....	41
Section 3.3    Allocation of the Purchase Price for Tax Purposes .....	42
Section 3.4    Deposit .....	43
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS .....	44
Section 4.1    Organization and Authority .....	44
Section 4.2    Non-Contravention .....	44
Section 4.3    Consents and Approvals .....	45
Section 4.4    Financial Statements .....	45
Section 4.5    Absence of Certain Changes or Events .....	46
Section 4.6    Title to Assets .....	46
Section 4.7    Purchased Assets Used in Business .....	46
Section 4.8    Real Property Leases .....	46
Section 4.9    Mortgage Servicing Portfolio; Servicing Agreements; the Business .....	47
Section 4.10    Material Contracts .....	49
Section 4.11    Compliance with Law, Licensing and Data Security .....	49

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
<b>Section 4.12 Employee Benefits</b> .....	50
<b>Section 4.13 Employees</b> .....	50
<b>Section 4.14 Litigation and Claims</b> .....	51
<b>Section 4.15 Intellectual Property</b> .....	51
<b>Section 4.16 Brokers, Finders and Financial Advisors</b> .....	52
<b>Section 4.17 Ginnie Mae Loans</b> .....	53
<b>Section 4.18 Tax Matters</b> .....	54
<b>Section 4.19 Shared Services Agreement</b> .....	55
<b>ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER</b> .....	55
<b>Section 5.1 Organization and Authority</b> .....	55
<b>Section 5.2 Non-Contravention</b> .....	55
<b>Section 5.3 Consents and Approvals</b> .....	56
<b>Section 5.4 Financing</b> .....	56
<b>Section 5.5 Non-reliance</b> .....	56
<b>Section 5.6 Brokers, Finders and Financial Advisors</b> .....	56
<b>ARTICLE VI PRE-CLOSING MATTERS AND OTHER COVENANTS</b> .....	57
<b>Section 6.1 Subsequent Actions; Further Assurances</b> .....	57
<b>Section 6.2 Third Party Consents</b> .....	57
<b>Section 6.3 Access to Information; Interim Financial Information</b> .....	57
<b>Section 6.4 Records; Post-Closing Access to Information</b> .....	58
<b>Section 6.5 Interim Operations of the Business</b> .....	59
<b>Section 6.6 Servicing Approvals and Licenses</b> .....	63
<b>Section 6.7 Employee Matters</b> .....	63
<b>Section 6.8 Notices of Certain Events</b> .....	65
<b>Section 6.9 Tax Matters</b> .....	66
<b>Section 6.10 Insurance</b> .....	67
<b>Section 6.11 Mortgage Loan Schedules and Servicing Advance Schedules</b> .....	67
<b>Section 6.12 Title Documents and Surveys</b> .....	67
<b>Section 6.13 Schedules and Disclosure Memorandum</b> .....	67
<b>Section 6.14 Bankruptcy Actions</b> .....	68
<b>Section 6.15 Stalking-Horse Bidder Matters</b> .....	69
<b>Section 6.16 Consent Order and DOJ/AG Settlement</b> .....	70
<b>Section 6.17 Antitrust Clearances and Obligations</b> .....	71
<b>Section 6.18 Post-Closing Amounts Received and Paid</b> .....	72
<b>Section 6.19 Confidentiality</b> .....	73
<b>Section 6.20 Real Property Matters and Transition Services</b> .....	74
<b>Section 6.21 Required Financial Information</b> .....	75
<b>Section 6.22 PSA Amendments</b> .....	75
<b>Section 6.23 Mortgage Loans Documents</b> .....	75
<b>Section 6.24 Copies of Assumed Contracts</b> .....	75
<b>Section 6.25 Purchaser Payment Cap</b> .....	75
<b>Section 6.26 DIP Financing Agreements</b> .....	76

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
<b>Section 6.27</b>	<b>Transfer of Assets to DIP Borrowers .....</b>
<b>Section 6.28</b>	<b>Separation Services .....</b>
<b>Section 6.29</b>	<b>Repurchase .....</b>
<b>Section 6.30</b>	<b>Rebranding .....</b>
<b>Section 6.31</b>	<b>Subservicing Agreement .....</b>
ARTICLE VII BANKRUPTCY COURT MATTERS .....	76
<b>Section 7.1</b>	<b>Competing Transaction .....</b>
<b>Section 7.2</b>	<b>Bankruptcy Court Filings .....</b>
ARTICLE VIII CONDITIONS .....	77
<b>Section 8.1</b>	<b>Conditions to Obligations of Purchaser and Sellers .....</b>
<b>Section 8.2</b>	<b>Conditions to Obligations of Sellers .....</b>
<b>Section 8.3</b>	<b>Conditions to Obligations of Purchaser .....</b>
ARTICLE IX TRANSFER OF SERVICING .....	78
<b>Section 9.1</b>	<b>Transfer of Purchased Mortgage Servicing and MSRs .....</b>
<b>Section 9.2</b>	<b>Costs of Transfer .....</b>
ARTICLE X TERMINATION AND SURVIVAL .....	81
<b>Section 10.1</b>	<b>Termination .....</b>
<b>Section 10.2</b>	<b>Procedure and Effect of Termination .....</b>
ARTICLE XI INDEMNIFICATION .....	83
<b>Section 11.1</b>	<b>Indemnification by Sellers .....</b>
<b>Section 11.2</b>	<b>Notice of Claims .....</b>
<b>Section 11.3</b>	<b>Third Person Claims .....</b>
<b>Section 11.4</b>	<b>Claims Against the Indemnity Escrowed Funds .....</b>
<b>Section 11.5</b>	<b>Adjustment to Purchase Price .....</b>
<b>Section 11.6</b>	<b>Survival .....</b>
<b>Section 11.7</b>	<b>Exclusive Remedy .....</b>
ARTICLE XII MISCELLANEOUS .....	85
<b>Section 12.1</b>	<b>Expenses .....</b>
<b>Section 12.2</b>	<b>Amendment; Waiver .....</b>
<b>Section 12.3</b>	<b>Notices .....</b>
<b>Section 12.4</b>	<b>Waivers .....</b>
<b>Section 12.5</b>	<b>Counterparts .....</b>
<b>Section 12.6</b>	<b>Applicable Law; WAIVER OF JURY TRIAL; Venue and Retention of Jurisdiction .....</b>
<b>Section 12.7</b>	<b>Assignment .....</b>
<b>Section 12.8</b>	<b>No Third-Party Beneficiaries .....</b>
<b>Section 12.9</b>	<b>Public Announcements .....</b>
<b>Section 12.10</b>	<b>Severability .....</b>
<b>Section 12.11</b>	<b>Specific Performance .....</b>
<b>Section 12.12</b>	<b>Waiver of Bulk Transfer Laws .....</b>

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
<b>Section 12.13</b>	
<b>Section 12.14</b>	
<b>Personal Liability .....</b>	<b>93</b>
<b>Entire Agreement.....</b>	<b>93</b>

## **SCHEDULES**

Schedule A	Additional Sellers
Schedule B	Agency Special Requirements
Schedule C	Schedule of Purchased Assets and Assumed Liabilities
Schedule D	DIP Financing Agreements
Schedule E	Private Investor Servicing Agreements and Servicing Agreements for Other Serviced Loans
Schedule F	Agency Contracts
Schedule G	Knowledge of Sellers
Schedule H	Owned Real Property and Leased Real Property
Schedule I	Other Serviced Loans
Schedule J	[Reserved]
Schedule K	Computer Equipment Located at Real Property
Schedule L-1	Other Purchased Assets
Schedule L-2	Credits and Other Expenses
Schedule M	Ginnie Mae Loan Criteria
Schedule N	Owned Transferred IP
Schedule O	Other Assigned Contracts
Schedule P	Material Agreements
Schedule Q	Excluded Contracts and Assets
Schedule R	Material Employee Benefit Plans
Schedule S	Business Licenses
Schedule T	Deemed Eligible Servicing Agreements
Schedule U	ETS Contracts
Schedule 2.15	Excludable Servicing Agreements
Schedule 3.1(a)	Purchase Price
Schedule 4.3	Seller Consents and Approvals
Schedule 4.9(a)	Mortgage Loan Data Fields
Schedule 4.9(c)	Servicing Advances Data Fields
Schedule 5.3	Purchaser Consents and Approvals
Schedule 6.14(f)	Terms of the Chapter 11 Plan
Schedule 6.16	Terms of Consent Order and DOJ/AG Settlement
Schedule 6.31	Subservicing Agreement Term Sheet
Schedule 8.3(vi)	Required Seller Consents
Schedule 8.3(viii)	Necessary Purchaser Business Licenses

## **EXHIBITS**

Exhibit 1	AFI Letter
Exhibit 2	Form of Deposit Escrow Agreement
Exhibit 3	Sale Approval Order
Exhibit 4	Sale Procedures
Exhibit 5	Sale Procedures Order
Exhibit 6	Form of GM Transition License
Exhibit 7	Term Sheet for Transition Services Agreement between AFI and Purchaser

Exhibit 8                      Shared Services Agreement  
Exhibit 9                      Form of Mutual Release

**DISCLOSURE MEMORANDUM**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of May 13, 2012, is entered into between Nationstar Mortgage LLC, a Delaware limited liability company ("Purchaser"), and Residential Capital, LLC ("ResCap"), Residential Funding Company, LLC ("RFC"), GMAC Mortgage, LLC ("GMAC Mortgage"), each of which is a Delaware limited liability company, Executive Trustee Services, LLC, a Delaware limited liability company ("ETS LLC"), ETS of Washington, Inc., a Washington corporation ("ETS WA" and together with ETS LLC, "ETS"), EPRE LLC, a Delaware limited liability company ("EPRE") and the additional sellers identified on Schedule A hereto (together with ResCap, RFC, GMAC Mortgage and ETS, the "Sellers").

**WHEREAS**, Sellers are engaged in the Business (as hereinafter defined);

**WHEREAS**, Sellers, together with other Affiliates (as hereinafter defined), intend to file voluntary petitions ("Petitions") for relief (collectively, the "Bankruptcy Case") under Chapter 11 of Title 11, U.S.C. §§ 101, *et seq.*, as amended (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on or shortly after the date this Agreement is executed;

**WHEREAS**, upon the terms and subject to the conditions set forth in this Agreement, and as authorized under sections 105, 363 and 365 of the Bankruptcy Code, Sellers wish to sell to Purchaser, and Purchaser (or Purchaser's assignee or assignees pursuant to Section 12.7 hereof) wishes to purchase from Sellers, the Purchased Assets (as hereinafter defined), and Purchaser is willing to assume all of the Assumed Liabilities (as hereinafter defined); and

**WHEREAS**, Sellers, as debtors and debtors-in-possession, will continue in the possession of their respective assets and in the management of the Business pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

"Adjustment Amount" has the meaning specified in Section 3.2(b).

"Adjustment Report" has the meaning specified in Section 3.2(d).

"Advance Facility" has the meaning specified in the definition of "Eligible Servicing Agreement."



“Advance Financing Person” has the meaning specified in the definition of “Eligible Servicing Agreement.”

“Affiliate” means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, the term “control” of a Person means the possession, direct or indirect, of the power to (i) vote 20% or more of the voting securities of such Person or (ii) direct or cause the direction of the management and policies of such Person, whether by Contract or otherwise, and the terms and phrases “controlling,” “controlled by” and “under common control with” have correlative meanings. Notwithstanding the foregoing, for purposes of this Agreement, unless otherwise specifically provided, Affiliates of the Sellers include only direct or indirect Subsidiaries of ResCap, and other Affiliates of AFI are excluded from the definition of Sellers’ Affiliates and references to Affiliates of AFI exclude Sellers and their Affiliates.

“Affiliate Purchased Assets” has the meaning specified in Section 2.5(a).

“Affiliate Seller” has the meaning specified in Section 2.5(a).

“AFI” means Ally Financial Inc., a Delaware corporation and the indirect parent of Sellers.

“AFI Letter” means the letter specified in the last paragraph of Section 6.5.

“AFI Transition Services Agreement” means the transition services agreement to be entered into by and among AFI, for itself and its Affiliates, and Purchaser pursuant to which Purchaser and AFI will each will provide certain transition services from and after the Closing Date, and for which the term sheet is attached as Exhibit 7 hereto.

“Agency” means a government-sponsored secondary mortgage market enterprise or Government Entity acquiring, owning or guaranteeing Mortgage Loans, including for purposes of this Agreement, Fannie Mae, Ginnie Mae, Freddie Mac, FHA and HUD.

“Agency Consents” means the written consents, approvals or acknowledgements of Fannie Mae, Freddie Mac or Ginnie Mae containing the provisions set forth in Schedule 4.3, in form and substance satisfactory to Purchaser.

“Agency Contracts” means the Contracts between any Seller or any Subsidiary of any Seller and an Agency, and each Agency’s respective seller and servicer guides utilized by the Agencies and other Investors to whom Sellers have sold Mortgage Loans and/or for which Sellers service Mortgage Loans, as listed on Schedule F hereto.

“Agency Loans” means Mortgage Loans being serviced by Sellers pursuant to an Agency Contract that are owned or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae or are intended to be included in a pool to be owned by Fannie Mae or Freddie Mac or guaranteed by Ginnie Mae, as identified in the Mortgage Loan Schedule, the Cut-Off Date Mortgage Loan Schedule, or the Closing Date Mortgage Loan Schedule, as applicable.

“Agency Special Requirements” means the Seller-specific reporting and servicing procedures required by the Agencies to be performed by Sellers as servicer of the Agency Loans, as set forth on Schedule B.

“Agreement” or “this Agreement” means this Asset Purchase Agreement, together with the Exhibits, Schedules and Disclosure Memorandum attached hereto, as any of them may be amended from time to time.

“Amended Disclosure Memorandum” has the meaning specified in Section 6.13(b).

“Ancillary Agreements” means the Servicing Transfer Agreement and each of the agreements set forth in Section 2.10.

“Ancillary Income” means all income, revenue, fees, expenses, charges or other monies from or relating to the Mortgage Loans to which a Servicer is entitled (other than servicing fees and prepayment charges, premiums or penalties), including late charges, insufficient funds fees, assumption fees, income from Optional Products, interest on funds deposited in any Servicing Escrow Account or Servicing Custodial Account maintained pursuant to the Servicing Agreements, fees payable to a Seller under HAMP, HARP, HASP or any similar program, loss mitigation incentive fees, including those payable from an Agency in such instances for non-HAMP workouts, pay-off fees, modification fees, default interest, commissions and administrative fees on insurance and similar fees and charges, and all other incidental fees and charges.

“Antitrust Authority” has the meaning specified in Section 6.17(b).

“Applicable Law” means, as of the time of reference and as applicable, any Law that is applicable to the Business.

“Applicable Requirements” means and includes, as of the time of reference, with respect to the origination, purchase, sale and servicing of Mortgage Loans or the Servicing Agreements or the ETS Contracts, (in each case to the extent applicable to any particular Mortgage Loan or Servicing Agreement): (i) contractual obligations of Sellers (except those rendered unenforceable by the Bankruptcy Code), including with respect to any Servicing under any Servicing Agreement, Mortgage Loan Document or any other commitment or other contractual obligation relating to a Mortgage Loan, (ii) applicable underwriting, servicing and other guidelines of Sellers as incorporated in Seller/Servicer Guides, (iii) Applicable Laws, (iv) other applicable requirements and guidelines of any Government Entity or of any Investor, ETS Customer or Insurer and (v) applicable requirements of MERS.

“Assignment and Assumption Agreement” means one or more assignment and assumption agreements to be executed by Sellers and Purchaser in respect of specified Assumed Contracts and Assumed Liabilities, in a customary form as mutually agreed between Sellers and Purchaser.

“Assignment and Assumption of Lease Agreements” means one or more assignment and assumption of lease agreements to be executed by applicable Sellers and Purchaser in respect of

the Real Property Leases, in a customary form as mutually agreed between Sellers and Purchaser.

“Assumed Contracts” has the meaning specified in Section 2.2.

“Assumed Contracts Procedures” means procedures pertaining to the assumption and assignment of the Assumed Contracts from the Sellers to the Purchaser, as set forth in the Sale Procedures, which shall include procedures pursuant to which (i) the Sellers shall (a) file a schedule setting forth each of the Assumed Contracts and the Sellers’ estimates of the Cure Amounts, if any, with respect to the Assumed Contracts and (b) provide notice of such schedule to all affected parties and (ii) all affected parties shall file an objection, if any, to the Sellers’ proposed assumption and assignment of the Assumed Contracts and the estimates of Cure Amounts set forth in such schedule by no later than 15 calendar days prior to the Sale Hearing or such earlier date as the Bankruptcy Court shall order.

“Assumed Liabilities” means:

- (i) the Business Employee Liabilities;
- (ii) the Liabilities relating to Permitted Liens with respect to Purchased Assets (to the extent not discharged in the Bankruptcy Case);
- (iii) the Liabilities arising under any Assumed Contract to the extent such Liabilities arise on and after the Closing; and
- (iv) all Liabilities of the Business or Purchased Assets arising from the conduct of the Business on or after the Closing other than any Retained Liabilities.

“Assumed Pre-Petition Contracts” has the meaning specified in Section 6.14(d).

“Auction” has the meaning specified in the Sale Procedures Order.

“Auction Date” has the meaning specified in the Sale Procedures Order.

“Bankruptcy Case” has the meaning specified in the preamble.

“Bankruptcy Code” has the meaning specified in the preamble.

“Bankruptcy Court” has the meaning specified in the preamble.

“Bankruptcy Exceptions” means (i) as a result of Sellers operating as debtors in possession under the Bankruptcy Code, (a) Sellers’ inability to maintain the services of their officers or other employees, including the possibility that a substantial number of Sellers’ employees have left, or will leave, their positions, and (b) vendors and counterparties of Sellers failing to continue to perform their obligations to Sellers, and (ii) any limitation or obligation imposed on Sellers by Order of the Bankruptcy Court or the DIP Financing Agreements.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Bill of Sale” means one or more bills of sale to be executed by Sellers and Purchaser in respect of certain Purchased Assets, in a customary form as mutually agreed between Sellers and Purchaser.

“Book Value” means, with respect to any asset, the book value of such asset determined in accordance with the Transaction Accounting Principles, as set forth on the Schedule of Purchased Assets and Liabilities, the Cut-off Date Schedule of Purchased Assets and Liabilities or the Closing Date Schedule of Purchased Assets and Liabilities, as applicable.

“Books and Records” means all books, ledgers, files, reports, plans, records, manuals, and other materials (in any form or medium) Related to the Business except those items identified on Schedule Q.

“Break-Up Fee” has the meaning set forth in Section 6.15(a).

“Budget” means the budget annexed to the DIP Order.

“Business” means the business, directly or indirectly, engaged in by Sellers and Affiliate Sellers of (i) originating Mortgage Loans, including through Sellers’ Consumer Lending Platform; (ii) owning the Other Purchased Assets; (iii) providing primary servicing, back-up servicing and related activities for Mortgage Loans and Other Serviced Loans; (iv) providing fee-based subservicing for Mortgage Loans; (v) providing master servicing for Private Investors in Private Investor Loans and investors in Other Serviced Loans; (vi) financing and reselling serviced Mortgage Loans and related capital markets transactions; (vii) other operations related to the foregoing and (viii) foreclosure trustee services and recovery services provided to ETS Customers. “Business” expressly excludes all activities, operations, products, transactions and services that are conducted under, or in connection with, any Excluded Assets.

“Business Day” means any day of the year, other than any Saturday, Sunday or any day on which banks located in New York, New York or Dallas, Texas generally are closed for business.

“Business Employee” means each employee of any Seller whose primary responsibility is to provide services Related to the Business.

“Business Employee Liabilities” means all Claims and Liabilities of Sellers related to the Transferred Employees that Purchaser expressly agrees to assume pursuant to Section 6.7.

“Business Employee List” has the meaning specified in Section 4.13(a) hereof.

“Business Licenses” means the Permits required by Law or by Fannie Mae, Freddie Mac or Ginnie Mae or other Government Entity in order to engage in the Business.

“Cash Deposit” has the meaning specified in Section 3.4.

“Chapter 11 Plan” shall mean the Chapter 11 plan of reorganization, in form and substance in accordance with the terms set forth in Schedule 6.14(f) and otherwise satisfactory to the Sellers and the Purchaser, which shall be confirmed by the Bankruptcy Court in accordance with section 1129 of the Bankruptcy Code.

“Chapter 11 Plan Effective Date” shall mean the date upon which all the conditions to effectiveness of the Chapter 11 Plan shall have been satisfied or waived and the transaction contemplated hereunder shall have been substantially consummated.

“Claims” means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, known or unknown.

“Closing” has the meaning specified in Section 2.9.

“Closing Date” means the date upon which the Closing occurs, which shall be the last day of the month.

“Closing Date Mortgage Loan Schedule” means the Mortgage Loan Schedule as of the close of business on the day immediately preceding the Closing Date.

“Closing Date Schedule of Purchased Assets and Assumed Liabilities” means the unaudited Schedule of Purchased Assets and Assumed Liabilities as of the Closing Date.

“Closing Date Servicing Advance Schedule” means the Servicing Advance Schedule as of the close of business on the day immediately preceding the Closing Date.

“COBRA” means the continuation coverage provisions of the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or any similar provisions of State or Local Law.

“Commitment Letter” means the letter agreement dated May 13, 2012 between Purchaser and Newcastle Investment Corp.

“Competing Transaction” has the meaning specified in Section 7.1.

“Computer Equipment” means all equipment and devices (including data processing hardware and related telecommunications equipment, media, materials, program documentation and tools) owned or leased by Sellers and located at the Real Property, including the Computer Equipment set forth on Schedule K, together with Sellers’ rights under all related warranties, other than the Computer Equipment identified on Schedule Q.

“Confidential Information” has the meaning specified in Section 6.19(b).

“Confidentiality Agreement” means the confidentiality agreement, dated as of January 26, 2012, between Purchaser and Fortress Investment Group LLC.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Chapter 11 Plan in accordance with section 1129 of the Bankruptcy Code.

“Consent” means the Permits, authorizations, consents, waivers, approvals and licenses from third parties or Government Entities necessary to consummate this Agreement and the transactions contemplated hereby and for Purchaser to operate the Business after the Closing.

“Consent Order” means the Consent Order entered into on April 13, 2011, by and among the FDIC, the FRB and AFI, Ally Bank, ResCap and GMAC Mortgage.

“Consumer Lending Platform” means the assets and operations of Sellers pursuant to which Sellers originate or broker Mortgage Loans, including traditional retail loan offices and a call center.

“Consumer Privacy Ombudsperson” has the meaning specified in Section 2.13.

“Contract” means any agreement, consensual obligation, promise, understanding, arrangement, commitment or undertaking of any nature (whether written or oral and whether express or implied), including leases, subleases, licenses, sublicenses, purchase orders, indentures and loan agreements (other than this Agreement and the Ancillary Agreements) (including each amendment, extension, exhibit, attachment, addendum, appendix, statement of work, change order and any other similar instrument or document relating thereto).

“Copyrights” has the meaning specified in the definition of “Intellectual Property.”

“Core Representations” means:

- (i) Section 4.4(a) (Financial Statements);
- (ii) Section 4.5 (Absence of Certain Changes or Events);
- (iii) Section 4.6 (Title to Assets);
- (iv) Section 4.7 (Purchased Assets Used in the Business);
- (v) Section 4.8 (Real Property Leases), limited to the first sentence thereof and clause (ii) of the third sentence thereof;
- (vi) Section 4.9(a)-(e) (Mortgage Servicing Portfolio; Servicing Agreements; the Business);
- (vii) Section 4.10 (Material Contracts), limited to the first two sentences thereof;
- (viii) Section 4.14 (Litigation and Claims), limited to clause (ii) thereof;

(ix) Section 4.15 (Intellectual Property), limited to subsection (a) and, with respect to any Intellectual Property rights included with the Transferred IT Assets, subsection (c); and

(x) Section 4.17 (Ginnie Mae Loans).

“Cure Amount” means the amount payable in order to cure all defaults on Assumed Contracts and effectuate the assumption by Sellers of an Assumed Contract and the assignment to Purchaser pursuant to section 365 of the Bankruptcy Code as provided in the Sale Approval Order or other Order of the Bankruptcy Court.

“Cut-off Date” means the last day of the month immediately preceding the month of the expected Closing Date or such other date as Purchaser and Sellers may agree.

“Cut-off Date Mortgage Loan Schedule” has the meaning specified in Section 4.9(a).

“Cut-off Date Purchase Price” has the meaning specified in Section 2.11(a).

“Cut-off Date Schedule of Purchased Assets and Assumed Liabilities” means the unaudited Schedule of Purchased Assets and Assumed Liabilities dated as of the Cut-off Date.

“Cut-off Date Servicing Advance Schedule” has the meaning specified in Section 4.9(c).

“Deed of Transfer” means one or more deeds of transfer, each in a customary form as mutually agreed between Sellers and Purchaser, to be executed by the applicable Seller and, if required by applicable law, Purchaser in respect of the Owned Real Property, each of which shall be a special warranty deed, or the equivalent in the applicable jurisdiction, with a covenant against grantor’s acts.

“De Minimis Interest” means an insubstantial interest, and shall equal a 0.01% interest, except as otherwise set forth in Section 2.3(g) of the Disclosure Memorandum.

“Deposit Escrow Agreement” means an escrow agreement by and among Purchaser, Sellers and the Escrow Agent, in substantially the form set forth in Exhibit 2 hereto, executed and delivered simultaneously with the execution and delivery hereof.

“Determination” has the meaning specified in Section 3.3(a).

“DIP Borrowers” means GMACM Borrower LLC, a wholly owned subsidiary of GMAC Mortgage, and RFC Borrower LLC, a wholly owned subsidiary of RFC.

“DIP Cash Proceeds” has the meaning set forth in Section 2.3(a).

“DIP Financing Agreements” means the Debtor in Possession Loan and Security Agreements identified on Schedule D hereto, as such agreements may be amended from time to time.

“DIP Order” means the Final Order or Final Orders (i) approving the DIP Financing Agreements; (ii) authorizing Debtors’ post-petition financing on a senior secured, superpriority basis; (iii) authorizing the Debtors’ use of Cash Collateral (as defined in the DIP Order); and (iv) granting Replacement Liens and Adequate Protection to Certain Pre-Petition Secured Creditors, entered by the Bankruptcy Court in the Bankruptcy Case.

“Disclosure Memorandum” has the meaning specified in Section 6.13(a).

“Dispute Notice” has the meaning specified in Section 3.2(c).

“DOJ/AG Settlement” means the Consent Judgment filed with the U.S. District Court for the District of Columbia on March 12, 2012 to which AFI, ResCap and GMAC Mortgage are parties.

“Electronic Data File” means test “tape(s),” sale “tape(s)” and/or “transfer tape(s)” containing Mortgage Loan, Other Serviced Loan and/or servicing information delivered or to be delivered by Sellers to Purchaser in connection with the transfer of the Purchased Mortgage Servicing, the Advances and the Servicing Agreements contemplated hereby.

“Eligible Servicing Agreement” means a Servicing Agreement (including a master servicing agreement, primary servicing agreement or subservicing agreement) that

(a) is described on Schedule T; or

(b) contains the following provisions:

(i) expressly authorize the servicer, without the consent of any party thereto and notwithstanding any other limitation set forth therein, to enter into a financing or other facility (an “Advance Facility”) under which such servicer assigns or pledges its rights under such servicing agreement to be reimbursed for any or all servicing advances to a lender or a special-purpose bankruptcy-remote entity and/or a trustee acting on behalf of holders of debt instruments or any other Person (any such Person, an “Advance Financing Person”);

(ii) require the servicer and the Advance Financing Person to notify the related securitization trustee in writing of the existence of an Advance Facility and the identity of the Advance Financing Person;

(iii) provide that an Advance Facility notice may only be terminated by the joint written notice of the servicer and the related Advance Financing Person;

(iv) require the servicer to maintain and provide to any successor servicer and the related securitization trustee, a detailed accounting on a loan-by-loan basis as to amounts advanced, by, pledged or assigned to, and reimbursed to any Advance Financing Person that are recoverable on a loan-level;

(v) to the extent that such servicing agreement is not a Fannie Mae or Freddie Mac Agency Contract, require that as between a predecessor servicer and



its Advance Financing Person, on the one hand, and a successor servicer and its Advance Financing Person (if any) on the other hand, reimbursement amounts in respect of servicing advances on a loan-by-loan basis with respect to each Mortgage Loan as shall be allocated on a “first-in, first-out” basis (such that servicing advances of a particular type that were disbursed first in time will be reimbursed prior to servicing advances of the same type with respect to the same Mortgage Loan that were disbursed later in time), subject to any exceptions for a “first-in, first-out” allocation of the kind set forth in the Advance Facility provisions in any servicing agreement described on Schedule T;

(vi) provide that any rights of set-off that the trust fund, the trustee, the master servicer or any other Person might have against such servicer under the related securitization trust document shall not attach to any rights to receive servicing advances that have been sold, transferred or pledged to an Advance Financing Person under a servicer advance facility;

(vii) provide that the sections of such servicing agreement that authorize the servicer to enter into an Advance Facility may not be amended without the consent of the Advance Financing Person;

(viii) expressly provide that if so required pursuant to the terms of an Advance Facility, the Servicer may direct the trustee, securities administrator or master servicer, as applicable, and if so directed in writing such person will directly pay to the Advance Financing Person or such trustee the reimbursement amounts payable to the servicer pursuant to the agreement;

(ix) expressly provide that an Advance Financing Person whose obligations are limited to the financing of servicing advances shall not be required to meet the qualifications of a successor servicer or subservicer pursuant to the agreement;

(x) expressly provide that in no event shall any reimbursement amounts be included in the funds available to be distributed to, or distributed to, security holders;

(xi) expressly provide that upon the direction of and at the expense of the servicer, the trustee, the securities administrator and the master servicer (as applicable) each agrees to execute such acknowledgments, certificates and other documents (in each case, in form and substance reasonably satisfactory to such party) provided by the servicer recognizing the interests of any Advance Financing Person or trustee for and on behalf of the Advance Financing Person in reimbursement amounts; and

(xii) expressly provide that the servicer (and any successor servicer) shall apply proceeds received in connection with a liquidation of, or final recovery of amounts under, any mortgage loan, as well as any recovery resulting from a partial collection of insurance proceeds, liquidation proceeds or

condemnation proceeds in respect of any mortgage loan, to reimburse any previously unreimbursed servicer advances prior to applying such proceeds to the payment of interest and principal on such mortgage loan in accordance with the agreement.

“Enforceability Exceptions” has the meaning specified in Section 4.1.

“EPRE” has the meaning set forth in the preamble.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and all regulations and rules issued thereunder, or any successor Law.

“Escrow Agent” means JPMorgan Chase Bank or such other bank or other financial institution reasonably acceptable to Sellers and Purchaser.

“ETS” has the meaning specified in the preamble.

“ETS Contract Rights” means the rights of ETS LLC or ETS WA to earn compensation in respect of trustee services or recovery services under the ETS Contracts.

“ETS Contracts” means the Contracts pursuant to which ETS LLC or ETS WA provides foreclosure trustee services or recovery services listed on Schedule U.

“ETS Customer” means the counterparty or counterparties of ETS LLC or ETS WA under an ETS Contract.

“ETS LLC” has the meaning specified in the preamble.

“ETS WA” has the meaning specified in the preamble.

“Excluded Assets” has the meaning specified in Section 2.3.

“Expense Reimbursement” means a reimbursement to Purchaser of Purchaser's actual, reasonable, documented, out-of-pocket expenses incurred in connection with the transactions contemplated by this Agreement, including professional fees, in each case to the extent not reimbursed by Sellers to Purchaser prior to or upon execution and delivery of this Agreement and not to exceed \$10,000,000.

“Fannie Mae” means Fannie Mae, formerly known as The Federal National Mortgage Association, or any successor thereto.

“FDIC” means the Federal Deposit Insurance Corporation or any successor thereto.

“Fed Funds Rate” means, for any date, the weighted average of the rates set forth in the weekly statistical release H.15(519) (or any successor publication) published by the Board of Governors of the Federal Reserve System opposite the caption “Federal Funds (Effective).”

“Fee-Based Subservicing Agreements” means the subservicing agreements (including letter agreements) with any counterparty, including any Affiliate of AFI, under which a Seller

services Mortgage Loans as to which such counterparty owns the related Mortgage Servicing Rights and, in some cases, agrees to pay over a portion of the related Servicing Compensation to such counterparty, as set forth in Schedule E hereto.

“FHA” means the Federal Housing Administration of HUD, or any successor thereto.

“FHA Loans” means mortgages insured by the FHA.

“Final Order” means an Order (i) as to which the time to appeal, petition for certiorari or move for review or rehearing has expired and as to which no appeal, petition for certiorari or other proceeding for review or rehearing is pending, or (ii) if an appeal, writ of certiorari, reargument or rehearing has been filed or sought, the Order has been affirmed by the highest court to which such Order was appealed or certiorari has been denied, or reargument or rehearing shall have been denied or resulted in no modification of such Order and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired; provided that the theoretical possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, as amended, or any successor rules, may be filed with respect to such order or judgment shall not prevent such Order from being considered a Final Order.

“Fixtures and Equipment” means all furniture, furnishings, vehicles, equipment, Computer Equipment, tools and other tangible personal property owned by any Seller and located at any Real Property as of the Closing Date, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person.

“FRB” means the Board of Governors of the Federal Reserve System.

“Freddie Mac” means Freddie Mac, formerly known as The Federal Home Loan Mortgage Corporation, or any successor thereto.

“GAAP” means United States generally accepted accounting principles, applied on a consistent basis.

“Ginnie Mae” means the Government National Mortgage Association, a body corporate organized and existing under the laws of the United States of America within HUD, or any successor thereto.

“Ginnie Mae Loans” means Whole Loans owned by a Seller on the Closing Date that meet the criteria set forth on Schedule M.

“Ginnie Mae MSR Assets” has the meaning specified in Section 2.16.

“GM Transition License” means a license from General Motors to Purchaser and certain of its Subsidiaries as designated by Purchaser to use “GMAC” as a trademark or servicemark for transitional purposes, substantially in the form attached as Exhibit 6.

“GMAC Mortgage” has the meaning specified in the preamble.

“Government Authorization” means any Permit, environmental permit, certificate, consent, ratification, permission, authorization, approval, confirmation, decision, endorsement, waiver, certification, registration or qualification issued, granted, given or otherwise made available by or under the authority of, or filing with or notice to, any Government Entity or pursuant to any Law, including any approval to participate in any of its programs relating to Mortgage Servicing.

“Government Entity” means any United States federal, state or local, or any supranational, court, judicial or arbitral body, administrative or regulatory body or other governmental or quasi-Government Entity with competent jurisdiction (including any political or other subdivision thereof), including the Agencies, the FHA, HUD, the VA, the FRB, the FDIC, the IRS, any State Agency and any Antitrust Authority.

“HAMP” means the Treasury Department’s Home Affordable Modification Program established in connection with the “Making Home Affordable” loan modification program, as in effect from time to time.

“HARP” means the Treasury Department’s Home Affordable Refinance Program established in connection with the “Making Home Affordable” loan modification program, as in effect from time to time.

“HASP” means the Treasury Department’s Homeowner Affordability and Stability Plan established in connection with the “Making Home Affordable” loan modification program, as in effect from time to time.

“HELOC” means a Mortgage Loan that is a home equity line of credit.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“HUD” means the Department of Housing and Urban Development of the United States of America.

“Improvements” means all buildings, structures, facilities and improvements located on any Owned Real Property, including buildings, structures, facilities and improvements that are under construction.

“Indebtedness” means (i) all indebtedness for borrowed money or for the deferred purchase price of property or services (other than current trade Liabilities incurred in the Ordinary Course of Business and payable in accordance with customary practices), (ii) any other indebtedness that is evidenced by a note, bond, debenture or similar instrument, (iii) liabilities under or in connection with letters of credit or bankers’ acceptances or similar items, (iv) all obligations under financing leases, (v) all Liabilities secured by any Lien on any property, and (vi) all guarantee obligations.

“Indemnity Escrow Account” has the meaning specified in Section 2.17.

“Indemnity Escrow Agent” has the meaning specified in Section 2.17.

“Indemnity Escrow Agreement” has the meaning specified in Section 2.17.

“Indemnity Escrow Amount” has the meaning specified in Section 2.17.

“Indemnity Escrowed Funds” has the meaning specified in Section 2.17.

“Independent Accounting Firm” means a nationally recognized independent accounting firm mutually chosen by Purchaser and ResCap.

“Insurance Policy” means (i) any private mortgage insurance or commitment of any private mortgage insurer to insure, (ii) any title insurance policy, (iii) any hazard insurance policy, (iv) any flood insurance policy, (v) any fidelity bond, direct surety bond, or errors and omissions insurance policy required by private mortgage insurers, (vi) any surety bonds required by state banking authorities for licensing purposes or (vii) any surety or guaranty agreement.

“Insurer” means an issuer of an Insurance Policy.

“Intellectual Property” means: (i) registered and unregistered trademarks, service marks, brand names, certification marks, collective marks, d/b/as, logos, symbols, trade dress, fictitious names, trade names and other indicia of origin, in each case, including all applications and registrations for the foregoing, all renewals of same, and any and all goodwill associated with any of the foregoing (collectively, “Trademarks”); (ii) patentable inventions and discoveries and all patents, registrations, invention disclosures and applications therefor, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (iii) trade secrets, confidential information and non-public know-how, including processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists (collectively, “Trade Secrets”); (iv) copyrightable published and unpublished works of authorship (including databases and other compilations of information), including computer software and documentation, registered and unregistered copyrights, registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof (collectively, “Copyrights”); (v) Internet domain names and registrations thereof; (vi) Software; and (vii) any other similar type of intellectual property right.

“Intellectual Property License” means (i) any grant by any Seller to any third Person of any right of such Seller under its Intellectual Property, and (ii) any grant by any third Person to one or more Sellers of any right under such third Person’s Intellectual Property, in each case to the extent Related to the Business.

“Investor” means an Agency, a Private Investor or any other Person who owns or holds Mortgage Loans or Other Serviced Loans or any interest therein, serviced or subserved by a Seller pursuant to a Servicing Agreement, singly or in the aggregate

“IRS” means the Internal Revenue Service.

“IT Assets” means IT Inventories, Technical Documentation, Computer Equipment and Software Contracts whereby licenses are granted to one or more Sellers and/or their Subsidiaries in each case to the extent Related to the Business.

“IT Inventories” means (i) computer software code (in all media) and materials, including all software programs; (ii) computer software documentation, including user materials; and (iii) all other unused or reusable materials, stores, and supplies related to computer software, in each case to the extent Related to the Business.

“Knowledge of Sellers” concerning a particular subject, area or aspect of the Business, the affairs of any Seller, the Purchased Assets or the Assumed Liabilities, means the actual knowledge of any individual listed on Schedule G hereto.

“Law” means any law, statute, ordinance, rule, regulation, code, Order, Permit, or other legal requirement enacted, issued, promulgated, enforced, or entered by a Government Entity.

“Lease” means each lease or other Contract pursuant to which a Seller leases any Real Property or personal property, either as lessor or lessee.

“Leased Real Property” means all real property, including leasehold improvements, that are the subject of the Real Property Leases.

“Liabilities” means any and all Indebtedness, liabilities, costs, Losses, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability), and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

“Licensed Transferred IP” has the meaning specified in the definition of “Transferred Intellectual Property.”

“Lien” means any lien, charge, pledge, deed of trust, right of first refusal, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, option, proxy, hypothecation, voting trust agreement, transfer restriction, easement, servitude, encroachment, or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

“Loss” or “Losses” means any and all damages, losses, actions, proceedings, causes of action, Liabilities, claims, Liens, penalties, fines, demands, Taxes, assessments, awards, judgments, settlements, costs and expenses, including (i) court costs and similar costs of litigation; (ii) reasonable attorneys’ and consultants’ fees, including those incurred in connection with (a) investigating or attempting to avoid the matter giving rise to the Losses or (b) successfully establishing a valid right to indemnification for Losses; and (iii) interest awarded as part of a judgment or settlement, if any, but in any event “Loss” or “Losses” shall exclude punitive damages claimed, incurred or suffered by any Person (which exclusion does not include any such damages for which such Person is liable to a third party as a direct, out-of-pocket cost of such Person).

“Material Adverse Effect” means any condition, circumstance, event, state of facts, change or effect that is materially adverse to the Business or the Purchased Assets or to Sellers’ ability to effect the transactions contemplated herein or to perform their obligations under this

Agreement and the Ancillary Agreements; provided that, for purposes of this Agreement, a Material Adverse Effect shall not include any condition, circumstance, event, state of facts, change or effect to the Business or the Purchased Assets resulting from (i) conditions, circumstances, events or changes to the housing or mortgage market or the mortgage servicing industry; (ii) the announcement or disclosure of the transactions contemplated herein, (iii) general economic, regulatory or political conditions or changes in the United States; (iv) military action or acts of terrorism; (v) changes in Law or changes in GAAP or in the application of GAAP that become effective after the date hereof that Sellers are required to adopt in accordance therewith; (vi) actions taken or not taken, in each case, at the request of Purchaser; (vii) conditions in or changes to any financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or market index); (viii) changes in or with respect to any of the Agencies, including in their legal organization, responsibilities, oversight obligations or roles in the mortgage loan and securities markets; or (ix) any effects on the Business resulting from the fact that Sellers will be operating as debtors-in-possession under the Bankruptcy Code; and provided further that, in the case of each of clauses (i), (iii), (iv), (v) and (vii), the Business or the Purchased Assets are not, or not reasonably likely to be, materially disproportionately affected by such condition, circumstance, event, state of facts, change or effect compared to other Persons engaged in the conduct of businesses similar to the Business.

“Material Contract” means any Assumed Contract to which any Seller is a party or by which any Seller or any of the Purchased Assets are bound or otherwise subject (i) not made in the Ordinary Course of Business that is to be performed in whole or in part after the date of this Agreement; (ii) involving any joint venture or partnership agreement; (iii) involving an agreement to share profits or excess cash flows and involving a liability or expenditure of greater than \$250,000 during any 6-month period; (iii) that involves a liability or expenditure of greater than \$250,000 during any 12-month period or \$500,000 over the remaining term of such Contract; (iv) providing for the guarantee, indemnification, surety or similar obligation of any Person’s obligations (other than any vendor contracts or Servicing Agreements entered into in the Ordinary Course of Business); (v) restricting or purporting to limit in any material respect the ability of any Seller or any of their Affiliates to compete in any line of business or to operate in any geographic area or that otherwise restricts in any material respect the Business from being conducted as conducted as of the date of this Agreement; (vi) entered into with any Government Entity, involving obligations that will continue following the Closing, other than Government Authorizations in the Ordinary Course of Business; (vii) granting any right of first refusal or first offer or similar right or that could require the disposition of any material assets of any Seller, or that limits the payment or dividend or other distributions by any Seller; (viii) requiring the purchase or use of all or substantially all of any Seller’s requirements of a particular product or service; (ix) that provides for indemnification obligations in excess of \$250,000; or (x) that is a Real Property Lease. Notwithstanding the foregoing, “Material Contract” does not include any Servicing Agreements or Mortgage Loan Documents.

“MERS” means the Mortgage Electronic Registration System maintained by Merscorp Holdings, Inc.

“Minnesota Data Center Interest” means the 51% interest in the Eden Prairie, Minnesota real property sold by EPRE to AFI pursuant to the Purchase and Sale Agreement between EPRE and AFI dated May 9, 2012.

“Mortgage Loan Documents” means, for any Mortgage Loan, all documents in the possession of Sellers or their custodians or other agents pertaining to such Mortgage Loan, including originals of the Mortgage Note, the mortgage or deed of trust and all assignments of the mortgage or deed of trust, all endorsements and allonges to the Mortgage Note, the title insurance policy with all endorsements thereto, any security agreement and financing statements, any account agreements, and any assignments, assumptions, modifications, continuations or amendments to, or affidavits of lost documents relating to, any of the foregoing.

“Mortgage Loan Schedule” has the meaning specified in Section 4.9(a).

“Mortgage Loan” means any U.S. individual residential (one-to-four family) mortgage loan or other extension of credit secured by a Lien on U.S. real property of a borrower originated, purchased or serviced by a Seller or any Affiliate Seller (which, for avoidance of doubt, may be a charged-off Mortgage Loan).

“Mortgage Note” means, with respect to a Mortgage Loan, a promissory note or notes, a loan agreement or other evidence of Indebtedness with respect to such Mortgage Loan, secured by a mortgage or mortgages or a deed or deeds of trust, together with any assignment, reinstatement, extension, endorsement or modification thereof.

“Mortgage Servicing” means all right, title and interest of Sellers in and to:

(A) With respect to Agency Loans:

(i) the right to service (including primary servicing and master servicing) Agency Loans under the Agency Contracts and Servicing Agreements, including the right to receive the Servicing Compensation;

(ii) the related servicing obligations as specified in the Agency Contracts and Servicing Agreements, including the obligations to administer and collect the payments of or relating to Agency Loans and to remit all amounts and provide information reporting to others;

(iii) the right of ownership, possession, control and use of any and all Servicing Files and Mortgage Loan Documents pertaining to the servicing of Agency Loans as provided in the Agency Contracts and Servicing Agreements;

(iv) the rights with respect to, and obligations to make, and right to reimbursement for any Servicing Advances with respect to such Agency Loans;

(v) the “clean-up call” right, if any, to purchase Agency Loans upon the aggregate principal balance thereof being reduced below a specified amount to the extent provided for in the Agency Contracts and Servicing Agreements;

(vi) any interest on escrow payments, Servicing Escrow Accounts or Servicing Custodial Accounts allowed by law or other similar payments or accounts with respect to the serviced Agency Loans to which the master servicer



or servicer of the serviced Agency Loans is entitled and any amounts actually collected by Sellers with respect thereto;

(vii) all accounts and other rights to payment related to any of the property described in this definition, including, any rights that Seller may have as master servicer or servicer to any accounts established pursuant to the Servicing Agreements and any rights to direct the disposition, disbursement, distribution or investment of amounts deposited therein;

(viii) all other rights, powers, privileges and obligations of any Seller as Servicer under the Agency Contracts and Servicing Agreements.

(B) With respect to Private Investor Loans and Other Serviced Loans:

(i) the right to service (including primary servicing and master servicing) Private Investor Loans and Other Serviced Loans under the relevant Servicing Agreements, including the right to receive Servicing Compensation;

(ii) the servicing fee and master servicing fee (if any) set forth in each related Servicing Agreement and the related Mortgage Loan Schedule;

(iii) the rights with respect to, and obligations to make, and right to reimbursement for any Servicing Advances with respect to such Private Investor Loans and Other Serviced Loans;

(iv) all rights of Sellers (to the extent owned by Sellers) to exercise “cleanup calls” and optional repurchase rights relating to delinquent Mortgage Loans as set forth in the applicable Servicing Agreements;

(v) all agreements or documents creating, defining or evidencing any such master servicing and servicing rights to the extent they relate to the rights of Sellers as master servicer or servicer thereunder;

(vi) any interest on escrow payments, Servicing Escrow Accounts or Servicing Custodial Accounts allowed by law or other similar payments or accounts with respect to the Serviced Mortgage Loans to which the master servicer or servicer of the Serviced Mortgage Loans is entitled and any amounts actually collected by Sellers with respect thereto;

(vii) all accounts and other rights to payment related to any of the property described in this definition, including, any rights that Seller may have as master servicer or servicer to any accounts established pursuant to the Servicing Agreements and any rights to direct the disposition, disbursement, distribution or investment of amounts deposited therein;

(viii) the nonexclusive right to possess and use any and all Servicing Files, Mortgage Loan Documents, servicing records, data tapes, computer records, or other information pertaining to the Private Investor Loans and Other Serviced

Loans and relating to the past, present or prospective master servicing or servicing of the Private Investor Loans and Other Serviced Loans to the extent of Sellers' rights under the Servicing Agreements; and

(ix) all other rights, powers, privileges and obligations of any Seller as Servicer of Private Investor Loans and Other Serviced Loans, including any Seller duties as a REMIC Administrator.

"Mortgage Servicing Rights," or "MSRs," means financial assets representing the economic value to Sellers of Mortgage Servicing, including Servicing Compensation.

"Mutual Release" means a mutual release in the form set forth in Exhibit 9 hereto.

"Necessary Consent" has the meaning specified in Section 2.6.

"Optional Products" means any life, accidental death or accident and health (disability) insurance or other optional products (including payment products, such as Paymap) purchased or obtained by a mortgagor in connection with a Mortgage Loan.

"Order" means, with respect to any Person, any award, decision, injunction, judgment, stipulation, order, ruling, subpoena, writ, decree, consent decree or verdict entered, issued, made or rendered by any Government Entity affecting such Person or any of its properties.

"Ordinary Course of Business" means the ordinary course of business of the Business during the six months immediately preceding the date of this Agreement including compliance with the Agency Special Requirements, as modified from time to time in order to comply with the Consent Order, the DOJ/AG Settlement and any other change required by any Government Entity or MERS, and, from and after the Petition Date, in accordance with the Budget.

"Organizational Documents" means: (i) with respect to a limited partnership, the certificate of limited partnership, limited partnership agreement and subscription agreements with such partnership's partners then in effect; (ii) with respect to a limited liability company, the certificate of formation, limited liability company agreement, operating agreement and subscription agreements with such company's members then in effect; (iii) with respect to a corporation, the articles or certificate of incorporation and by-laws of such corporation then in effect; and (iv) with respect to any other entity, comparable organizational documents of such entity, in each case, as then in effect.

"Other Purchased Assets" means the assets to be acquired by Purchaser set forth on Schedule L-1 hereto.

"Other Serviced Loans" means Mortgage Loans (other than Agency Loans or Private Investor Loans) and other secured and unsecured loans, whether or not securitized, owned by an Investor or a Seller and serviced by a Seller (as master servicer, servicer or otherwise), the servicing of which is intended to be transferred hereunder, as set forth on Schedule I hereto.

“Owned Real Property” means the U.S. real property that is owned by a Seller, as set forth on Schedule H hereto, and that is being sold, conveyed and transferred to Purchaser pursuant to this Agreement. Owned Real Property does not include any REO Property.

“Owned Transferred IP” has the meaning specified in the definition of “Transferred Intellectual Property.”

“Permits” means permits, concessions, grants, franchises, licenses, variances, exemptions, exceptions, clearances, registrations, qualifications, filings and other authorizations and approvals required or issued by any Government Entity and Related to the Business.

“Permitted Liens” means (i) with respect to Owned Real Property, all defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in policies of title insurance provided to Purchaser prior to the date hereof or disclosed in title search reports made available by Sellers to Purchaser prior to the date hereof; (ii) statutory liens for current Taxes, assessments or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings or the making of appropriate demands, notices or filings; provided that an appropriate reserve is established therefor against the carrying amount of the related assets; (iii) mechanics’, carriers’, workers’, repairers’ and similar Liens arising or incurred in the Ordinary Course of Business and the amount or validity of which is being contested in good faith by appropriate proceedings or the making of appropriate demands, notices or filings; provided that an appropriate reserve is established therefor against the carrying amount of the related assets; (iv) with respect to Owned Real Property, minor survey exceptions, reciprocal easement agreements and other customary encumbrances on title to real property; (v) with respect to Leased Real Property, statutory landlord’s Liens under leases to which any Seller is a party; (vi) with respect to Real Property, requirements and restrictions of zoning, building and other similar Laws that are not violated in any material respect by the current use or occupancy of the Real Property or the activities conducted thereon as of the date hereof; (vii) rights granted to any licensee of any Transferred Intellectual Property in the Ordinary Course of Business; (viii) Liens on equipment registered under the Uniform Commercial Code as adopted in any applicable state or similar legislation in other jurisdictions by any lessor or licensor of assets to a Seller (in respect of the Business) or in respect of the purchase price therefor (it being understood that all such Liens shall be discharged or released at the Closing); and (ix) Liens that will be and are discharged or released either prior to, or simultaneously with the Closing; provided that, except in the case of clause (ii), such exceptions (a) do not render title to the property encumbered thereby unmarketable and (b) do not, individually or in the aggregate, materially detract from the value or use of such property for its current purposes.

“Person” means a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Entity or other entity or organization.

“Petition Date” means the date on which the Petitions in respect of the Bankruptcy Case are filed with the Bankruptcy Court.

“Petitions” has the meaning specified in the preamble.

“Plan” means any (i) deferred compensation, bonus, retention, severance, termination pay, or incentive compensation plan, program, agreement or arrangement; (ii) stock purchase, stock bonus, stock option, restricted stock, phantom stock or other equity or equity-based compensation plan, program, agreement or arrangement; (iii) medical, surgical, vision, dental, disability, hospitalization, life insurance or other “employee welfare benefit plan” (within the meaning of Section 3(1) of ERISA); (iv) retirement, profit-sharing, savings or other “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA); (iv) employment, consulting, retention, change in control, termination or severance agreement; or (v) other employee benefit plan, fund, program, agreement or arrangement, in each case, (A) adopted by or contributed to by any Seller with respect to any Business Employee, (B) with respect to which any Seller and any Business Employee is a party, or (C) with respect to which any Seller has any Liability with respect to any Business Employee or Purchaser could have any Liability.

“Pre-Closing Tax Period” means any taxable period (or the allocable portion of a Straddle Period) ending on or before the close of business on the Closing Date.

“Private Investor” means a Seller or any person other than an Agency that owns Mortgage Loans master serviced, serviced or subserviced by Sellers pursuant to a Servicing Agreement.

“Private Investor Loans” means Serviced Mortgage Loans, other than Agency Loans or Other Serviced Loans, identified on the Mortgage Loan Schedule, the Cut-off Date Mortgage Loan Schedule or the Closing Date Mortgage Loan Schedule, as applicable.

“Private Investor Servicing Agreements” means, with respect to any Private Investor Loans, the applicable private investor servicing agreement, sale and servicing agreement, servicing agreement, subservicing agreement or other agreement, other than an Agency Contract, pursuant to which a Seller services a Serviced Mortgage Loan, as listed on Schedule E hereto.

“Privileged Documents” has the meaning specified in Section 2.4.

“PSA Amendment” means (a) an amendment to the provisions of any Servicing Agreement that relates to the replacement of the Servicer or the assignment or transfer of Mortgage Servicing responsibility, which amendment is determined by the Sellers and Purchaser to be reasonably necessary or appropriate to be entered into in connection with obtaining the Agency Consents, (b) an amendment permitting Purchaser to sell, transfer or assign the right to all or a portion of Servicing Compensation and other compensation payable to the servicer or master servicer or to any other Person and (c) any amendment to the terms of any Servicing Agreement, to cause such Servicing Agreement to be deemed an Eligible Servicing Agreement.

“Purchase Price” has the meaning specified in Section 3.1(a).

“Purchase Price Adjustment Statement” has the meaning specified in Section 3.2(a).

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchased Mortgage Servicing” means all of Sellers’ Mortgage Servicing in respect of Agency Loans, Private Investor Loans and Other Serviced Loans.

“Purchaser” has the meaning specified in the preamble.

“Purchaser Payable Cure Amount” means an amount equal to 50% of the Cure Amount, but in any event subject to the Purchaser Payment Cap.

“Purchaser Payment Cap” has the meaning set forth in Section 6.25.

“Real Property” means the Owned Real Property and the Leased Real Property.

“Real Property Leases” means the real property leases, subleases, licenses or other agreements in which the Sellers are lessees or licensees, and subleases, sublicences or other agreements in which Sellers are sublessees or sublicensees (or sublessors or sublicensors) that may be assumed by Purchaser pursuant to this Agreement as set forth on Schedule H hereto.

“Related to the Business” means required for, held for, or used in the conduct of the Business as conducted by Sellers in the Ordinary Course of Business.

“REMIC” means a real estate mortgage investment conduit within the meaning of Section 860D(a) of the Tax Code or any other entity or arrangement that has purported to be a real estate mortgage investment conduit under Section 860D(a) of the Tax Code irrespective of whether such entity or arrangement qualifies as a REMIC under Section 860D(a) of the Tax Code.

“REMIC Administrator” means the person designated as such under the terms of the documents governing the creation and administration of any REMIC, and generally having the duty to prepare and file tax returns on behalf such REMIC and to perform tax compliance and administrative duties with respect to such REMIC.

“REMIC Regular Interest” means a regular interest, as defined in Section 860G(a)(1) of the Tax Code, in a REMIC, or any interest that has been represented or otherwise held out to be a regular interest in a REMIC irrespective of whether such interest qualifies as a regular interest in a REMIC as defined in Section 860G(a)(1) of the Tax Code.

“REMIC Residual Interest” means a residual interest, as defined in Section 860G(a)(2) of the Tax Code, in a REMIC, or any interest that has been represented or otherwise held out to be a residual interest in a REMIC irrespective of whether such interest qualifies as a residual interest in a REMIC as defined in Section 860G(a)(2) of the Tax Code.

“REO Property” means real property acquired under servicing agreements, whether or not Servicing Agreements, through foreclosure, acceptance of a deed in lieu of foreclosure or otherwise in connection with the default or imminent default of a Mortgage Loan.

“ResCap” has the meaning specified in the preamble.

“Retained Liabilities” means any and all Liabilities of any kind or nature whatsoever of a Seller or any of its Affiliates (other than any Assumed Liabilities), including any Liabilities arising under, in connection with or otherwise related to

(a) any action, inaction, event, state of facts, circumstance or condition occurring or failing to occur, or existing or failing to exist, on or prior to the Closing Date and any third-party Claim or defense relating thereto, regardless of when asserted, including any Claim or defense that is not discharged in the Bankruptcy Case, as a result of the operation of Section 363(o) of the Bankruptcy Code or otherwise;

(b) the Cure Amount;

(c) any financial penalties under the Consent Order or the DOJ/AG Settlement and except as expressly provided in this Agreement, any other payments, Claims and Liabilities under the Consent Order or the DOJ/AG Settlement;

(d) except as specifically provided in Section 6.7,

(i) any Plan or other employee benefit or compensation plan, policy, program, agreement or arrangement, including any employment, retention, change in control, severance or similar agreement;

(ii) salaries, wages, bonuses, vacation or severance pay or other compensation, payments or benefits earned, accrued or arising prior to or in connection with the Closing Date or in connection with the Closing, including any such payments or benefits due on account of a Business Employee's termination of employment;

(iii) Title IV of ERISA;

(iv) a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA;

(v) COBRA;

(vi) any Transferred Employee with respect to any period or event occurring prior to the date on which he or she becomes an employee of Purchaser or one of its Affiliates;

(vii) any former or current, active or inactive, employee, officer, agent, consultant, independent contractor or subcontractor of any Seller with respect to any period;

(viii) any employment-related grievance or any claim with respect to any personal injuries sustained in connection with the employment or retention of a Person by any Seller, including workers' compensation or disability, regardless of when such claim is made or asserted; or

(ix) WARN;

(e) any and all lawsuits or governmental examinations, audits or investigations commenced and claims made or pertaining to the period prior to the

Closing Date (including any and all class actions, qui tam claims, False Claims Act litigation or other similar litigation);

(f) the origination or securitization of Mortgage Loans by Sellers or any Affiliate of Sellers, including repurchase obligations relating thereto;

(g) any act or omission of any originator, holder or servicer of Mortgage Loans occurring prior to the Closing Date;

(h) any Liability related to an Excluded Asset;

(i) any Tax Liabilities with respect to the Business for any Pre-Closing Tax Period; or

(j) the Agency Special Requirements.

“RFC” has the meaning specified in the preamble.

“Sale Approval Order” means a Final Order or Final Orders of the Bankruptcy Court issued pursuant to sections 105, 363, and 365 of the Bankruptcy Code, in substantially the form set forth in Exhibit 3 hereto, authorizing and approving, among other things, (i) the sale, transfer and assignment of the Purchased Assets to Purchaser in accordance with the terms and conditions of this Agreement, free and clear of all Claims and Liens, (ii) the assumption and assignment of the Assumed Contracts in connection therewith and as a part thereof and the fixing of the Cure Amounts with respect to the Assumed Contracts, (iii) that except for the Purchaser Payable Cure Amount, the Purchaser shall not be liable for any Cure Amount or otherwise obligated to cure any defaults, known or unknown, arising prior to Closing under any Assumed Contract (whether or not such Assumed Contract is an Assumed Pre-Petition Contract) and (iv) that Purchaser is a good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code. References to the “Sale Approval Order” in this Agreement shall be deemed to include the Confirmation Order provided (1) the Confirmation Order has been entered by the Bankruptcy Court by October 31, 2012, (2) the Chapter 11 Plan Effective Date has occurred by December 15, 2012, (3) the Confirmation Order contains each of the provisions, findings, conclusions and determinations set forth in Exhibit 3 in Purchaser’s sole discretion, (4) the other provisions of the Confirmation Order are reasonably acceptable to Purchaser, (5) the Confirmation Order has become a Final Order by December 15, 2012 and (6) Purchaser and Seller agree, in their reasonable judgment, that the Sale Approval Order should be incorporated into the Confirmation Order.

“Sale Hearing” has the meaning specified in the Sale Procedures Order.

“Sale Motion” means the motion filed by Sellers with the Bankruptcy Court for the approval of the Sale Procedures Order and the Sale Approval Order, in form and substance reasonably satisfactory to Purchaser, and Sellers.

“Sale Procedures” means the Sale Procedures substantially in the form set forth in Exhibit 4, as such procedures may be amended and approved in the Sale Procedures Order and in form and substance reasonably satisfactory to Purchaser.

“Sale Procedures Order” means a Final Order of the Bankruptcy Court, in the form set forth in Exhibit 5, with modifications, if any, to be in form and substance reasonably satisfactory to Purchaser that, among other things, approves the Assumed Contracts Procedures and the Sale Procedures, designates Purchaser as a “stalking horse bidder”, and authorizes Sellers to pay the Break-Up Fee and Expense Reimbursement in accordance with this Agreement and the Sale Procedures.

“Schedule of Purchased Assets and Assumed Liabilities” means the schedule setting forth the Book Value of the Purchased Assets and the greater of Book Value or nominal value of the Assumed Liabilities, calculated in accordance with the Transaction Accounting Principles as of the date specified therein, as attached as Schedule C.

“SEC” means the Securities and Exchange Commission.

“Seller/Servicer Guides” means the (i) seller and servicer guides utilized by the Agencies and other Investors to whom Sellers have sold Mortgage Loans and/or for which Sellers service Mortgage Loans and (ii) the manuals, guidelines and related employee reference materials utilized by Sellers to govern their relationships under which Mortgage Loans originated directly by Sellers are made.

“Sellers” has the meaning specified in the preamble.

“Separation Services” has the meaning specified in Section 6.28.

“Serviced Mortgage Loan” means any Mortgage Loan for which a Seller is acting as Servicer under a Servicing Agreement or providing services under an ETS Contract and any REO Property resulting from the foreclosure or other liquidation of such a Mortgage Loan.

“Serviced Mortgagor” means the obligor(s) (including any lessee(s), borrower(s) or guarantor(s)) under a Mortgage Loan for which any Seller is acting as Servicer.

“Servicer” means the Person responsible for performing loan servicing functions (including primary servicing and master servicing) with respect to a Mortgage Loan under the applicable Servicing Agreement.

“Servicing Advance Schedule” has the meaning specified in Section 4.9(c).

“Servicing Advances” means, with respect to each Agency Loan, Private Investor Loan or Other Serviced Loan, the aggregate outstanding amount that, as of any date of determination, has been advanced directly by Sellers from their own funds or from funds advanced under any loan facility (but not with funds borrowed from any custodial or other accounts under a Servicing Agreement) in connection with servicing of such Mortgage Loans in accordance with the applicable Servicing Agreements, including with respect to principal, interest, Taxes, insurance premiums, corporate and other advances and all accrued but unpaid interest thereon as permitted by Applicable Requirements and the applicable Servicing Agreement, including in each case the right to reimbursement for, and enforce payment of, such Servicing Advances. For the avoidance of doubt, “Servicing Advances” shall not include any HELOC draws.



“Servicing Agreements” means all Contracts pursuant to which any Seller provides servicing, including primary servicing or master servicing and related activities (including duties as a REMIC Administrator), and includes the Agency Contracts listed on Schedule F, and the Private Investor Servicing Agreements and Servicing Agreements for Other Serviced Loans, in each case as listed on Schedule E.

“Servicing Compensation” means any servicing fees and other compensation, including any Ancillary Income and any excess servicing spread that a servicer is entitled to receive, collect or retain as Servicer with respect to a Mortgage Loan or otherwise under any Servicing Agreement and any compensation payable to ETS under an ETS Contract.

“Servicing Custodial Account” means each trust account or bank account maintained by a Seller, as Servicer, pursuant to a Servicing Agreement, for the benefit of an Investor or an ETS Customer.

“Servicing Escrow Accounts” means those accounts established and maintained by a Seller with commercial banking institutions or savings and loan associations under Applicable Requirements or the provisions of Servicing Agreements (other than Servicing Custodial Accounts) for (i) the deposit and retention of all collections of taxes, assessments, ground rents, hazard and mortgage insurance or comparable items on account of Mortgage Loans; (ii) the deposit and retention of buydown funds on account of Mortgage Loans, and (iii) all other escrow or similar accounts maintained by a Seller with respect to Mortgage Loans.

“Servicing File” means, for each Mortgage Loan, copies of such Mortgage Loan Documents and all other documents, files and other items related thereto required to be maintained by the Servicer pursuant to the applicable Servicing Agreement or ETS pursuant to the applicable ETS Contracts and, if not specifically set forth in the applicable Servicing Agreement or ETS Contract, pursuant to the servicing standard identified in such Servicing Agreement or ETS Contract, respectively.

“Servicing Transfer Agreement” means the agreement to be entered into between Purchaser and Sellers containing the terms and conditions for the transfer by Sellers to Purchaser of the Purchased Mortgage Servicing and Servicing Advances, pursuant to Section 9.1.

“Shared Services Agreement” means the Shared Services Agreement dated May 13, 2012 between AFI and ResCap, attached hereto as Exhibit 8.

“Software” means (a) all computer and computer network software, firmware, programs, applications and databases in any form, including any content or other information associated or used therewith, along with all source code, object code, operating systems, specifications, data, database management code, utilities, libraries, scripts, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, data formats and all other code and documentation, whether in human readable form or otherwise, and all copies of the foregoing in any and all formats or media, in each case owned by or licensed to Sellers or any Affiliate Seller and only to the extent Related to the Business; and (b) with respect to the foregoing items, all versions, updates, corrections, enhancements and modifications thereto.

“Software Contracts” means Contracts to which Sellers or any Affiliate Sellers are party respecting the ownership, license, acquisition, design, development, distribution, marketing, development, use, outsourcing or maintenance of Software, in each case Related to the Business.

“State Agency” means any state agency or regulatory authority with authority to regulate the activities of Sellers relating to the origination or servicing of Mortgage Loans determine the servicing requirements with regard to Mortgage Loan origination, purchasing, servicing, master servicing or certificate administration performed by Sellers, or to otherwise participate in mortgage lending.

“Straddle Period” means any taxable period that includes (but not end on) the Closing Date.

“Subservicing Agreement” means the agreement to be entered into between Purchaser and Sellers containing the terms and conditions under which Purchaser shall service, master service or subservice certain assets pursuant to Section 6.31.

“Sublease Agreement” means any sublease agreement to be entered into between Purchaser as sublessor and the applicable Seller as sublessee with respect to any of the Leased Real Property located at the locations set forth on Schedule H.

“Subsidiary” means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, of which (i) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries or (ii) such Person or any other Subsidiary of such Person is a general partner (excluding any such partnership where such Person or any Subsidiary of such Person does not have a majority of the voting interest in such partnership).

“Tax” or “Taxes” means all (i) taxes, charges, fees, duties, levies, penalties or other assessments imposed by any federal, state, local or foreign Government Entity, including income, gross receipts, excise, property, sales, gain, use, license, custom duty, unemployment, capital stock, transfer, franchise, payroll, withholding, social security, minimum estimated, profit, gift, severance, value added, disability, premium, recapture, credit, occupation, service, leasing, employment, stamp and other taxes, any amounts attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns, (ii) liability for the payment of any Taxes as a result of being or having been on or before the Closing Date a member of an affiliated, consolidated, combined or unitary group or other association, and (iii) any transferee or secondary Liability in respect of Taxes, and, in each case, any interest or penalty thereon or addition thereto, whether disputed or not.

“Tax Code” means the Internal Revenue Code of 1986, as amended.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto or amendment thereof.

“Technical Documentation” means all technical and descriptive materials (other than Inventory) relating to the acquisition, design, development, use, or maintenance of computer code and Computer Equipment.

“Termination Date” has the meaning specified in Section 11.1(b).

“Texas Data Center Interest” means the 51% interest in the Lewisville, Texas leased real property assigned by GMAC Mortgage to AFI pursuant to the Assignment of Leasehold Interest dated May 9, 2012 between GMAC Mortgage and AFI.

“Title Company” means Chicago Title Insurance Company.

“Title Documents” has the meaning specified in Section 6.12.

“Title IV Plan” means an employee pension benefit plan that is subject to Section 302 or Title IV of ERISA or Section 412 of the Tax Code.

“Trade Secrets” has the meaning specified in the definition of “Intellectual Property.”

“Trademarks” has the meaning specified in the definition of “Intellectual Property.”

“Transaction Accounting Principles” means prepared in accordance with GAAP on a consistent basis and measured and calculated using the same accounting principles, practices, methodologies and policies used in the preparation of the Historical Financial Statements, the Schedule of Purchased Assets and Assumed Liabilities, but subject to and in accordance with Schedule 3.1(a). Calculations pursuant to the Transaction Accounting Principles shall be subject to customary year-end closing processes and adjustments regardless of whether the Closing occurs on a year end, and may take into account all information relevant to the financial condition of the Business on the Closing Date regardless of whether such information was obtained or available on the Closing Date or otherwise. Without limiting the foregoing, all amounts shall be derived from the accounting records of ResCap using consistent accounts and subaccounts reflected in the preparation of the Historical Financial Statements and the Schedule of Purchased Assets and Assumed Liabilities.

“Transfer Taxes” means any federal, state, county, local, foreign and other excise, sales, use, value added, transfer (including real property transfer or gains), conveyance, stamp, documentary transfer, filing, recording or other similar Tax, fee or charge, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, resulting directly from the transactions contemplated by this Agreement.

“Transferred Employee” has the meaning specified in Section 6.7(c).

“Transferred Employee List” has the meaning specified in Section 6.7(b).

“Transferred Intellectual Property” means all the Intellectual Property Related to the Business owned by (“Owned Transferred IP”), or licensed to (“Licensed Transferred IP”), any Seller or any Affiliate Seller in each case except as set forth on Schedule Q.

“Transferred IP Assignment Agreement” means one or more assignment agreements to be executed by and between Sellers and Purchaser in respect of Transferred Intellectual Property, in a customary form as mutually agreed between Sellers and Purchaser.

“Transferred IT Assets” means the IT Assets other than the IT Assets set forth on Schedule Q.

“Transferred Rights and Claims” has the meaning specified in Section 2.1(l).

“Transition Services Agreement” has the meaning specified in Section 6.20(a).

“VA” means the Department of Veteran Affairs of the United States of America, or any successor thereto.

“WARN” means the U.S. Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state or local Law (including, for the avoidance of doubt, the California Worker Adjustment and Retraining Notification Act, as amended).

“Whole Loans” means the Mortgage Loans and any collateral, insurance, guaranty or other credit support arrangement related thereto.

**Section 1.2 Interpretation.** For purposes of this Agreement:

(a) The headings preceding the text of Articles and Sections included in this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement.

(b) The use of the masculine, feminine or neuter gender or the singular or plural form of words herein shall not limit any provision of this Agreement.

(c) The use of the terms “including” or “include” shall in all cases herein mean “including, without limitation” or “include, without limitation,” respectively.

(d) Reference to any Person includes such Person’s successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable agreement. Reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

(e) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(f) Underscored references to Articles, Sections, paragraphs, clauses or Exhibits shall refer to those portions of this Agreement. The use of the terms “hereunder,” “hereby,” “hereof,” “hereto” and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section, paragraph or clause of, or Schedule or Exhibit to, this Agreement.

(g) All references to amounts denominated in dollars shall mean U.S. dollars, except where specifically noted otherwise.

(h) Whenever any payment hereunder is to be paid in “cash,” payment shall be made in U.S. dollars and the method for payment shall be by wire transfer of immediately available funds.

(i) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(j) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(k) Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

## ARTICLE II

### PURCHASE AND SALE OF ASSETS

**Section 2.1 Purchase and Sale of Assets.** On the terms and subject to the conditions set forth herein, at the Closing, Sellers shall sell, convey, transfer, assign and deliver (or cause to be sold, conveyed, transferred, assigned and delivered) to Purchaser, and Purchaser shall purchase from Sellers, all of Sellers’ right, title and interest in, to and under the following assets as they exist on the Closing Date (collectively, the “Purchased Assets”), whether tangible or intangible, real, personal or mixed, Related to the Business, in each case free and clear of all Claims and Liens except Permitted Liens, as approved for sale, transfer and assignment pursuant to the Sale Approval Order:

(a) the Purchased Mortgage Servicing and rights to receive Servicing Compensation related thereto, including Servicing Compensation that is accrued and unpaid as of the Closing Date;

(b) except as provided in Section 2.15, the Servicing Advances outstanding as of the Closing Date;

(c) subject to Schedule M, the Ginnie Mae Loans;

(d) the Owned Transferred IP and Licensed Transferred IP;

- (e) the Books and Records;
- (f) copies of all Tax Returns and related books, records and workpapers filed by or on behalf of any REMIC as to which a Seller is REMIC Administrator (and the duties of which in that capacity the Purchaser will assume), together with all information technology or software in Sellers' possession related to the performance of the duties of the REMIC Administrator, including any such information technology or software used to assemble or supply information needed to be provided to any third-party service provider engaged by the REMIC Administrator to perform any or all of its duties on its behalf;
- (g) all REMIC Residual Interests representing a De Minimis Interest in the residual interests of the related REMIC and required to be held by Purchaser as the REMIC Administrator of such REMIC;
- (h) the Fixtures and Equipment;
- (i) the Transferred IT Assets;
- (j) the Owned Real Property, including, to the extent transferable, all easements, Government Authorizations and other rights and interests appurtenant thereto;
- (k) certain other assets listed on Schedule L-1;
- (l) credits, prepaid expenses, deferred charges, security deposits, prepaid items and duties to the extent related to a Purchased Asset or an Assumed Liability; Schedule L-2 sets forth all such items for which the amount is at least \$100,000 as of the date hereof;
- (m) the causes of action, lawsuits, judgments, refunds, choses in action, rights of recovery, rights of set-off, rights of recoupment, demands and any other rights or Claims related to the Purchased Assets, the Assumed Liabilities and any foreclosure, recovery and other loss mitigation activities related to the Business, including all preference or avoidance claims and actions of any of the Sellers related thereto, including any such claims and actions arising under sections 544, 547, 548, 549, and 550 of the Bankruptcy Code (provided that, for the avoidance of doubt, Sellers shall be entitled to participate in the defense of any counterclaim that does not constitute an Assumed Liability) (the "Transferred Rights and Claims");
- (n) all rights of and benefits accruing under the Assumed Contracts and the Purchased Assets;
- (o) all telephone or facsimile numbers used by Sellers in connection with the Business, which, for the sake of clarity, does not include such numbers for Sellers' business locations or individuals that are not transferring to Purchaser pursuant to this Agreement;

(p) to the extent permitted by Law, all Permits held by Sellers to the extent primarily Related to the Business or the Purchased Assets;

(q) all signage, marketing materials, art and collectables relating to the Business;

(r) all rights to receive mail and other communications addressed to Sellers that pertains to the Business or the Purchased Assets, including any mail and communications from Serviced Mortgagors, Investors, ETS Customers, trustees, customers, suppliers, distributors and their respective representatives;

(s) all client lists, customer lists, supplier lists, mailing lists, do not call lists and other data Related to the Business, including service and warranty records, operating guides and manuals, studies, and correspondence (electronic or otherwise);

(t) to the extent transferable, all rights under insurance policies and insurance proceeds directly relating to Mortgage Loans serviced pursuant to any Servicing Agreement, all bank accounts, other accounts, safe deposit boxes, lock boxes and safes Related to the Business, and the responsibility for all cash and cash equivalents held in or required to be held in such accounts as identified in clause (i) of Section 2.3(a) (exclusive of the parenthetical reference to investment income);

(u) to the extent transferable, all guaranties, warranties, indemnities and similar rights in favor of any Seller or any Affiliate Seller to the extent Related to the Business or related to any Purchased Asset or Assumed Liability; and

(v) the goodwill and other intangible assets Related to the Business or related to the Purchased Assets.

**Section 2.2 Assignment of Contracts, Leases and Other Assets.** On the terms and subject to the conditions set forth in this Agreement and any applicable Ancillary Agreement, each Seller will assign and transfer to Purchaser, effective as of the Closing Date, all of Sellers' right, title and interest in, to and under, and Purchaser will assume, the following Contracts, as approved for sale, transfer and assignment pursuant to the Sale Approval Order (all of the following collectively are referred to herein as the "Assumed Contracts" and included in the term "Purchased Assets" as used herein):

(a) the Real Property Leases;

(b) except as provided in Section 2.15, the Servicing Agreements;

(c) the Intellectual Property Licenses;

(d) the Software Contracts;

(e) other Contracts to which any Seller is a party and that are Related to the Business, as set forth on Schedule O, but excluding (i) any Plan to the extent not assumed

by Purchaser pursuant to Section 6.7 and (ii) the Consent Order and the DOJ/AG Settlement Agreement; and

(f) Contracts that are solely Related to the Business entered into or made by any Seller in the Ordinary Course of Business after the date hereof and before the Closing Date in accordance with the terms of this Agreement (provided that Sellers shall have furnished Purchaser a true, correct and complete copy of each such Contract promptly following the execution and delivery thereof).

**Section 2.3 Excluded Assets.** Notwithstanding anything herein to the contrary, Sellers will not sell, assign, convey, transfer or deliver to Purchaser, and Purchaser will not purchase, acquire or assume or take assignment or delivery of, any and all assets, Contracts or rights that are not expressly Purchased Assets or Assumed Contracts, whether tangible, real, personal or mixed (collectively, the "Excluded Assets"). For the avoidance of doubt, Excluded Assets include the following:

(a) all cash and cash equivalents, including (i) all restricted cash, amounts held in Servicing Escrow Accounts and Servicing Custodial Accounts pursuant to Applicable Requirements or Servicing Agreements (which, for the avoidance of doubt, will be transferred pursuant to the Servicing Transfer Agreement and are not assets of Sellers except to the extent such cash represents investment income related to such accounts, which investment income constitutes Ancillary Income), (ii) the Cash Deposit, (iii) cash and cash equivalents on deposit in bank accounts maintained in accordance with the DIP Financing Agreements and cash received by Sellers that is or was required to be deposited into accounts maintained pursuant to the DIP Order (the "DIP Cash Proceeds"), but excluding in all cases cash flows under any Servicing Agreement or any net cash flow generated by operation of the Business on or after the Closing Date;

(b) all Mortgage Loans, including first and second lien mortgage loans, Whole Loans, pipeline loans and HELOCs owned or held by Sellers that are not specifically identified as Purchased Assets;

(c) all trading securities and available for sale securities;

(d) all REO Property owned by a Seller in its corporate capacity;

(e) all Contracts or other instruments that are considered derivatives;

(f) any asset or class of assets excluded from the defined terms set forth in Sections 2.1 and 2.2 by virtue of the limitations expressed or implied therein;

(g) all causes of action, lawsuits, judgments, claims, refunds, choses in action, rights of recovery, rights of set-off, rights of recoupment, demands and any other rights or Claims of any nature other than the Transferred Rights and Claims, including any Claims relating to early payment default claims and any and all defenses and counterclaims relating to acts or omissions under the Assumed Contracts that occurred before the Closing;



(h) any of the rights of Sellers under this Agreement or any agreements between any Seller and Purchaser or any of its Affiliates entered into on or after the date of this Agreement;

(i) the Consent Order, the DOJ/AG Settlement and the Contracts, including rights and licenses thereunder; and other assets Related to the Business set forth on Schedule Q;

(j) all shares or equity interests in any Subsidiaries or Affiliates of the Sellers;

(k) any and all other assets, whether tangible or intangible, real, personal or mixed, including Intellectual Property, rights or other items that are not Related to the Business;

(l) the Purchase Price;

(m) all rights, claims and causes of action relating to any Excluded Asset or any Retained Liability;

(n) Tax refunds, Tax credits and other Tax benefits relating to Taxes imposed on any Seller or Affiliate Seller or Taxes for which any of them is liable;

(o) all Tax Returns (including working papers), all Books and Records relating to outstanding litigation and ongoing discovery and e-discovery obligations of any Seller and Affiliate Seller and all Books and Records that Sellers are required by Law to retain, other than copies of such Tax Returns, Books and Records, and obligations as may relate to Tax Returns filed by a Seller as REMIC Administrator by or on behalf of any REMIC, and the duties of which in that capacity the Purchaser will assume;

(p) REMIC Regular Interests and REMIC Residual Interests, other than any REMIC Residual Interest representing a De Minimis Interest in the residual interests of the related REMIC and required to be held by Purchaser as the REMIC Administrator of such REMIC;

(q) all rights, demands, Claims, actions and causes of action constituting avoidance actions of Sellers' estates under Chapter 5 of the Bankruptcy Code, and any other applicable provisions of the Bankruptcy Code, including any and all proceeds of the foregoing;

(r) other than as set forth in Section 2.1(m), all rights, demands, Claims, causes of action, objections and defenses of Sellers and its Affiliates under sections 502 and 503 of the Bankruptcy Code and Bankruptcy Rule 3007 with respect to the assertion or defense of any claims that may be filed against Seller and any of its Affiliates that will file a petition for relief under the Bankruptcy Code;

(s) except as provided in Section 6.7, any Plan;

(t) other than as set forth in Section 2.1, all insurance proceeds that Sellers have a right to receive as of the Closing or that relate to events, circumstances or occurrences prior to the Closing (which, for the avoidance of doubt, includes the proceeds of insurance policies providing coverage for errors and omissions or for directors, officers and employees, whether such policies are held by AFI or by one or more of the Sellers);

(u) all Privileged Documents;

(v) any Contracts excluded from Assumed Contracts pursuant to Section 2.15; and

(w) the assets specifically identified on Schedule Q;

**Section 2.4 Post-Closing Asset Deliveries.** If any Seller or Purchaser, in its reasonable discretion, determines after the Closing that any Books and Records or other materials or assets constituting Purchased Assets are still in the possession of such Seller or any Affiliate Seller, such Seller shall, or shall cause such Affiliate Seller to, promptly deliver them to Purchaser at no additional cost or expense to Purchaser. If any Seller or Purchaser, in its reasonable discretion, determines after the Closing that Books and Records or other materials or assets constituting Excluded Assets were delivered to Purchaser in error, Purchaser shall promptly return them to the applicable Seller at Sellers' sole cost and expense. In furtherance and not in limitation of the foregoing (and notwithstanding any provision in this Agreement to the contrary), each of Sellers and Purchaser acknowledges and agrees that it is neither Sellers' nor Purchaser's intention to sell, assign or transfer possession of any documents or communications of Sellers that are subject to Sellers' attorney-client privilege and/or the work-product immunity doctrine (the "Privileged Documents"). If it is discovered that any such Privileged Documents have been inadvertently or unintentionally turned over to Purchaser, Purchaser agrees, upon Sellers' request, to promptly turn over to Sellers or destroy such Privileged Documents, in each case at Sellers' sole cost and expense; provided, that (i) Purchaser shall in no way be obligated or responsible for reviewing, identifying or making a determination that any documents or communications in its possession are Privileged Documents and (ii) Purchaser shall not be obligated to take any actions under this Section 2.4 that may subject it to any liability or otherwise be in violation with any applicable Law.

**Section 2.5 Conveyance of Assets by Affiliate Sellers.**

(a) Notwithstanding anything to the contrary contained in this Agreement, if it is determined by Sellers and Purchaser before, at or after the Closing that any direct or indirect Subsidiary of ResCap (an "Affiliate Seller") owns or possesses any assets or properties that would be deemed to be Purchased Assets if such Affiliate Seller were a Seller under this Agreement (such assets and properties, the "Affiliate Purchased Assets"), then Sellers shall, upon Purchaser's request, promptly cause such Affiliate Seller to transfer, assign, convey and deliver to Purchaser such Affiliate Purchased Assets in accordance with the terms and conditions of this Agreement; provided that Purchaser shall not be obligated to pay any additional amounts to Sellers in consideration for the transfer of such Affiliate Purchased Assets to Purchaser other than those amounts that

Purchaser is obligated to pay to Sellers pursuant to Section 3.1. Unless otherwise consented to by Purchaser, any Affiliate Seller shall be required to be a debtor in the Bankruptcy Case.

(b) To the extent that any Affiliate Purchased Assets are transferred, assigned, conveyed and delivered by an Affiliate Seller to Purchaser pursuant to this Section 2.5, then each representation and warranty set forth in Article IV shall be deemed to be applicable to such Affiliate Seller as if such Affiliate Seller were a Seller and to such Affiliate Purchased Assets as if such Affiliate Purchased Assets were Purchased Assets.

(c) Article IX and the Servicing Transfer Agreement shall also govern the transfer of any Mortgage Servicing owned by Affiliate Sellers, as set forth therein.

**Section 2.6 Non-Assignable Purchased Assets; Necessary Consents.** Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not effect the assignment or transfer of any Purchased Asset if an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “Necessary Consent”), would constitute a breach thereof or in any way adversely affect the rights of Purchaser thereunder, unless the Bankruptcy Court has entered a Final Order (which may include the Sale Approval Order) whose effectiveness has not been stayed providing that (i) such Necessary Consent is not required or (ii) the Purchased Assets shall be assigned or transferred regardless of any such Necessary Consent and there shall be no breach or adverse effect on the rights of Purchaser thereunder for the failure to obtain any such Necessary Consent. As Purchaser may reasonably request, if the Bankruptcy Court has not entered such an Order, Sellers and Purchaser will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Purchaser. If any such Necessary Consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of any Seller thereunder so that Purchaser would not in fact receive all such rights, such Seller and Purchaser will cooperate in a mutually agreeable arrangement under which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including, to the extent that such an arrangement would be permitted by Law and the related Contract, subcontracting, sub-licensing, or sub-leasing to Purchaser, or under which such Seller would enforce for the benefit of Purchaser, with Purchaser assuming such Seller’s obligations in accordance with this Agreement, any and all rights of such Seller against a third party thereto.

**Section 2.7 Assumption of Certain Liabilities.** On the terms and subject to the conditions set forth herein and as additional consideration for the Purchased Assets, at the Closing, Purchaser shall assume and be responsible for all of the Assumed Liabilities and Sellers shall have no further obligations with respect thereto. Other than the Assumed Liabilities, Purchaser shall not assume any Liability of any nature or kind whatsoever of Sellers.

**Section 2.8 Retained Liabilities.** Sellers shall retain and be responsible for all Retained Liabilities and Purchaser shall not have any obligation of any nature or kind with respect thereto.

**Section 2.9 Closing.** Subject to the terms and conditions of this Agreement, the closing (the “Closing”) of the transactions contemplated hereby shall take place at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104 on the second Business Day following the date on which the conditions set forth in Sections 8.1, 8.2 and 8.3 (other than those conditions that by their nature can be satisfied only at the Closing but subject to the fulfillment or waiver of those conditions) have been satisfied or waived, but no earlier than 18 Business Days following the Cut-off Date nor, at Purchaser’s option, later than the last Business Day of the month in which such conditions are satisfied or waived, or at such other time and place as the parties hereto may mutually agree. At the Closing, Purchaser shall deliver the Purchase Price in accordance with Sections 2.11 and 3.1, the transfer of title to the Purchased Assets and Assumed Contracts and the assumption of the Assumed Liabilities shall take place, and the appropriate parties shall take all actions required under Sections 2.10, 2.11 and 2.12 and all other actions not previously taken but required to be taken hereunder at or prior to the Closing Date. It is a condition of the Closing that all matters of payment and the execution and delivery of documents by any party to the others pursuant to the terms of this Agreement be concurrent requirements, and that nothing will be complete at the Closing until everything required as a condition precedent to the Closing has been paid, executed and delivered, as the case may be.

**Section 2.10 Ancillary Agreements.** At the Closing, Sellers shall duly execute and deliver to Purchaser, and Purchaser shall duly execute and deliver to Sellers, as applicable, each of the following agreements:

- (a) Bills of Sale;
- (b) Deeds of Transfer for Owned Real Property;
- (c) Assignment and Assumption Agreements;
- (d) Assignment and Assumption of Lease Agreements;
- (e) Transferred IP Assignment Agreement(s);
- (f) the Transition Services Agreement;
- (g) the Subservicing Agreement;
- (h) Transfer Tax forms, if applicable, in the form required by Law;
- (i) if requested by Purchaser, the GM Transition License;
- (j) the Indemnity Escrow Agreement;
- (k) such other agreements as may be entered into between the parties in connection with this Agreement;
- (l) all instruments or documents necessary to change the names of the individuals who have access to or are authorized to make withdrawals from or

dispositions of all bank accounts, other accounts, safe deposit boxes, lock boxes and safes Related to the Business or related to the Purchased Assets (together with all keys and combinations to all safe deposit boxes, lock boxes and safes Related to the Business and all keys related to the Purchased Assets);

(m) and any other documents that may be required by the Sale Approval Order or pursuant to any other direction by the Bankruptcy Court to be effected on or prior to the Closing.

**Section 2.11 Deliveries by Purchaser.**

(a) At the Closing, Purchaser shall deliver to Sellers the following:

(i) the Purchase Price calculated as of the Cut-off Date in accordance with Section 3.1 (the “Cut-off Date Purchase Price”), in immediately available funds by wire transfer to an account or accounts designated by Sellers at least two Business Days prior to the Closing Date (less the sum of the Cash Deposit as applied in accordance with Section 3.4(a), and the Indemnity Escrow Amount);

(ii) the certificate to be delivered pursuant to Section 8.2(iii);

(iii) Ancillary Agreements duly executed by Purchaser;

(iv) the Purchaser Payable Cure Amount in immediately available funds by wire transfer to an account or accounts designated by Sellers at least two Business Days prior to the Closing Date;

(v) if a Mutual Release is requested by any Person that is a director or officer of any Seller as of the Closing Date and executed and delivered by such director or officer, such Mutual Release duly executed by Purchaser; and

(vi) such other customary instruments of transfer and assumption and other instruments or documents, in form and substance reasonably acceptable to Sellers, as may be necessary to effectuate the assignment of any Assumed Contracts or other Purchased Assets, the assumption of the Assumed Liabilities by Purchaser or to give effect to this Agreement or any Ancillary Agreement.

**Section 2.12 Deliveries by Sellers.**

(a) At the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:

(i) the certificates to be delivered pursuant to Section 8.3(iii);

(ii) a receipt acknowledging payment of the Cut-off Date Purchase Price payable in accordance with Section 3.1(c);

(iii) affidavits of Sellers' non-foreign status, in form and substance reasonably satisfactory to Purchaser, that comply with Section 1445 of the Tax Code and the regulations thereunder;

(iv) the Title Documents;

(v) Ancillary Agreements duly executed by the applicable Sellers;

(vi) if the Confirmation Order is received, a certified copy of the Confirmation Order, which shall be a Final Order; and

(vii) such other customary instruments of transfer and assumption and other instruments or documents, in form and substance reasonably acceptable to Purchaser, as may be necessary to effect this Agreement, including Sellers' assignment of the Assumed Contracts or other Purchased Assets to Purchaser (or its assignee), or as may be required to give effect to any Ancillary Agreement.

**Section 2.13 Consumer Privacy Matters.** The sale, if any, of customer lists, customer data and other consumer privacy information pursuant to this Agreement is subject to and shall conform to the recommendations of any consumer privacy ombudsperson that may be appointed pursuant to section 332 of the Bankruptcy Code (the "Consumer Privacy Ombudsperson") (to the extent that appointment of a Consumer Privacy Ombudsperson is determined to be necessary) in connection with the transactions contemplated in this Agreement.

**Section 2.14 "As Is, Where Is" Transaction.** Purchaser hereby acknowledges and agrees that, except as expressly set forth in this Agreement, Sellers make no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets. Without in any way limiting the foregoing, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets. Purchaser further acknowledges that it is proceeding with its acquisition of the Purchased Assets based solely upon its independent inspections and investigations and the representations and warranties herein and in the Ancillary Agreements. Accordingly, except as expressly set forth in this Agreement, Purchaser will accept the Purchased Assets on the Closing Date "AS IS" and "WHERE IS".

**Section 2.15 Exclusion of Assumed Contracts.**

(a) From the date hereof until two Business Days prior to the Closing Date, Purchaser shall have the right, upon written notice to Sellers, to exclude any Contract (other than a Servicing Agreement) from the Assumed Contracts for any reason. For a period of not less than 60 days following the Closing, Sellers shall not reject any Leased Real Property that is not assumed and transferred to Purchaser at Closing.

(b) From the date hereof until two Business Days prior to the Closing Date, Purchaser shall have the right, upon written notice to Sellers, to exclude any Servicing Agreement set forth in Schedule 2.15 and the related Servicing Advances.

(c) Any Contract excluded by Purchaser pursuant to this Section 2.15 shall be deemed to no longer be an Assumed Contract, shall be deemed to be an Excluded Asset and any Liability thereunder shall be deemed to be a Retained Liability. Any Schedules hereto shall be amended to reflect any changes made pursuant to this Section 2.15. For the avoidance of doubt, (i) any exclusion of an Assumed Contract under Section 2.15(a) shall not result in a change to the Purchase Price and (ii) any exclusion of a Servicing Agreement under Section 2.15(b) shall be reflected in the calculation of the Purchase Price as provided in Schedule 3.1(a).

**Section 2.16 Ginnie Mae MSR Assets Auction.** Sellers may seek a separate auction in the Bankruptcy Case of the MSRs related to the Agency Loans guaranteed by Ginnie Mae and the related Servicing Advances (the “Ginnie Mae MSR Assets”). The terms of the auction of the Ginnie Mae MSR Assets shall be in form and substance reasonably satisfactory to Purchaser. If Sellers elect to have a separate auction of the Ginnie Mae MSR Assets, then Purchaser shall be designated as a “stalking horse bidder” and each of the Break-Up Fee, Expense Reimbursement and the Cash Deposit shall be allocated 8.44% to the Ginnie Mae MSR Assets and 91.56% to the other Purchased Assets.

**Section 2.17 Indemnity Escrow Agreement.** At the Closing, Purchaser and Sellers shall execute and deliver an escrow agreement in a customary form as mutually agreed between Sellers and Purchaser (the “Indemnity Escrow Agreement”), which agreement shall designate an escrow agent (the “Indemnity Escrow Agent”) and provide for the establishment of an escrow account (the “Indemnity Escrow Account”) in the initial amount equal to 1% of the Purchase Price (the “Indemnity Escrow Amount”). The Indemnity Escrow Amount, together with income earned thereon as provided in the Indemnity Escrow Agreement (the “Indemnity Escrowed Funds”) shall be held by the Indemnity Escrow Agent pursuant to the Indemnity Escrow Agreement as a source of funds for amounts owing to Purchaser Indemnitees under Article XI (Indemnification) and, in Purchaser’s sole discretion, Section 3.2 (Purchase Price Adjustment). On the Closing Date, Purchaser shall deliver to the Indemnity Escrow Agent payment, by wire transfer to the Indemnity Escrow Account, immediately available funds in an amount equal to the Indemnity Escrow Amount.

### ARTICLE III

#### PURCHASE PRICE; ADJUSTMENT; ALLOCATION

##### **Section 3.1 Purchase Price; Payment of Purchase Price.**

(a) Subject to the terms and conditions of this Article III, as aggregate consideration for the Purchased Assets, Purchaser will assume the Assumed Liabilities and pay an amount in cash equal to the amount calculated in accordance with Schedule 3.1(a), all as determined as of the Closing Date (the “Purchase Price”).

(b) As soon as reasonably practical following the Cut-off Date, but in no event later than seven Business Days following the Cut-off Date (and, in any event, at least three Business Days prior to the Closing Date), Sellers shall deliver to Purchaser the Cut-off Date Schedule of Purchased Assets and Assumed Liabilities prepared in good

faith in accordance with the Transaction Accounting Principles, applied consistently with their application in connection with the preparation of the Balance Sheet, and the Cut-off Date Mortgage Loan Schedule and the Cut-off Date Servicing Advance Schedule, prepared in good faith consistently with the preparations of the Mortgage Loan Schedule and the Servicing Advance Schedule, respectively. No less than two Business Days prior to the Closing Date, Sellers will provide Purchaser a statement of Sellers' good faith calculation of the Purchase Price as of the Cut-off Date prepared on an unaudited basis in accordance with the Transaction Accounting Principles and, with respect to principal balance, Book Value and other amounts to be determined by reference to the Books and Records, on a basis consistent with the Cut-off Date Schedule of Purchased Assets and Assumed Liabilities, the Cut-off Date Mortgage Loan Schedule and the Cut-off Date Servicing Advance Schedule. The Cut-off Date Schedule of Purchased Assets and Assumed Liabilities, the Cut-off Date Mortgage Loan Schedule, the Cut-off Date Servicing Advance Schedule and the calculation of the Cut-off Date Purchase Price shall be subject to approval by Purchaser, such approval not to be unreasonably withheld, conditioned or delayed.

### **Section 3.2 Purchase Price Adjustment; Final Payment.**

(a) Post-Closing Determination. As soon as reasonably practical following the Closing Date, but in no event later than 120 days following the Closing Date, Purchaser shall deliver to Sellers (i) the Closing Date Schedule of Purchased Assets and Assumed Liabilities, prepared in accordance with the Transaction Accounting Principles, the Closing Date Mortgage Loan Schedule and the Closing Date Servicing Advance Schedule, and (ii) a statement (the "Purchase Price Adjustment Statement") setting forth Purchaser's calculation (prepared on an unaudited basis in accordance with the Transaction Accounting Principles and, with respect to principal balance, Book Value and other amounts to be determined by reference to the Books and Records, on a basis consistent with the Closing Date Schedule of Purchased Assets and Assumed Liabilities, the Closing Date Mortgage Loan Schedule and the Closing Date Servicing Advance Schedule) of the Purchase Price as of the Closing Date. Sellers shall provide Purchaser and its representatives full cooperation, including full access to books, records and employees in connection with the preparation of the Purchase Price Adjustment Statement.

(b) Purchase Price True-up. Subject to Section 3.2(d), within 60 days of delivery of the Purchase Price Adjustment Statement (or within 15 days of the final determination of the Purchase Price in accordance with Section 3.2(d)), (i) if the Purchase Price is less than the Cut-off Date Purchase Price, then Sellers shall pay to Purchaser an amount equal to such shortfall; and (ii) if the Purchase Price is greater than the Cut-off Date Purchase Price, then Purchaser shall pay to Sellers an amount equal to such excess (in either event, the "Adjustment Amount"). The Adjustment Amount will (A) bear simple interest from the Closing Date to the date of payment at an interest rate equal to the Fed Funds Rate per annum as published in *The Wall Street Journal* as of the Closing Date and (B) be paid by wire transfer of immediately available funds to an account or accounts designated by the recipient thereof.



(c) Objections. Unless Sellers deliver written notice to Purchaser of an objection to all or a part of the Purchase Price Adjustment Statement (a “Dispute Notice”) prior to the expiration of the 60-day period provided in Section 3.2(b) above, the Purchase Price Adjustment Statement shall become binding in its entirety at the end of such 60-day period. The Dispute Notice shall set forth, in reasonable detail on a line-item by line-item basis, the basis for such dispute, the amounts involved and Sellers’ determination of the Purchase Price. If Sellers deliver a Dispute Notice to Purchaser within such period and the parties are unable to agree as to all issues in the Dispute Notice within the ten Business Day period immediately following the day after the Dispute Notice is received by Purchaser, then the Dispute Notice may be submitted by either Sellers or Purchaser to an Independent Accounting Firm to resolve the disputed items set forth therein in accordance with Section 3.2(d).

(d) Dispute Resolution. An Independent Accounting Firm shall conduct a review of the Dispute Notice and any supporting documentation submitted by either Purchaser or Sellers. The parties shall direct the Independent Accounting Firm to, as promptly as practicable and in no event later than 60 days following its receipt of the Dispute Notice, deliver to Sellers and Purchaser a report (the “Adjustment Report”) setting forth in reasonable detail the Independent Accounting Firm’s determination with respect to the issues specified in the Dispute Notice, and the revisions, if any, to be made to the Purchase Price Adjustment Statement together with supporting calculations. The Independent Accounting Firm has no authority to review or raise items not expressly identified in the Dispute Notice. With respect to each disputed line item, such determination, if not in accordance with the position of either Sellers or Purchaser, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by either Sellers or Purchaser in the Dispute Notice or the Purchase Price Adjustment Statement, respectively, with respect to such disputed line item. Such Adjustment Report and the revisions, if any, to be made to the Purchase Price Adjustment Statement shall be final and binding on the parties, absent arithmetical error, and shall be deemed a final arbitration award that is enforceable against each of the parties in any court of competent jurisdiction, and the Purchase Price shall be adjusted according to such Adjustment Report and paid in accordance with Section 3.2(b). The fees and expenses of the Independent Accounting Firm shall be borne 50% by Sellers and 50% by Purchaser.

### **Section 3.3 Allocation of the Purchase Price for Tax Purposes.**

(a) The Purchase Price and the Assumed Liabilities shall be allocated among the Purchased Assets in accordance with Section 1060 of the Tax Code and the Treasury Regulations thereunder in a manner consistent with an allocation schedule (the “Allocation Schedule”), which Allocation Schedule shall be prepared by Purchaser and provided to Sellers for their review and the parties’ mutual agreement within 120 days after the Closing Date. The parties shall cooperate reasonably in attempting to reach such a mutual agreement. If the Allocation Schedule is not mutually agreed upon within such period, the parties shall submit such dispute to an Independent Accounting Firm for a decision that shall be rendered in a timely manner in order to permit the timely filing of all applicable Tax forms. The Independent Accounting Firm’s review shall be final and binding on the parties except as otherwise required by a “determination” within the

meaning of Section 1313(a) of the Tax Code or similar provision of other Tax law (a "Determination"). The fees and expenses of the Independent Accounting Firm shall be borne 50% by Sellers and 50% by Purchaser. The parties agree to adjust the Allocation Schedule as appropriate to reflect amounts released to Sellers from the Indemnity Escrow Account.

(b) Each of Sellers and Purchaser shall (i) be bound by such allocation for purposes of determining Taxes (but not for any other purpose), (ii) prepare and file, and cause its Affiliates to prepare and file, its Tax Returns on a basis consistent with such allocation, and (iii) take no position, and cause its Affiliates to take no position, inconsistent with such allocation on any applicable Tax Return, except in each case as otherwise required by a Determination. If the allocation set forth on the Allocation Schedule is disputed by any Government Entity with taxing authority, the party receiving notice of such dispute shall promptly notify the other party hereto concerning the existence of, material developments regarding, and resolution of such dispute.

**Section 3.4 Deposit.** Upon execution of this Agreement, Purchaser will execute and deliver the Deposit Escrow Agreement to Sellers and the Escrow Agent and, upon execution and delivery thereof by each of the other parties thereto, Purchaser will deliver to the Escrow Agent, pursuant to the terms of the Deposit Escrow Agreement and within two Business Days following the date hereof, \$72,000,000 in immediately available funds (the "Cash Deposit"). Any Cash Deposit shall be held by the Escrow Agent in an interest-bearing account reasonably acceptable to Purchaser and Sellers. For the avoidance of doubt, the Cash Deposit shall not be the property of any Seller during such time that the Cash Deposit is held by the Escrow Agent. The Cash Deposit shall be held by the Escrow Agent to serve as an earnest money deposit under this Agreement to be released as follows:

(a) Effect of Closing. If the Closing occurs, Sellers and Purchaser shall jointly instruct the Escrow Agent to, on the Closing Date, apply the Cash Deposit, together with all accrued investment income thereon, toward the payment of the Cut-off Date Purchase Price in accordance with the terms of the Escrow Agreement.

(b) Effect of Termination. If this Agreement is terminated prior to the Closing Date, the Escrow Agent shall deliver the Cash Deposit in accordance with the terms of the Deposit Escrow Agreement.

(c) Effect of Auction of Ginnie Mae MSR Assets. If Purchaser is topped as the "stalking horse" bidder at completion of the auction (if any) for the Ginnie Mae MSR Assets, then the Escrow Agent shall deliver 8.44% of the Cash Deposit to Purchaser in accordance with the Deposit Escrow Agreement no later than the Business Day immediately following the completion of the Ginnie Mae MSR auction.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed to Purchaser by Sellers in the Disclosure Memorandum, Sellers jointly and severally represent and warrant to Purchaser, as of the date hereof and as of the Closing Date (except to the extent any such representations and warranties shall have been expressly made as of a particular date, in which case such representations and warranties shall be made only as of such date), as follows:

**Section 4.1 Organization and Authority.** Each Seller is a legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and has all requisite corporate or other organizational power and authority to own, lease, hold and operate its properties and assets and to carry on its business as presently conducted. Each Seller has the corporate or other organizational power, authority and right to enter into and deliver this Agreement and the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder, and to complete the transactions contemplated hereby and thereby (subject to entry of the Sale Procedures Order, the Sale Approval Order and the Confirmation Order). The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and (subject to entry of the Sale Procedures Order, the Sale Approval Order and the Confirmation Order) validly authorized by all appropriate corporate or other organizational authority, and no other corporate or other organizational action on the part of any Seller is necessary to authorize the execution, delivery and performance by such Seller of this Agreement or any of the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby. This Agreement constitutes the valid and legally binding obligations of each Seller, enforceable against each Seller in accordance with its terms, except (i) as such enforceability may be limited by principles of public policy and subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar Laws of general applicability relating to or affecting creditor's rights or by general equity principles (the "Enforceability Exceptions"); (ii) that enforceability of the provisions hereof requiring consummation of the transactions contemplated hereby is subject to entry of the Sale Approval Order or any other Order by the Bankruptcy Court; and (iii) that enforceability of all other provisions hereof is subject to entry of the Sale Procedures Order, the Confirmation Order and any other action by the Bankruptcy Court. Each Ancillary Agreement, when required by this Agreement to be delivered to Purchaser, will be duly and validly executed and delivered by each Seller that will be a party thereto, and upon such execution and delivery (assuming such Ancillary Agreement constitutes a valid and binding obligation of each other party thereto) will constitute the legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its respective terms, subject to the Enforceability Exceptions.

**Section 4.2 Non-Contravention.** Assuming all Consents, declarations, filings or registrations set forth on Schedule 4.3 have been obtained or made, as applicable, and receipt of the Sale Approval Order and the Confirmation Order, the execution, delivery and performance of this Agreement and the Ancillary Agreement by Sellers and the consummation of the transactions contemplated hereby and thereby and the compliance by Sellers with the applicable terms and conditions hereof and thereof, do not and will not (a) conflict with or violate, result in

a material breach or violation of or default (or an event which with notice or the passage of time or both would become a material breach or default) under, give rise to a right of termination, cancellation, acceleration of any material obligation or loss of any material benefit under (i) the organizational or governing documents of any Seller, (ii) any Law or Order applicable to Sellers, or (iii) any terms, conditions or provisions of any Servicing Agreement or Material Contract or (b) result in the creation of any Lien, other than Permitted Liens, on the Purchased Assets.

**Section 4.3 Consents and Approvals.** Upon entry of the Sale Approval Order and the Confirmation Order and the satisfaction of the conditions set forth therein, no material Consent of, or declaration, filing or registration with, any Government Entity or any other Person is required to be obtained or made, as applicable, by any Seller in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, except for Consents, declarations, filings and registrations listed on Schedule 4.3; provided that Sellers are not making any representation with respect to any Consent, including Permits, or declarations, filings or registrations with, any Government Entity or any other Person that must be or may be made by Purchaser (as a result of facts and circumstances specific to Purchaser) in order to acquire the Purchased Assets or to operate the Business.

**Section 4.4 Financial Statements.**

(a) Sellers have delivered to Purchaser on or before the date hereof (i) the Schedule of Purchased Assets and Assumed Liabilities as of February 29, 2012, (ii) the audited consolidated balance sheet of ResCap as of December 31, 2011 and 2010 and the audited consolidated statements of income and cash flows for the two years ended December 31, 2011 (including the notes thereto) and (iii) the unaudited condensed consolidated balance sheet of ResCap at March 31, 2012 and the unaudited condensed consolidated statements of income and cash flows for the three months ended March 31, 2012 and 2011 (including the notes thereto) (the financial statements in clauses (ii) and (iii) collectively, the “Historical Financial Statements”). The information set forth in the Schedule of Purchased Assets and Assumed Liabilities was derived from the accounting records of ResCap using accounts and subaccounts consistent with those used in preparing ResCap’s Historical Financial Statements. The Historical Financial Statements were prepared in accordance with GAAP and fairly present in all material respects the consolidated financial condition, results of operations and cash flows of ResCap and its subsidiaries as of the dates thereof and for the periods covered thereby except that in the financial statements identified in clause (iii) reflect all adjustments that are necessary for the fair presentation of the results for the interim periods presented, which adjustments are of a normal recurring nature.

(b) Except as disclosed or reserved against in the Historical Financial Statements, Sellers and their subsidiaries do not, with respect to the Business or the Purchased Assets, have any material Liabilities other than (A) Liabilities or obligations incurred in the Ordinary Course of Business since February 29, 2012, (B) Liabilities incurred in connection with the preparation and negotiation of this Agreement, in accordance with this Agreement or the DIP Financing Agreements or in connection with the transactions expressly contemplated by this Agreement, including the filing of the

Bankruptcy Case, or (C) for future performance under any Contracts to which any of them is a party or bound that were entered into in the Ordinary Course of Business.

(c) The books, records and accounts of Sellers accurately and fairly reflect, in reasonable detail, the transactions in and dispositions of the assets of Sellers, and Sellers maintain internal accounting controls that provide reasonable assurance that (i) transactions are recorded as necessary to permit preparation of their financial statements and to maintain accountability for their assets, (ii) transactions are executed, and access to their assets is permitted, only in accordance with management's authorization, and (iii) as part of the Sellers' account reconciliation process, the reporting of their assets is compared with existing assets at regular intervals and appropriate action is taken with respect to any differences.

**Section 4.5 Absence of Certain Changes or Events.** Since February 29, 2012, Sellers have operated the Business only in the Ordinary Course of Business and (a) there has not been any condition, event, change or occurrence that, individually or in the aggregate, has had, or is reasonably likely to have, a Material Adverse Effect and (b) Sellers have not taken any action that, if taken after the date hereof, would constitute a violation of Section 6.5.

**Section 4.6 Title to Assets.** Following entry of the Sale Approval Order, at the Closing, Sellers shall transfer to Purchaser good, valid and marketable title (and, in the case of the Owned Real Property, insurable fee simple title) to, or a valid lease or license interest in, the Purchased Assets free and clear of any Claim or Lien, other than Permitted Liens. To the Knowledge of Sellers, the Improvements are in all material respects (A) in good operating condition and repair (ordinary wear and tear excepted) and (B) suitable and adequate for continued use in the manner in which they are presently being used. True and complete copies of the most recent title commitments, surveys, appraisals and policies of title insurance or the equivalent currently in force in the possession of Sellers with respect to the Owned Real Property have been made available to Purchaser.

**Section 4.7 Purchased Assets Used in Business.** Except for the Excluded Assets listed on Schedule Q and the services to be provided by Sellers under the Transition Services Agreement, and by AFI under the AFI Transition Services Agreement, the Purchased Assets, whether real or personal, tangible or intangible, comprise all of the assets, properties and rights that are used by Sellers and their Affiliates as of the date of this Agreement and necessary to conduct the Business in the manner presently conducted.

**Section 4.8 Real Property Leases.** Schedule H is a true, accurate and complete list of each Real Property Lease and copies of such leases, subleases and other agreements. have been made available to Purchaser. Each Real Property Lease is in full force and effect and is a valid and binding obligation of each Seller party thereto (assuming such Real Property Lease is the valid and binding obligation of the other party or parties to such Real Property Lease), enforceable against such Seller in accordance with its terms subject to the Enforceability Exceptions. Except as set forth on Schedule H, (i) there are no security deposits under the Real Property Leases; (ii) Sellers have not assigned, transferred or pledged any interest in any of the Real Property Leases; and (iii) there are no leases, subleases, licenses or other agreements

granting to any Person the right of use or occupancy of any portion of the Leased Real Property (except under the Real Property Leases).

**Section 4.9 Mortgage Servicing Portfolio; Servicing Agreements; the Business.**

(a) Mortgage Servicing Portfolio. Sellers have delivered to Purchaser Electronic Data Files Tapes dated as of February 29, 2012 that provide loan level information with respect to the Agency Loans, the Private Investor Loans, and the Other Serviced Loans, with the loan level fields being those described on Schedule 4.9(a) (collectively, the “Mortgage Loan Schedule,” which term includes, except where the context requires otherwise, updated data tapes to be prepared as of the close of business on the day immediately preceding the Cut-off Date (the “Cut-off Date Mortgage Loan Schedule”)), each to be delivered as provided in Article III. The information set forth in the Mortgage Loan Schedule is true, complete and correct in all material respects as of the date thereof and the information in each of the Cut-off Date Mortgage Loan Schedule to be prepared and delivered to Purchaser in accordance with Article III will be true, complete and correct in all material respects as of the Cut-off Date.

(b) Agency Contracts; Servicing Agreements; ETS Contracts. Schedule E sets forth a true, correct and complete list of all Servicing Agreements as of the date hereof. Schedule F sets forth a true, correct and complete list of all Agency Contracts as of the date hereof. Schedule U sets forth a true, correct and complete list of all ETS Contracts as of the date hereof. True, correct and complete copies of the Servicing Agreements, the Agency Contracts and the ETS Contracts have been made available to Purchaser in the electronic data room on or before the date hereof. Except as set forth on set forth on Section 4.09(a) of the Disclosure Memorandum, (i) each Agency Contract, Servicing Agreement and ETS Contract is a legal, valid and binding obligation of each Seller that is a party thereto, and, to the Knowledge of Sellers, each other party thereto, enforceable against it in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions; (ii) none of the other parties to any of the Agency Contracts, Servicing Agreements or ETS Contracts has provided written notice as of May 11, 2012 to any of Sellers that such party will be terminating any of the Agency Contracts, Servicing Agreements or ETS Contracts (or otherwise seeking to terminate such Agency Contracts, Servicing Agreements or ETS Contracts, including the Purchased Mortgage Servicing under any of the Servicing Agreements); and (iii) to the Knowledge of Sellers, no other party thereto is or, with the lapse of time or giving of notice or both, would be, in violation or default of any Agency Contract, Servicing Agreement or ETS Contract. The Agency Contracts, Servicing Agreements or ETS Contracts set forth all of the provisions with respect to fees and other income and set forth in all material respects all of the other terms and conditions of Sellers’ rights and obligations relating to the servicing of the Mortgage Loans identified in the Mortgage Loan Schedule, and there are no other Contracts that modify or affect the Agency Contracts, the Servicing Agreements, the Servicing Compensation, the Purchased Mortgage Servicing, the related MSRs, the ETS Contracts or the ETS Contract Rights. Subject to entry of the Sale Approval Order, Sellers, as applicable, own the entire right, title and interest in and to (i) the ETS Contracts and the ETS Contract Rights, (ii) the Purchased Mortgage Servicing, the related MSRs and the right to service the Agency

Loans, subject to the Agency Contracts and the applicable Seller/Servicer Guides, and (iii) the Private Investor Loans and the Other Serviced Loans, subject to the applicable Servicing Agreements, free and clear of all Liens except for the rights of subservicers under the Contracts set forth on Section 4.9(b) of the Disclosure Memorandum and the rights of the counterparties under the Fee-Based Subservicing Agreements. Except as set forth on Section 4.9(b) of the Disclosure Memorandum and subject to any actions by Purchaser that may be required in order to satisfy the conditions of Sections 8.1(vi) and 8.1(vii), the execution and delivery of Assignment and Assumption Agreement(s) pursuant hereto and the transfer, assignment and delivery of the Servicing Agreements in accordance with the Servicing Transfer Agreement, in each case, in accordance with the terms and conditions of this Agreement, shall grant to Purchaser ownership of all of the Purchased Mortgage Servicing and the related MSRs, and all of the ETS Contract Rights.

(c) Servicing Advances. Sellers have delivered to Purchaser Electronic Data Files dated as of February 29, 2012 that set forth the amount of each Servicing Advance (shown, (i) in the case of P+I Advances (as defined in the applicable Servicing Agreement) on an aggregate portfolio basis, net of any unscheduled principal and interest payments and (ii) in the case of T&I and Corporate Advances (as defined in the applicable Servicing Agreement) on a loan-level basis, gross of any unscheduled principal and interest payments) with the data fields identified in Schedule 4.9(c) (the “Servicing Advance Schedule,” which term includes, except where the context requires otherwise, an updated version of such schedule to be prepared as of the close of business on the day immediately preceding the Cut-off Date (the “Cut-off Date Servicing Advance Schedule”)), each to be delivered as provided in Article III. Each Servicing Advance is a valid and subsisting amount owing to a Seller, made in accordance with and payable at the times and in accordance with the provisions of the applicable Servicing Agreement, and is a legal, valid and binding reimbursement right, and is enforceable against such securitization trust or owner in accordance with its terms, and is not subject to any Claims, defenses or set-off arising from acts or omissions of the Sellers that could be asserted against Purchaser. Each Servicing Advance is entitled to be paid, has not been repaid in whole and has not been compromised, adjusted (except by partial payment), extended, satisfied, subordinated, rescinded, amended or modified. No Servicing Advance has been sold, transferred, assigned or pledged (other than a pledge that has been released as of the Closing including pursuant to the DIP Financing Agreements) by the related Seller to any Person other than the Purchaser. All of the Servicing Advances included in the Purchased Assets relate to Mortgage Loans that are being serviced by a Seller pursuant to a Servicing Agreement. The information set forth in the Servicing Advance Loan Schedule is true, complete and correct in all material respects as of the date thereof and the information in the Cut-off Date Servicing Advance Schedule to be prepared and delivered to Purchaser in accordance with Article III will be true, complete and correct in all material respects as of Cut-off Date, in each case in accordance with the applicable Servicing Agreement.

(d) Servicing Files. The Servicing Files included in the Purchased Assets contain true, correct and complete copies of all documents, instruments and information necessary to service the Serviced Mortgage Loans and Other Serviced Loans serviced by Seller in accordance with the Applicable Requirements in all material respects.

(e) Servicing Escrow Accounts and Servicing Custodial Accounts. All Servicing Escrow Accounts and Servicing Custodial Accounts are maintained in accordance with the Applicable Requirements in all material respects.

**Section 4.10 Material Contracts.** Schedules H and P set forth a true, accurate and complete list, organized under the applicable sub-headings, of all Material Contracts as of the date hereof (excluding Servicing Agreements). True, correct and complete copies of the Material Contracts have been made available to Purchaser on or before the date hereof. Except as set forth in Section 4.10 of the Disclosure Memorandum, (i) each Material Contract is a legal, valid and binding obligation of each Seller that is a party thereto, and, to the Knowledge of Sellers, each other party thereto, enforceable against the applicable Seller in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions and after the Bankruptcy Case commences, the Bankruptcy Exceptions; (ii) none of the other parties to any of the Material Contracts has provided written notice as of May 11, 2012 to any of Sellers that such party will be terminating, any of the Material Contracts (or otherwise seeking to terminate any Material Contracts, including the Purchased Mortgage Servicing under any of the Servicing Agreements); and (iii) to the Knowledge of Sellers, no other party thereto is or, with the lapse of time or giving of notice or both, would be, in violation or default of an Material Contract. Following the assumption and cure and subsequent assignment of the Material Contracts by Sellers to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code and the Sale Approval Order or Confirmation Order, as applicable, there will not be any existing defaults by any Seller under any of the Material Contracts and no events that (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default under any Material Contract by any Seller. For the avoidance of doubt Sellers are not making any representation or warranty in this Section 4.10 with respect to any Servicing Agreement.

**Section 4.11 Compliance with Law, Licensing and Data Security.**

(a) Except as set forth in Section 4.11(a) of the Disclosure Memorandum, since January 1, 2011, (i) Sellers have operated the Business in compliance, and are in compliance in all respects, with all Laws and the guides, programs and policies of the Agencies that are applicable to the Business or the ownership and operation of the Purchased Assets, except where any failure to comply with such Laws, individually or in aggregate, would not reasonably be expected to have a Material Adverse Effect; and (ii) the Sellers have not received any notification from any Government Authority that any Seller or any of its Affiliates is not in compliance with such Laws, guides, programs or policies, except as set forth in the Consent Order or the DOJ/AG Settlement.

(b) Schedule S sets forth a true, accurate and complete list of all active Business Licenses held by Sellers as of May 3, 2012. Each Seller and each employee or officer of each Seller has all material Government Authorizations of, and has made all material filings, applications and registrations with, all Government Entities that are required in order for such employee or officer to conduct his or her activities for the applicable Seller in the conduct of the Business and each Seller and each employee or officer of each Seller have received all required approvals as a result of such material filings. Since January 1, 2011, the Sellers have not received any notification from any



Government Authority that any Seller or any of their Affiliates is not in compliance with the terms of such Origination and Servicing Licenses and no suspension, cancellation or restriction of any such Business Licenses is threatened.

(c) Except as set forth in Section 4.11(c) of the Disclosure Memorandum, since January 1, 2011 no Seller, nor, to the Knowledge of Sellers, any agent, servicer or contractor thereof with respect to its Contracts with Sellers, has experienced any actual, suspected or threatened breach in data security involving personally identifiable information of Serviced Mortgagors.

#### **Section 4.12 Employee Benefits.**

(a) Schedule R contains a complete and correct list of each material Plan applicable to the Business Employees. The Sellers have made available to Purchaser upon its request true, complete and correct copies of each such material Plan and any related summary plan description (or, in the absence of such documents, a detailed description thereof).

(b) Except as set forth in Section 4.12(b) of the Disclosure Memorandum, neither the execution of this Agreement nor the consummation of the transactions contemplated herein will (either alone or in connection with any other event) (i) entitle any Business Employee to any payment or compensation, or (ii) accelerate the time of payment, funding or vesting of, or increase the amount of, compensation due to any Business Employee. No amount paid or payable (whether in cash, in property, or in the form of benefits) to any Business Employee in connection with the transactions contemplated hereby (either alone or in connection with any other event) will be subject to Section 280G of the Code.

(c) To the Knowledge of the Sellers, each Plan that is intended to be qualified under Section 401(a) of the Code has obtained a currently effective favorable determination letter from the IRS regarding its qualification or is entitled to rely on a favorable advisory or opinion letter from the IRS regarding the master or prototype form on which it is established, or an application for such a determination letter has been or shall be submitted to the IRS by AFI, and the Sellers have provided a copy of each such letter to Purchaser to the extent any were issued. To the Knowledge of the Sellers, nothing has occurred that would be reasonably expected to cause any such Plan to fail to qualify under Section 401(a) of the Code.

#### **Section 4.13 Employees.**

(a) With respect to each Business Employee, Sellers have provided Purchaser with a list (the "Business Employee List") setting forth, to the extent such information is permitted to be disclosed under applicable Law: (i) title or job/position; (ii) job designation (*i.e.*, salaried or hourly); (iii) location of employment and Employer; (iv) employment status (active, on leave or on unpaid leave); (v) annual base rate of compensation and target bonus amount for the current fiscal year to which he or she is entitled, including any retention or similar plans adopted prior to the Bankruptcy Case or

approved by the Bankruptcy Court, and any bonus amount that he or she has received for the fiscal year immediately prior to the date hereof; and (vi) if applicable, any material, individual specific provisions relating to such person's employment (*e.g.*, golden parachute, etc.).

(b) There are no collective bargaining or other labor union agreements that have been in existence or currently are in existence, or that have been negotiated or that are being negotiated by any Seller, to which any Seller is or may become a party or by which any of them has been bound, is bound, or may become bound. There are no unfair labor practice charges or complaints pending or, to the Knowledge of Sellers, threatened against any Seller with respect to employees of a Seller.

(c) As of the date hereof, all bonuses and other compensation required to be paid on or prior to the date hereof and payable to Business Employees have been paid in full; and no Seller is liable for any arrears of wages or any Taxes or penalties for failure to comply with any of the foregoing.

(d) Each Business Employee is employed at will and may terminate his or her employment or be terminated from such employment at any time for any or no reason with or without prior notice except as may be required by applicable law.

**Section 4.14 Litigation and Claims.** Except as listed on Section 4.14 of the Disclosure Memorandum, as of the date hereof, (i) there is no action, suit, demand, inquiry, proceeding, claim, cease and desist letter, hearing or investigation by or before any Government Entity pending, or, to the Knowledge of Sellers, threatened in respect of the Business that could materially and adversely affect the ability of Sellers to complete the transactions contemplated by this Agreement, and (ii) no Purchased Asset is subject to any Order other than the Consent Order or the DOJ/AG Settlement.

#### **Section 4.15 Intellectual Property.**

(a) The Transferred IT Assets that are (i) material to the conduct of the Business and (ii) located at the Real Property have been disclosed to Purchaser by Sellers in the electronic data room on or before the date hereof. Schedule K sets forth a true, accurate and complete list of (i) the material network-telecommunications, storage and server equipment that are Transferred IT Assets and (ii) the other material Computer Equipment that are Transferred IT Assets.

(b) Schedule N contains a complete and accurate list of all registrations and applications included within the Owned Transferred IP (including United States patents, patent applications, Trademark registrations or pending applications to register Trademarks filed in or issued by, as the case may be, the United States Patent and Trademark Office, Copyright registrations or pending applications to register Copyrights filed in or issued by the United States Copyright Office, or such other filing offices, domestic or foreign, and domain name registrations but excluding the registrations and applications set forth on Schedule Q). Except as disclosed in Section 4.15(b) of the Disclosure Memorandum, all such Owned Transferred IP is: (i) valid, subsisting, in

proper form and enforceable, and have been maintained, including the submission of all necessary filings and fees in accordance with the legal and administrative requirements of the appropriate jurisdictions, from the date hereof and continuing for the 90 day period after the Closing Date, and (ii) have not lapsed, expired or been abandoned. To the Knowledge of Sellers, no Transferred Intellectual Property or any registration or application therefor is the subject of any opposition, interference, cancellation proceeding or other legal proceeding (including litigation) or governmental proceeding before any Government Entity in any jurisdiction, or of any outstanding Order, judgment, decree or agreement that materially and adversely affects the ownership, validity, registrability, or enforceability of the Transferred Intellectual Property or Sellers' use thereof or rights thereto.

(c) Schedule N contains a complete and accurate list of all material Licensed Transferred IP. With respect to the Transferred Intellectual Property, except as listed on Section 4.15(c) of the Disclosure Memorandum: (i) Sellers own and possess all right, title and interest in and to, or have a valid, binding and enforceable license to use, such Transferred Intellectual Property; (ii) no material claim by any third party contesting the validity, enforceability, use or ownership of any of the Transferred Intellectual Property has been made in writing and delivered to a Seller or, to the Knowledge of Sellers, is threatened; (iii) to the Knowledge of Sellers, none of the Transferred Intellectual Property is being infringed upon or violated by any third party; (iv) Sellers have not received any material written notices from any third party claiming that any Transferred Intellectual Property infringes upon and/or misappropriates such third party's; and (v) to the Knowledge of Sellers, Sellers have not infringed, misappropriated or otherwise violated any Intellectual Property of any third parties in the United States.

(d) With respect to the IT Inventories and Technical Documentation portion of the Transferred IT Assets used by Sellers in the conduct of the Business, except as listed on Section 4.15(d) of the Disclosure Memorandum, each was either: (i) developed by employees of a Seller within the scope of their employment, (ii) developed by a third Person, and all ownership rights therein have been assigned or otherwise transferred to or vested in a Seller pursuant to written agreements, (iii) licensed from third parties, or (iv) are in the public domain. Software Contracts that are Transferred IT Assets and constitute Material Contracts have been disclosed to Purchaser by Sellers in writing on the date hereof. To the Knowledge of Sellers, except as listed on Section 4.15(d) of the Disclosure Memorandum, Sellers have the legal power to convey to Purchaser under this Agreement the rights granted to Sellers (as applicable) under any license or assignment for any Transferred IT Assets and, to the Knowledge of Sellers, no Seller is subject to any contractual, legal or other restriction on the use of such Transferred IT Assets, except to the extent that such Transferred IT Assets are governed by Software Contracts and/or Intellectual Property Licenses that contain restrictions on the use of such Transferred IT Assets.

**Section 4.16 Brokers, Finders and Financial Advisors.** Except for Centerview Partners LLC, whose fees will be paid by ResCap in the Bankruptcy Case, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers or any Affiliate Seller, or will be entitled to any brokers' or finders' fee or any other commission or similar fee from

Sellers or any Affiliate Seller, in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

**Section 4.17 Ginnie Mae Loans.** The Sellers represent and warrant as of the Closing Date:

(a) Each of the Ginnie Mae Loans comply in all material respects with Sellers' underwriting policies in effect as of the origination date of each such Ginnie Mae Loan. The origination, sale, and servicing of the Ginnie Mae Loans by Sellers comply with all Applicable Requirements with respect to the Ginnie Mae Loans in all material respects.

(b) With respect to each Ginnie Mae Loan originated by Sellers, (i) the loan files includes customer information and originals or copies of all material documents (either in physical or electronic form) that are required in order to service such Loan in accordance with Applicable Requirements, (ii) the loan files have been kept by Sellers in the Ordinary Course of Business, and (iii) the loan files are true, complete and accurate in all material respects. No payment of principal or interest is more than 60 days past due on any Ginnie Mae Loan and all of the information provided to Purchaser by or on behalf of the Sellers in each Servicing File is complete and accurate in all respects.

(c) Each Ginnie Mae Loan is a first lien residential Mortgage Loan, subject only to (i) the Lien of current real property taxes and assessments, (ii) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of the mortgage, (iii) such exceptions appearing of record that are acceptable to mortgage lending institutions generally in the area wherein the property subject to the mortgage is located or specifically reflected in any appraisal obtained in connection with the origination of the related Ginnie Mae Loan, and (iv) other matters to which like properties are commonly subject that do not materially interfere with the benefits of the security intended to be provided by such mortgage.

(d) There is no material default, breach, violation, fraud or event permitting acceleration existing under any Ginnie Mae Loan. The Sellers have not waived any such default, breach, violation or event permitting acceleration of any Ginnie Mae Loan.

(e) No material provision of any Ginnie Mae Loan has been waived, altered or modified in any respect, except by instruments or documents identified in the Servicing File relating to such Ginnie Mae Loan.

(f) No Ginnie Mae Loan is subject to any right of rescission, setoff, counterclaim or defense, including the defense of usury and the exercise of any right under any Ginnie Mae Loan will not render such Ginnie Mae Loan unenforceable in whole or in part or subject to any right of rescission (other than the statutory right of rescission), setoff, counterclaim or defense, including the defense of usury.

(g) No Ginnie Mae Loan has been satisfied or subordinated in whole or in part or rescinded (other than pursuant to a statutory right of rescission), and no collateral

securing a Ginnie Mae Loan has been released from the Lien of the related mortgage in whole or in part.

(h) None of the Ginnie Mae Loans provides for recourse to the Sellers that would constitute an Assumed Liability.

(i) No Seller has taken any act or failed to take any act that it is required to take in order for any mortgage insurance with respect to each Ginnie Mae Loan to remain in full force and effect.

(j) No Seller has received any written notice from any Person that alleges a breach of any representation, warranty or covenant made by the Sellers with respect to any Ginnie Mae Loan for which a repurchase of, or any indemnity obligation relating to, such Ginnie Mae Loan could be required nor, to the Knowledge of Sellers, does there exist any such breach for which a repurchase of, or any indemnity obligation relating to, any such Ginnie Mae Loan may be required.

#### **Section 4.18 Tax Matters.**

(a) Except as set forth in Section 4.18(a) of the Disclosure Memorandum, each Seller has withheld and paid, or set aside in accounts for such purpose, or accrued or reserved on the Balance Sheet, all material Taxes required to have been withheld and paid in connection with amounts paid to employees or independent contractors.

(b) Except as set forth in Section 4.18(b) of the Disclosure Memorandum, for U.S. federal income tax purposes, no equity or other ownership interests in any Person are included in the Purchased Assets.

(c) No REMIC Residual Interests are included in the Purchased Assets, except for the De Minimis Interests required to be held by Purchaser as the REMIC Administrator of such REMIC.

(d) Attached hereto, as Section 4.18(d) of the Disclosure Memorandum, is an accurate and complete list of entities or arrangements for which any Seller acts, and the Purchaser will act, as REMIC Administrator.

(e) Except as set forth in Section 4.18(e) of the Disclosure Memorandum, as to each of the entities or arrangements identified as a REMIC in Section 4.18(c) of the Disclosure Memorandum, for which any Seller acts as the Servicer or REMIC Administrator (in the case of clause (i) below) or as REMIC Administrator (in the case of clauses (ii) and (iii) below), in the capacity or capacities as such identified in Section 4.18(e) of the Disclosure Memorandum, such REMIC:

(i) has engaged in no “prohibited transactions” (as defined in Section 860F(a)(2) of the Code) and has never received any contributions after its startup day subject to the tax imposed by Section 860G(d) of the Code;

(ii) has timely elected to be classified as a REMIC and has timely filed all Tax Returns required to be filed by such REMIC; and;

(iii) has never itself been examined by, or itself entered into any closing agreement with the IRS, and is not bound by any closing agreement entered into between the Sellers and the IRS.

**Section 4.19 Shared Services Agreement.** Exhibit 8 sets forth a true and accurate copy of the Shared Services Agreement, except for the specific statements of work thereto. The terms of the final statements of work to the Shared Services Agreement, as agreed to between ResCap and AFI as of the date hereto, are not materially adverse, individually or in the aggregate, to ResCap relative to the terms of the statements of work as provided to Purchaser prior to the date hereof.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as disclosed to Sellers by Purchaser in writing on the date hereof, Purchaser represents and warrants to Sellers, as of the date hereof and as of the Closing Date (except to the extent any such representations and warranties shall have been expressly made as of a particular date, in which case such representations and warranties shall be made only as of such date), as follows:

**Section 5.1 Organization and Authority.** Purchaser has been duly incorporated, and is validly existing and in good standing under the Laws of its jurisdiction of incorporation, has all corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby, and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Agreement and the Ancillary Agreements. This Agreement has been, and the Ancillary Agreements to which it is a party will be, duly and validly executed and delivered by Purchaser and this Agreement constitutes, and each of the Ancillary Agreements to which it is a party will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

**Section 5.2 Non-Contravention.** The execution, delivery and performance of this Agreement and the Ancillary Agreements by Purchaser and the consummation of the transactions contemplated hereby and thereby and the compliance by Purchaser with the applicable terms and conditions hereof or thereof, do not and will not conflict with or violate, result in a material breach of or default (or an event which with notice or the passage of time or both would become a material breach or default) under, give rise to a right of termination, cancellation, acceleration of any material obligation or loss of any material benefit under (i) the organizational or governing documents of Purchaser or (ii) assuming all Consents, declarations, filings or registrations set forth on Schedule 5.3 have been obtained or made, as applicable, any Law or Order applicable to Purchaser.

**Section 5.3 Consents and Approvals.** No Consent of, or declaration, filing or registration with, any Government Entity or any other Person is required to be obtained or made, as applicable, by Purchaser in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements, or the consummation of the transactions contemplated by this Agreement or by any of the Ancillary Agreements, except for Consents, declarations, filings and registrations (i) listed on Schedule 5.3, or (ii) Consents, the failure to have which, individually or in the aggregate, would not reasonably be expected to materially impact the ability of Purchaser to consummate the transactions contemplated hereby and satisfy all its obligations hereunder.

**Section 5.4 Financing** Purchaser has available cash, the Commitment Letter and debt commitment letters, which together are sufficient to enable it to consummate the transactions contemplated hereby. Purchaser has delivered to the Sellers true, complete and correct copies of the Commitment Letter and the debt commitment letters entered into as of the date hereof in connection with the transactions contemplated herein pursuant to which the respective signatories thereto have committed, subject to the terms and conditions set forth therein, to provide Purchaser with certain funds in the amounts described in the Commitment Letter and such debt commitment letters at the Closing. None of the Commitment Letter or debt commitment letters delivered to Sellers has been amended or modified (other than any amendment or modification consented to by Sellers), no such amendment or modification is contemplated by Purchaser, or, to the knowledge of Purchasers, the signatories thereto, and the commitments contained in the Commitment Letter and such debt commitment letters have not been withdrawn or rescinded in any respect. There are no side letters or other Contracts that would modify the obligations under the Commitment Letter or any debt commitment letter delivered to Sellers other than as expressly set forth in the Commitment Letter or such debt commitment letter delivered to the Sellers. There are no conditions precedent or other contingencies related to the funding of the full amount of the Commitment Letter or any debt commitment letter delivered to Sellers, other than as expressly set forth in or expressly contemplated by the Commitment Letter or any such debt commitment letter. No event has occurred that, with or without notice, lapse of time or both, would or would reasonably be expected to constitute a default or breach on the part of Purchaser under the Commitment Letter or any debt commitment letter delivered to Sellers other than any such default or breach that has been irrevocably waived by the applicable other signatories thereto or otherwise cured in a timely manner by Purchaser to the satisfaction of such other signatories. Purchaser will have at and after the Closing funds sufficient to (i) pay the Purchase Price and (ii) satisfy all of the other payment obligations of Purchaser contemplated hereunder.

**Section 5.5 Non-reliance.** Purchaser has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral (from or by the Sellers, or any Person acting on their behalf) other than those expressly set out in this Agreement (or other related documents referred to herein) and acknowledges and agrees that, except for any fraud claim, it will not have any right or remedy rising out of any representation, warranty or other statement not expressly set out in this Agreement.

**Section 5.6 Brokers, Finders and Financial Advisors.** No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any brokers' or finder's

fee or any other commission or similar fee in connection with the transactions contemplated hereby as a result of any action taken by Purchaser.

## **ARTICLE VI**

### **PRE-CLOSING MATTERS AND OTHER COVENANTS**

**Section 6.1 Subsequent Actions; Further Assurances.** Subject to the Bankruptcy Exceptions, Sellers and Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements as promptly as practicable, including, (i) opposing any objections to, appeals from or petitions to reconsider or reopen any such approval by Persons not a party to this Agreement and (ii) obtaining any Final Orders approving the transactions contemplated by this Agreement or the Ancillary Agreements, if required. Purchaser shall not amend or modify the Commitment Letter or any debt commitment letter entered into as of the date hereof in connection with the transactions contemplated and delivered to Sellers, except with the consent of Sellers (not to be unreasonably withheld or delayed). If at any time after the Closing, Purchaser shall consider or be advised that any assurances or any other actions or things are necessary or desirable (a) to vest, perfect or confirm ownership (of record or otherwise) in Purchaser, as applicable, its title or interest in the Purchased Assets or (b) otherwise to carry out this Agreement or the Ancillary Agreements, Sellers shall use commercially reasonable efforts to execute and deliver all bills of sale, instruments of conveyance, UCC filings, powers of attorney, assignments, assurances and orders and take and do all such other actions and things as may be reasonably requested by Purchaser, in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Purchased Assets.

**Section 6.2 Third Party Consents.** Sellers and Purchaser shall use commercially reasonable efforts to obtain, as soon as reasonably practicable, all Necessary Consents, including from Government Entities and Insurers; provided that Purchaser shall not be required to agree to actions, conditions or restrictions that would materially impair the value to Purchaser of the Business or the Purchased Assets or have a materially adverse effect on the business of Purchaser or its Affiliates. Each party hereto shall promptly provide the other parties with copies of any communication, including any written objection, litigation or administrative proceeding that challenges the transactions contemplated hereby received by such party from any Government Entity or any other Person regarding transactions contemplated hereby. For the avoidance of doubt, if and to the extent a rating agency “no-downgrade” letter is expressly required under any Servicing Agreement (if and to the extent required under Order of the Bankruptcy Court) and is not obtained by Closing, such Servicing Agreement and the related Servicing Advance shall not be transferred as part of the Purchased Assets at Closing and Purchaser shall not be required to pay for such assets as part of the Purchase Price.

### **Section 6.3 Access to Information; Interim Financial Information.**

(a) From and after the date of this Agreement until the Closing Date, Sellers shall afford to Purchaser and its accountants, counsel, environmental consultants,



financing sources and other representatives reasonable access, upon reasonable notice during normal business hours, to the personnel, properties, books, Contracts, Tax Returns and records of Sellers (to the extent Related to the Business) and during such period shall furnish to Purchaser any information concerning the Purchased Assets and Sellers (to the extent relating to the Business) that is reasonably available to Sellers, as Purchaser may reasonably request; provided, however, that such access shall not unreasonably disrupt the business of Sellers and that nothing herein will obligate Sellers to violate any applicable Law.

(b) From the date of this Agreement until the Closing Date, Sellers will deliver to Purchaser (i) such financial and operating information Related to the Business as is provided (and no later than two Business Days after being so provided) to the board of directors of ResCap in the Ordinary Course of Business, (ii) as soon as reasonably practicable, but in no event later than 30 days after the end of each calendar month during the period from the date hereof to the Closing Date, unaudited monthly financial statements and operating or management reports of ResCap (with such statements and reports to be in the same form as made available pursuant to the DIP Financing Agreements), and (iii) as soon as reasonably practicable, but in no event later than 45 days after the end of each calendar quarter during the period from the date hereof to the Closing Date, unaudited quarterly financial statements and operating or management reports of ResCap (with such statements and reports to be in the same form as made available pursuant to the DIP Financing Agreements).

#### **Section 6.4 Records; Post-Closing Access to Information.**

(a) Each of Sellers and Purchaser shall, for a period of seven years after the Closing Date, preserve and retain in accordance with their respective document retention policies, as amended from time to time, and shall cause its respective Affiliates in accordance with their respective document retention policies, as amended from time to time, to preserve and retain, all agreements, documents, books, records and files (including any documents relating to any governmental or non-governmental actions, suits, proceedings or investigations) relating to the Business prior to the Closing Date; provided, that if at the end of the seven years, any third-party charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand identified in Section 6.4(c) is ongoing, the parties shall maintain and preserve all such information relating thereto until one year after such action, suit, proceeding or investigation has been finally concluded.

(b) From and after the Closing Date, each party shall, and shall cause its Affiliates to, afford the other party and its counsel, accountants and other authorized representatives, with five Business Days' prior notice, reasonable access during normal business hours to the respective premises, properties, personnel, Books and Records and to any other assets or information that such other party reasonably deems necessary, including in connection with the Bankruptcy Case or any report or Tax Return required to be filed under applicable Law (but so as not to unduly disrupt the normal course of operations of Purchaser), including preparing or defending any Tax Return and any interim or annual report or other accounting statements.

(c) If and for so long as any party hereto is contesting or defending against any third-party charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand, including in the Bankruptcy Case, in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving the Business and the Purchased Assets, or the Excluded Assets and Retained Liabilities, in any respect, each other party hereto shall (A) reasonably cooperate with and assist it and its counsel and other advisors in the contest or defense, (B) make available its personnel (including for purposes of fact finding, consultation, interviews, depositions and, if required, as witnesses) and (C) provide such information, testimony and access to its books and records, in each case as shall be reasonably requested in connection with the contest or defense, all at the sole cost and expense (not including employee compensation and benefits costs) of the contesting or defending party. For the avoidance of doubt, this Section 6.4(c) shall not apply with respect to disputes between the parties hereto.

(d) Purchaser agrees, at Sellers' cost and expense, to make available, at the reasonable request of Sellers, any books and records that may be included in the Purchased Assets to the extent they may relate to Excluded Assets and, if necessary, to provide such original books and records to any purchaser of such Excluded Assets and to retain only a copy thereof, subject to the delivery by such purchaser of a non-disclosure agreement as reasonably requested by Purchaser.

(e) Notwithstanding anything to the contrary in this Agreement, each of the parties will comply with federal and state laws and regulations regarding the confidentiality and privacy relating to information collected and used in connection with the application for and processing and servicing of Mortgage Loans.

**Section 6.5 Interim Operations of the Business.** Sellers covenant and agree that, after the date hereof and prior to the Closing, subject to the Bankruptcy Exceptions and except as (i) set forth in Section 6.5 of the Disclosure Memorandum, (ii) expressly provided in or as a result of the consummation of this Agreement, (iii) provided in the DIP Financing Agreements, (iv) ordered by the Bankruptcy Court or (v) may be agreed in writing by Purchaser:

(a) the Business shall be conducted in the Ordinary Course of Business in compliance with the Applicable Requirements and Sellers shall, and shall cause each Affiliate Seller to, use commercially reasonable efforts to preserve the Business organization and ongoing operations, including with respect to the relationships between and among such Seller and its Affiliates and AFI and its Affiliates, keep available the services of the current officers and employees of the Business and maintain the existing relationships with customers, suppliers, creditors, business partners and others having business dealings with the Business;

(b) Sellers and Affiliate Sellers shall (i) maintain the Purchased Assets in good repair and condition (subject to normal wear and tear); (ii) pay all Taxes, accounts payable and other expenses with respect to the Business and the Purchased Assets as they become due and payable; (iii) maintain proper business and accounting records relative to

the Business, consistent with past practice; and (iv) maintain commercially reasonable procedures for protection of the Transferred Intellectual Property;

(c) Sellers and Affiliate Sellers shall not (i) modify or amend, or release, assign or waive any material rights or claims under, or materially accelerate or delay the performance under, any Assumed Contract; provided, however, Sellers and Affiliate Sellers may modify or amend any Assumed Contract that is not material to the Business (other than a Servicing Agreement), following commercially reasonable efforts to provide notice and consult with Purchaser regarding such action, or (ii) enter into any Contract Related to the Business that, if any Seller had entered into such Contract immediately prior to the date of this Agreement, would be a Material Contract or a Servicing Agreement; provided that Sellers may enter into customary insurance Contracts, including director and officer liability insurance and, provided there is no adverse impact to the Business, Sellers may reduce or limit the services that are provided to them by AFI and its Affiliates as part of their management of their estates in the Bankruptcy Case. For the avoidance of doubt, nothing in this Agreement shall prevent Sellers from engaging in loss mitigation activities, defending and/or settling routine litigation matters, or making payments to former mortgagors pursuant to the Consent Order or from offering and effecting refinancing of or modifications to Mortgage Loans as required by the terms of the DOJ/AG Settlement, or by HAMP, HARP, HASP or any similar program that the Sellers have or may develop in the Ordinary Course of Business; provided that Sellers shall promptly provide copies to Purchaser of any reports provided under the DOJ/AG Settlement to the monitor appointed to oversee Sellers' compliance with the DOJ/AG Settlement with respect to such agreements, arrangements and actions;

(d) Sellers and Affiliate Sellers shall not transfer, sell, lease, license, mortgage, pledge, surrender, encumber, divest, cancel, abandon, subject to any Lien (other than Permitted Liens) or allow to lapse or expire, permit the destruction of, or material damage or loss to, or otherwise dispose of any of the Purchased Assets, other than immaterial amounts of personal property sold or otherwise disposed for fair value in the Ordinary Course of Business;

(e) Except as would not give rise to any Assumed Liabilities, Sellers and Affiliate Sellers shall not (i) incur Liabilities, expenses, Indebtedness or other obligations Related to the Business except in the Ordinary Course of Business or (ii) enter into any new Contract to incur, assume or guarantee any Indebtedness other than the DIP Financing Agreements;

(f) Sellers and Affiliate Sellers shall not cancel any debts or waive any material claims or rights (including the cancellation, compromise, release or assignment of any Indebtedness owed to, or claims held by, any of Seller and its Subsidiaries) that constitute Purchased Assets except as required by the Consent Order, the DOJ/AG Settlement or the programs referenced in clause (c) above;

(g) Sellers and Affiliate Sellers shall not terminate or permit to lapse any material Permits that are necessary for the operation of the Business;

(h) Sellers and Affiliate Sellers shall not make any capital expenditure Related to the Business, including acquiring, leasing or licensing or creating or permitting to exist any Lien other than a Permitted Lien on any assets or property that are Purchased Assets or making any investment in, or making any loan or capital contribution to, any Person, in each case with a value in excess of \$500,000 individually or \$5 million in the aggregate;

(i) Sellers and Affiliate Sellers shall not (A) change any method, practice or principle of accounting, except as may be required from time to time by GAAP (without regard to any optional early adoption date); provided, that if any such changes are required, the Sellers shall promptly provide written notice to Purchaser with respect thereto, or (B) materially write-up, write-down or write-off the Book Value of any Purchased Asset except as required by GAAP;

(j) Sellers and Affiliate Sellers shall not with respect to the Purchased Assets, make or change any election in respect of Taxes, adopt or change any accounting method in respect of Taxes or otherwise, enter into any closing agreement, settle any claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes, except as required by Law or GAAP;

(k) Sellers and Affiliate Sellers shall not change their servicing practices in any material respect, except as required by Applicable Law, the Consent Order or the DOJ/AG Settlement;

(l) Sellers shall not (1) reject or terminate any Assumed Contract or seek Bankruptcy Court approval to do so or (2) fail to use commercially reasonable efforts to oppose any action by a third party to terminate (including any action by a third party to obtain Bankruptcy Court approval to terminate) any Assumed Contract; provided that, prior to the Closing Date, Sellers may reject or terminate any Assumed Contract (other than any Servicing Agreement) that is both not material to the Business and is readily replaceable (and so replaced) at not more than the same cost, without disruption to the operation of the Business and otherwise on terms and conditions consistent with such rejected or terminated Assumed Contract, following commercially reasonable efforts to consult with Purchaser regarding such rejection or termination;

(m) With respect to any Purchased Asset, Sellers shall not, and shall use their best efforts to ensure that any Affiliates shall not: (1) agree to allow any form of relief from the automatic stay in the Bankruptcy Case; (2) fail to use commercially reasonable efforts to oppose any action by a third party to obtain relief from the automatic stay in the Bankruptcy Case; (3) agree to a rejection of any Assumed Contract except as provided in the proviso in clause (l) above; or (4) fail to use commercially reasonable efforts to oppose any action by a Person (other than Purchaser) seeking to have an Assumed Contract rejected, except as provided in the proviso in clause (l) above;

(n) Sellers and Affiliate Sellers shall not take, or agree to or commit to take, any action that would or is reasonably likely to result in any of the conditions set forth in

Article VIII, not being satisfied, or would make any representation or warranty of Sellers contained herein inaccurate in any material respect at, or as of any time prior to, the Closing Date or that would materially impair the ability of Sellers or Purchaser to consummate the Closing in accordance with the terms hereof or materially delay such consummation;

(o) Sellers and Affiliate Sellers shall not amend any of their Organizational Documents or enter into or amend any limited liability company, joint venture, partnership, strategic alliance, stockholders' agreement, co-marketing, co-promotion, joint development, operating agreement or similar arrangement Related to the Business or with respect to the Purchased Assets;

(p) Sellers and Affiliate Sellers shall not (i) transfer the employment of any individual not providing services Related to the Business as of the date hereof to a role in which he or she will provide services Related the Business; or (ii) cause any employee who provides services Related to the Business as of the date hereof to cease to provide services Related to the Business, if either of the foregoing shall unreasonably interfere with the Business or Purchaser's access to employees as reasonably necessary for purposes of making the Employment Offers;

(q) Sellers and Affiliate Sellers shall not modify the base salary, wages, benefits or other compensation of any employee who provides services Related to the Business or take any action that would accelerate, create or increase a right to payment to any Business Employee under any Plan, other than for increases in base salary or wages in the Ordinary Course of Business;

(r) Sellers and Affiliate Sellers shall not (i) enter into or amend any employment, change in control, retention, severance or similar agreement with respect to any individual who provides services Related to the Business, (ii) adopt, amend or terminate any Plan (or any plan, program, agreement, or agreement that would be a Plan if in effect as of the date hereof), other than to comply with law, or (iii) enter into any collective bargaining or similar agreement;

(s) Except in connection with the Bankruptcy Case, Seller shall not pay, discharge, settle or otherwise satisfy any Liabilities (i) with any third party (other than a Government Entity) involving an amount greater than \$100,000, or (ii) with any Government Entity involving an amount greater than \$100,000 unless such settlement does not impose restrictions materially more onerous than any similar settlement between such Government Entity and two or more of the top ten mortgage servicers in the United States (based on unpaid principal balance serviced, as determined by Inside Mortgage Finance for 2011); provided that this clause (s) does not apply to payments made pursuant to Sellers' Contracts in the Ordinary Course of Business;

(t) Sellers and Affiliate Sellers shall not accelerate the rate of collection of accounts receivable Related to the Business other than in the Ordinary Course of Business and in accordance with acceptable servicing practices; and

(u) With respect to clauses (c)-(t), Sellers and Affiliate Sellers shall not enter into any Contract to do any of the foregoing.

Simultaneously with the execution and delivery of this Agreement, AFI has provided a letter to Purchaser (the "AFI Letter"), a copy of which is attached as Exhibit 1.

**Section 6.6 Servicing Approvals and Licenses.** Promptly following execution of this Agreement, in each case to the extent not already obtained by Purchaser, Purchaser shall have filed or shall file all applications and use commercially reasonable efforts to (i) be approved as (A) a Title II Supervised Mortgagee and servicer for FHA Loans by HUD; (B) an approved seller and servicer of residential mortgages by Freddie Mac and Fannie Mae; (C) an "issuer" by Ginnie Mae; and (D) a VA-approved lender; (ii) obtain all necessary licenses in all states in which it proposes to conduct the Business; (iii) enter into master mortgage insurance contracts with Insurers and take such other actions reasonably and customarily required to obtain the approval of any Insurer under a mortgage insurance policy to the transfer of Mortgage Servicing and MSRs contemplated hereby; and (iv) obtain all other material Permits and Business Licenses that are necessary to own or administer the Business, including the Purchased Mortgage Servicing and related MSRs (or, where legally permissible, any waiver of or exemption from any of the foregoing by such Agency, Government Entity or Insurer). All such actions shall be at Purchaser's cost and expense, and Sellers shall cooperate with, and use commercially reasonable efforts to provide assistance to, Purchaser in all such efforts.

**Section 6.7 Employee Matters.**

(a) Transferred Employees. With respect to each Business Employee, not later than 30 days prior to the expected Closing Date, Sellers shall provide Purchaser with an updated version of the Business Employee List referenced in Section 4.13(a), reflecting the Business Employees then currently employed by a Seller and any changes in the information set forth therein. Sellers shall further update such Business Employee List as of the day immediately preceding the Closing Date.

(b) Not later than ten days prior to the Closing Date, Purchaser shall provide a list to Sellers of those Business Employees who will be offered employment by Purchaser effective as of the Closing Date (the "Transferred Employee List"). No Seller shall preclude Purchaser from offering employment to any Business Employee or solicit any such Business Employee to refuse such offer of employment.

(c) Prior to the Closing Date, Purchaser shall provide each Business Employee on the Transferred Employee List with an offer (the "Employment Offer") of employment, effective as of the later of the Closing Date or the date such Business Employee accepts such Employment Offer. Each Business Employee who accepts Purchaser's offer of employment and who becomes an employee of Purchaser shall be a "Transferred Employee." Sellers shall cooperate with Purchaser in effecting the Transferred Employees' transfer of employment from Sellers to Purchaser as contemplated hereby.

(d) For at least one year following the Closing, Purchaser shall employ the Transferred Employees on terms and conditions not less favorable in the aggregate than those provided by Purchaser to similarly situated employees of Purchaser, including with respect to salary or wages, paid time off, bonus opportunity and employee benefits. Sellers shall retain all responsibility for providing severance compensation and benefits to each Business Employee (including each Business Employee who is a Transferred Employee) to the extent such Business Employee is or becomes entitled to such severance compensation and benefits pursuant to any severance plan, program, agreement or arrangement maintained by a Seller or any Affiliate thereof. Sellers shall retain all responsibility for paying retention bonuses or similar compensation to the extent not expressly assumed by Purchaser pursuant to this paragraph.

(e) Unless prohibited by Law, all unused vacation and paid time off of the Transferred Employees accrued as of the Closing Date shall, effective as of the Closing Date or, if later, the date on which such Transferred Employee becomes an employee of Purchaser, be transferred to and assumed by Purchaser, and following the Closing Date, Purchaser shall recognize and provide all such unused paid time off to the extent such paid time off is reflected in the Closing Date Schedule of Purchased Assets and Assumed Liabilities. Sellers shall be responsible for paying out any earned and unused paid time off of (i) the Business Employees who are not Transferred Employees, and (ii) Transferred Employees to the extent such paid time off cannot be assumed by Purchaser in accordance with applicable Law (unless a Transferred Employee consents to such assumption by Purchaser, if allowed under applicable Law) or are not reflected in the Closing Date Schedule of Purchased Assets and Assumed Liabilities.

(f) Unless prohibited by Law, with respect to each Transferred Employee, Purchaser agrees to assume and honor all accrued but unpaid bonus compensation to the extent (i) such bonus compensation is reflected in the Closing Date Schedule of Purchased Assets and Assumed Liabilities and (ii) all terms and conditions applicable to such bonus compensation (including, the name of the recipient, the amount, as updated through the Closing Date, and the time and form of payment) are set forth on Section 4.13(a) of the Disclosure Memorandum. Sellers shall be responsible for paying all accrued but unpaid bonus compensation to the extent not assumed by Purchaser pursuant to this paragraph (including any amounts owed to Transferred Employees that are greater than the amount reflected on the Closing Date Schedule of Purchased Assets and Assumed Liabilities due to fluctuations in the value of equity on which such amounts are based or otherwise).

(g) Purchaser shall also recognize each Transferred Employee's service at such Seller for all purposes (other than benefit accruals under defined benefit plans or retiree medical arrangements) under any Plans maintained by Purchaser for the benefit of the Transferred Employees to the extent such service was recognized under the same or comparable Plans that covered the Transferred Employees immediately prior to the Closing Date.

(h) From and after the Closing Date, Sellers shall retain all (i) employment obligations with regard to those employees and former employees of Sellers (or who are

otherwise Related to the Business) who are not Transferred Employees, and (ii) all liabilities related to any Transferred Employees to the extent such liability is not expressly assumed by Purchaser in this Section 6.7.

(i) The Sellers shall cause, effective as of the Closing Date, each Transferred Employee to become fully vested in his or her account balance under the Ally Financial Inc. Retirement Savings Plan (the "Seller 401(k) Plan"). To the extent not already provided for under the Seller 401(k) Plan, the Sellers shall amend, or cause to be amended, the Seller 401(k) Plan to provide for, with respect to any Transferred Employee who elects a "direct rollover" of his or her full account balance, the distribution and rollover of any promissory note evidencing a loan outstanding under the Seller 401(k) Plan.

(j) Without limiting the generality of Section 12.8, nothing in this Section 6.7 shall (a) be treated as an amendment of, or undertaking to amend, any employee benefit plan, (b) obligate Purchaser, Seller or any of their respective Affiliates to retain the employment of any particular employee or (c) confer any rights or benefits on any person, including any Transferred Employee, other than the parties to this Agreement. Purchaser shall be entitled to rely on information provided by Sellers with respect to any Business Employee Liabilities and the performance of its obligations under this Section 6.7.

(k) If and to the extent Sellers are not "liquidating fiduciaries in bankruptcy" within the meaning of the Worker Adjustment and Retraining Notification Act ("WARN"), Sellers shall assume any liabilities, obligations and commitments in respect of WARN and any similar state and local laws, if any, as a result of the transactions contemplated by this Agreement in respect of Business Employees who are not Transferred Employees.

**Section 6.8 Notices of Certain Events.** From the date hereof until the Closing Date,

(a) A Seller shall promptly notify Purchaser of:

(i) any written notice or other written communication from any Person (including any notices or communications filed with the Bankruptcy Court other than notices or other written communications that provide for a copy to be provided to Purchaser) alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, or objecting to the consummation of any of the transactions contemplated by this Agreement;

(ii) any written notice or other written communication from any Government Entity in connection with the transactions contemplated by this Agreement;

(iii) any change or fact with respect to any of Sellers' representations, warranties or obligations hereunder of which Seller becomes aware that, with notice or lapse of time or both, will or is reasonably expected to result in a material breach by Sellers of this Agreement or otherwise result in any of the conditions set forth in Article VIII becoming incapable of being satisfied; and



(iv) any Material Adverse Effect (but without giving effect to clause (ix) of the definition of Material Adverse Effect).

(b) Purchaser shall promptly notify Sellers of:

(i) any written notice or other written communication from any Person (other than notices or other written communications directed to Sellers or to the Bankruptcy Court, with a copy provided to Purchaser) alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, or objecting to the consummation of any of the transactions contemplated by this Agreement;

(ii) any written notice or other written communication from any Government Entity (other than notices or other written communications directed to Sellers or to the Bankruptcy Court, with a copy provided to Purchaser) in connection with the transactions contemplated by this Agreement; and

(iii) any change or fact with respect to any of Purchaser's representations, warranties or obligations hereunder of which it becomes aware that, with notice or lapse of time or both, will or is reasonably expected to result in a material breach by Purchaser of this Agreement or otherwise result in any of the conditions set forth in Article VIII becoming incapable of being satisfied.

No disclosure by any party hereto pursuant to this Section 6.8 shall be deemed to amend or supplement the Disclosure Schedule with respect thereto or prevent or cure any misrepresentation or breach of warranty for purposes of this Agreement.

#### **Section 6.9 Tax Matters.**

(a) If the transactions contemplated hereby are not approved in connection with the Chapter 11 Plan, Sellers shall pay and be responsible for all Transfer Taxes imposed in connection with the closings of the transactions contemplated hereby, and Purchaser shall reimburse Sellers for such payments up to the Purchaser Payment Cap. Sellers and Purchaser shall cooperate to timely prepare, and Sellers shall file or cause to be filed any returns or other filings relating to such Transfer Taxes (unless Purchaser is required by applicable Law to file the return), including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes.

(b) Sellers and Purchaser shall cooperate with each other and furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information (including access to books and records) and assistance relating to the Purchased Assets and Assumed Liabilities as is reasonably requested for the preparation or filing of any Tax Returns and for the satisfaction of legitimate Tax or accounting requirements.

(c) Purchaser shall assume the duties of REMIC Administrator for any and all REMICs for which a Seller is acting as REMIC Administrator, including the preparation, filing, and other obligations related to the Tax Returns for such REMICs.

**Section 6.10 Insurance.** Purchaser and Sellers shall not take any action that may adversely affect the rights of the other with respect to any outstanding claims made or for new claims that may be made against insurance policies purchased or maintained by Purchaser for the benefit of itself and its Subsidiaries and Affiliates that the other may or will have as of the Closing Date and shall use commercially reasonable efforts to cooperate with the other in the settlement or other resolution of such claims.

**Section 6.11 Mortgage Loan Schedules and Servicing Advance Schedules.** Sellers shall deliver to Purchaser (i) an updated version of the Mortgage Loan Schedule and the Servicing Advance Schedule within 15 Business Days after the end of each month during the period from the date hereof to the Closing Date, and (ii) the Cut-off Date Mortgage Loan Schedule and the Cut-off Servicing Advance Schedule as provided in Section 3.1(b).

**Section 6.12 Title Documents and Surveys.** Sellers shall deliver to Purchaser prior to the Closing the following documents in respect of the Owned Real Property in form and substance reasonably acceptable to the Title Company and Sellers: (i) Owner's Affidavit; (ii) No Change to Survey Affidavit, if applicable; (iii) gap indemnity; and (iv) at least ten (10) Business Days prior to Closing, financial and other information regarding on-going construction, if any (collectively, the "Title Documents"). Sellers shall reasonably cooperate with Purchaser so that Purchaser may obtain, at Purchaser's sole cost and expense, ALTA surveys for the Owned Real Property.

**Section 6.13 Schedules and Disclosure Memorandum.**

(a) Concurrently with the execution and delivery of this Agreement, Sellers are delivering to Purchaser the Schedules to be provided by Sellers identified in the Table of Contents (the "Schedules") and a disclosure memorandum (the "Disclosure Memorandum") that sets forth all of the items that it deems to be necessary or appropriate (i) as an exception to a provision of this Agreement, (ii) in response to an express disclosure requirement contained in a provision hereof or (iii) as an exception to one or more representations or warranties contained in Article IV, as applicable, or to one or more of the covenants of Sellers contained in this Agreement; provided that the mere inclusion of an item in the Schedules or Disclosure Memorandum as an exception to a provision or representation or warranty shall not be deemed an admission by any Seller or Purchaser, as applicable, that such item represents a material exception or event, state of facts, circumstance, development, change or effect or that such item would reasonably be expected to have or result in a Material Adverse Effect; provided, further, that any disclosures or exceptions made with respect to a section or subsection of this Agreement shall be deemed to qualify not only the specific section(s) referenced but also such other sections or subsections that may be affected thereby to the extent the relevance of such disclosure or exception to such other sections or subsections is readily apparent on its face. Notwithstanding the foregoing, (x) until May 31, 2012, Sellers may update any of Schedules N, O, P or U hereunder to add any new Assumed Contracts (excluding Servicing Agreements, Real Property Leases and other vendor contracts identified as "critical" on Schedule P) not previously referenced in such Schedule that should have been set forth in such Schedule as of the date hereof (it being understood that amendments to Contracts referenced in such Schedule as of the date hereof shall not be

added to the Schedule pursuant to this Section 6.13(a)); and (y) until 60 days following the date hereof, Sellers may update Schedule K to reflect the inventory to be conducted by Sellers to determine the allocation of any Computer Equipment between Sellers and AFI, and to the extent any storage, servers or network telecommunications equipment shall be removed from Schedule K, then Sellers shall provide reasonably adequate information to Purchaser that evidences AFI's ownership of such equipment, and provide Purchaser at Closing with replacement equipment of the same quality as such removed equipment or replacement value for such removed equipment.

(b) Sellers and Purchaser agree that, with respect to Sellers' representations and warranties contained in this Agreement, Sellers shall have the obligation until the Closing to correct, supplement or amend no later than five Business Days prior to the expected Closing Date the Disclosure Memorandum with respect to any matter arising or discovered after the date of this Agreement (whether or not existing or known at the date of this Agreement) that causes the representations and warranties of Sellers to be untrue or inaccurate in any respect (as so amended, the "Amended Disclosure Memorandum"); provided, however, that, in no event shall any such correction, supplement or amendment be taken into account when determining the accuracy, truth and correctness of the representations and warranties of Sellers for purposes of Article VIII, including the certificates to be delivered pursuant to Section 8.3(iii), except for the updates explicitly required by the representations set forth in Sections 4.9(a) and (c) (which required updates shall only be taken into account when determining the accuracy, truth and correctness of such representations and warranties as of the Closing Date); and provided further that there is no obligation to update any representation that is as of a specified date.

#### **Section 6.14 Bankruptcy Actions.**

(a) As soon as practicable, but not later than two Business Days after the date hereof, Sellers shall file Petitions for relief under Chapter 11 of the Bankruptcy Code. On the Petition Date, Sellers shall file, together with other customary "first day" motions, the Sale Motion with the Bankruptcy Court.

(b) Sellers shall, and Sellers shall cause all of their Subsidiaries to, comply with all of the obligations of Sellers under the Sale Procedures Order (after entry of such Order by the Bankruptcy Court) and the Sale Approval Order (after the entry of such Order by the Bankruptcy Court).

(c) Sellers shall use reasonable efforts to comply (or obtain an order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and Bankruptcy Rules in connection with obtaining approval of the transactions contemplated by this Agreement. Sellers shall serve on all required Persons in the Bankruptcy Case, including (i) all Persons who are known to possess or assert a Claim or Lien against or interest in any of the Purchased Assets, (ii) the IRS, (iii) all applicable state attorneys general, and local Government Entities, (iv) all applicable state and local Government Entities with taxing authority, (v) all other Persons required by any order of the Bankruptcy Court, (vi) all parties to Assumed Contracts, and (vii) using its

commercially reasonable efforts to serve all third party investor beneficiaries of Assumed Contracts and any other Persons that Purchaser reasonably may request, any notice of the Sale Motion, the Sale Hearing, the Sale Procedures Order, the Sale Approval Order, and all objection deadlines in accordance with all applicable Bankruptcy Rules, the Sale Procedures Order, and any applicable local rules of the Bankruptcy Court.

(d) As provided in the Sale Procedures Order (including the Assumed Contracts Procedures), Sellers shall move to assume and assign to Purchaser (or Purchaser's designee or designees) the Assumed Contracts that are executory contracts capable of being assumed pursuant to section 365 of the Bankruptcy Code (collectively, the "Assumed Pre-Petition Contracts") and shall (A) provide notice thereof to (i) all counterparties to such contracts, (ii) any third party beneficiary to such contracts as requested by Purchaser (which third party beneficiaries shall be identified by Sellers using their best efforts), (iii) any other specific and identified Person that Purchaser requests, and (iv) any other Person as may be required by applicable Bankruptcy Rules, the Sale Procedures Order, and any applicable local rules of the Bankruptcy Court and any other Person requested by Sellers; and (B) use their commercially reasonable efforts to provide notice thereof to Investors and certificateholders. Sellers have the right to reject any Contract that is not an Assumed Contract in accordance with the Bankruptcy Code. Sellers shall request a ruling in the Sale Approval Order that the Purchaser shall not be liable for any Cure Amount or otherwise obligated to cure any defaults, known or unknown, arising prior to Closing under any Assumed Contract (whether or not such Assumed Contract is an Assumed Pre-Petition Contract).

(e) Sellers shall pay Cure Amounts in the time and manner specified by the Sale Approval Order.

(f) The Chapter 11 Plan, any and all exhibits and attachments to the Chapter 11 Plan, the Disclosure Statement with respect to the Chapter 11 Plan and the Orders approving the same (including the Confirmation Order), to the extent any of the foregoing impact the transactions contemplated under this Agreement, shall be in accordance with the terms set forth in Schedule 6.14(f) and reasonably acceptable in form and substance to Purchaser.

### **Section 6.15 Stalking-Horse Bidder Matters.**

(a) In the event that this Agreement is terminated pursuant to Section 10.1(e), Sellers shall pay to Purchaser a cash amount equal to \$72,000,000 (the "Break-Up Fee"), and the Expense Reimbursement in cash, which shall each be treated as priority administrative expenses in the Bankruptcy Case. The Break-Up Fee and the Expense Reimbursement will be due and payable on the Business Day immediately following such termination. Notwithstanding anything to the contrary contained in this Agreement, (1) upon payment of the Break-Up Fee and the Expense Reimbursement in accordance herewith, Sellers and their respective Representatives and Affiliates shall be fully released and discharged from any Liability under or resulting from this Agreement and, neither Purchaser nor any other Person shall have any other remedy or cause of action under or relating to this Agreement, including for reimbursement of expenses and

(2) Sellers' obligations hereunder shall be joint and several. Notwithstanding this Section 6.15(a), if Purchaser is the Next-Highest Bidder (as such term is defined in the Sale Procedures) and Purchaser closes under this Agreement as a result of a failure to close under a Competing Transaction, then Sellers shall have no obligation to pay, and Purchaser shall not be entitled to receive, the Break-Up Fee.

(b) Notwithstanding Section 6.15(a), Sellers' agreement to pay the Break-Up Fee and Expense Reimbursement is subject to Bankruptcy Court approval of this Agreement, including approval of payment of the Break-Up Fee and Expense Reimbursement, which approval shall be requested in the Sale Motion. Sellers acknowledge and agree that (i) approval of the Break-Up Fee and Expense Reimbursement is an integral part of this Agreement; (ii) in the absence of Sellers' obligation to pay the Break-Up Fee and Expense Reimbursement, Purchaser would not have entered into this Agreement; (iii) entry of the Purchaser into this Agreement is necessary for preservation of the estate of Sellers and is beneficial to Sellers because, in Sellers' business judgment, it will enhance Sellers' ability to maximize the value of their assets for the benefit of their creditors; (iv) the Break-Up Fee and Expense Reimbursement are reasonable in relation to Purchaser's efforts and to the magnitude of the transactions contemplated by this Agreement and Purchaser's lost opportunities resulting from the time spent pursuing such transactions; and (v) time is of the essence with respect to entry of the Sale Procedures Order by the Bankruptcy Court, approving, among other things, the Sale Procedures and the payment of the Break-Up Fee and Expense Reimbursement.

(c) If Purchaser is topped as the "stalking horse" bidder at completion of the auction (if any) for the Ginnie Mae MSR Assets, then 8.44% of the Break-Up Fee and Expense Reimbursement (up to 8.44% of the \$10,000,000 cap) will be due and payable on the Business Day immediately following the completion of the Ginnie Mae MSR auction.

**Section 6.16 Consent Order and DOJ/AG Settlement.** From and after the Closing Date, Purchaser agrees to comply with the mandated servicing standards as set forth in the DOJ/AG Settlement regarding the Purchased Mortgage Servicing, as set forth on Schedule 6.16. Purchaser also agrees to use its commercially reasonable efforts to cooperate with and assist Sellers and their counsel and other advisors with (i) Sellers' foreclosure review obligations under the Consent Order and the reporting and oversight program with respect thereto as such obligations are finally approved by the FRB and (ii) Sellers' other obligations under the DOJ/AG Settlement Order regarding the compliance with the soft dollar menu options relating to providing borrower assistance including, with respect to each of subparagraphs (i) and (ii) hereof, by making available all necessary Books and Records such as relevant Mortgage Loan Documents, and by providing such other information as shall be reasonably requested by Sellers or their counsel and other advisors in connection with such obligations; provided that out-of-pocket third party costs and expenses and reasonable additional incremental overhead costs incurred by Purchaser or its Affiliates in connection therewith, including costs and expenses of the compliance monitor and any requests or demands of Purchaser by such monitor, shall be paid directly by the Sellers, and in the event incurred by Purchaser, will be promptly reimbursed by Sellers. Notwithstanding anything to the contrary herein, the parties agree that any remediation

payments to borrowers or any penalties that Sellers may incur as a result of any failure of Purchaser or its Affiliates to comply with the terms of the Consent Order and the DOJ/AG Settlement shall remain the liability of Sellers, except in the case of gross negligence or willful misconduct by Purchaser or its Affiliates, provided that Sellers shall provide prompt notice following receipt of notice from any Governmental Entity alleging that Purchaser's conduct constitutes gross negligence or willful misconduct.

**Section 6.17 Antitrust Clearances and Obligations.**

(a) Each of Purchaser and Sellers shall promptly after the date of this Agreement and in any event by July 1, 2012, prepare and file all notification and report forms required to be filed under the HSR Act with respect to the transactions contemplated by this Agreement, and request early termination of the waiting period under the HSR Act. Purchaser, on the one hand, and Sellers, on the other hand, shall be responsible for payment of their own fees and expenses incurred in connection with or relating to the review of the transactions contemplated hereby pursuant to the HSR Act or their efforts to consummate the transactions contemplated hereby pursuant to this Section 6.17, and shall each bear the cost of 50% of the applicable filing fee under the HSR Act.

(b) Each of Purchaser and Sellers shall (i) respond as promptly as practicable to any inquiries or requests for additional information or documentation received from the Federal Trade Commission, the Department of Justice, any attorney general of any state of the United States, or any other antitrust or competition authority of any jurisdiction ("Antitrust Authority"); (ii) keep the other party reasonably informed of any communication received by such party from, or given by such party to, any Antitrust Authority regarding the transactions contemplated by this Agreement, and any communication received or given in connection with any proceeding by a private party regarding the transactions contemplated by this Agreement, in each case in a manner that protects attorney-client or attorney work product privilege; (iii) provide copies of any written communications received from or given to any Antitrust Authority unless prohibited by applicable Law; and (iv) permit the other party to review and incorporate the other party's reasonable comments in any communication given by it to any Antitrust Authority or in connection with any proceeding by a private party related to Antitrust Laws with any other person, in each case regarding the transactions contemplated under this Agreement and in a manner that protects attorney-client or attorney work product privilege.

(c) Purchaser further agrees that it shall, to the extent necessary to obtain the waiver or consent from any Antitrust Authority required to receive the Sale Approval Order or to avoid the entry of or have lifted, vacated or terminated any award, writ, injunction, judgment, order or decree entered, issued, made, or rendered by any Antitrust Authority that is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement, take the following actions: (i) propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate order or otherwise, and in connection with the consummation of the transactions contemplated by this Agreement, the sale, divestiture or disposition (including by licensing any Intellectual Property) of

any Purchased Assets and/or any other assets or businesses of Purchaser or any of its Subsidiaries or controlled Affiliates (or equity interests held by Purchaser or any of its controlled Affiliates in entities with assets or businesses); (ii) terminate any existing relationships and contractual rights and obligations; (iii) otherwise offer to take or offer to commit to take any action that it is capable of taking and, if the offer is accepted, take or commit to take such action, that limits its freedom of action with respect to, or its ability to retain, any of the Purchased Assets and/or any other assets or businesses of Purchaser or any of its Subsidiaries or controlled Affiliates (or equity interests held by Purchaser or any of its controlled Affiliates in entities with assets or businesses); and (iv) take promptly, in the event that any permanent or preliminary injunction or other order is entered or becomes reasonably foreseeable to be entered in any proceeding that would make consummation of the transactions contemplated by this Agreement unlawful or that would prevent or delay consummation of the transactions contemplated by this Agreement, any and all steps (including the appeal thereof, the posting of a bond or the taking of the steps contemplated by clauses (i), (ii) and (iii) of this Section 6.17(c)) necessary to vacate, modify or suspend such injunction or order. For the avoidance of doubt, Purchaser's obligations under this Section 6.17 shall be absolute and not qualified by "commercially reasonable efforts." The Parties agree that Sellers' obligations under this Section 6.17 shall not include any obligation on the part of Sellers or their respective Subsidiaries or controlled Affiliates to commit to or effect, by consent decree, hold separate orders, trust or otherwise the sale or disposition of such of its assets or businesses (including the Purchased Assets) as may be required to be divested in order to avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding.

(d) Neither Purchaser nor Sellers shall, after the entry of the Sale Approval Order, agree to accept any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other Party. For the avoidance of doubt, no Party shall commit to or agree with any Antitrust Authority to stay, toll or extend any applicable waiting period under the HSR Act or other applicable Laws, without the prior written consent of the other Parties.

(e) Neither Purchaser nor any of its controlled Subsidiaries shall take any action or acquire any assets or securities of any other Person or agree to acquire assets or securities of any other Person if such action, acquisition or agreement would reasonably be expected to impair Purchaser's ability to consummate the transactions contemplated hereby.

**Section 6.18 Post-Closing Amounts Received and Paid.** All amounts that are received by a Seller or any Seller Affiliates in respect of any of the Purchased Assets with respect to a period following the Closing shall be received by such Person as agent, in trust for and on behalf of Purchaser, and following the Closing, Sellers shall, on a monthly basis, pay, or cause to be paid, by wire transfer of immediately available funds to Purchaser all such amounts received by or paid to any such Seller or any of their respective Affiliates, and shall provide Purchaser with information as to the nature and source of all such payments, including any invoice related thereto. All amounts that are received by Purchaser or any of its Affiliates following the Closing in respect of any Excluded Assets with respect to a period prior to the

Closing shall be received by such Person as agent, in trust for and on behalf of Sellers, and Purchaser shall, on a monthly basis, pay or cause to be paid all such amounts over to Sellers by wire transfer of immediately available funds and shall provide Seller with information as to the nature and source of all such payments, including any invoice relating thereto.

**Section 6.19 Confidentiality.**

(a) After the Closing, Sellers will, and will cause their respective Subsidiaries and instruct their respective Affiliates to, hold in confidence and not use in any manner detrimental to the Business all Confidential Information concerning the Business, the Purchased Assets, the Assumed Liabilities or the Assumed Contracts, except to the extent that such information can be shown to have been (i) in the public domain prior to the Closing or (ii) in the public domain at or after the Closing through no fault of Sellers or any of their Affiliates or any of their respective representatives. If, after the Closing, Sellers or any of their Affiliates or any of their respective representatives are legally required to disclose any Confidential Information, Sellers shall to the extent permitted by Law (A) promptly notify Purchaser to permit Purchaser, at its expense, to seek a protective order or take other appropriate action and (B) cooperate as reasonably requested by Purchaser in Purchaser's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information, but only at Purchaser's sole cost and expense. If, after the Closing and in the absence of a protective order, Sellers or any of their Affiliates or any of their respective Representatives are compelled as a matter of Law to disclose any such Confidential Information to a third party, such Person may disclose to the third party compelling disclosure only the part of such Confidential Information as is required by Law to be disclosed; provided, however, that to the extent permitted by Law, prior to any such disclosure, such Person consults in good faith with Purchaser and its legal counsel as to such disclosure and the nature and wording of such disclosure.

(b) For purposes of Section 6.19(a), "Confidential Information" shall mean any confidential information concerning the Business, the Purchased Assets, the Assumed Liabilities or the Assumed Contracts, including, without limitation, methods of operation, products, prices, fees, costs, markets or other specialized information or proprietary matters.

(c) If the Closing does not occur, each party shall, upon the written request of the other party, return to the other party or destroy (such destruction to be confirmed in writing to the other party upon written request) all materials, documentation, data, records and other papers and copies thereof (whether on paper or in electronic, magnetic, photographic, mechanical or optical storage) that constitutes Confidential Information of the other party, and not use any such information or knowledge for any purpose whatsoever, provided that a party may maintain such information to the extent required by Law or such party's established document retention policies (including any requirement to retain email on an automated email archival system) or relating to the safeguarding or backup storage of electronic data or in connection with a legal dispute with the other party.



(d) Notwithstanding the foregoing, the parties to this Agreement acknowledge that each of them (and each of their employees, representatives, or other agents) has been and is permitted to disclose to any and all persons, without limitation of any kind, the federal tax treatment and structure of this Agreement (including Confidential Information) and all materials of any kind (including opinions or other tax analyses) that are or have been provided to them relating to such federal tax treatment and structure. This provision is intended to qualify for the presumption that this Agreement is not offered under conditions of confidentiality as set forth in Treasury Regulation Section 1.6011-4(b)(3) and shall be interpreted to authorize disclosure only to the extent necessary to so qualify.

(e) In connection with the delivery by Purchaser to Sellers of the copy of the Commitment Letter, Sellers shall comply with the confidentiality terms of the Commitment Letter.

#### **Section 6.20 Real Property Matters and Transition Services.**

(a) With regard to any Real Property not included in the Purchased Assets or Assumed Contracts as of the Closing Date, Purchaser shall be permitted to occupy and have access thereto (in the same manner as the Business occupied and had access to such property prior to Closing) for a period of not less than 60 days following the Closing. For such 60 day period, Seller shall maintain and shall not reject any such Real Property. If requested by AFI, access and occupancy to such Real Property shall also be granted to AFI and its Subsidiaries in the same manner as AFI and its Subsidiaries had occupied and access to such property prior to Closing.

(b) Prior to the Closing Date, if the Sellers request a sublease with respect to any Leased Real Property to be transferred to Purchase at Closing, Sellers and Purchaser will undertake good faith efforts to negotiate the terms of any Sublease Agreement with respect to any such Leased Real Property.

(c) Sellers and Purchaser agree that, promptly after the date hereof, Sellers and Purchaser will begin to negotiate in good faith and will use their commercially reasonable efforts to finalize, as promptly as practicable, a transition services agreement between Sellers, on the one hand, and Purchaser, on the other (the "Transition Services Agreement"), pursuant to which Purchaser will provide Sellers such transition services as may be mutually agreed upon by the parties, taking into account the anticipated Purchased Assets, Excluded Assets, Transferred Employees (and any employees that will not become Transferred Employees) in each case, as of the Closing Date. Fees for such transition services shall be based on any actual, out-of-pocket costs and expenses incurred by Purchaser and its Subsidiaries in performing such services plus the allocable portion of internal costs incurred in performing such services, including employee compensation and other costs, overhead and administrative costs. Purchaser will provide such transition services for a period not to exceed the lesser of (x) the closing of the Bankruptcy Case or (y) six months after the Closing Date.

(d) On or prior to the Closing Date, effective as of the Closing Date, Purchaser expects to enter into the AFI Transition Services Agreement with AFI.

**Section 6.21 Required Financial Information.** At Purchaser's cost and expense, Sellers shall reasonably cooperate with Purchaser in a timely manner as reasonably requested by Purchaser in connection with Purchaser's preparation of historical financial statements and pro forma financial information in respect of the Business as required by Regulation S-X under the Securities Act of 1933, as amended, and the timely filing of the necessary financial statements and pro forma financial information with the SEC under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, and for securities offerings by Purchaser and its Affiliates in which such financial information is reasonably necessary or advisable including (i) permitting Purchaser to use any audited or unaudited financial statements available, (ii) facilitating the delivery from Seller's independent public accountants relevant consent letters necessary in connection with the foregoing and (iii) if any requested financial statements are not available, assisting in the preparation of such audited or unaudited financial statements. Not later than 10 days following the Auction, Sellers shall deliver the following financial statements to Purchaser, to the extent not previously provided: any Historical Financial Statements; the audited consolidated balance sheet of ResCap as of December 31, 2009; unaudited condensed consolidated balance sheets of ResCap at any quarter end following March 31, 2012 and the unaudited condensed consolidated statements of income and cash flows for any quarterly periods following March 31, 2012.

**Section 6.22 PSA Amendments.** Prior to Closing, Sellers shall use commercially reasonable efforts (i) to obtain any PSA Amendment requested by Purchaser and (ii) to obtain amendments requested by Purchaser to any Servicing Agreement with respect to servicing fees that are substantially similar to the amendments with respect to servicing advances under clauses (i), (v) and (vi) of the definition of Eligible Servicing Agreement, but Sellers shall not be required to seek any investor consent for such amendment for servicing fees. Purchaser agrees to provide Sellers such assistance as Sellers may reasonably request to obtain any PSA Amendment or other amendments to Servicing Agreements as requested by Purchaser.

**Section 6.23 Mortgage Loans Documents.** Prior to Closing, Sellers shall use commercially reasonable efforts to obtain originals of the Mortgage Notes, the mortgage or deed of trust and all assignments thereof that are not currently included in the Mortgage Loan Documents (at Sellers' cost).

**Section 6.24 Copies of Assumed Contracts.** To the extent not provided to Purchaser as of the date hereof, Sellers shall provide to Purchaser true, correct and complete copies of all Assumed Contracts entered into prior to the date hereof, no later than 60 days after the date hereof but in any case at least 45 days prior to the Closing Date.

**Section 6.25 Purchaser Payment Cap.** Notwithstanding any of the terms of this Agreement, the aggregate amount that Purchaser shall be liable for under the Purchaser Payable Cure Amount, the Transfer Taxes under Section 6.9, the transfer costs under Section 9.2 and any other Section referencing the Purchaser Payable Cure Amount shall not in the aggregate exceed \$10,000,000 (the "Purchaser Payment Cap"), and Sellers shall be liable for any such Cure Amount, Transfer Taxes and transfer costs in excess of the Purchaser Payment Cap.

**Section 6.26 DIP Financing Agreements.** Concurrently with the execution of this Agreement, Sellers shall enter (or cause their Subsidiaries to enter) into the DIP Financing Agreements, which includes a grant by Sellers to the lenders thereunder of a lien on Sellers' rights under the Deposit Escrow Agreement, subject to the terms and conditions described therein.

**Section 6.27 Transfer of Assets to DIP Borrowers.** In accordance with the terms and conditions of the DIP Financing Agreements, promptly after approval of such agreements by the Bankruptcy Court, the Sellers will transfer the Purchased Assets identified in the relevant DIP Financing Agreements to the respect DIP Borrowers, and from and after that transfer, the DIP Borrowers will be "Additional Sellers" hereunder.

**Section 6.28 Separation Services.**

(a) Following the date hereof, Sellers shall, and shall cause its Subsidiaries to, continue the separation of the Business from AFI and its Affiliates (other than ResCap and its Subsidiaries) (the "Separation Services"). Sellers acknowledge and agree that the Separation Services are intended to permit Sellers to deliver at Closing to the Purchaser the Business and Purchased Assets as a stand-alone business separate from AFI, and with as minimal support from AFI as is necessary for Purchaser to operate the Business following the Closing. Purchaser and ResCap shall designate representatives to have biweekly meetings to discuss the Separation Services and to resolve any issues which may arise during the performance of the Separation Services.

(b) If Purchaser is selected as the highest bid at the Auction or is the only bidder under the Sale Procedures, then Sellers shall use commercially reasonable efforts to effect the Separation Services as reasonably directed by Purchaser in order to enable Purchaser to operate the Business in the ordinary course at Closing without the need of any services provided by AFI and its Affiliates (other than ResCap and its Subsidiaries). In connection with the Separation Services, the parties shall undertake good faith efforts to agree on a migration plan to the extent reasonably necessary in order to effect the Separation Services by Closing.

(c) Prior to Closing, the Sellers shall acquire good and valid title to the servers, software, computer equipment, systems and related information technology as contemplated by Sellers shared services and transition plan (as the same may be amended by mutual agreement of the parties hereto), such assets to be at least the same quality as currently in place and as used in the Ordinary Course of Business, and shall be included as part of the Purchased Assets under this Agreement. To the extent that Sellers shall not have acquired any such assets prior to Closing, the Purchase Price shall be reduced by the contemplated costs for such assets and Schedule 3.1(a) shall be amended accordingly.

**Section 6.29 Repurchase.** Purchaser shall have the right to cause Sellers to repurchase from Purchaser any Ginnie Mae Loan that is not eligible to be FHA or VA insured within 60 days after the Closing Date. The closing of the repurchase of any Ginnie Mae Loan shall take place on a date mutually agreed upon between Sellers and Purchaser, but in any event, within seven days after receipt of notice by Seller from Purchaser that it is exercising its right to cause

such repurchase. The repurchase price for any Ginnie Mae Loan sold to Sellers shall be the same price at which Purchaser acquired the Ginnie Mae Loan at Closing.

**Section 6.30 Rebranding.** Following the Closing Date, Purchaser shall proceed expeditiously to complete the rebranding of items used in the Business into a name or names designated by Purchaser. No later than 120 days following the Closing, Purchaser shall have completed such rebranding with respect to signage, letterhead, account statements, business cards, email accounts, marketing materials, VRU scripts and similar items. Until such rebranding is completed, Purchaser shall be authorized to continue to use such items bearing the names of Sellers, provided that to the extent covered by the GM Transition License, such use shall be governed by the terms thereof. The costs of such rebranding shall be borne by Purchaser and not be subject to the Purchaser Payment Cap.

**Section 6.31 Subservicing Agreement.**

(a) Sellers and Purchaser shall use their respective reasonable best efforts to promptly negotiate in good faith and finalize, within 30 days following the date hereof, the terms and conditions of the Subservicing Agreement under which Purchaser shall agree to service, master service or subservice on Sellers' behalf such types of assets of Sellers that Sellers serviced, master serviced or subserviced prior to the Closing in the Ordinary Course of Business. For the avoidance of doubt, servicing and subservicing of such asset types includes (i) Mortgage Loans including charged-off assets, (ii) unsecured loans, (iii) FHA/VA delinquent loans and related servicing advances, (iv) REO property, and (v) repayment of advances to various facilities. Master servicing includes loan accounting, investor reporting, claims administration, servicer management (collectively "Master Servicing Oversight"), bond administration, bond modeling and REMIC tax administration for its own portfolio and its clients. For the avoidance of doubt, this includes (i) Master Servicing Oversight, bond administration, bond modeling and REMIC tax administration for U.S. mortgage backed transactions, (ii) bond administration for Canadian mortgage securitizations, (iii) bond administration and bond modeling for transactions in which Seller acts as master servicer for Ally auto loan securitizations, (iv) back up servicing and (v) administration of master servicing P&I advances. Such Subservicing Agreement shall be consistent with the terms of this Section 6.31 and contain customary terms and conditions for transactions of this type, including representations and warranties, covenants and indemnification provisions, and further contain the terms and conditions set forth in Schedule 6.31.

**ARTICLE VII**

**BANKRUPTCY COURT MATTERS**

**Section 7.1 Competing Transaction.** From the date hereof until the earlier of the entry of the Sale Procedures Order and the termination of this Agreement, no Seller shall and each Seller shall cause its Affiliates and such Seller's and Affiliates' respective officers, directors, managers, employees, representatives and agents not to, directly or indirectly, (i) engage in substantive negotiations or discussions with, or enter into any agreement or understanding with, any Person (other than Purchaser and its Affiliates, agents and representatives) concerning any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of the Purchased Assets (each a "Competing

Transaction”), or (ii) furnish any non-public information concerning any of the Purchased Assets; provided, however, that notwithstanding the foregoing, Seller and its Affiliates shall be permitted to (a) communicate with prospective bidders concerning the proposed sale process, including the proposed timetable and the requirements for Qualified Bids (as defined in the Sale Procedures Order), and (b) enter into confidentiality agreements with prospective bidders (no more favorable to such bidders than the Confidentiality Agreement) and take such other actions that may facilitate a prospective bidder’s ability immediately to commence (or resume) diligence as soon as the Sale Procedures Order has been entered. Following entry of the Sale Procedures Order, other than pursuant to and in compliance with the terms and conditions of the Sale Procedures Order, in no event may Sellers or their respective Affiliates initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (other than Purchaser and its Affiliates, agents and representatives) with respect to a Competing Transaction or accept an offer or proposal from any Person (other than Purchaser and its Affiliates, agents and representatives) with respect to a Competing Transaction.

**Section 7.2 Bankruptcy Court Filings.** As promptly as practicable but no later than two Business Days following the execution of this Agreement, Sellers shall file Petitions for relief under Chapter 11 of the Bankruptcy Code and shall file, together with other customary “first day” motions, the Sale Motion with the Bankruptcy Court. Subject to Section 7.1, Sellers shall thereafter pursue diligently the entry of the Sale Procedures Order and the Sale Approval Order, including resolving any objections lodged to the Sellers’ proposed Cure Amounts relating to Assumed Pre-Petition Contracts. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Procedures Order and the Sale Approval Order and all parties hereto shall use their respective reasonable best efforts to obtain a finding of adequate assurance of future performance by Purchaser or its designee or designees under the Assumed Pre-Petition Contracts, and demonstrating that each of Purchaser and such designees is a “good faith” purchaser under section 363(m) of the Bankruptcy Code, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court. In the event the entry of the Sale Procedures Order or the Sale Approval Order shall be appealed, Sellers and Purchaser shall use their respective reasonable efforts to defend such appeal.

## ARTICLE VIII

### CONDITIONS

**Section 8.1 Conditions to Obligations of Purchaser and Sellers.** The respective obligations of each party to consummate the Closing shall be subject to the satisfaction, or waiver by Purchaser and Sellers, on or prior to the Closing Date of all of the following conditions precedent:

- (i) Sale Procedures Order. The Sale Procedures Order (a) shall have been entered by the Bankruptcy Court and not be subject to any stay of effectiveness, (b) shall not have been modified or amended in any manner materially adverse to Purchaser unless agreed to in writing by Purchaser in its sole discretion and (c) shall have become a Final Order; provided, however, that the

condition set forth in clause (c) shall be waivable only by Purchaser on behalf of both parties.

(ii) Sale Approval Order. The Sale Approval Order (a) shall have been entered by the Bankruptcy Court and not be subject to any stay of effectiveness, (b) shall not have been modified or amended in any manner adverse to Purchaser unless agreed to in writing by Purchaser in its sole discretion and (c) shall have become a Final Order.

(iii) Confirmation Order. The Confirmation Order shall have been entered by the Bankruptcy Court and not be subject to any stay of effectiveness, and the Chapter 11 Plan Effective Date shall have occurred as of or concurrently with the Closing Date; provided, that if the Confirmation Order has not been entered by October 31, 2012, or the Chapter 11 Plan Effective Date has not occurred, by December 15, 2012, then this condition precedent shall be deemed to be waived by all parties.

(iv) No Law, Judgments, Etc. No Government Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or any decree, judgment, injunction or other Order, which is in effect and that restricts, prevents, prohibits, makes illegal or enjoins the consummation of the transactions contemplated by this Agreement. No proceeding or investigation by any Government Entity or other Person shall have been instituted that restricts, prevents, prohibits, makes illegal, enjoins or results in material damages in respect of the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement.

(v) Injunctions. No Government Entity shall have issued an Order enjoining, restraining or prohibiting the completion of the transactions contemplated hereby and no suit, action or proceeding shall have been instituted by a Government Entity or any other Person that would reasonably be expected to have a Material Adverse Effect on the Business or enjoin, restrain, prohibit or otherwise challenge the transactions contemplated by this Agreement, or that would be reasonably likely to prevent or make illegal the consummation of the transactions contemplated by this Agreement, and no Government Entity shall have notified Purchaser or Sellers in writing that this Agreement or the consummation of the transactions contemplated by this Agreement would in any manner constitute a violation of any Law and that it intends to commence any suit, action, or proceeding to restrain, enjoin or prohibit the transactions contemplated by this Agreement.

(vi) Agency Approvals. Purchaser shall be approved as (A) a Title II Supervised Mortgagee and servicer for FHA Loans by HUD; (B) an approved seller and servicer of residential mortgages by Freddie Mac and Fannie Mae; (C) an "issuer" by Ginnie Mae; and (D) a VA-approved lender in all applicable jurisdictions.

(vii) Antitrust Clearances. The waiting period applicable to the transactions contemplated by this Agreement under the HSR Act shall have expired or been terminated.

**Section 8.2 Conditions to Obligations of Sellers.** The obligations of Sellers to consummate the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing Date, of the following conditions:

(i) Warranties of Purchaser True as of Closing Date. The representations and warranties of Purchaser contained herein that are qualified by materiality or Material Adverse Effect shall be accurate, true and correct in all respects, and all other representations and warranties of Purchaser contained herein shall be accurate, true and correct in all material respects, in each case on and as of the date hereof and as of the Closing Date as though made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date).

(ii) Compliance with Covenants. Purchaser shall have performed and complied in all material respects with each of the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date.

(iii) Certificate. Sellers shall have received a certificate, signed by a duly authorized officer of Purchaser and dated the Closing Date, to the effect that the conditions set forth in Sections 8.2(i) and 8.2(ii) have been satisfied.

**Section 8.3 Conditions to Obligations of Purchaser.** The obligations of Purchaser to consummate the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing Date of each of the following conditions:

(i) Warranties of Sellers True as of Closing Date. The representations and warranties of Sellers or any Affiliate Seller contained herein that are qualified by materiality or Material Adverse Effect (including the representation set forth in clause (a) of Section 4.5) shall be accurate, true and correct in all respects, and all other representations and warranties of Sellers or any Affiliate Seller contained herein shall be accurate, true and correct in all material respects, in each case on and as of the date hereof and as of the Closing Date as though made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date).

(ii) Compliance with Covenants. Sellers shall have performed and complied with the covenants set forth in Sections 6.14(d) and (f) in all respects, and shall have performed and complied in all material respects with each of the covenants and agreements contained in this Agreement required to be performed and complied with by them on or prior to the Closing Date.

(iii) Certificate. Purchaser shall have received certificates, signed by duly authorized officers of Sellers and dated the Closing Date, to the effect that the conditions set forth in Sections 8.3(i) and 8.3(ii) have been satisfied.

(iv) Sale Approval Order. With respect to obligations and benefits that can be realized prior to the Closing Date, Sellers shall have complied, in all material respects, with all of their obligations under, and Purchaser shall have received the benefits of, the Sale Approval Order.

(v) Agency Consents. The Agency Consents described in Schedule 4.3 in form and substance reasonably satisfactory to Purchaser shall have been duly obtained, and shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect.

(vi) Other Third Party Consents. The Consents set forth on Schedule 8.3(vi) shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Purchaser, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect.

(vii) Agreements with AFI. AFI shall have executed and delivered to Purchaser the AFI Transition Services Agreement incorporating the provisions of the Term Sheet attached as Exhibit 7 with such changes therein as AFI and Purchaser shall agree.

(viii) Licenses. Purchaser shall have each of the Business Licenses set forth on Schedule 8.3(viii) or, with respect to any such Business License, shall have received a written waiver by the relevant licensing Governmental Entity to operate the Business without such Business License, pending the final issuance thereof.

(ix) Data Center Interests. AFI shall have sold the Minnesota Data Center Interest to EPRE and re-assigned the Texas Data Center Interest to GMAC Mortgage, in each case on or prior to Closing, and such Data Center Interests shall be transferable at Closing to Purchaser, such that it owns good, valid and marketable title to 100% of the Eden Prairie Owned Real Property and 100% of the Lewisville, Texas Leased Real Property, in each case free and clear of all Claims and Liens (other than Permitted Liens) other than in accordance with Section 9.1 of the Purchase and Sale Agreement, dated May 9, 2012 between AFI and EPRE.

## ARTICLE IX

### TRANSFER OF SERVICING

#### Section 9.1 Transfer of Purchased Mortgage Servicing and MSRs.



(a) Sellers and Purchaser shall use their respective reasonable best efforts to promptly negotiate in good faith and finalize, within 30 days following the date hereof, the terms and conditions of the Servicing Transfer Agreement, which shall be consistent with this Section 9.1 and contain customary terms for transactions of this type regarding the transfer of mortgage loan servicing, including related servicing transfer instructions, and shall include, among other provisions: (i) an agreement by Sellers to take such actions as are reasonably required to change the named party to Purchaser or its designee on documents related to the Purchased Mortgage Servicing that are currently in the name of a Seller, in its capacity as Servicer, including on all financing statements and insurance policies; (ii) authorization for Purchaser to communicate to third parties that it has purchased the Purchased Assets from Sellers and reference such names of Sellers, and (iii) an acknowledgment by the parties that the costs of the servicing transfer will be borne by the respective parties in accordance with Section 9.2 hereof.

(b) The Servicing Transfer Agreement shall further (i) provide that Purchaser shall file appropriate documents within one hundred twenty (120) days after each applicable servicing transfer date to request that Purchaser be substituted for Seller in any Foreclosure proceeding in which a Seller is a plaintiff (the costs and expenses of any such filing to be divided equally between Purchaser and Sellers, subject to the Purchaser Payment Cap), unless Purchaser determines such substitution is not necessary or advisable to complete the Foreclosure, (ii) provide that in no event will Purchaser be required to take any action to request that Purchaser or any other Person be substituted for Seller to the extent that Seller is only a defendant in any litigation and (iii) provide that, if agreed upon by Purchaser and Seller in writing, Purchaser shall conduct and control litigation in which Seller is a defendant from and after the Closing Date at Sellers' sole expense, it being understood that, (A) it is the parties' intention that Purchaser will assume management responsibility for all ordinary course servicing litigation other than litigation in which a Seller is solely a defendant and (B) notwithstanding any agreement to conduct and control such litigation, any liability with respect to such litigation shall be a Retained Liability.

(c) The Servicing Transfer Agreement shall be executed by Sellers and Purchaser no later than one Business Day following the date of the Sale Approval Order. The transfer of the Purchased Mortgage Servicing from Sellers to Purchaser shall occur on one or more transfer dates on or following the Closing Date determined in accordance with the Servicing Transfer Agreement. In the case of any inconsistency between this Agreement and the Servicing Transfer Agreement, the provisions of this Agreement shall govern.

**Section 9.2 Costs of Transfer.** Except as otherwise provided herein (including the Purchaser Payment Cap) or in the Servicing Transfer Agreement, Sellers, on the one hand, and Purchaser, on the other hand, shall each be responsible for 50% of all costs and expenses of transferring the Purchased Mortgage Servicing to Purchaser, including (i) transferring the servicer status of any Serviced Mortgage Loan registered on MERS from Sellers to Purchaser, (ii) preparing assignments of mortgages and deeds of trust in recordable form to the extent necessary or advisable for Purchaser to assume servicing responsibility for any Serviced Mortgaged Loan not registered on MERS (provided that the fees and expenses of recording assignments, if Purchaser chooses to do so, will be borne entirely by Purchaser), (iii) preparation and mailing of "hello-goodbye letters" to Serviced Mortgagors (as defined in the Servicing Transfer Agreement), (iv) preparation and delivery of notices to Investors, ETS Customers,

trustees, bond insurers, custodians, master servicers, subservicers, vendors, foreclosure attorneys and other interested parties, (v) retitling custodial, escrow and other servicing related bank and investment accounts, (vi) obtaining Investor or ETS Customer consents and rating agency “no downgrade” letters (if and to the extent required under Orders of the Bankruptcy Court), (vii) obtaining PSA Amendments, (viii) recording of mortgage assignments, (ix) the cost of tax and flood contracts and (x) filing pleadings and other documents and instruments with the court or other appropriate body requesting that Sellers be removed as a party plaintiff to litigation and substituting Purchaser or another appropriate party plaintiff, as the real party-in-interest.

## ARTICLE X

### TERMINATION AND SURVIVAL

**Section 10.1 Termination.** Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time on or prior to the Closing Date:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by Sellers or Purchaser if any court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order shall have become a Final Order unless such Final Order or action was issued or taken at the request or with the support of the party seeking to terminate this Agreement (or any of its Affiliates); it being agreed that the parties, hereto shall promptly appeal any such adverse order or other determination that is appealable (and argue such appeal with reasonable diligence);

(c) by Purchaser, if

(i) upon written notice to Sellers, if any condition to the obligations of Purchaser set forth in Sections 8.1 and 8.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(ii) upon written notice to Sellers, if there has been a material violation or breach by any Seller of any covenant, agreement, representation or warranty contained in this Agreement, which violation or breach (A) has not been cured within ten Business Days following the delivery of written notice of such violation or breach or (B) is not capable of being cured within a ten Business Day period;

(iii) the Sellers do not file the Petitions within two Business Days of the date hereof;

(iv) the Sale Motion is not filed on the Petition Date;

(v) the Sale Procedures Order has not been entered by the Bankruptcy Court by June 18, 2012, or if the Sale Procedures Order, once entered, is changed in a manner that is materially adverse to Purchaser without the consent of Purchaser in its sole discretion;

(vi) the Sale Procedures Order does not provide for the final bid deadline to occur not later than 90 calendar days following the entry by the Bankruptcy Court of the Sale Procedures Order;

(vii) the auction, if any, is not concluded within seven Business Days following the final bid deadline;

(viii) the Sale Hearing does not occur within 30 days following the conclusion of the auction, or such other date as may be scheduled by the Bankruptcy Court that is no more than 40 days following the conclusion of the auction;

(ix) the Confirmation Order has not been entered by October 31, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of its effectiveness by November 15, 2012;

(x) the Chapter 11 Plan Effective Date has not occurred by December 15, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of effectiveness by December 20, 2012;

(xi) the Sale Approval Order, once entered, is changed in a manner that is adverse to Purchaser without the consent of Purchaser in its sole discretion; or

(xii) any Seller seeks to have the Bankruptcy Court enter an order dismissing the Bankruptcy Case of any Seller or converting it to a case under Chapter 7 of the Bankruptcy Code, or if the Bankruptcy Court enters an order dismissing the Bankruptcy Case of any Seller or converting the Bankruptcy Case of any Seller to a case under Chapter 7 of the Bankruptcy Code, or appoints a trustee in any Seller's Bankruptcy Case or an examiner with enlarged powers relating to the operation of Sellers' businesses, and such dismissal, conversion or appointment is not reversed or vacated within three business days after the entry thereof;

(d) by Sellers:

(i) upon written notice to Purchaser, if any condition to the obligations of Purchaser set forth in Sections 8.1 and 8.2 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers; or

(ii) upon written notice to Purchaser, if there has been a material violation or breach by Purchaser or any covenant, agreement, representation or

warranty contained in this Agreement, which violation or breach (A) has not been cured within ten Business Days following the delivery of written notice of such violation or breach or (B) is not capable of being cured within a ten Business Day period;

(e) automatically if the Bankruptcy Court, shall enter an Order approving a Competing Transaction, subject to Purchaser's right to payment of the Break-Up Fee and Expense Reimbursement pursuant to Section 6.15(a); provided, however, that if the Auction is held pursuant to the Sale Procedures, and Purchaser is designated as the Next-Highest Bidder (as such term is defined in the Sale Procedures), then this Agreement shall not terminate pursuant to this subsection (e) until the earlier of (i) the Bankruptcy Court approval of the "Successful Bid" (as such term is defined in the Sale Procedures); and (ii) 30 calendar days following the Auction. While Purchaser remains the Next-Highest Bidder (as such term is defined in the Sale Procedures), the obligations of Purchaser and Sellers described in Sections 6.1, 6.14(c) and (d) and 6.15(a) shall be held in abeyance and the Deposit Escrow Agreement shall remain in full force and effect until the purchase agreement with the bidder or purchase agreements with the bidders, as the case may be, who made the "Successful Bid" at the Auction (as such term is defined in the Sale Procedures) are terminated; or

(f) by Sellers or Purchaser if the Closing shall not have occurred on or before December 31, 2012 (or such later date as mutually agreed to by Sellers and Purchaser).

**Section 10.2 Procedure and Effect of Termination.** In the event of termination of this Agreement and abandonment of the transactions contemplated by this Agreement by either or both of the parties pursuant to Section 10.1, three Business Days' written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated by this Agreement shall be abandoned, without further action by any of the parties hereto; provided that no notice shall be required with respect to termination pursuant to Section 10.1(e) and provided further that (a) Section 3.4, Section 6.15, this Section 10.2 and Article XI shall survive the termination of this Agreement and (b) no such termination shall relieve any party from any Losses arising out of any breach of this Agreement by a party that occurs upon or prior to the termination of this Agreement. If this Agreement is terminated in accordance with Section 10.1, Sellers shall, unless the termination shall be pursuant to Section 10.1(d)(ii), pay Purchaser the Expense Reimbursement. The Expense Reimbursement will be due and payable on the Business Day immediately following such termination.

## ARTICLE XI

### INDEMNIFICATION

#### Section 11.1 Indemnification by Sellers.

(a) Each Seller agrees, on a joint and several basis, to indemnify and hold harmless each of Purchaser, Nationstar Mortgage Holdings Inc. ("Parent"), Parent's direct and indirect Subsidiaries, Parent's controlling shareholders, any Affiliate that has provided funding directly or indirectly to Purchaser under the Commitment Letter, and its

and their respective directors, officers and employees (each a “Purchaser Group Member”) from and against any and all Losses incurred by such Purchaser Group Member in connection with or arising from any breach of any Core Representations or the inaccuracy of any Core Representations of Sellers contained or referred to in this Agreement or in any certificate delivered by or on behalf of Sellers pursuant hereto; provided, that in no event shall the aggregate amount required to be paid by Sellers pursuant to this Section 11.1(a) exceed the Indemnity Escrow Amount.

(b) The indemnification provided for in Section 11.1(a) shall terminate on the earlier of one year after the Closing Date and the entry of a Final Order closing the Bankruptcy Case (the “Termination Date”) (and no claims shall be made by any Purchaser Group Member under Section 11.1(a) after the Termination Date), except that the indemnification by Sellers shall continue as to any Loss of which any Purchaser Group Member has notified ResCap in accordance with the requirements of Section 11.2 on or prior to the Termination Date, as to which the obligation of Sellers shall continue until the liability of Sellers shall have been determined pursuant to this Article XI, and Sellers shall have reimbursed all Purchaser Group Members for the full amount of such Losses in accordance with this Article XI.

## **Section 11.2 Notice of Claims.**

(a) Any Purchaser Group Member seeking indemnification hereunder shall give to each Seller obligated to provide indemnification to such Purchaser Group Member (the “Indemnitor”) a notice (a “Claim Notice”) describing in reasonable detail the facts giving rise to any claim for indemnification hereunder and shall include in such Claim Notice (if then known) the amount or the method of computation of the amount of such claim, and a reference to the provision of this Agreement or any other agreement, document or instrument executed hereunder or in connection herewith upon which such claim is based; provided, that a Claim Notice in respect of any pending or threatened action at law or suit in equity by or against a third Person as to which indemnification will be sought (each such action or suit being a “Third Person Claim”) shall be given promptly after the action or suit is commenced; provided further that failure to give such notice shall not relieve the Indemnitor of its obligations hereunder except to the extent it shall have been actually prejudiced by such failure and then only to the extent of such prejudice.

(b) After the giving of any Claim Notice pursuant hereto, the amount of indemnification to which a Purchaser Group Member shall be entitled under this Article XI shall be determined: (i) by the written agreement between the Purchaser Group Member and the Indemnitor; (ii) by a final judgment or decree of any court of competent jurisdiction; or (iii) by any other means to which the Purchaser Group Member and the Indemnitor shall agree. The judgment or decree of a court shall be deemed final when the time for appeal, if any, shall have expired and no appeal shall have been taken or when all appeals taken shall have been finally determined. The Purchaser Group Member shall have the burden of proof in establishing the amount of Loss suffered by it.

### **Section 11.3 Third Person Claims.**

(a) Subject to Section 11.3(b), the Purchaser Group Member shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any Third Person Claim against such Purchaser Group Member as to which indemnification will be sought by any Purchaser Group Member from any Indemnitor hereunder, and in any such case the Indemnitor shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Purchaser Group Member in connection therewith; provided, that:

(i) the Indemnitor may participate, through counsel chosen by it and at its own expense, in the defense of any such Third Person Claim as to which the Purchaser Group Member has so elected to conduct and control the defense thereof; and

(ii) the Purchaser Group Member shall not, without the written consent of the Indemnitor, pay, compromise or settle any such Third Person Claim, except that no such consent shall be required if, following a written request from the Purchaser Group Member, the Indemnitor shall fail, within 28 days after the making of such request or such shorter period if such Purchaser Group Member is required to respond prior to the end of such 28-day period, to acknowledge and agree in writing that, if such Third Person Claim shall be adversely determined, such Indemnitor has an obligation to provide indemnification hereunder to such Purchaser Group Member.

Notwithstanding the foregoing, the Purchaser Group Member shall have the right to pay, settle or compromise any such Third Person Claim without such consent, provided, that in such event the Purchaser Group Member shall waive any right to indemnity therefor hereunder unless such consent is unreasonably withheld.

(b) If any Third Person Claim against any Purchaser Group Member is solely for money damages or will have no continuing effect in any material respect on the Business or the Purchased Assets, then the Indemnitor shall have the right to conduct and control, through counsel of its choosing, the defense, compromise or settlement of any such Third Person Claim against such Purchaser Group Member as to which indemnification will be sought by any Purchaser Group Member from any Indemnitor hereunder if the Indemnitor has acknowledged and agreed in writing that, if the same is adversely determined, the Indemnitor has an obligation to provide indemnification to the Purchaser Group Member in respect thereof, and in any such case the Purchaser Group Member shall cooperate in connection therewith and shall furnish such records, information and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnitor in connection therewith; provided, that the Purchaser Group Member may participate, through counsel chosen by it and at its own expense, in the defense of any such Third Person Claim as to which the Indemnitor has so elected to conduct and control the defense thereof. Notwithstanding the foregoing, the Indemnitor shall not be entitled to assume the defense

of any Third Person Claim if the reasonably expected monetary damages for which the Purchaser Group Member would be entitled to indemnification under this Agreement is greater than the Indemnity Escrow Funds. Notwithstanding the foregoing, the Purchaser Group Member shall have the right to pay, settle or compromise any such Third Person Claim, provided, that in such event the Purchaser Group Member shall waive any right to indemnity therefor hereunder .

**Section 11.4 Claims Against the Indemnity Escrowed Funds.** Purchaser shall have the right to notify the Indemnity Escrow Agent of any claim for indemnification made by any Purchaser Group Member pursuant to this Article XI. Promptly following the final determination in accordance with this Article XI of any claim for indemnification made by any Purchaser Group Member, upon request by Purchaser, Sellers shall execute and deliver a certificate requesting the Indemnity Escrow Agent to deliver by wire transfer to an account designated by Purchaser immediately available funds in the amount of such claim as finally determined in accordance with this Article XI (not to exceed the Indemnity Escrowed Funds). On the Termination Date, the Indemnity Escrow Agent shall deliver to Sellers all the Indemnity Escrowed Funds then held by the Indemnity Escrow Agent by wire transfer to one or more accounts designated by ResCap; provided, however, that if prior to the Termination Date Purchaser notifies the Indemnity Escrow Agent in writing that all or a portion of the Indemnity Escrowed Funds is subject to claims for indemnification under this Agreement that have not been finally determined (the “Outstanding Claims”), the amount delivered to Sellers upon the Termination Date shall be equal to the Indemnity Escrowed Funds then held by the Indemnity Escrow Agent, less the sum of any amounts subject to the Outstanding Claims. If at any time after the Termination Date the amount of the Indemnity Escrowed Funds then held by the Indemnity Escrow Agent exceeds the sum of any amounts subject to the Outstanding Claims, ResCap and Purchaser shall execute and deliver a certificate requesting the Indemnity Escrow Agent to deliver such excess amount to Sellers by wire transfer to one or more accounts designated by ResCap.

**Section 11.5 Adjustment to Purchase Price.** To the extent that any payment by Sellers under this Article XI can be properly so characterized under applicable Tax law, such payment shall be treated by the parties as an adjustment to the Purchase Price.

**Section 11.6 Survival.** Sellers and Purchaser agree that all of the representations, warranties and covenants of Sellers and Purchaser contained in this Agreement, or any instrument delivered pursuant to this Agreement, shall terminate at the Closing Date, except that the Core Representations shall survive as provided in Section 11.1(b) and the covenants that by their terms survive the Closing Date shall survive the Closing Date.

**Section 11.7 Exclusive Remedy.** Except in the case of fraud or where a Party seeks to obtain specific performance pursuant to Section 12.11, from and after the Closing, the sole and exclusive remedy of any Purchaser Group Member in connection with any breach of any Core Representations or the inaccuracy of any Core Representations of Sellers contained or referred to in this Agreement or in any certificate delivered by or on behalf of Sellers pursuant hereto, whether under this Agreement or arising under common law or any other Law, shall be as provided in this Article XI. Nothing in this Section 11.7 shall operate to interfere with or impede the operation of the provisions of Section 3.2 or any Ancillary Agreement.

## ARTICLE XII

### MISCELLANEOUS

**Section 12.1 Expenses.** Except as otherwise provided in this Agreement or the Sale Procedures Order, all costs and expenses incurred in connection with this Agreement and the consummation of the transaction hereunder, shall be paid by the party incurring such expenses. Subject to approval by the Bankruptcy Court, the Break-Up Fee and Expense Reimbursement payable to Purchaser (i) shall rank as administrative expense claims against the Sellers pursuant to Section 503(b)(1)(A) of the Bankruptcy Code; and (ii) shall be paid promptly by the Sellers as set forth herein. Following approval of the Sale Procedures Order, any claims arising from breaches by any Sellers of their obligations pursuant to the terms of this Agreement shall constitute administrative expense claims against the Sellers under Sections 503(b)(1) and 507(a)(1), as applicable, of the Bankruptcy Code.

**Section 12.2 Amendment; Waiver.** This Agreement may be amended, modified or supplemented only in writing signed by each of the parties hereto. Any provisions of this Agreement may be waived, but only if such waiver is in writing and signed by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**Section 12.3 Notices.** Any written notice to be given hereunder shall be deemed given: (a) when received if given in person or by nationally recognized courier; (b) on the date of transmission if sent by telecopy, e-mail or other wire transmission (receipt confirmed in each case); (c) five Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid, return receipt requested; and (d) if sent by an internationally recognized overnight delivery service, the second Business Day following the date given to such overnight delivery service (specified for overnight delivery and receipt confirmed). All notices shall be addressed as follows:

if to Sellers, to:

Residential Capital, LLC  
1177 Avenue of the Americas  
New York, New York 10036  
Facsimile: 646-257-2703  
Attention: Mr. Thomas Marano  
Telephone: 646-781-2600  
email: tom.marano@gmacrescap.com



with copies to (which copies shall not constitute notice):

Residential Capital, LLC  
1100 Virginia Drive  
Fort Washington, Pennsylvania 19034  
Facsimile: 866-572-7524  
Attn: Tammy Hamzehpour, Esq., General Counsel  
Telephone: 215-682-1307  
email: tammy.hamzehpour@gmacrescap.com

*and*

Morrison & Foerster LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Facsimile: (212) 468-7900  
Attention: Gary S. Lee, Esq.  
Telephone: (212) 468-8163  
email: glee@mofo.com

*and*

Attention: Larren M. Nashelsky, Esq.  
Telephone : (212) 506-7365  
email: lnashelsky@mofo.com

if to Purchaser, to:

Nationstar Mortgage LLC  
350 Highland Drive  
Lewisville, Texas 75067  
Facsimile: (469) 549-2085  
Attention: General Counsel  
Telephone: (972) 316-5429  
email: Tony.Villani@nationstarmail.com

with copies to (which copies shall not constitute notice):

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603  
Facsimile: (312) 853-7036  
Attention: Chris E. Abbinante and Larry J. Nyhan  
Telephone: (312) 853-7000  
email: [cabbinante@sidley.com](mailto:cabbinante@sidley.com) and lnyhan@sidley.com

**Section 12.4 Waivers.** The failure of a party to require performance of any provision hereof shall not affect its right at a later time to enforce the same. No waiver by a party of any

term, covenant, representation or warranty contained herein shall be effective unless in writing. No such waiver in any one instance shall be deemed a further or continuing waiver of any such term, covenant, representation or warranty in any other instance.

**Section 12.5 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 12.6 Applicable Law; WAIVER OF JURY TRIAL; Venue and Retention of Jurisdiction.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to any conflicts of law principles thereof or any other jurisdiction that would apply the law of another jurisdiction and, to the extent applicable, the Bankruptcy Code.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.3 hereof; provided, however, that if the Bankruptcy Case of Sellers have closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.3.

**Section 12.7 Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided that no

assignment of either party's rights or obligations may be made without the written consent of the other party, which consent shall not be unreasonably withheld or delayed; and provided that Purchaser may assign (i) its rights and interests in Servicing Advances to be acquired hereunder to any of its lenders as collateral security or (ii) this Agreement and any or all rights or obligations hereunder (including Purchaser's rights to purchase the Purchased Assets and assume the Assumed Liabilities) to one or more Affiliates of Purchaser provided that any such Affiliate has at the Closing all Business Licenses necessary to own and conduct business with such Purchased Assets and to assume such Assumed Liabilities; provided, however, that Purchaser shall remain obligated to fulfill its obligations pursuant to this Agreement and for any damages arising from an unlawful breach hereof; provided further, that Sellers are permitted to assign their right under the Deposit Escrow Agreement as provided in Section 6.26. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

**Section 12.8 No Third-Party Beneficiaries.** Except as provided in Article XI, this Agreement is solely for the benefit of the parties hereto, and no provision of this Agreement shall be deemed to confer any remedy, claim or right upon any third party, including any employee or former employee of Sellers or any participant or beneficiary in any benefit plan, program or arrangement.

**Section 12.9 Public Announcements.** Sellers and Purchaser each agree that they and their Affiliates shall not issue any press release or otherwise make any public statement or respond to any media inquiry with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other parties, which shall not be unreasonably withheld or delayed, except as may be required by Law or by any stock exchanges having jurisdiction over Sellers, Purchaser or their Affiliates. Sellers, Affiliate Sellers and Purchaser will consult with each other regarding the content and timing of any internal announcements regarding the transactions contemplated by this Agreement and the Ancillary Agreements to Sellers' employees.

**Section 12.10 Severability.** Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

**Section 12.11 Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Purchaser shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to

enforce specifically the terms and provisions of this Agreement in any court referenced in Section 12.6(c), this being in addition to any other remedy to which they are entitled at Law or in equity.

**Section 12.12 Waiver of Bulk Transfer Laws.** Seller and Purchaser agree to waive compliance with Article 6 of the Uniform Commercial Code as adopted in each of the jurisdictions in which any of the Purchased Assets are located to the extent that such Article is applicable to the transactions contemplated hereby and any other bulk sale or bulk transfer or similar Law.

**Section 12.13 Personal Liability.** This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any officer, director, employee, representative or investor of any party hereto.

**Section 12.14 Entire Agreement.** This Agreement, together with the Ancillary Agreements, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, Purchaser and Sellers have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

NATIONSTAR MORTGAGE LLC

By


Name:

Jesse K. Bray


Title:

Chief Executive Officer


**RESIDENTIAL CAPITAL, LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

**RESIDENTIAL FUNDING COMPANY, LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

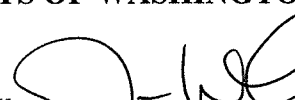
**GMAC MORTGAGE, LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

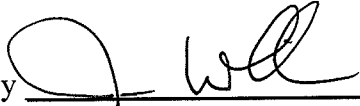
**EXECUTIVE TRUSTEE SERVICES, LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

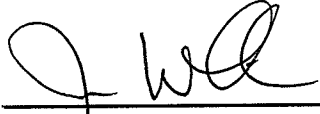
**ETS OF WASHINGTON, INC.**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

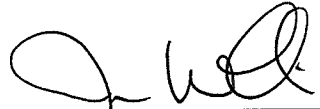
**GMACM BORROWER LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

**RFC BORROWER LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer

**EPRE LLC**

By   
Name: James Whitlinger  
Title: Chief Financial Officer





### SCHEDULE 3.1(a)

#### PURCHASE PRICE CALCULATION

The Purchase Price for those Purchased Assets assigned to Purchaser in accordance with the Sale Approval Order shall be an amount equal to the sum of the following (without duplication):

1. with respect to the Purchased Mortgage Servicing that is assumed and assigned to Sellers pursuant to the Sale Approval Order, an amount equal to the sum of each product obtained by multiplying (x) the unpaid principal balance as of the close of business on the Closing Date of the Mortgage Loans within each category set forth below by (y) the product of the net servicing fee\* as of the close of business on the Closing Date and the applicable multiple for each such category shown below:

<u>Category of Servicing Rights</u>	<u>Servicing Fee Field on the Data Tape*</u>	<u>Multiple</u>
Fannie Mae / Freddie Mac MSRs	SfeeNet	1.5425x
Private Investor Loan MSRs (Eligible Servicing Agreements)	SFeeNet; sfee_c; or INVESTOR_SERVICE_FEE_PERCENT	0.8920x
Private Investor Loan MSRs (non- Eligible Servicing Agreements)	SFeeNet; sfee_c; or INVESTOR_SERVICE_FEE_PERCENT	0.0000x
Ginnie Mae MSRs	sfeeNet	0.6276x
Master Servicing	Sfee_c	0.3324x

plus

2. with respect to the Purchased Mortgage Servicing that is assumed and assigned to Sellers pursuant to the Sale Approval Order, an amount equal to the sum of each product obtained by multiplying (x) the unpaid principal balance as of the close of business on the Closing Date of the Mortgage Loans within each category set forth below by (y) the applicable percentage for such category shown below:

<u>Category of Servicing Rights</u>	<u>Applicable Percentage</u>
Third Party Fee-Based Subservicing Agreements (excluding any such Servicing Agreement with AFI set forth in <u>Schedule 2.15</u> )	0.1110%

plus

3. with respect to the Servicing Advances, an amount equal to the sum of each product obtained by multiplying (x) the aggregate amount of such Servicing Advances that are outstanding as of the close of business on the Closing Date within each category set forth below by (y) the applicable percentage for such category shown below:

<u>Category of Servicing Rights</u>	<u>Applicable Percentage</u>
Fannie Mae / Freddie Mac MSR	95%
Private Investor Loan MSR (Eligible Servicing Agreements)	95%
Private Investor Loan MSR (non-Eligible Servicing Agreements)	
If the result (expressed as a percentage) of (i) the aggregate amount of Servicing Advances that are outstanding as of the close of business on the Closing Date for all Private Investor Loans that are covered under Eligible Servicing Agreements (excluding any such loans under the Servicing Agreements set forth in Schedule T) divided by (ii) the aggregate amount of Servicing Advances that are outstanding as of the close of business on the Closing Date for all Private Investor Loans (excluding any such loans under the Servicing Agreements set forth in Schedule T) is:	
Greater than 50%	85%
Between 25% – 50%	77.5%
Less than 25%	70%
Ginnie Mae MSR	95%
Third Party Fee-Based Subservicing Agreements	90%

plus

4. with respect to the Ginnie Mae Loans, an amount equal to the sum of the following:  
(x) after deducting a servicing fee of 31.5 bps and a guaranty fee of 6 bps from the underlying note rate, the interpolated GNMA TBA MBS price as of the Closing Date and as quoted on Bond

Web or other market pricing service, plus (y) the servicing value ascribed per the following matrix set forth in Annex A; plus

5. except as set forth in item 6 below, with respect to the other Purchased Assets set forth in Section 2.1(d) – (v), an amount equal to \$0.00; plus

6. with respect to the Purchased Assets set forth in Schedule L-1 and L-2, an amount equal to the aggregate sum of the product of (x) the Book Value of each category as of the close of business on the Closing Date multiplied by (y) the “Applicable Purchase Price %” as set forth in the Schedule of Purchased Assets and Assumed Liabilities for such Purchased Assets; less

7. with respect to the Liabilities detailed on the Schedule of Purchased Assets and Assumed Liabilities, an amount equal to the aggregate sum of the product of (x) the greater of Book Value or nominal value of each category as of the close of business on the Closing Date multiplied by (y) the “Applicable Purchase Price Deduction %” as set forth in the Schedule of Purchased Assets and Assumed Liabilities for such Liabilities.

---

For purposes of any separate auction of the Ginnie Mae Assets, the Break-Up Fee, Expense Reimbursement and the Cash Deposit shall be allocated 8.44% to the Ginnie Mae MSR Assets and 91.56% to the other Purchased Assets.

Annex A – Ginnie Mae Loan Matrix

Variance from Par Rate	Net Servicing Fee = 31.5		Net Servicing Fee = 31.5	
	30 year	Excess Multiple	15 year	Excess Multiple
(1.500)	0.851	2.50x	0.391	1.10x
(1.375)	0.852	2.50x	0.391	1.10x
(1.250)	0.854	2.50x	0.391	1.10x
(1.125)	0.855	2.50x	0.390	1.00x
(1.000)	0.856	2.50x	0.388	1.00x
(0.875)	0.858	2.50x	0.387	1.00x
(0.750)	0.859	2.40x	0.385	1.00x
(0.625)	0.861	2.40x	0.382	1.00x
(0.500)	0.858	2.40x	0.378	1.00x
(0.375)	0.853	2.40x	0.345	0.90x
(0.250)	0.846	2.40x	0.306	0.70x
(0.125)	0.841	2.40x	0.282	0.70x
—	0.835	2.30x	0.264	0.70x
0.125	0.829	2.30x	0.251	0.60x
0.250	0.824	2.30x	0.240	0.60x
0.375	0.818	2.30x	0.229	0.50x
0.500	0.812	2.20x	0.217	0.50x
0.625	0.806	2.10x	0.207	0.50x
0.750	0.770	2.00x	0.200	0.40x
0.875	0.744	2.00x	0.193	0.40x
1.000	0.695	1.90x	0.188	0.40x
1.125	0.659	1.90x	0.183	0.40x
1.250	0.632	1.80x	0.179	0.40x
1.375	0.596	1.70x	0.176	0.30x
1.500	0.561	1.60x	0.172	0.30x

Note:

1. For 30 year product, par rate shall be calculated using the MTGENGNSF <Index> from Bloomberg averaged for the 30 calendar days prior to the pool issue month plus 0.750% round up to the nearest 0.125%.
2. For 15 year product, par rate shall be calculated using the MTGENGNJO <Index> from Bloomberg averaged for the 30 calendar days prior to the pool issue month plus 0.750% round up to the nearest 0.125%.
3. VA Loans shall have a 35 basis point reduction in purchase price.
4. USDA Loans shall have a 35 basis point reduction in purchase price.

**EXHIBIT B-1**

**NATIONSTAR APA TERM SHEET**

## SUMMARY

### NATIONSTAR APA AGREEMENT

Asset Purchase Agreement, dated as of May 13, 2012 (the “Nationstar APA”), is entered into between Nationstar Mortgage LLC, a Delaware limited liability company (“Purchaser”), and Residential Capital, LLC (“ResCap”), Residential Funding Company, LLC (“RFC”), GMAC Mortgage, LLC (“GMAC Mortgage”), each of which is a Delaware limited liability company, Executive Trustee Services, LLC, a Delaware limited liability company (“ETS LLC”), ETS of Washington, Inc., a Washington corporation (“ETS WA” and together with ETS LLC, “ETS”), EPRE LLC, a Delaware limited liability company (“EPRE”) and the additional sellers identified on Schedule A hereto (together with ResCap, RFC, GMAC Mortgage and ETS, the “Sellers”). Terms used but not defined in this term sheet shall have the meaning set forth in the Nationstar APA.

This summary has been prepared solely for the convenience of the parties. To the extent any of the terms described herein are in any way inconsistent with the terms of the Nationstar APA, the Nationstar APA shall control in all respects

<b>Purchase and Sale of Purchased Assets</b>	<p>Purchaser, as Stalking-Horse Bidder, will acquire the following assets of the Debtors:</p> <ul style="list-style-type: none"> <li>• Origination, servicing and capital markets platforms, consisting primarily of people, software and related information technology (IT) as well as other contracts;</li> <li>• Servicing agreements;</li> <li>• MSRs owned by the Debtors; and</li> <li>• Ginnie Mae-guaranteed Whole Loans with aggregate principal not to exceed \$75 million and satisfying certain other criteria.</li> </ul> <p>In addition, the Stalking-Horse Bidder will acquire other IT and intellectual property, books and records, owned and leased real property, rights and benefits under other contracts, certain rights in litigation, certain rights under insurance policies, goodwill and other intangibles Related to the Business or the Purchased Assets.</p>
<b>Assumed Liabilities</b>	<p>Stalking-Horse Bidder will assume certain specified liabilities of the Debtors, including the following Assumed Liabilities (each as defined in the Nationstar APA):</p> <ul style="list-style-type: none"> <li>(i) the Business Employee Liabilities;</li> <li>(ii) the Liabilities relating to Permitted Liens with respect to Purchased Assets (to the extent not discharged in the Bankruptcy Case);</li> <li>(iii) the Liabilities arising under any Assumed Contract to the extent</li> </ul>

	<p>such Liabilities arise on and after the Closing; and</p> <p>(iv) all Liabilities of the Business or Purchased Assets arising from the conduct of the Business on or after the Closing other than any Retained Liabilities.</p>
<b>Purchase Price</b>	In consideration for the sale of the Purchased Assets to Purchaser, Sellers will receive approximately \$2.3 billion, <sup>1</sup> net of assumed liabilities. Such Purchase Price is subject to adjustment.
<b>Cash Deposit</b>	Purchaser is required to deposit \$72 million in an escrow account
<b>Required Consents</b>	In addition to the approvals required from the Bankruptcy Court, the Sellers are required to obtain consents from (i) Fannie Mae, Freddie Mac and Ginnie Mae to the Sale and certain related matters; (ii) an owner of MSRs to GMAC Mortgage's transfer of the servicing of its MSRs to Purchaser and such owner entering into a servicing agreement directly with Purchaser; and (iii) counterparties to certain intellectual property and IT agreements.
<b>Representations and Warranties</b>	<p>Sellers have made representations and warranties to Purchaser with respect to:</p> <ul style="list-style-type: none"> <li>(i) Organization and Authority;</li> <li>(ii) Non-contravention;</li> <li>(iii) Consents and Approvals;</li> <li>(iv) Financial Statements;</li> <li>(v) Absence of Certain Changes or Events;</li> <li>(vi) Title to Assets;</li> <li>(vii) Purchased Assets Used in Business;</li> <li>(viii) Real Property Leases;</li> <li>(ix) Mortgage Servicing Portfolio; Servicing Agreements; and the Business;</li> <li>(x) Material Contracts;</li> <li>(xi) Compliance with Law; Licensing and Data Security;</li> <li>(xii) Employee Benefits;</li> </ul>

	<p>(xiii) Employees;</p> <p>(xiv) Litigation and Claims;</p> <p>(xv) Intellectual Property;</p> <p>(xvi) Brokers, Finders and Financial Advisors;</p> <p>(xvii) Ginnie Mae Loans;</p> <p>(xviii) Tax Matters; and</p> <p>(xix) Shared Services Agreement.</p> <p>These representations and warranties are subject to materiality and other exceptions, some of which are set forth in the Disclosure Memorandum provided by the Sellers to Purchaser.</p> <p>The Purchaser has made representations and warranties to the Sellers with respect to :</p> <p>(i) Organization and Authority;</p> <p>(ii) Non-Contravention;</p> <p>(iii) Consents and Approvals;</p> <p>(iv) Financing (including providing an equity commitment letter);</p> <p>(v) Non-reliance on information not expressly provided in the Nationstar APA; and</p> <p>(vi) Brokers, Finders and Financial Advisors.</p> <p>Except for the representations and warranties set forth in the Nationstar APA, the sale of the Purchased Assets is “AS IS,” “WHERE IS.”</p>
<b>PSA Amendments Covenant</b>	<p>The Sellers are obligated to use commercially reasonable efforts to obtain PSA Amendments requested by Purchaser. PSA Amendments are amendments to existing Servicing Agreements in order to, among other things, cause the Servicing Agreements to become Eligible Servicing Agreements (as defined in the Nationstar APA).</p>
<b>AFI Support Letter</b>	<p>AFI has provided a letter to Purchaser providing for, among other matters, support for the Sellers’ Bankruptcy Case and the Nationstar APA, the terms of a mutual transition support agreement and certain confidentiality and indemnification obligations.</p>
<b>Competing</b>	<p>Until a Sale Procedures Order is entered, Sellers may not engage in</p>



<b>Transactions</b>	<p>substantive negotiations or discussions with, or enter into any agreement or understanding with, any Person (other than Purchaser) concerning any transaction involving the direct or indirect sale, transfer or other disposition of the Purchased Assets (a “Competing Transaction”) or furnish non-public information regarding any of the Purchased Assets.</p> <p>Seller are permitted to (a) communicate with prospective bidders concerning the proposed sale process, including the proposed timetable and the requirements for Qualified Bids (as defined in the Sale Procedures Order), and (b) enter into confidentiality agreements with prospective bidders (no more favorable to such bidders than the Confidentiality Agreement) and take such other actions that may facilitate a prospective bidder’s ability immediately to commence (or resume) diligence as soon as the Sale Procedures Order has been entered.</p> <p>Once the Sales Procedures Order is entered, Sellers are required to comply with the Sales Procedures Order with respect Competing Transactions.</p>
<b>Break-up Fee and Expense Reimbursement</b>	<p>If the Nationstar APA is terminated pursuant to <u>Section 10.1(e)</u>, Sellers shall pay to Purchaser a break-up fee equal to \$72,000,000 and reimburse Purchaser’s actual, reasonable, documented out-of-pocket expenses incurred since execution of the Nationstar APA in an amount not to exceed \$10 million.</p>
<b>Covenants</b>	<p>Other material pre-closing covenants relate to:</p> <ul style="list-style-type: none"> <li>(vii) Interim operations of the Business, particularly outside the Ordinary Course of Business;</li> <li>(viii) Servicing Approvals and Licenses;</li> <li>(ix) Employee Matters;</li> <li>(x) Providing updated financial information and mortgage loan and servicing advances schedules;</li> <li>(xi) Notices of Certain Events;</li> <li>(xii) Tax Matters;</li> <li>(xiii) Confidentiality;</li> <li>(xiv) Transition Services, Separation Services and Rebranding;</li> <li>(xv) Purchaser’s right to cause Sellers to repurchase uninsured Ginnie</li> </ul>

	<p>Mae Loans;</p> <p>(xvi) Transfer of assets to certain borrowers under the debtor in possession financing; and</p> <p>(xvii) Subservicing arrangements post-closing.</p>
<b>Closing Date and Closing Conditions</b>	<p>Closing shall occur after the necessary conditions to closing have been satisfied or waived. Material conditions to the obligations of each party to consummate the closing include:</p> <ul style="list-style-type: none"> <li>(i) The entry of the Sale Procedures Order, the Sale Approval Order and the Confirmation Order;</li> <li>(ii) No judgments or injunction barring Closing;</li> <li>(iii) The Stalking Horse Bidder's receipt of specified Agency Approvals; and</li> <li>(iv) Expiration of the applicable antitrust waiting period.</li> </ul> <p>Additional conditions to the obligations of Sellers to consummate the closing include:</p> <ul style="list-style-type: none"> <li>(i) Purchaser's representations and warranties being true on the Closing Date and Purchaser having complied with all covenants; and</li> <li>(ii) Receipt of required third-party consents.</li> </ul> <p>Additional conditions to the obligations of Purchaser to consummate the closing include:</p> <ul style="list-style-type: none"> <li>(i) Sellers' representations and warranties being true on the Closing Date and Sellers having complied with all covenants;</li> <li>(ii) Sellers compliance with the Sale Approval Order;</li> <li>(iii) Sellers' receipt of the Agency Consents and other third-party consents;</li> <li>(iv) The execution by AFI of the Transition Services Agreement with Purchaser; and</li> <li>(v) Purchaser's receipt of certain business licenses to operate the Purchased Assets; and</li> <li>(vi) The repurchase from AFI by a Seller of an owned datacenter and the reassignment from AFI to a Seller of a leased datacenter as</li> </ul>

	described in the Nationstar APA.
<b>Termination</b>	<p>The Nationstar APA may be terminated:</p> <ul style="list-style-type: none"><li>(i) By mutual written consent of Sellers and Purchaser;</li><li>(ii) By either party if a permanent injunction or similar order against the transaction is entered;</li><li>(iii) By Purchaser if:<ul style="list-style-type: none"><li>a. the conditions to its obligations are not satisfied;</li><li>b. Sellers breach the Nationstar APA;</li><li>c. the Sellers do not file the Petitions within two business days of the date of the Nationstar APA;</li><li>d. the Sale Motion is not filed on the Petition Date;</li><li>e. the Sale Procedures Order is not filed by June 18, 2012 or if the Sale Procedures Order, once entered, is changed in a manner that is materially adverse to Purchaser without the consent of Purchaser in its sole discretion;</li><li>f. the Sale Procedures Order does not provide for the final bid deadline to occur not later than 90 calendar days following the entry by the Bankruptcy Court of the Sale Procedures Order;</li><li>g. the auction, if any, is not concluded within seven Business Days following the final bid deadline;</li><li>h. the Sale Hearing does not occur within 30 days following the conclusion of the auction, or such other date as may be scheduled by the Bankruptcy Court that is no more than 40 days following the conclusion of the auction;</li><li>i. the Confirmation Order has not been entered by October 31, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of its effectiveness by November 15, 2012;</li><li>j. the Chapter 11 Plan Effective Date has not occurred by December 15, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of effectiveness by December 20, 2012;</li></ul></li></ul>

	<p>k. the Sale Approval Order, once entered, is changed in a manner that is adverse to Purchaser without the consent of Purchaser in its sole discretion; or</p> <p>l. any Seller seeks to have the Bankruptcy Court enter an order dismissing the Bankruptcy Case of any Seller or converting it to a case under Chapter 7 of the Bankruptcy Code, or if the Bankruptcy Court enters an order dismissing the Bankruptcy Case of any Seller or converting the Bankruptcy Case of any Seller to a case under Chapter 7 of the Bankruptcy Code, or appoints a trustee in any Seller's Bankruptcy Case or an examiner with enlarged powers relating to the operation of Sellers' businesses, and such dismissal, conversion or appointment is not reversed or vacated within three business days after the entry thereof.</p> <p>(iv) By Sellers if:</p> <p>a. the conditions to the obligations of the Sellers are not satisfied;</p> <p>b. Purchaser breaches the Nationstar APA;</p> <p>(v) Automatically if the bankruptcy court enters an order approving a Competing Transaction.;</p> <p>(vi) By Sellers or Purchaser if the Closing shall not have occurred on or before December 31, 2012 (or such later date as mutually agreed to by Sellers and Purchaser).</p>
<b>Survival, Indemnification and Escrow</b>	<p>All of the representations, warranties and covenants of Sellers and Purchaser terminate at the Closing Date, except that the Core Representations survive until the earlier of one year after the Closing Date and the entry of a Final Order closing the Bankruptcy Case and covenants that by their terms survive the Closing Date shall survive the Closing Date. Sellers have agreed to escrow an amount equal to 1% of the Purchase Price to fund their indemnification obligations with respect to Core Representations, which fund is an exclusive remedy.</p>
<b>Regulatory Matters</b>	<p>The Nationstar APA is subject to antitrust clearances. The waiting period applicable to the transactions contemplated by the Agreement under the HSR Act shall have expired or been terminated except for those which by their terms shall survive the Closing Date.</p>

**EXHIBIT C**

**AFI ASSET PURCHASE AGREEMENT**

**ASSET PURCHASE AGREEMENT**

**Between**

**ALLY FINANCIAL INC.**

**and**

**BMMZ HOLDINGS LLC**

**and**

**RESIDENTIAL CAPITAL, LLC**

**RESIDENTIAL FUNDING COMPANY, LLC**

**GMAC MORTGAGE, LLC**

**and**

**THE ADDITIONAL SELLERS IDENTIFIED ON SCHEDULE A HERETO**

**dated as of**

**May 13, 2012**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE I. DEFINITIONS AND INTERPRETATION .....	1
Section 1.1 Definitions.....	1
Section 1.2 Interpretation.....	16
ARTICLE II. PURCHASE AND SALE OF ASSETS .....	17
Section 2.1 Purchase and Sale of Assets.....	17
Section 2.2 Excluded Assets .....	18
Section 2.3 Post-Closing Asset Deliveries.....	19
Section 2.4 Conveyance of Assets by Affiliate Sellers.....	19
Section 2.5 Non-Assignable Purchased Assets; Necessary Consents .....	19
Section 2.6 Retained Liabilities .....	20
Section 2.7 Closing .....	20
Section 2.8 Ancillary Agreements .....	20
Section 2.9 Deliveries by Purchaser .....	21
Section 2.10 Deliveries by Sellers .....	21
Section 2.11 Consumer Privacy Matters.....	22
Section 2.12 “As Is, Where Is” Transaction .....	22
ARTICLE III. PURCHASE PRICE; ADJUSTMENT; ALLOCATION .....	22
Section 3.1 Purchase Price; Payment of Purchase Price.....	22
Section 3.2 Purchase Price Adjustment; Final Payment.....	23
Section 3.3 Allocation of the Purchase Price for Tax Purposes .....	25
ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF SELLERS.....	25
Section 4.1 Organization and Authority .....	25
Section 4.2 Non-Contravention .....	26
Section 4.3 Consents and Approvals .....	26
Section 4.4 Title to Assets .....	27
Section 4.5 Mortgage Loan Portfolio.....	27
Section 4.6 [Reserved.].....	27
Section 4.7 Litigation and Claims.....	27
Section 4.8 Brokers, Finders and Financial Advisors.....	27
Section 4.9 Whole Loans .....	27
Section 4.10 Mortgage Securities .....	29
ARTICLE V. REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	30
Section 5.1 Organization and Authority .....	30
Section 5.2 Non-Contravention .....	30
Section 5.3 Consents and Approvals .....	30
Section 5.4 Financing.....	30
Section 5.5 Non-reliance.....	31
Section 5.6 Brokers, Finders and Financial Advisors.....	31
ARTICLE VI. PRE-CLOSING MATTERS AND OTHER COVENANTS.....	31
Section 6.1 Subsequent Actions; Further Assurances.....	31
Section 6.2 Third Party Consents.....	31

**TABLE OF CONTENTS**

	<b>Page</b>
Section 6.3 Access to Information .....	31
Section 6.4 Records; Post-Closing Access to Information .....	32
Section 6.5 Interim Operations .....	33
Section 6.6 Mortgage Approvals and Licenses.....	34
Section 6.7 Notices of Certain Events .....	34
Section 6.8 Tax Matters .....	35
Section 6.9 Insurance .....	35
Section 6.10 Mortgage Loan Schedules.....	35
Section 6.11 Schedules and Disclosure Memorandum.....	36
Section 6.12 Bankruptcy Actions .....	36
Section 6.13 Antitrust Clearances and Obligations .....	37
Section 6.14 Post-Closing Amounts Received and Paid .....	38
Section 6.15 Confidentiality .....	38
Section 6.16 Delivery of Mortgage Files.....	39
Section 6.17 Third Party Servicing Agreement .....	40
Section 6.18 Transfer of Servicing .....	40
Section 6.19 Use of Proceeds.....	41
Section 6.20 Electronic Data Files.....	42
Section 6.21 Transfer of Assets to DIP Borrowers.....	42
Section 6.22 Mortgage Loan Modifications .....	42
<b>ARTICLE VII. BANKRUPTCY COURT MATTERS .....</b>	<b>42</b>
Section 7.1 Competing Transaction.....	42
Section 7.2 Bankruptcy Court Filings.....	43
<b>ARTICLE VIII. CONDITIONS .....</b>	<b>43</b>
Section 8.1 Conditions to Obligations of Purchaser and Sellers .....	43
Section 8.2 Conditions to Obligations of Sellers .....	44
Section 8.3 Conditions to Obligations of Purchaser .....	45
<b>ARTICLE IX. TERMINATION AND SURVIVAL.....</b>	<b>46</b>
Section 9.1 Termination.....	46
Section 9.2 Procedure and Effect of Termination.....	48
Section 9.3 No Survival .....	48
<b>ARTICLE X. MISCELLANEOUS .....</b>	<b>48</b>
Section 10.1 Expenses .....	48
Section 10.2 Amendment; Waiver.....	49
Section 10.3 Notices .....	49
Section 10.4 Waivers .....	50
Section 10.5 Counterparts.....	51
Section 10.6 Applicable Law; WAIVER OF JURY TRIAL; Venue and Retention of Jurisdiction .....	51
Section 10.7 Assignment .....	51
Section 10.8 No Third-Party Beneficiaries.....	52
Section 10.9 Public Announcements .....	52
Section 10.10 Severability .....	52



**TABLE OF CONTENTS**

	<b>Page</b>
Section 10.11 Specific Performance .....	52
Section 10.12 Waiver of Bulk Transfer Laws .....	52
Section 10.13 Personal Liability .....	53
Section 10.14 Entire Agreement .....	53
Section 10.15 Parent Guaranty .....	53

**SCHEDULES**

Schedule A	Additional Sellers
Schedule B	Contents of Credit File
Schedule C	DIP Financing Agreements
Schedule D	Knowledge of Sellers
Schedule E	Mortgage Securities
Schedule F	Purchase Price Schedule
Schedule 4.3	Seller Consents and Approvals
Schedule 4.5	Mortgage Loan Data Fields
Schedule 5.3	Purchaser Consents and Approvals
Schedule 6.12(f)	Terms of the Chapter 11 Plan

**EXHIBITS**

Exhibit 1	Sale Approval Order
Exhibit 2	Sale Procedures
Exhibit 3	Sale Procedures Order

**DISCLOSURE MEMORANDUM**

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated as of May 13, 2012, is entered into between Ally Financial Inc., a Delaware corporation (“Parent”) and BMMZ Holdings LLC, a Delaware limited liability company (“Purchaser”), and Residential Capital, LLC (“ResCap”), Residential Funding Company, LLC (“RFC”), and GMAC Mortgage, LLC (“GMAC Mortgage”), each of which is a Delaware limited liability company, and the additional sellers identified on Schedule A hereto (together with ResCap, RFC and GMAC Mortgage, “Sellers”).

**WHEREAS**, Sellers, together with other Affiliates (as hereinafter defined), intend to file voluntary petitions (“Petitions”) for relief (collectively, the “Bankruptcy Case”) under Chapter 11 of Title 11, U.S.C. §§ 101, *et seq.*, as amended (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) on or shortly after the date this Agreement is executed;

**WHEREAS**, upon the terms and subject to the conditions set forth in this Agreement, and as authorized under sections 105, 363 and 365 of the Bankruptcy Code, Sellers wish to sell to Purchaser, and Purchaser (or Purchaser’s assignee or assignees pursuant to Section 10.7 hereof) wishes to purchase from Sellers, the Purchased Assets (as hereinafter defined); and

**WHEREAS**, Sellers, as debtors and debtors-in-possession, will continue in the possession of their respective assets pursuant to sections 1107 and 1108 of the Bankruptcy Code.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

### ARTICLE I.

#### DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

“Acceptable Servicing Procedures” means the procedures, including collection and loan administration procedures, for servicing mortgage loans using the same standard of care that Sellers customarily employ and exercise in servicing and administering similar mortgage loans for their own account, which shall be in compliance with Applicable Law.

“Accrued Interest” means interest accrued in accordance with the AFI Global Accounting Policy #2255 whereby interest is accrued up to the date the Whole Loan is classified as 60 days delinquent or, in the case the Whole Loan was previously modified, has had a sustained period of repayment performance of at least six months by the borrower.

“Adjustment Amount” has the meaning specified in Section 3.2(b).

“Adjustment Report” has the meaning specified in Section 3.2(d).

“Advances” means, with respect to each Mortgage Loan, the aggregate outstanding amount that, as of any date of determination, has been advanced directly by Sellers from their own funds or from funds advanced under any loan facility in connection with servicing of such Mortgage Loans in accordance with Acceptable Servicing Procedures solely with respect to Taxes, insurance premiums and corporate advances as permitted by Applicable Requirements, including in each case the right to reimbursement for, and enforce payment of, such Advances. For the avoidance of doubt, “Advances” shall not include (i) any HELOC draws and (ii) any advances of, or on account of, principal and interest.

“Affiliate” means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, the term “control” of a Person means the possession, direct or indirect, of the power to (i) vote 20% or more of the voting securities of such Person or (ii) direct or cause the direction of the management and policies of such Person, whether by Contract or otherwise, and the terms and phrases “controlling,” “controlled by” and “under common control with” have correlative meanings. Notwithstanding the foregoing, for purposes of this Agreement, unless otherwise specifically provided, Affiliates of Sellers include only direct or indirect Subsidiaries of ResCap, and other Affiliates of Purchaser are excluded from the definition of Sellers’ Affiliates and references to Affiliates of Purchaser exclude Sellers and their Affiliates.

“Affiliate Purchased Assets” has the meaning specified in Section 2.4(a).

“Affiliate Seller” has the meaning specified in Section 2.4(a).

“Agency” means a government-sponsored secondary mortgage market enterprise or Government Entity acquiring, owning or guaranteeing Mortgage Loans, including for purposes of this Agreement, Fannie Mae, Ginnie Mae, Freddie Mac, FHA and HUD.

“Agreement” or “this Agreement” means this Asset Purchase Agreement, together with the Exhibits, Schedules and Disclosure Memorandum attached hereto, as any of them may be amended from time to time.

“Allocation Schedule” has the meaning specified in Section 3.3(a).

“ALTA” means the American Land Title Association or any successor thereto.

“Alternative Restructuring” means a proposal or offer for a chapter 11 plan or other restructuring transaction which Sellers and their respective Boards of Directors have determined in good faith constitutes a proposal that is reasonably likely to be more favorable to Sellers’ estates, their creditors and other parties to whom Sellers owe fiduciary duties than the Chapter 11 Plan.

“Amended Disclosure Memorandum” has the meaning specified in Section 6.11(b).

“Ancillary Agreements” has the meaning specified in Section 2.8.

“Antitrust Authority” has the meaning specified in Section 6.13(b).

“Applicable Law” means, as of the time of reference and as applicable, any Law that is applicable to the Purchased Assets.

“Applicable Requirements” means and includes, as of the time of reference, with respect to the origination, purchase, sale and servicing of Mortgage Loans, (in each case to the extent applicable to any particular Mortgage Loan): (i) contractual obligations of Sellers (except those rendered unenforceable by the Bankruptcy Code), including with respect to any Mortgage Loan Document or any other commitment or other contractual obligation relating to a Mortgage Loan, (ii) Applicable Laws, (iii) other applicable requirements and guidelines of any Government Entity and (iv) applicable requirements of MERS.

“April Collateral Exceptions Report” means the collateral exceptions report prepared by Sellers’ custodians in April 2012 and most recently updated as of May 6, 2012, with respect to each Whole Loan included in the Purchased Assets hereunder, identifying on the “Custodial Exceptions” tabs of such report which of the Mortgage Loan Documents are not in its possession, to the extent applicable, or have document deficiencies. No Seller shall have any obligation to deliver any documents included in the April Collateral Exceptions Report or cure any document deficiencies identified in the April Collateral Exceptions Report.

“Auction” has the meaning specified in the Sale Procedures Order.

“Bankruptcy Case” has the meaning specified in the preamble.

“Bankruptcy Code” has the meaning specified in the preamble.

“Bankruptcy Court” has the meaning specified in the preamble.

“Bankruptcy Exceptions” means (i) as a result of Sellers operating as debtors in possession under the Bankruptcy Code, (a) Sellers’ inability to maintain the services of their officers or other employees, including the possibility that a substantial number of Sellers’ employees have left, or will leave, their positions, and (b) vendors and counterparties of Sellers failing to continue to perform their obligations to Sellers, and (ii) any limitation or obligation imposed on Sellers by Order of the Bankruptcy Court or the DIP Financing Agreements.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure.

“Bill of Sale” means one or more bills of sale to be executed by Sellers and Purchaser in respect of certain Purchased Assets, in a customary form as mutually agreed between Sellers and Purchaser.

“Business Day” means any day of the year, other than any Saturday, Sunday or any day on which banks located in New York, New York generally are closed for business.

“Chapter 11 Plan” shall mean the Chapter 11 plan of reorganization, in form and substance in accordance with the terms set forth in Schedule 6.12(f) and otherwise satisfactory to Sellers and Purchaser, which shall be confirmed by the Bankruptcy Court in accordance with section 1129 of the Bankruptcy Code.

“Chapter 11 Plan Effective Date” shall mean the date upon which all the conditions to effectiveness of the Chapter 11 Plan shall have been satisfied or waived and the transactions contemplated hereunder shall have been substantially consummated.

“Claims” means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, known or unknown.

“Closing” has the meaning specified in Section 2.7.

“Closing Collateral Exceptions Report” means the collateral exceptions report generated by Sellers’ custodians upon Sellers’ request and at Purchaser’s expense, with respect to each Whole Loan included in the Purchased Assets hereunder, identifying on the “Custodial Exceptions” tabs of such report which of the Mortgage Loan Documents are not in Sellers’ possession, to the extent applicable, or have document deficiencies. No Seller shall have any obligation to deliver any documents included in the Closing Collateral Exceptions Report or cure any document deficiencies identified in the Closing Collateral Exceptions Report.

“Closing Date” means the date upon which the Closing occurs.

“Closing Date Mortgage Loan Schedule” has the meaning specified in Section 4.5.

“Closing Date Purchase Price” has the meaning specified in Section 3.2(a).

“Collateral Exceptions Report” means the April Collateral Exceptions Report or the Closing Collateral Exceptions Report, as applicable.

“Competing Transaction” has the meaning specified in Section 7.1.

“Confidential Information” has the meaning specified in Section 6.15(a).

“Confirmation Order” means the order of the Bankruptcy Court confirming the Chapter 11 Plan in accordance with section 1129 of the Bankruptcy Code.

“Consent” means the Permits, authorizations, consents, waivers, approvals and licenses from third parties or Government Entities necessary to consummate this Agreement and the transactions contemplated hereby and for Purchaser to hold the Purchased Assets after the Closing.

“Consent Order” means the Consent Order entered into on April 13, 2011, by and among the FDIC, the FRB and Parent, Ally Bank, ResCap and GMAC Mortgage.

“Consumer Privacy Ombudsperson” has the meaning specified in Section 2.11.

“Contract” means any agreement, consensual obligation, promise, understanding, arrangement, commitment or undertaking of any nature (whether written or oral and whether express or implied), including leases, subleases, licenses, sublicenses, purchase orders, indentures and loan agreements (other than this Agreement and the Ancillary Agreements) (including each amendment, extension, exhibit, attachment, addendum, appendix, statement of work, change order and any other similar instrument or document relating thereto).

“Credit File” means with respect to any Mortgage Loan, a file pertaining to such Mortgage Loan that contains, if available, the documents described on Schedule B hereto, together with the credit documentation relating to the origination of such Mortgage Loan which may be maintained on microfilm, optical storage or any other comparable medium.

“Cut-off Date” means the last day of the month immediately preceding the month of the expected Closing Date or such other date as Purchaser and Sellers may agree.

“Cut-off Date Mortgage Loan Schedule” has the meaning specified in Section 4.5.

“Cut-off Date Purchase Price” has the meaning specified in Section 3.1(d).

“Determination” has the meaning specified in Section 3.3(a).

“DIP Financing Agreements” means the Debtor-in-Possession Loan and Security Agreements identified on Schedule C hereto, as such agreements may be amended from time to time.

“DIP Borrowers” means GMACM Borrower LLC, a wholly owned subsidiary of GMAC Mortgage, and RFC Borrower LLC, a wholly owned subsidiary of RFC.

“Disclosure Memorandum” has the meaning specified in Section 6.11(a).

“Disclosure Statement” has the meaning specified in Section 6.12(d).

“Dispute Notice” has the meaning specified in Section 3.2(c).

“DOJ/AG Settlement” means the Consent Judgment filed with the U.S. District Court for the District of Columbia on March 12, 2012 to which Parent, ResCap and GMAC Mortgage are parties.

“Electronic Data File” means test tape(s), sale tape(s) and/or transfer tape(s) containing Mortgage Loan information delivered or to be delivered by Sellers to Purchaser in connection with the transfer of the Whole Loans contemplated hereby.

“Enforceability Exceptions” has the meaning specified in Section 4.1.

“Escrow Payments” means the aggregate amount of the escrows for real estate taxes, insurance, private mortgage insurance, and other payments required to be escrowed by the Mortgagor with the mortgage pursuant to any Mortgage Loan.

“Excluded Assets” has the meaning specified in Section 2.2.

“Fannie Mae” means Fannie Mae, formerly known as The Federal National Mortgage Association, or any successor thereto.

“FDIC” means the Federal Deposit Insurance Corporation or any successor thereto.

“Fed Funds Rate” means, for any date, the weighted average of the rates set forth in the weekly statistical release H.15(519) (or any successor publication) published by the Board of Governors of the Federal Reserve System opposite the caption “Federal Funds (Effective).”

“FHA” means the Federal Housing Administration of HUD, or any successor thereto.

“FHA Loans” means mortgages insured by the FHA.

“Final Order” means an Order (i) as to which the time to appeal, petition for certiorari or move for review or rehearing has expired and as to which no appeal, petition for certiorari or other proceeding for review or rehearing is pending, or (ii) if an appeal, writ of certiorari, reargument or rehearing has been filed or sought, the Order has been affirmed by the highest court to which such Order was appealed or certiorari has been denied, or reargument or rehearing shall have been denied or resulted in no modification of such Order and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired; provided, that the theoretical possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, as amended, or any successor rules, may be filed with respect to such order or judgment shall not prevent such Order from being considered a Final Order.

“FRB” means the Board of Governors of the Federal Reserve System.

“Freddie Mac” means Freddie Mac, formerly known as The Federal Home Loan Mortgage Corporation, or any successor thereto.

“GAAP” means United States generally accepted accounting principles, applied on a consistent basis.

“Ginnie Mae” means the Government National Mortgage Association, a body corporate organized and existing under the laws of the United States of America within HUD, or any successor thereto.

“GMAC Mortgage” has the meaning specified in the preamble.

“Government Entity” means any United States federal, state or local, or any supranational, court, judicial or arbitral body, administrative or regulatory body or other governmental or quasi-Government Entity with competent jurisdiction (including any political or other subdivision thereof), including the Agencies, the FHA, HUD, the VA, the FRB, the FDIC, the IRS, any state agency and any Antitrust Authority.

“Guaranteed Obligations” has the meaning specified in Section 10.15.

“HAMP” means the Treasury Department’s Home Affordable Modification Program established in connection with the “Making Home Affordable” loan modification program, as in effect from time to time.

“HARP” means the Treasury Department’s Home Affordable Refinance Program established in connection with the “Making Home Affordable” loan modification program, as in effect from time to time.

“HASP” means the Treasury Department’s Homeowner Affordability and Stability Plan established in connection with the “Making Home Affordable” loan modification program, as in effect from time to time.

“HELOC” means a Mortgage Loan that is a home equity line of credit.

“Homes Act” means the Helping Families Save Their Homes Act of 2009, as amended.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“HUD” means the Department of Housing and Urban Development of the United States of America.

“Indebtedness” means (i) all indebtedness for borrowed money or for the deferred purchase price of property or services (other than current trade Liabilities incurred in the Ordinary Course of Business and payable in accordance with customary practices), (ii) any other indebtedness that is evidenced by a note, bond, debenture or similar instrument, (iii) liabilities under or in connection with letters of credit or bankers’ acceptances or similar items, (iv) all obligations under financing leases, (v) all Liabilities secured by any Lien on any property, and (vi) all guarantee obligations.

“Independent Accounting Firm” means a nationally recognized independent accounting firm mutually chosen by Purchaser and ResCap.

“Insurance Policy” means (i) any private mortgage insurance or commitment of any private mortgage insurer to insure, (ii) any title insurance policy, (iii) any hazard insurance policy, (iv) any flood insurance policy, (v) any fidelity bond, direct surety bond, or errors and omissions insurance policy required by private mortgage insurers, (vi) any surety bonds required by state banking authorities for licensing purposes or (vii) any surety or guaranty agreement.

“Insurer” means an issuer of an Insurance Policy.

“IRS” means the Internal Revenue Service.

“Knowledge of Sellers” concerning a particular subject, the affairs of any Seller or the Purchased Assets, means the actual knowledge of any individual listed on Schedule D hereto.

“Law” means any law, statute, ordinance, rule, regulation, code, Order, Permit, or other legal requirement enacted, issued, promulgated, enforced, or entered by a Government Entity.



“Liabilities” means any and all Indebtedness, liabilities, costs, Losses, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability), and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

“Licenses” means the Permits required by Law or an Agency or other Government Entity in order to hold the Purchased Assets.

“Lien” means any lien, charge, pledge, deed of trust, right of first refusal, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, option, proxy, hypothecation, voting trust agreement, transfer restriction, easement, servitude, encroachment, or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).

“Loss” or “Losses” means any and all damages, losses, actions, proceedings, causes of action, Liabilities, claims, Liens, penalties, fines, demands, Taxes, assessments, awards, judgments, settlements, costs and expenses, including (i) court costs and similar costs of litigation; (ii) reasonable attorneys’ and consultants’ fees, including those incurred in connection with (a) investigating or attempting to avoid the matter giving rise to the Losses or (b) successfully establishing a valid right to indemnification for Losses; and (iii) interest awarded as part of a judgment or settlement, if any, but in any event “Loss” or “Losses” shall exclude punitive damages claimed, incurred or suffered by any Person (which exclusion does not include any such damages for which such Person is liable to a third party as a direct, out-of-pocket cost of such Person).

“Master Servicing Rights” means any and all rights of a Seller to master service the Mortgage Loans and to monitor the performance of the primary servicers, including to the extent applicable any and all rights of a Seller to the following: (a) any payments or monies received as compensation for master servicing the Mortgage Loans; (b) collection of any late fees, penalties or similar payments with respect to the Mortgage Loans; (c) administration and maintenance of all agreements or documents creating, defining or evidencing any such master servicing rights of the related Seller thereunder; (d) maintenance of all accounts and other rights to payment related to any of the property described in this paragraph; and (e) administration and maintenance of any and all documents, files, records, servicing files, servicing documents, servicing records, data tapes, computer records, or other information pertaining to the applicable Mortgage Loans.

“Material Adverse Effect” means any condition, circumstance, event, state of facts, change or effect that is materially adverse to the Purchased Assets or to Sellers’ ability to effect the transactions contemplated herein or to perform their obligations under this Agreement and the Ancillary Agreements; provided, that, for purposes of this Agreement, a Material Adverse Effect shall not include any condition, circumstance, event, state of facts, change or effect to the Purchased Assets resulting from (i) conditions, circumstances, events or changes to the housing or mortgage market or the mortgage servicing industry; (ii) the announcement or disclosure of the transactions contemplated herein, (iii) general economic, regulatory or political conditions or changes in the United States; (iv) military action or acts of terrorism; (v) changes in Law or

changes in GAAP or in the application of GAAP that become effective after the date hereof that Sellers are required to adopt in accordance therewith; (vi) actions taken or not taken, in each case, at the request of Purchaser; (vii) conditions in or changes to any financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or market index); (viii) changes in or with respect to any of the Agencies, including in their legal organization, responsibilities, oversight obligations or roles in the mortgage loan and securities markets; or (ix) any effects on the Purchased Assets resulting from the fact that Sellers will be operating as debtors-in-possession under the Bankruptcy Code; and provided, further, that, in the case of each of clauses (i), (iii), (iv), (v) and (vii), the Purchased Assets are not, or not reasonably likely to be, materially disproportionately affected by such condition, circumstance, event, state of facts, change or effect compared to similar assets of other Persons engaged in the conduct of similar businesses.

“MERS” means the Mortgage Electronic Registration System maintained by Merscorp Holdings, Inc.

“MERS Loan” means any Mortgage Loan registered on the MERS system for which MERS is listed as the record mortgagee or beneficiary on the related mortgage or assignment thereof.

“MIN” means the mortgage identification number issued to each MERS Loan.

“MOM Loan” means any Mortgage Loan that was registered on the MERS system at the time of origination thereof and for which MERS appears as the record mortgagee or beneficiary on the related mortgage.

“Mortgage File” means, with respect to any Mortgage Loan, a file pertaining to such Mortgage Loan that contains each of the Mortgage Loan Documents except as specified in any applicable Collateral Exceptions Report.

“Mortgage Loan” means any U.S. individual residential (one-to-four family) mortgage loan or other extension of credit secured by a Lien on U.S. real property of a borrower originated, purchased or serviced by a Seller or any Affiliate Seller (which may be a charged-off Mortgage Loan or the receivable with respect to a funded HELOC advance).

“Mortgage Loan Documents” means, for any Mortgage Loan:

(A) either:

(i) the original Mortgage Note, endorsed (on the Mortgage Note or an allonge attached thereto) “Pay to the order of \_\_\_\_\_ without recourse,” and signed by facsimile signature in the name of the last holder of record by an authorized officer; or

(ii) a copy of the Mortgage Note (endorsed as provided above) together with a lost note affidavit and indemnity, bearing all intervening endorsements, to the extent of any such endorsements, from the original payee to

an endorsement in blank, and if previously endorsed, signed in the name of the last endorsee by a duly qualified officer of the last endorsee;

(B) the original mortgage, with evidence of recording thereon (and, in the case of a MOM Loan, with evidence of the MIN); provided, that (A) if the original mortgage has been delivered for recording to the public recording office of the jurisdiction in which the Mortgaged Property is located but has not yet been returned to the applicable Seller by such recording office, such Seller shall (i) provide to Purchaser a copy of the mortgage, and (ii) as soon as the original mortgage becomes available, deliver to Purchaser the original of such mortgage, with evidence of recording thereon, and (B) if such original mortgage is not available, has been lost or if such public recording office retains the original recorded mortgage, such Seller shall deliver or cause to be delivered to Purchaser a photocopy of such mortgage with the recording information included on such copy, certified by such Seller to be a copy of the original recorded mortgage;

(C) unless such Mortgage Loan is a MERS Loan, the original assignment of the mortgage, from the applicable Seller signed by original signature of an authorized officer, in blank, which assignment shall be in form and substance acceptable for recording (except for the insertion of the names of the assignee and the recording information);

(D) unless such Mortgage Loan is a MOM Loan, originals or copies of all recorded intervening assignments of the mortgage; provided, that (A) if any original intervening assignment of the mortgage has been delivered for recording to the appropriate public recording office of the jurisdiction in which the Mortgaged Property is located but has not yet been returned to the applicable Seller by such recording office, such Seller shall deliver to Purchaser such original intervening assignment of the mortgage, with evidence of recording thereon, if and when such assignment of the mortgage becomes available, and (B) if such intervening assignment of the mortgage is not available or if such public recording office retains the original recorded intervening assignment of the mortgage, a Seller may deliver a photocopy of such intervening assignment of the mortgage showing evidence of recordation;

(E) the originals of all assumption, modification, consolidation or extension agreements, with evidence of recording thereon, if any, or if such assumption, modification, consolidation or extension agreements are not available, a copy of such assumption, modification, consolidation or extension agreements; and

(F) the original copy of the original lender's title insurance policy in the form of an ALTA mortgage title insurance policy and insuring Purchaser and its successors and assigns as to the first priority lien of the mortgage in the original principal amount of the Mortgage Loan or, if the original lender's title insurance policy has not been issued, the commitment to issue the same; provided, that this subsection (F) shall not apply to second lien Mortgage Loans.

"Mortgage Loan Schedule" has the meaning specified in Section 4.5.

“Mortgage Note” means, with respect to a Mortgage Loan, a promissory note or notes, a loan agreement or other evidence of Indebtedness with respect to such Mortgage Loan, secured by a mortgage or mortgages or a deed or deeds of trust, together with any assignment, reinstatement, extension, endorsement or modification thereof.

“Mortgage Securities” means the trading/financing securities to be included in the Purchased Assets, which are identified on Schedule E hereto.

“Mortgage Securities Purchase Price Percentage” means 0.8194%.

“Mortgaged Property” means the real property securing repayment of the Indebtedness evidenced by a Mortgage Note pursuant to a related Mortgage Loan.

“Mortgagor” means the obligor on a Mortgage Note, the owner of the Mortgaged Property and the grantor or mortgagor named in the related mortgage and such grantor’s or mortgagor’s successors in title to the Mortgaged Property.

“Nationstar” means Nationstar Mortgage LLC.

“Necessary Consent” has the meaning specified in Section 2.5.

“Non-performing” means, with respect to any Mortgage Loan as of any date of determination, that (a) such Mortgage Loan is 30 or more days past due with respect to a scheduled payment of principal and interest, or (b) there exists an event of default under the terms of the related Mortgage Note or mortgage.

“Order” means, with respect to any Person, any award, decision, injunction, judgment, stipulation, order, ruling, subpoena, writ, decree, consent decree or verdict entered, issued, made or rendered by any Government Entity affecting such Person or any of its properties.

“Ordinary Course of Business” means the ordinary course of business of Sellers during the six months immediately preceding the date of this Agreement as modified from time to time in order to comply with the Consent Order, the DOJ/AG Settlement and any other change required by any Government Entity or MERS, and, from and after the Petition Date, in accordance with the budget contemplated by the DIP Financing Agreements.

“Performing” means, with respect to any Mortgage Loan as of any date of determination, such Mortgage Loan is current or fewer than 30 days past due with respect to a scheduled payment of principal and interest.

“Permits” means permits, concessions, grants, franchises, licenses, variances, exemptions, exceptions, clearances, registrations, qualifications, filings and other authorizations and approvals required or issued by any Government Entity and related to the Purchased Assets.

“Permitted Liens” means (i) statutory liens for current Taxes, assessments or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings or the making of appropriate demands, notices or filings; provided, that an appropriate reserve is established therefor against the

carrying amount of the related assets; (ii) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the Ordinary Course of Business and the amount or validity of which is being contested in good faith by appropriate proceedings or the making of appropriate demands, notices or filings; provided, that an appropriate reserve is established therefor against the carrying amount of the related assets; and (iii) Liens that will be and are discharged or released either prior to, or simultaneously with the Closing; provided, that, except in the case of clause (i), such exceptions (a) do not render title to the property encumbered thereby unmarketable and (b) do not, individually or in the aggregate, materially detract from the value or use of such property for its current purposes.

"Person" means a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Government Entity or other entity or organization.

"Petition Date" means the date on which the Petitions in respect of the Bankruptcy Case are filed with the Bankruptcy Court.

"Petitions" has the meaning specified in the preamble.

"Primary APA" means that certain Asset Purchase Agreement, dated as of the date hereof, between Sellers, on the one hand, and Nationstar or another Winning Bidder that is acceptable to Sellers, on the other hand.

"Primary Servicing Rights" means any and all rights of a Seller to service the Mortgage Loans, including to the extent applicable any and all rights of a Seller to the following: (a) any payments or monies received for servicing the Mortgage Loans; (b) any late fees, penalties or similar payments with respect to the Mortgage Loans; (c) all agreements or documents creating, defining or evidencing any such servicing rights to the extent they relate to such servicing rights and all rights of the related Seller thereunder; (d) Escrow Payments with respect to the Mortgage Loans and any amounts actually collected with respect thereto, subject to the rights of the related Mortgagor in such amounts; (e) all accounts and other rights to payment related to any of the property described in this paragraph; and (f) any and all documents, files, records, servicing files, servicing documents, servicing records, data tapes, computer records or other information pertaining to the Mortgage Loans or pertaining to the past, present or prospective servicing of the Mortgage Loans.

"Privileged Documents" has the meaning specified in Section 2.3.

"Purchase Price" has the meaning specified in Section 3.1(a).

"Purchase Price Adjustment Statement" has the meaning specified in Section 3.2(a).

"Purchase Price Document Deficiency Multiplier" means, for each Whole Loan Bucket, the multiplier to be applied to the Whole Loan Purchase Price Percentage for such Whole Loan Bucket based on the percentage of Mortgage Files in such Whole Loan Bucket determined to contain deficiencies (as set forth in the Closing Collateral Exceptions Report) as follows:

Percentage	Purchase Price
------------	----------------

<u>Deficient</u>	<u>Document Deficiency Multiplier</u>
< =6%	1.033
8%	1.029
10%	1.021
12%	1.013
15%	1.000
18%	0.979
20%	0.962
22%	0.948
> =24%	0.937

“Purchase Price Schedule” means Schedule F hereto which sets forth an example of the calculations to be made pursuant to Section 3.1 in order to calculate the Purchase Price as if calculated as of December 31, 2011.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchased Servicing Rights” means (i) with respect to Mortgage Loans indicated on the Mortgage Loan Schedule as being primary serviced by an SBO Servicer, the Master Servicing Rights, (ii) with respect to Mortgage Loans indicated on the Mortgage Loan Schedule as being primary serviced by a Seller, the Primary Servicing Rights and the Master Servicing Rights, and (iii) with respect to 41 Mortgage Loans as to which a Seller owns both the Primary Servicing Rights and the Master Servicing Rights, but which are indicated on the Mortgage Loan Schedule as being primary serviced by a third-party servicer on a subservicing basis, the Primary Servicing Rights and the Master Servicing Rights.

“Purchaser” has the meaning specified in the preamble.

“Report Request Date” has the meaning specified in Section 3.1(d).

“ResCap” has the meaning specified in the preamble.

“Retained Liabilities” means any and all Liabilities of any kind or nature whatsoever of a Seller or any of its Affiliates, including but not limited to any Liabilities relating to the origination or securitization of Mortgage Loans by Sellers or any Affiliate of Sellers, including repurchase obligations relating thereto.

“RFC” has the meaning specified in the preamble.

“Sale Approval Order” means a Final Order or Final Orders of the Bankruptcy Court issued pursuant to sections 105, 363, and 365 of the Bankruptcy Code, in substantially the form set forth in Exhibit 1 hereto, authorizing and approving, among other things, (i) the sale, transfer and assignment of the Purchased Assets to Purchaser in accordance with the terms and conditions of this Agreement, free and clear of all Claims and Liens and (ii) that Purchaser is a

good faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code. References to the “Sale Approval Order” in this Agreement shall be deemed to include the Confirmation Order provided (1) the Confirmation Order has been entered by the Bankruptcy Court by October 31, 2012, (2) the Chapter 11 Plan Effective Date has occurred by December 15, 2012, (3) the provisions of the Confirmation Order are reasonably acceptable to Purchaser, (4) the Confirmation Order has become a Final Order by December 15, 2012 and (5) Purchaser and Sellers agree, in their reasonable judgment, that the Sale Approval Order should be incorporated into the Confirmation Order.

“Sale Hearing” has the meaning specified in the Sale Procedures Order.

“Sale Motion” means the motion filed by Sellers with the Bankruptcy Court for the approval of the Sale Procedures Order and the Sale Approval Order, in form and substance reasonably satisfactory to Purchaser, Parent and Sellers.

“Sale Procedures” means the Sale Procedures substantially in the form set forth in Exhibit 2, as such procedures may be amended and approved in the Sale Procedures Order and in form and substance reasonably satisfactory to Purchaser, Parent and Sellers.

“Sale Procedures Order” means a Final Order of the Bankruptcy Court, in the form set forth in Exhibit 3, with modifications, if any, to be in form and substance reasonably satisfactory to Purchaser that, among other things, approves the Sale Procedures and designates Purchaser as a “stalking horse bidder” for the Purchased Assets.

“SBO Loan” means a Mortgage Loan serviced by an SBO Servicer under an SBO Servicing Agreement.

“SBO Servicer” means the Person responsible for performing loan servicing functions with respect to a Mortgage Loan under an SBO Servicing Agreement.

“SBO Servicing Agreements” means the servicing agreements between any Seller, on the one hand, and any third-party servicer or subservicer, on the other hand.

“Section 363 Sale” means a sale process conducted by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code.

“Sellers” has the meaning specified in the preamble.

“Servicing File” means for each Mortgage Loan other than an SBO Loan, all loan documents and information (including any servicing tapes, images and conversion reports) received or obtained through the efforts of servicing the Mortgage Loan, which may be maintained on CD or DVD. To the extent available, each Servicing File shall contain: (a) documentation relating to any releases of collateral, (b) any correspondence between the current servicer of the mortgage and the Mortgagor, (c) payment history, (d) collection letters or form notices, and (e) foreclosure correspondence and legal notification. For the SBO Loans, the term “Servicing File” means only such copies of the foregoing documents as shall have been provided by the primary servicer and retained by the master servicing group of the applicable Seller.

“Subsidiary” means, with respect to any Person, any corporation or other organization, whether incorporated or unincorporated, of which (i) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries or (ii) such Person or any other Subsidiary of such Person is a general partner (excluding any such partnership where such Person or any Subsidiary of such Person does not have a majority of the voting interest in such partnership).

“Tax” or “Taxes” means all (i) taxes, charges, fees, duties, levies, penalties or other assessments imposed by any federal, state, local or foreign Government Entity, including income, gross receipts, excise, property, sales, gain, use, license, custom duty, unemployment, capital stock, transfer, franchise, payroll, withholding, social security, minimum estimated, profit, gift, severance, value added, disability, premium, recapture, credit, occupation, service, leasing, employment, stamp and other taxes, any amounts attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns, (ii) liability for the payment of any Taxes as a result of being or having been on or before the Closing Date a member of an affiliated, consolidated, combined or unitary group or other association, and (iii) any transferee or secondary Liability in respect of Taxes, and, in each case, any interest or penalty thereon or addition thereto, whether disputed or not.

“Tax Code” means the Internal Revenue Code of 1986, as amended.

“Tax Return” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto or amendment thereof.

“Third Party Servicing Agreement” means the servicing agreement to be executed by and between Purchaser and the Winning Bidder.

“Transaction Proceeds” mean the proceeds obtained by Sellers in connection with the payment of the Purchase Price pursuant to Article III hereof.

“Transfer Taxes” means any federal, state, county, local, foreign and other excise, sales, use, value added, transfer (including real property transfer or gains), conveyance, stamp, documentary transfer, filing, recording or other similar Tax, fee or charge, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, resulting directly from the transactions contemplated by this Agreement.

“UPB” means, with respect to each Mortgage Loan as of any date of determination, the unpaid principal balance of such Mortgage Loan as of the close of business on such date of determination, after deduction and application of all payments of principal received by such date of determination.

“VA” means the Department of Veteran Affairs of the United States of America, or any successor thereto.



“VA Loans” means mortgages guaranteed by the VA.

“Whole Loan Bucket” means each of the following categories of Whole Loans included in the Purchased Assets, calculated as set forth in the Purchase Price Schedule: Performing First Lien, Non-Performing First Lien, Performing Second Lien, Non-Performing Second Lien, Other and HELOC Advances.

“Whole Loan Purchase Price Percentage” means, for the Whole Loans in each Whole Loan Bucket included in the Purchased Assets, the following percentages with respect to a Chapter 11 Plan and a Section 363 Sale, respectively, which shall be adjusted by applying the applicable Purchase Price Document Deficiency Multiplier to reflect the percentage of Mortgage Files determined to be deficient based on the Closing Collateral Exceptions Report:

Whole Loan Bucket	Purchase Price Percentage with respect to a Chapter 11 Plan	Purchase Price Percentage with respect to a Section 363 Sale
Performing First Lien .....	49.20%	43.05%
Non-Performing First Lien .....	34.50%	30.1875%
Performing Second Lien.....	52.80%	46.20%
Non-Performing Second Lien.....	17.10%	14.9625%
Other .....	40.00%	35.00%
HELOC Advances .....	58.80%	51.45%

“Whole Loans” means the first and second lien Mortgage Loans, HELOCs and other Mortgage Loans owned by Sellers and intended to be purchased by Purchaser, and any collateral, insurance, guaranty or other credit support arrangement related thereto, as identified on the Mortgage Loan Schedule, the Cut-off Date Mortgage Loan Schedule or the Closing Date Mortgage Loan Schedule, as applicable.

“Winning Bidder” means Nationstar or any other winning bidder for substantially all of the assets of Sellers contemplated to be sold by Sellers substantially on the terms and conditions set forth in the Primary APA.

**Section 1.2 Interpretation.** For purposes of this Agreement:

(a) The headings preceding the text of Articles and Sections included in this Agreement are for convenience only and shall not be deemed part of this Agreement or be given any effect in interpreting this Agreement.

(b) The use of the masculine, feminine or neuter gender or the singular or plural form of words herein shall not limit any provision of this Agreement.

(c) The use of the terms “including” or “include” shall in all cases herein mean “including, without limitation” or “include, without limitation,” respectively.

(d) Reference to any Person includes such Person’s successors and assigns to the extent such successors and assigns are permitted by the terms of any applicable

agreement. Reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

(e) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(f) Underscored references to Articles, Sections, paragraphs, clauses or Exhibits shall refer to those portions of this Agreement. The use of the terms “hereunder,” “hereby,” “hereof,” “hereto” and words of similar import shall refer to this Agreement as a whole and not to any particular Article, Section, paragraph or clause of, or Schedule or Exhibit to, this Agreement.

(g) All references to amounts denominated in dollars shall mean U.S. dollars, except where specifically noted otherwise.

(h) Whenever any payment hereunder is to be paid in “cash,” payment shall be made in U.S. dollars and the method for payment shall be by wire transfer of immediately available funds.

(i) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(j) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(k) Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

## ARTICLE II.

### PURCHASE AND SALE OF ASSETS

**Section 2.1 Purchase and Sale of Assets.** On the terms and subject to the conditions set forth herein, at the Closing, Sellers shall sell, convey, transfer, assign and deliver (or cause to be sold, conveyed, transferred, assigned and delivered) to Purchaser, and Purchaser shall purchase from Sellers, all of Sellers’ right, title and interest in, to and under the following assets (collectively, the “Purchased Assets”), in each case free and clear of all Claims and Liens except

Permitted Liens, as approved for sale, transfer and assignment pursuant to the Sale Approval Order:

(a) the pool of Whole Loans, servicing released to the extent of the Purchased Servicing Rights (including any and all Primary Servicing Rights and Master Servicing Rights included in the Purchased Servicing Rights owned by a Seller), and the right to all payments of Accrued Interest, principal, penalties, fees, charges and other amounts received or receivable on or in respect of the Mortgage Loans after the Closing Date (except to the extent that an SBO Servicer is entitled to such amounts under an SBO Servicing Agreement), together with the Mortgage Files and the Credit Files, and any and all proceeds of the foregoing; provided, that HELOCs shall only be included in the Purchased Assets if the condition set forth in Section 8.3(d)(i) is satisfied or waived by Purchaser;

(b) the Mortgage Securities;

(c) the Advances as of the Closing Date;

(d) the Purchased Servicing Rights and the related Servicing Files;

(e) the causes of action, lawsuits, judgments, refunds, choses in action, rights of recovery, rights of set-off, rights of recoupment, demands and any other rights or Claims, including those indicated by the presence of a "litigation flag" or indicated to be in bankruptcy or active foreclosure on the Mortgage Loan Schedule, including all preference or avoidance claims and actions of any of the Sellers, in each case that are related to the Purchased Assets, including any such claims and actions arising under sections 544, 547, 548, 549, and 550 of the Bankruptcy Code (provided, that Sellers shall be entitled to participate in the defense of any counterclaim);

(f) all rights to receive mail and other communications addressed to Sellers that pertains to the Purchased Assets, including any mail and communications from any Person who holds any Whole Loan (or any interest therein), trustees, customers, suppliers, distributors and their respective representatives;

(g) to the extent transferable, all rights under insurance policies and insurance proceeds directly relating to Whole Loans serviced pursuant to any servicing agreement, and all escrow accounts and any other accounts related to the Purchased Assets and all funds and property credited thereto; and

(h) to the extent transferable, all guaranties, warranties, indemnities and similar rights in favor of any Seller or any Affiliate Seller to the extent related to any Purchased Asset.

**Section 2.2 Excluded Assets.** Notwithstanding anything herein to the contrary, Sellers will not sell, assign, convey, transfer or deliver to Purchaser, and Purchaser will not purchase, acquire or assume or take assignment or delivery of, any and all assets, Contracts or rights that are not expressly Purchased Assets, whether tangible, real, personal or mixed (collectively, the "Excluded Assets"). For the avoidance of doubt, the servicing rights of SBO

Servicers under the SBO Servicing Agreements are not the property of Sellers and are Excluded Assets.

**Section 2.3 Post-Closing Asset Deliveries.** If any Seller or Purchaser, in its reasonable discretion, determines after the Closing that any other materials or assets constituting Purchased Assets are still in the possession of such Seller or any Affiliate Seller, such Seller shall, or shall cause such Affiliate Seller to, promptly deliver them to Purchaser at no additional cost or expense to Purchaser. If any Seller or Purchaser, in its reasonable discretion, determines after the Closing that other materials or assets constituting Excluded Assets were delivered to Purchaser in error, Purchaser shall promptly return them to the applicable Seller at Sellers' sole cost and expense. In furtherance and not in limitation of the foregoing (and notwithstanding any provision in this Agreement to the contrary), each of Sellers and Purchaser acknowledges and agrees that it is neither Sellers' nor Purchaser's intention to sell, assign or transfer possession of any documents or communications of Sellers that are subject to Sellers' attorney-client privilege and/or the work-product immunity doctrine (the "Privileged Documents"). If it is discovered that any such Privileged Documents have been inadvertently or unintentionally turned over to Purchaser, Purchaser agrees, upon Sellers' request, to promptly turn over to Sellers or destroy such Privileged Documents, in each case at Sellers' sole cost and expense; provided, that (i) Purchaser shall in no way be obligated or responsible for reviewing, identifying or making a determination that any documents or communications in its possession are Privileged Documents and (ii) Purchaser shall not be obligated to take any actions under this Section 2.3 that may subject it to any liability or otherwise be in violation with any applicable Law.

**Section 2.4 Conveyance of Assets by Affiliate Sellers.**

(a) Notwithstanding anything to the contrary contained in this Agreement, if it is determined by Sellers and Purchaser before, at or after the Closing that any direct or indirect Subsidiary of ResCap (an "Affiliate Seller") owns or possesses any assets or properties that would be deemed to be Purchased Assets if such Affiliate Seller were a Seller under this Agreement (such assets and properties, the "Affiliate Purchased Assets"), then Sellers shall, upon Purchaser's request, promptly cause such Affiliate Seller to transfer, assign, convey and deliver to Purchaser such Affiliate Purchased Assets in accordance with the terms and conditions of this Agreement; provided, that Purchaser shall not be obligated to pay any additional amounts to Sellers in consideration for the transfer of such Affiliate Purchased Assets to Purchaser other than those amounts that Purchaser is obligated to pay to Sellers pursuant to Section 3.1.

(b) To the extent that any Affiliate Purchased Assets are transferred, assigned, conveyed and delivered by an Affiliate Seller to Purchaser pursuant to this Section 2.4, then each representation and warranty set forth in Article IV and each covenant in Article VI shall be deemed to be applicable to such Affiliate Seller as if such Affiliate Seller were a Seller and to such Affiliate Purchased Assets as if such Affiliate Purchased Assets were Purchased Assets.

**Section 2.5 Non-Assignable Purchased Assets; Necessary Consents.** Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not effect the assignment or transfer of any

Purchased Asset if an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “Necessary Consent”), would constitute a breach thereof or in any way adversely affect the rights of Purchaser thereunder unless the Bankruptcy Court has entered a Final Order (which may include the Sale Approval Order) whose effectiveness has not been stayed providing that (i) such Necessary Consent is not required or (ii) the Purchased Assets shall be assigned or transferred regardless of any such Necessary Consent and there shall be no breach or adverse effect on the rights of Purchaser thereunder for the failure to obtain any such Necessary Consent. As Purchaser may reasonably request, if the Bankruptcy Court has not entered such an Order, Sellers and Purchaser will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Purchaser. If any such Necessary Consent is not obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of any Seller thereunder so that Purchaser would not in fact receive all such rights, such Seller and Purchaser will cooperate in a mutually agreeable arrangement under which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including, to the extent that such an arrangement would be permitted by Law and the related Contract, subcontracting, sub-licensing or sub-leasing to Purchaser, or under which such Seller would enforce for the benefit of Purchaser, with Purchaser assuming such Seller’s obligations in accordance with this Agreement, any and all rights of such Seller against a third party thereto.

**Section 2.6 Retained Liabilities.** Sellers shall retain and be responsible for all Retained Liabilities and Purchaser shall not have any obligation of any nature or kind with respect thereto.

**Section 2.7 Closing.** Subject to the terms and conditions of this Agreement, the closing (the “Closing”) of the transactions contemplated hereby shall take place at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York 10104 on the second Business Day following the date on which the conditions set forth in Sections 8.1, 8.2 and 8.3 (other than those conditions that by their nature can be satisfied only at the Closing but subject to the fulfillment or waiver of those conditions) have been satisfied or waived but no earlier than 18 Business Days following the Cut-off Date nor, at Purchaser’s option, later than the last Business Day of the month in which such conditions are satisfied or waived, or at such other time and place as the parties hereto may mutually agree. At the Closing, Purchaser shall deliver the Purchase Price in accordance with Sections 2.9 and 3.1, the transfer of title to the Purchased Assets shall take place, and the appropriate parties shall take all actions required under Sections 2.8, 2.9 and 2.10 and all other actions not previously taken but required to be taken hereunder at or prior to the Closing Date. It is a condition of the Closing that all matters of payment and the execution and delivery of documents by any party to the others pursuant to the terms of this Agreement be concurrent requirements, and that nothing will be complete at the Closing until everything required as a condition precedent to the Closing has been paid, executed and delivered, as the case may be.

**Section 2.8 Ancillary Agreements.** At the Closing, Sellers shall duly execute and deliver to Purchaser, and Purchaser shall duly execute and deliver to Sellers, as applicable, each of the following agreements (the “Ancillary Agreements”):

- (a) Bills of Sale;
- (b) Transfer Tax forms, if applicable, in the form required by Law;
- (c) such other agreements as may be entered into between the parties in connection with this Agreement;
- (d) all instruments or documents necessary to change the names of the individuals who have access to or are authorized to make withdrawals from or dispositions of all escrow or other accounts related to the Purchased Assets; and
- (e) any other documents that may be required by the Sale Approval Order or pursuant to any other direction by the Bankruptcy Court to be effected on or prior to the Closing.

**Section 2.9 Deliveries by Purchaser.**

- (a) At the Closing, Purchaser shall deliver to Sellers the following:
  - (i) the Cut-off Date Purchase Price, in immediately available funds by wire transfer to an account or accounts designated by Sellers at least two Business Days prior to the Closing Date;
  - (ii) the certificate to be delivered pursuant to Section 8.2(c);
  - (iii) Ancillary Agreements duly executed by Purchaser; and
  - (iv) such other customary instruments of transfer and assumption and other instruments or documents, in form and substance reasonably acceptable to Sellers, as may be necessary to effectuate the assignment of the Purchased Assets or to give effect to this Agreement or any Ancillary Agreement.

**Section 2.10 Deliveries by Sellers.**

- (a) At the Closing, Sellers shall deliver, or cause to be delivered, to Purchaser the following:
  - (i) the certificates to be delivered pursuant to Section 8.3(c);
  - (ii) a receipt acknowledging payment of the Cut-off Date Purchase Price payable in accordance with Section 3.1(b);
  - (iii) affidavits of Sellers' non-foreign status, in form and substance reasonably satisfactory to Purchaser, that comply with Section 1445 of the Tax Code and the regulations thereunder;
  - (iv) Ancillary Agreements duly executed by the applicable Sellers;

(v) if the Confirmation Order is received, a certified copy of the Confirmation Order, which shall be a Final Order;

(vi) the Mortgage Files delivered pursuant to Section 6.16(a); provided, that if the Mortgage Files are in the possession of a custodian, Purchaser shall have received a trust receipt or similar document from such custodian acknowledging that such custodian holds the Mortgage Files for the benefit of Purchaser, and such custodian shall provide a copy of such trust receipt or similar document to Sellers; and

(vii) such other customary instruments of transfer and assumption and other instruments or documents, in form and substance reasonably acceptable to Purchaser, as may be necessary to effect this Agreement, including Sellers' assignment of the Purchased Assets to Purchaser (or its assignee), or as may be required to give effect to any Ancillary Agreement.

**Section 2.11 Consumer Privacy Matters.** The sale, if any, of customer lists, customer data and other consumer privacy information pursuant to this Agreement is subject to and shall conform to the recommendations of any consumer privacy ombudsperson that may be appointed pursuant to section 332 of the Bankruptcy Code (the "Consumer Privacy Ombudsperson") (to the extent that appointment of a Consumer Privacy Ombudsperson is determined to be necessary) in connection with the transactions contemplated in this Agreement.

**Section 2.12 "As Is, Where Is" Transaction.** Purchaser hereby acknowledges and agrees that, except as expressly set forth in this Agreement, Sellers make no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets. Without in any way limiting the foregoing, Sellers hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets. Purchaser further acknowledges that it is proceeding with its acquisition of the Purchased Assets, based solely upon its independent inspections and investigations and the representations and warranties herein and in the Ancillary Agreements. Accordingly, except as expressly set forth in this Agreement, Purchaser will accept the Purchased Assets on the Closing Date "AS IS" and "WHERE IS."

### ARTICLE III.

#### PURCHASE PRICE; ADJUSTMENT; ALLOCATION

##### Section 3.1 Purchase Price; Payment of Purchase Price.

(a) Subject to the terms and conditions of this Article III, as aggregate consideration for the Purchased Assets, Purchaser will pay an aggregate amount in cash (the "Purchase Price") on the Closing Date equal to:

(i) the product of (a) the sum, for each Whole Loan included in a Whole Loan Bucket (other than the Whole Loan Buckets related to HELOC Advances and Other), of the Whole Loan Purchase Price Percentage of the aggregate UPB of such Whole Loans included in such Whole Loan Buckets as of

the Cut-off Date, times (b) the applicable Purchase Price Document Deficiency Multiplier;

(ii) the sum, for each Whole Loan included in a Whole Loan Bucket related to the HELOC Advances and Other, of the Whole Loan Purchase Price Percentage of the aggregate UPB of such Whole Loans included in such Whole Loan Buckets as of the Cut-off Date; provided, that if the condition in Section 8.3(d)(i) is not satisfied or waived by Purchaser, then the Purchase Price shall be reduced by an amount equal to the sum, for each Whole Loan that is a HELOC Advance, of the Whole Loan Purchase Price Percentage applicable to such HELOC Advances of the aggregate UPB of such HELOC Advances as of the Cut-off Date;

(iii) for each Whole Loan, to the extent applicable, the aggregate amount of unpaid Accrued Interest as of the Cut-off Date; and

(iv) the Mortgage Securities Purchase Price Percentage of the aggregate UPB of the Mortgage Securities included in the Purchased Assets as of the Cut-off Date.

(b) As soon as reasonably practical following the Cut-off Date, but in no event later than 15 Business Days following the Cut-off Date (and, in any event, at least three Business Days prior to the Closing Date), Sellers shall deliver to Purchaser the Cut-off Date Mortgage Loan Schedule, prepared in good faith consistently with the preparation of the Mortgage Loan Schedule. The Cut-off Date Mortgage Loan Schedule shall be subject to approval by Purchaser, such approval not to be unreasonably withheld, conditioned or delayed.

(c) The April Collateral Exceptions Report has been delivered to Purchaser prior to the date hereof as document #16.8.2 in the data room established in connection with this Agreement. Sellers shall have the right, but not the obligation, to remedy any document deficiencies identified in the April Collateral Exceptions Report up to and including the Report Request Date.

(d) On the date that is twelve Business Days prior to the Closing Date, or such earlier date as the custodians shall require (the "Report Request Date"), Sellers shall instruct the custodians who prepared the April Collateral Exceptions Report to produce the Closing Collateral Exceptions Report and deliver it to Sellers and Purchaser as soon as reasonably practicable. Purchaser shall be responsible for all costs, expenses and fees incurred in connection with the production of the Closing Collateral Exceptions Report. Not less than five Business Days prior to the Closing Date, Sellers will provide Purchaser with a statement of Sellers' good faith calculation of the Purchase Price as of the Cut-off Date (the "Cut-off Date Purchase Price") prepared in a manner consistent with, and using the same principles, methodologies and policies as those set forth in, the Purchase Price Schedule. The Closing Collateral Exceptions Report and the calculation of the Cut-off Date Purchase Price shall be subject to approval by Purchaser, such approval not to be unreasonably withheld, conditioned or delayed.



### **Section 3.2 Purchase Price Adjustment; Final Payment.**

(a) Post-Closing Determination. As soon as reasonably practical following the Closing Date, but in no event later than 30 days following the Closing Date, Purchaser shall deliver to Sellers (i) the Closing Date Mortgage Loan Schedule and (ii) a statement (the “Purchase Price Adjustment Statement”) setting forth Purchaser’s calculation (prepared in a manner consistent with, and using the same principles, methodologies and policies as those set forth in, the Purchase Price Schedule) of the Purchase Price as of the Closing Date (the “Closing Date Purchase Price”). Sellers shall provide Purchaser and its representatives full cooperation, including full access to books, records and employees in connection with the preparation of the Purchase Price Adjustment Statement.

(b) Purchase Price True-up. Subject to Section 3.2(d), within 30 days of delivery of the Purchase Price Adjustment Statement (or within 15 days of the final determination of the Purchase Price in accordance with Section 3.2(d)), (i) if the Closing Date Purchase Price is less than the Cut-off Date Purchase Price, then Sellers shall pay to Purchaser an amount equal to such shortfall; and (ii) if the Closing Date Purchase Price is greater than the Cut-off Date Purchase Price, then Purchaser shall pay to Sellers an amount equal to such excess (in either event, the “Adjustment Amount”). The Adjustment Amount will (A) bear simple interest from the Closing Date to the date of payment at an interest rate equal to the Fed Funds Rate per annum as published in *The Wall Street Journal* as of the Closing Date and (B) be paid by wire transfer of immediately available funds to an account or accounts designated by the recipient thereof.

(c) Objections. Unless Sellers deliver written notice to Purchaser of an objection to all or a part of the Purchase Price Adjustment Statement (a “Dispute Notice”) prior to the expiration of the 30-day period provided in Section 3.2(b) above, the Purchase Price Adjustment Statement shall become binding in its entirety at the end of such 30-day period. The Dispute Notice shall set forth, in reasonable detail on a line-item by line-item basis, the basis for such dispute, the amounts involved and Sellers’ determination of the Purchase Price. If Sellers deliver a Dispute Notice to Purchaser within such period and the parties are unable to agree as to all issues in the Dispute Notice within the ten Business Day period immediately following the day after the Dispute Notice is received by Purchaser, then the Dispute Notice may be submitted by either Sellers or Purchaser to an Independent Accounting Firm to resolve the disputed items set forth therein in accordance with Section 3.2(d).

(d) Dispute Resolution. An Independent Accounting Firm shall conduct a review of the Dispute Notice and any supporting documentation submitted by either Purchaser or Sellers. The parties shall direct the Independent Accounting Firm to, as promptly as practicable and in no event later than 30 days following its receipt of the Dispute Notice, deliver to Sellers and Purchaser a report (the “Adjustment Report”) setting forth in reasonable detail the Independent Accounting Firm’s determination with respect to the issues specified in the Dispute Notice, and the revisions, if any, to be made to the Purchase Price Adjustment Statement together with supporting calculations. The

Independent Accounting Firm has no authority to review or raise items not expressly identified in the Dispute Notice. With respect to each disputed line item, such determination, if not in accordance with the position of either Sellers or Purchaser, shall not be in excess of the higher, nor less than the lower, of the amounts advocated by either Sellers or Purchaser in the Dispute Notice or the Purchase Price Adjustment Statement, respectively, with respect to such disputed line item. Such Adjustment Report and the revisions, if any, to be made to the Purchase Price Adjustment Statement shall be final and binding on the parties, absent arithmetical error, and shall be deemed a final arbitration award that is enforceable against each of the parties in any court of competent jurisdiction, and the Purchase Price shall be adjusted according to such Adjustment Report and paid in accordance with Section 3.2(b). The fees and expenses of the Independent Accounting Firm shall be borne 50% by Sellers and 50% by Purchaser.

### **Section 3.3 Allocation of the Purchase Price for Tax Purposes.**

(a) The Purchase Price shall be allocated among the Purchased Assets in accordance with Section 1060 of the Tax Code and the Treasury Regulations thereunder in a manner consistent with an allocation schedule (the "Allocation Schedule"), which Allocation Schedule shall be prepared by Purchaser and provided to Sellers for their review and the parties' mutual agreement within 90 days after the Closing Date. The parties shall cooperate reasonably in attempting to reach such a mutual agreement. If the Allocation Schedule is not mutually agreed upon within such period, the parties shall submit such dispute to an Independent Accounting Firm for a decision that shall be rendered in a timely manner in order to permit the timely filing of all applicable Tax forms. The Independent Accounting Firm's review shall be final and binding on the parties except as otherwise required by a "determination" within the meaning of Section 1313(a) of the Tax Code or similar provision of other Tax law (a "Determination"). The fees and expenses of the Independent Accounting Firm shall be borne 50% by Sellers and 50% by Purchaser.

(b) Each of Sellers and Purchaser shall (i) be bound by such allocation for purposes of determining Taxes (but not for any other purpose), (ii) prepare and file, and cause its Affiliates to prepare and file, its Tax Returns on a basis consistent with such allocation, and (iii) take no position, and cause its Affiliates to take no position, inconsistent with such allocation on any applicable Tax Return, except in each case as otherwise required by a Determination. If the allocation set forth on the Allocation Schedule is disputed by any Government Entity with taxing authority, the party receiving notice of such dispute shall promptly notify the other party hereto concerning the existence of, material developments regarding, and resolution of such dispute.

## **ARTICLE IV.**

### **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as disclosed to Purchaser by Sellers in the Disclosure Memorandum, Sellers jointly and severally represent and warrant to Purchaser, as of the date hereof and as of the Closing Date (except to the extent any such representations and warranties shall have been

expressly made as of a particular date, in which case such representations and warranties shall be made only as of such date), as follows:

**Section 4.1 Organization and Authority.** Each Seller is a legal entity duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and has all requisite corporate or other organizational power and authority to own, lease, hold and operate its properties and assets and to carry on its business as presently conducted. Each Seller has the corporate or other organizational power, authority and right to enter into and deliver this Agreement and the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder, and to complete the transactions contemplated hereby and thereby (subject to entry of the Sale Procedures Order, the Sale Approval Order and the Confirmation Order). The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and (subject to entry of the Sale Procedures Order, the Sale Approval Order and the Confirmation Order) validly authorized by all appropriate corporate or other organizational authority, and no other corporate or other organizational action on the part of any Seller is necessary to authorize the execution, delivery and performance by such Seller of this Agreement or any of the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby. This Agreement constitutes the valid and legally binding obligations of each Seller, enforceable against each Seller in accordance with its terms, except (i) as such enforceability may be limited by principles of public policy and subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar Laws of general applicability relating to or affecting creditor's rights or by general equity principles (the "Enforceability Exceptions"); (ii) that enforceability of the provisions hereof requiring consummation of the transactions contemplated hereby is subject to entry of the Sale Approval Order or any other Order by the Bankruptcy Court; and (iii) that enforceability of all other provisions hereof is subject to entry of the Sale Procedures Order, the Confirmation Order and any other action by the Bankruptcy Court. Each Ancillary Agreement, when required by this Agreement to be delivered to Purchaser, will be duly and validly executed and delivered by each Seller that will be a party thereto, and upon such execution and delivery (assuming such Ancillary Agreement constitutes a valid and binding obligation of each other party thereto) will constitute the legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its respective terms, subject to the Enforceability Exceptions.

**Section 4.2 Non-Contravention.** Assuming all Consents, declarations, filings or registrations set forth on Schedule 4.3 have been obtained or made, as applicable, and receipt of the Sale Approval Order and the Confirmation Order, the execution, delivery and performance of this Agreement and the Ancillary Agreement by Sellers and the consummation of the transactions contemplated hereby and thereby and the compliance by Sellers with the applicable terms and conditions hereof and thereof, do not and will not (a) conflict with or violate, result in a material breach or violation of or default (or an event which with notice or the passage of time or both would become a material breach or default) under, give rise to a right of termination, cancellation, acceleration of any material obligation or loss of any material benefit under (i) the organizational or governing documents of any Seller, (ii) any Law or Order applicable to Sellers, or (iii) any material terms, conditions or provisions of any SBO Servicing Agreement or (b) result in the creation of any Lien, other than Permitted Liens, on the Purchased Assets.

**Section 4.3 Consents and Approvals.** Upon entry of the Sale Approval Order and the Confirmation Order and the satisfaction of the conditions set forth therein, no material Consent of, or declaration, filing or registration with, any Government Entity or any other Person is required to be obtained or made, as applicable, by any Seller in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, except for (i) Consents, declarations, filings and registrations listed on Schedule 4.3 or (ii) the failure to have which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; provided, that Sellers are not making any representation with respect to any Consent, including Permits, or declarations, filings or registrations with, any Government Entity or any other Person that must be or may be made by Purchaser (as a result of facts and circumstances specific to Purchaser) in order to acquire the Purchased Assets.

**Section 4.4 Title to Assets.** Upon entry of the Sale Approval Order at the Closing, Sellers shall transfer to Purchaser good and valid title to the Purchased Assets free and clear of any Lien, other than Permitted Liens.

**Section 4.5 Mortgage Loan Portfolio.** Sellers have delivered to Purchaser Electronic Data Files dated as of March 31, 2012 that provide loan level information with respect to the Whole Loans, with the loan level fields being those described on Schedule 4.5 (collectively, the “Mortgage Loan Schedule,” which term includes, except where the context requires otherwise, updated data tapes to be prepared as of (i) the close of business on the day immediately preceding the Cut-off Date (the “Cut-off Date Mortgage Loan Schedule”), and (ii) the close of business on the day immediately preceding the Closing Date (the “Closing Date Mortgage Loan Schedule”), each to be delivered pursuant to Section 6.10). The information set forth in the Mortgage Loan Schedule is true, complete and correct in all material respects as of the date thereof and the information in each of the Cut-off Date Mortgage Loan Schedule and the Closing Date Mortgage Loan Schedule to be prepared and delivered to Purchaser in accordance with Section 6.10 will be true, complete and correct in all material respects as of their applicable dates.

**Section 4.6 [Reserved.]**

**Section 4.7 Litigation and Claims.** Except as listed on Section 4.7 of the Disclosure Memorandum or as may be ordered by the Bankruptcy Court, as of the date hereof, (i) there is no action, suit, demand, inquiry, proceeding, claim, cease and desist letter, hearing or investigation by or before any Government Entity pending, or, to the Knowledge of Sellers, threatened in respect of the Purchased Assets that could materially and adversely affect the ability of Sellers to complete the transactions contemplated by this Agreement, and (ii) no Purchased Asset is subject to any material Order.

**Section 4.8 Brokers, Finders and Financial Advisors.** Except for Centerview Partners LLC, whose fees will be paid by ResCap in the Bankruptcy Case, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers or any Affiliate Seller, or will be entitled to any brokers’ or finders’ fee or any other commission or similar fee from Sellers or any Affiliate Seller, in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

#### **Section 4.9 Whole Loans**

(a) Subject to the related Collateral Exception Reports, the Mortgage Loan Documents include customer information and originals or copies of all material documents (either in physical or electronic form) that are required in order to service such Whole Loan in accordance with Applicable Requirements.

(b) Except as set forth on the Mortgage Loan Schedule and the Closing Date Mortgage Loan Schedule, no payment of principal or interest is more than 60 days past due on any Whole Loan.

(c) Sellers are the sole owners and holders of each Whole Loan, and Sellers have full right and authority to sell and assign each Whole Loan to Purchaser pursuant to this Agreement. Except as set forth on Section 4.9(c) of the Disclosure Memorandum, the Whole Loans have not been assigned or pledged by any Seller (except for pledges or other grants of security interests which will be released on or prior to the Closing), and Sellers have good and marketable thereto.

(d) Each Whole Loan is genuine and constitutes the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its terms in all material respects, except as such enforcement may be limited by the Enforceability Exceptions.

(e) Except as set forth on Section 4.9(e) of the Disclosure Memorandum, for each Whole Loan that is a first lien residential mortgage loan on the applicable Mortgaged Property, including all improvements on such Mortgaged Property, such lien is subject only to (i) the Lien of current real property taxes and assessments, (ii) covenants, conditions, restrictions, rights of way, mineral right reservations, zoning and other land use restrictions, easements and other matters of public record as of the date of recording of the mortgage, (iii) any state of facts an accurate land survey of the Mortgaged Property might show, (iv) such exceptions appearing of record that are acceptable to mortgage lending institutions generally in the area where the Mortgaged Property is located or specifically reflected in any appraisal obtained in connection with the origination of the Whole Loan, and (v) other matters to which like properties are commonly subject that do not materially interfere with the benefits of the security intended to be provided by such mortgage.

(f) Except as set forth on Section 4.9(f) of the Disclosure Memorandum, for each Whole Loan that is a second lien residential mortgage loan on the applicable Mortgaged Property, including all improvements on such Mortgaged Property, such lien is subject only to (i) any first lien, (ii) the Lien of current real property taxes and assessments, (iii) covenants, conditions, restrictions, rights of way, mineral right reservations, zoning and other land use restrictions, easements and other matters of public record as of the date of recording of the mortgage, (iv) any state of facts an accurate land survey of the Mortgaged Property might show, (v) such exceptions appearing of record that are acceptable to mortgage lending institutions generally in the area where the Mortgaged Property is located or specifically reflected in any appraisal obtained in connection with the origination of the Whole Loan, and (vi) other matters to which like

properties are commonly subject that do not materially interfere with the benefits of the security intended to be provided by such mortgage.

(g) Except as set forth on Section 4.9(g) of the Disclosure Memorandum, no provision of any Whole Loan has been impaired, waived, altered or modified in any respect, except by written instrument that has been recorded, if required by Applicable Law or if necessary to maintain the lien priority of the Whole Loan, and that is included in the Mortgage Loan Documents relating to such Whole Loan.

(h) Each Whole Loan that is a first lien Mortgage Loan is covered by either an ALTA mortgage title insurance policy acceptable to Sellers and issued by a title insurer duly qualified to do business in the jurisdiction where the Mortgaged Property is located, or such other generally used and acceptable form of policy and applicable endorsements acceptable to prudent mortgage lending institutions making loans in the area where the Mortgaged Property is located.

(i) As of the date hereof and as of the Closing Date, no Whole Loan that is a first lien Mortgage Loan, has been satisfied, canceled or subordinated in whole or in part or rescinded (other than pursuant to a statutory right of rescission), and no Mortgaged Property has been released from the Lien of the related mortgage in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission.

(j) As of the date hereof and as of the Closing Date, no Whole Loan that is a second lien Mortgage Loan has been satisfied or canceled in whole or in part or rescinded (other than pursuant to a statutory right of rescission), and no Mortgaged Property has been released from the Lien of the related mortgage in whole or in part, nor has any instrument been executed that would effect any such release, cancellation or rescission.

(k) All improvements upon the Mortgaged Property pursuant to each Whole Loan are insured against loss by fire and such other hazards as are customary in the area where such Mortgaged Property is located, pursuant to insurance policies maintained by the Mortgagor or a blanket insurance policy maintained by Sellers or the applicable SBO Servicer.

(l) Except with respect to the Whole Loans listed in Section 4.9(l) of the Disclosure Memorandum, none of the Whole Loans provides for recourse to or against Sellers.

**Section 4.10 Mortgage Securities.** In connection with the sale and purchase of the Mortgage Securities hereunder, on the Closing Date Sellers shall convey to Purchaser (or, if applicable, its designee) all right, title and interest in the Mortgage Securities being delivered on the Closing Date free and clear of any and all Liens (including any counterclaim, defense or right of set off by or of the issuer of the Mortgage Securities). The transfer of the Mortgage Securities by Sellers to Purchaser shall not require or cause Purchaser to assume, and shall not subject Purchaser to, any obligation, Liability or commitment to lend additional funds, including any outstanding contingent commitment.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as disclosed to Sellers by Purchaser in writing on the date hereof, Purchaser represents and warrants to Sellers, as of the date hereof and as of the Closing Date (except to the extent any such representations and warranties shall have been expressly made as of a particular date, in which case such representations and warranties shall be made only as of such date), as follows:

**Section 5.1 Organization and Authority.** Purchaser has been duly incorporated, and is validly existing and in good standing under the Laws of its jurisdiction of incorporation, has all corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby, and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Agreement and the Ancillary Agreements. This Agreement has been, and the Ancillary Agreements to which it is a party will be, duly and validly executed and delivered by Purchaser and this Agreement constitutes, and each of the Ancillary Agreements to which it is a party will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

**Section 5.2 Non-Contravention.** The execution, delivery and performance of this Agreement and the Ancillary Agreements by Purchaser and the consummation of the transactions contemplated hereby and thereby and the compliance by Purchaser with the applicable terms and conditions hereof or thereof, do not and will not conflict with or violate, result in a material breach of or default (or an event which with notice or the passage of time or both would become a material breach or default) under, give rise to a right of termination, cancellation, acceleration of any material obligation or loss of any material benefit under (i) the organizational or governing documents of Purchaser or (ii) assuming all Consents, declarations, filings or registrations set forth on Schedule 5.3 have been obtained or made, as applicable, any Law or Order applicable to Purchaser.

**Section 5.3 Consents and Approvals.** No Consent of, or declaration, filing or registration with, any Government Entity or any other Person is required to be obtained or made, as applicable, by Purchaser in connection with the execution, delivery and performance of this Agreement and the Ancillary Agreements, or the consummation of the transactions contemplated by this Agreement or by any of the Ancillary Agreements, except for Consents, declarations, filings and registrations (i) listed on Schedule 5.3, or (ii) Consents, the failure to have which, individually or in the aggregate, would not reasonably be expected to materially impact the ability of Purchaser to consummate the transactions contemplated hereby and satisfy all its obligations hereunder.

**Section 5.4 Financing.** Purchaser has and will have, as of the Closing Date, all necessary financial resources available to consummate the transactions contemplated hereby.

**Section 5.5 Non-reliance.** Purchaser has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral (from or by Sellers, or any Person acting on their behalf) other than those expressly set out in this Agreement (or other related documents referred to herein) and acknowledges and agrees that, except for any fraud claim, it will not have any right or remedy rising out of any representation, warranty or other statement not expressly set out in this Agreement.

**Section 5.6 Brokers, Finders and Financial Advisors.** Except for Evercore Partners Inc., whose fees will be paid by Parent, no agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any brokers' or finder's fee or any other commission or similar fee in connection with the transactions contemplated hereby as a result of any action taken by Purchaser.

## ARTICLE VI.

### PRE-CLOSING MATTERS AND OTHER COVENANTS

**Section 6.1 Subsequent Actions; Further Assurances.** Subject to the Bankruptcy Exceptions, Sellers and Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements as promptly as practicable, including, (i) opposing any objections to, appeals from or petitions to reconsider or reopen any such approval by Persons not a party to this Agreement and (ii) obtaining any Final Orders approving the transactions contemplated by this Agreement or the Ancillary Agreements, if required. If at any time after the Closing, Purchaser shall consider or be advised that any assurances or any other actions or things are necessary or desirable (a) to vest, perfect or confirm ownership (of record or otherwise) in Purchaser, as applicable, its title or interest in the Purchased Assets or (b) otherwise to carry out this Agreement or the Ancillary Agreements, Sellers shall use commercially reasonable efforts to execute and deliver all bills of sale, instruments of conveyance, UCC filings, powers of attorney, assignments, assurances and orders and take and do all such other actions and things as may be reasonably requested by Purchaser, in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Purchased Assets.

**Section 6.2 Third Party Consents.** Sellers and Purchaser shall use commercially reasonable efforts to obtain, as soon as reasonably practicable, all Necessary Consents, including from Government Entities and Insurers; provided, that Purchaser shall not be required to agree to actions, conditions or restrictions that would materially impair the value to Purchaser of the Purchased Assets or have a materially adverse effect on the business of Purchaser or its Affiliates. Each party hereto shall promptly provide the other parties with copies of any communication, including any written objection, litigation or administrative proceeding that challenges the transactions contemplated hereby received by such party from any Government Entity or any other Person regarding transactions contemplated hereby.

**Section 6.3 Access to Information.** From and after the date of this Agreement until the Closing Date, Sellers shall afford to Purchaser and its accountants, counsel and other



representatives reasonable access, upon reasonable notice during normal business hours, to the Mortgage Files, Servicing Files and Credit Files for the Mortgage Loans and personnel with knowledge thereof; provided, that such access shall not unreasonably disrupt the business of Sellers and that nothing herein will obligate Sellers to violate any Applicable Law.

**Section 6.4 Records; Post-Closing Access to Information.**

(a) On and after the Closing Date, Sellers shall execute, deliver, file and record any specific assignment, novation or other document and take any other action that may be necessary, customary or desirable and reasonably requested by Purchaser in connection with Sellers' delivery of the Mortgage Securities.

(b) From and after the Closing Date, each party shall, and shall cause its Affiliates to, afford the other party and its counsel, accountants and other authorized representatives, with five Business Days' prior notice, reasonable access during normal business hours to the respective premises, properties, personnel, books and records and to any other assets or information, in each case relating to the Purchased Assets, that such other party reasonably deems necessary, including in connection with the Bankruptcy Case or any report or Tax Return required to be filed under applicable Law (but so as not to unduly disrupt the normal course of operations of Purchaser).

(c) If and for so long as any party hereto is contesting or defending against any third-party charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand, including in the Bankruptcy Case, in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction involving the Purchased Assets or the Excluded Assets and Retained Liabilities in any respect, each other party hereto shall (A) reasonably cooperate with and assist it and its counsel and other advisors in the contest or defense, (B) make available its personnel (including for purposes of fact finding, consultation, interviews, depositions and, if required, as witnesses) and (C) provide such information, testimony and access to its books and records, in each case as shall be reasonably requested in connection with the contest or defense, all at the sole cost and expense (not including employee compensation and benefits costs) of the contesting or defending party. For the avoidance of doubt, this Section 6.4(c) shall not apply with respect to disputes between the parties hereto.

(d) Purchaser agrees, at Sellers' cost and expense, to make available, at the reasonable request of Sellers, any books and records that may be included in the Purchased Assets to the extent they may relate to Excluded Assets and, if necessary, to provide such original books and records to any purchaser of such Excluded Assets and to retain only a copy thereof, subject to the delivery by such purchaser of a non-disclosure agreement as reasonably requested by Purchaser.

(e) Notwithstanding anything to the contrary in this Agreement, each of the parties will comply with federal and state laws and regulations regarding the

confidentiality and privacy relating to information collected and used in connection with the application for and processing and servicing of Mortgage Loans.

**Section 6.5 Interim Operations.** Sellers covenant and agree that, after the date hereof and prior to the Closing, subject to the Bankruptcy Exceptions and except as (i) set forth in Section 6.5 of the Disclosure Memorandum, (ii) expressly provided in or as a result of the consummation of this Agreement, (iii) provided in the DIP Financing Agreements, (iv) ordered by the Bankruptcy Court or (v) may be agreed in writing by Purchaser:

(a) Sellers' business relating to the Purchased Assets shall be conducted in the Ordinary Course of Business in compliance with the Applicable Requirements and Acceptable Servicing Procedures; provided, that notwithstanding the foregoing, Sellers shall not be obligated to fund any draws under HELOCs except in accordance with any motion approved by the Bankruptcy Court;

(b) Sellers and Affiliate Sellers shall service, or cause to be serviced, the Mortgage Loans in the Ordinary Course of Business and in accordance with all requirements of any Applicable Requirements and Acceptable Servicing Procedures. With respect to the Mortgage Loans, Sellers and Affiliate Sellers shall take no action, and refrain from taking action, which, in either case, would reasonably be expected to (i) impair the ability of Purchaser to realize on or enforce any Mortgage Note or the lien of the mortgage or any other document related thereto or (ii) jeopardize the rights or remedies available to Purchaser with respect to any Mortgage Loan or otherwise impair the ability of Purchaser to realize on the Mortgaged Property with respect to such Mortgage Loan. For the avoidance of doubt, nothing in this Agreement shall prevent Sellers from making payments to former mortgagors pursuant to the Consent Order or from offering, and effecting refinancing of or modifications to, Mortgage Loans as contemplated by the terms of the DOJ/AG Settlement, or by HAMP, HARP, HASP or any similar program that Sellers have or may develop in the Ordinary Course of Business; provided, that Sellers shall promptly provide copies to Purchaser of any reports provided to the settlement master under the DOJ/AG Settlement with respect to such agreements, arrangements and actions;

(c) Sellers and Affiliate Sellers shall not terminate or permit to lapse any material Permits that are necessary for the ownership or servicing of the Purchased Assets;

(d) Sellers and Affiliate Sellers shall not change its servicing or administration practices with respect to the Whole Loans or the Mortgage Securities in any material respect, except in the Ordinary Course of Business;

(e) With respect to any Purchased Asset, Sellers shall not, and shall use their best efforts to ensure that any Affiliates shall not: (i) agree to allow any form of relief from the automatic stay in the Bankruptcy Case; or (ii) fail to use commercially reasonable efforts to oppose any action by a third party to obtain relief from the automatic stay in the Bankruptcy Case;

(f) Sellers and Affiliate Sellers shall not take, or agree to or commit to take, any action that would or is reasonably likely to result in any of the conditions set forth in Article VIII, not being satisfied, or would make any representation or warranty of Sellers contained herein inaccurate in any material respect at, or as of any time prior to, the Closing Date or that would materially impair the ability of Sellers or Purchaser to consummate the Closing in accordance with the terms hereof or materially delay such consummation;

(g) With respect to clauses (a) through (f) (inclusive), Sellers and Affiliate Sellers shall not enter into any Contract to do any of the foregoing, or authorize, recommend, propose or announce an intention to do, any of the foregoing.

**Section 6.6 Mortgage Approvals and Licenses.** Promptly following execution of this Agreement, in each case to the extent not already obtained by Purchaser, Purchaser shall have filed or shall file all applications and use commercially reasonable efforts to (i) be approved (A) by HUD to hold FHA Loans and (B) by the VA to hold VA Loans, in each case to the extent necessary; (ii) obtain all necessary licenses in all states in which it proposes to hold the Purchased Assets; and (iii) obtain all other material Permits and Licenses that are necessary to hold the Purchased Assets. All such actions shall be at Purchaser's cost and expense, and Sellers shall cooperate with, and use commercially reasonable efforts to provide assistance to, Purchaser in all such efforts.

**Section 6.7 Notices of Certain Events.** From the date hereof until the Closing Date,

(a) A Seller shall promptly notify Purchaser of:

(i) any written notice or other written communication from any Person (including any notices or communications filed with the Bankruptcy Court other than notices or other written communications that provide for a copy to be provided to Purchaser) alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, or objecting to the consummation of any of the transactions contemplated by this Agreement;

(ii) any written notice or other written communication from any Government Entity in connection with the transactions contemplated by this Agreement;

(iii) any change or fact with respect to any of Sellers' representations, warranties or obligations hereunder of which Seller becomes aware that, with notice or lapse of time or both, will or is reasonably expected to result in a material breach by Sellers of this Agreement or otherwise result in any of the conditions set forth in Article VIII becoming incapable of being satisfied; or

(iv) any Material Adverse Effect (but without giving effect to clause (ix) of the definition of Material Adverse Effect).

(b) Purchaser shall promptly notify Sellers of

(i) any written notice or other written communication from any Person (other than notices or other written communications directed to Sellers or to the Bankruptcy Court, with a copy provided to Purchaser) alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, or objecting to the consummation of any of the transactions contemplated by this Agreement;

(ii) any written notice or other written communication from any Government Entity (other than notices or other written communications directed to Sellers or to the Bankruptcy Court, with a copy provided to Purchaser) in connection with the transactions contemplated by this Agreement; or

(iii) any change or fact with respect to any of Purchaser's representations, warranties or obligations hereunder of which it becomes aware that, with notice or lapse of time or both, will or is reasonably expected to result in a material breach by Purchaser of this Agreement or otherwise result in any of the conditions set forth in Article VIII becoming incapable of being satisfied.

No disclosure by any party hereto pursuant to this Section 6.7 shall be deemed to amend or supplement the Disclosure Memorandum with respect thereto or prevent or cure any misrepresentation or breach of warranty for purposes of this Agreement.

#### **Section 6.8 Tax Matters.**

(a) Purchaser shall pay and be responsible for all Transfer Taxes imposed in connection with the closings of the transactions contemplated hereby. Sellers and Purchaser shall cooperate to timely prepare, and Purchaser shall file or cause to be filed any returns or other filings relating to such Transfer Taxes (unless Sellers are required by applicable Law to file the return), including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes.

(b) Sellers and Purchaser shall cooperate with each other and furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information (including access to books and records) and assistance relating to the Purchased Assets as is reasonably requested for the preparation or filing of any Tax Returns and for the satisfaction of legitimate Tax or accounting requirements.

**Section 6.9 Insurance.** Purchaser and Sellers shall not take any action that may adversely affect the rights of the other with respect to any outstanding claims made or for new claims that may be made against insurance policies relating to the Purchased Assets purchased or maintained by Purchaser for the benefit of itself and its Subsidiaries and Affiliates that the other may or will have as of the Closing Date and shall use commercially reasonable efforts to cooperate with the other in the settlement or other resolution of such claims.

**Section 6.10 Mortgage Loan Schedules.** Sellers shall deliver to Purchaser (i) an updated version of the Mortgage Loan Schedule within 15 Business Days after the end of each month during the period from the date hereof to the Closing Date, and (ii) the Cut-off Date Mortgage Loan Schedule as provided in Section 3.1(b).

### **Section 6.11 Schedules and Disclosure Memorandum.**

(a) Concurrently with the execution and delivery of this Agreement, Sellers are delivering to Purchaser the Schedules to be provided by Sellers identified in the Table of Contents (the “Schedules”) and a disclosure memorandum (the “Disclosure Memorandum”) that sets forth all of the items that it deems to be necessary or appropriate (i) as an exception to a provision of this Agreement, (ii) in response to an express disclosure requirement contained in a provision hereof or (iii) as an exception to one or more representations or warranties contained in Article IV, as applicable, or to one or more of the covenants of Sellers contained in this Agreement; provided, that the mere inclusion of an item in the Schedules or Disclosure Memorandum as an exception to a provision or representation or warranty shall not be deemed an admission by any Seller or Purchaser, as applicable, that such item represents a material exception or event, state of facts, circumstance, development, change or effect or that such item would reasonably be expected to have or result in a Material Adverse Effect; and provided, further, that any disclosures or exceptions made with respect to a section or subsection of this Agreement shall be deemed to qualify not only the specific section(s) referenced but also such other sections or subsections that may be affected thereby to the extent the relevance of such disclosure or exception to such other sections or subsections is readily apparent on its face. In the event of an inconsistency between the statements in the body of this Agreement and those in the Schedules or Disclosure Memorandum, the statements in the Schedules or Disclosure Memorandum will control.

(b) Sellers and Purchaser agree that, with respect to Sellers’ representations and warranties contained in this Agreement, Sellers shall have the obligation until the Closing to correct, supplement or amend no later than five Business Days prior to the expected Closing Date the Disclosure Memorandum with respect to any matter arising or discovered after the date of this Agreement (whether or not existing or known at the date of this Agreement) that causes the representations and warranties of Sellers to be untrue or inaccurate in any material respect (as so amended, the “Amended Disclosure Memorandum”); provided, that until May 31, 2012, any such correction, supplement or amendment shall be taken into account when determining the accuracy, truth and correctness of the representations and warranties of Sellers for purposes of Article VIII, including the certificates to be delivered pursuant to Section 8.3(iii) except to the extent any such correction, supplement or amendment would reasonably be expected to result in a Material Adverse Effect, but thereafter, in no event shall any such correction, supplement or amendment be taken into account when determining the accuracy, truth and correctness of the representations and warranties of Sellers for purposes of Article VIII, including the certificates to be delivered pursuant to Section 8.3(c), except for the updates explicitly required by the representations set forth in Section 4.5 (which required updates shall only be taken into account when determining the accuracy, truth and correctness of such representations and warranties as of the Closing Date); and provided, further, that there is no obligation to update any representation that is as of a specified date.

### **Section 6.12 Bankruptcy Actions.**

(a) As soon as practicable, but not later than two Business Days after the date hereof, Sellers shall file Petitions for relief under Chapter 11 of the Bankruptcy Code. On the Petition Date, Sellers shall file, together with other customary “first day” motions, the Sale Motion with the Bankruptcy Court.

(b) Sellers shall, and Sellers shall cause all of their Subsidiaries to, comply with all of the obligations of Sellers under the Sale Procedures Order (after entry of such Order by the Bankruptcy Court) and the Sale Approval Order (after the entry of such Order by the Bankruptcy Court).

(c) Sellers shall use reasonable efforts to comply (or obtain an order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and Bankruptcy Rules in connection with obtaining approval of the transactions contemplated by this Agreement. Sellers shall serve on all required Persons in the Bankruptcy Case, including (i) all Persons who are known to possess or assert a Claim or Lien against or interest in any of the Purchased Assets, (ii) the IRS, (iii) all applicable state attorneys general, and local Government Entities, (iv) all applicable state and local Government Entities with taxing authority, (v) all other Persons required by any order of the Bankruptcy Court, and (vi) using their best efforts to serve any other Persons that Purchaser reasonably may request, any notice of the Sale Motion, the Sale Hearing, the Sale Procedures Order, the Sale Approval Order, and all objection deadlines in accordance with all applicable Bankruptcy Rules, the Sale Procedures Order, and any applicable local rules of the Bankruptcy Court.

(d) Sellers shall, no later than 45 days from the date of this Agreement, prepare and file with the Bankruptcy Court: (A) a Disclosure Statement with respect to the Chapter 11 Plan (the “Disclosure Statement”) and (B) the Chapter 11 Plan. The Chapter 11 Plan, any and all exhibits and attachments to the Chapter 11 Plan, the Disclosure Statement and the Orders approving the same (including the Confirmation Order), to the extent any of the foregoing impact the transactions contemplated under this Agreement, shall be in accordance with the terms set forth in Schedule 6.12(f) and reasonably acceptable in form and substance to Purchaser.

### **Section 6.13 Antitrust Clearances and Obligations.**

(a) Each of Purchaser and Sellers shall promptly after the date of this Agreement and in any event by July 1, 2012, prepare and file all notification and report forms required to be filed under the HSR Act with respect to the transactions contemplated by this Agreement, and request early termination of the waiting period under the HSR Act. Purchaser, on the one hand, and Sellers, on the other hand, shall be responsible for payment of their own fees and expenses incurred in connection with or relating to the review of the transactions contemplated hereby pursuant to the HSR Act or their efforts to consummate the transactions contemplated hereby pursuant to this Section 6.13, and shall each bear the cost of 50% of the applicable filing fee under the HSR Act.

(b) Each of Purchaser and Sellers shall (i) respond as promptly as practicable to any inquiries or requests for additional information or documentation received from

the Federal Trade Commission, the Department of Justice, any attorney general of any state of the United States, or any other antitrust or competition authority of any jurisdiction (“Antitrust Authority”); (ii) keep the other party reasonably informed of any communication received by such party from, or given by such party to, any Antitrust Authority regarding the transactions contemplated by this Agreement, and any communication received or given in connection with any proceeding by a private party regarding the transactions contemplated by this Agreement, in each case in a manner that protects attorney-client or attorney work product privilege; (iii) provide copies of any written communications received from or given to any Antitrust Authority unless prohibited by applicable Law; and (iv) permit the other party to review and incorporate the other party’s reasonable comments in any communication given by it to any Antitrust Authority or in connection with any proceeding by a private party related to Antitrust Laws with any other person, in each case regarding the transactions contemplated under this Agreement and in a manner that protects attorney-client or attorney work product privilege.

(c) Neither Purchaser nor Sellers shall, after the entry of the Sale Approval Order, agree to accept any agreement that would have the effect of delaying the consummation of any action contemplated by this Agreement without the written consent of the other party. For the avoidance of doubt, no party shall commit to or agree with any Antitrust Authority to stay, toll or extend any applicable waiting period under the HSR Act or other applicable Laws, without the prior written consent of the other parties.

(d) Neither Purchaser nor any of its controlled Subsidiaries shall take any action or acquire any assets or securities of any other Person or agree to acquire assets or securities of any other Person if such action, acquisition or agreement would reasonably be expected to impair Purchaser’s ability to consummate the transactions contemplated hereby.

**Section 6.14 Post-Closing Amounts Received and Paid.** All amounts that are received by a Seller or any Affiliate of Seller in respect of any of the Purchased Assets with respect to a period following the Closing shall be received by such Person as agent, in trust for and on behalf of Purchaser and shall be paid pursuant to Section 6.18(i). All amounts that are received by Purchaser or any of its Affiliates following the Closing in respect of any Excluded Assets with respect to a period prior to the Closing shall be received by such Person as agent, in trust for and on behalf of Sellers, and Purchaser shall, on a monthly basis, pay or cause to be paid all such amounts over to Sellers by wire transfer of immediately available funds and shall provide Seller with information as to the nature and source of all such payments, including any invoice relating thereto.

#### **Section 6.15 Confidentiality.**

(a) After the Closing, Sellers shall, and shall cause their respective Subsidiaries and instruct their respective Affiliates to, hold in confidence and not use in any manner detrimental to Sellers’ business all Confidential Information concerning the Purchased Assets, except to the extent that such information can be shown to have been (i) in the public domain prior to the Closing or (ii) in the public domain at or after the

Closing through no fault of Sellers or any of their Affiliates or any of their respective representatives. If, after the Closing, Sellers or any of their Affiliates or any of their respective representatives are legally required to disclose any Confidential Information, Sellers shall to the extent permitted by Law (A) promptly notify Purchaser to permit Purchaser, at its expense, to seek a protective order or take other appropriate action and (B) cooperate as reasonably requested by Purchaser in Purchaser's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information, but only at Purchaser's sole cost and expense. If, after the Closing and in the absence of a protective order, Sellers or any of their Affiliates or any of their respective Representatives are compelled as a matter of Law to disclose any such Confidential Information to a third party, such Person may disclose to the third party compelling disclosure only the part of such Confidential Information as is required by Law to be disclosed; provided, that to the extent permitted by Law, prior to any such disclosure, such Person consults in good faith with Purchaser and its legal counsel as to such disclosure and the nature and wording of such disclosure. "Confidential Information" shall mean any confidential information concerning the Purchased Assets, including methods of operation, products, prices, fees, costs, markets or other specialized information or proprietary matters.

(b) If the Closing does not occur, each party shall, upon the written request of the other party, return to the other party or destroy (such destruction to be confirmed in writing to the other party upon written request) all materials, documentation, data, records and other papers and copies thereof (whether on paper or in electronic, magnetic, photographic, mechanical or optical storage) that constitutes Confidential Information of the other party, and not use any such information or knowledge for any purpose whatsoever, provided that a party may maintain such information to the extent required by Law or such party's established document retention policies (including any requirement to retain email on an automated email archival system) or relating to the safeguarding or backup storage of electronic data or in connection with a legal dispute with the other party.

(c) Notwithstanding the foregoing, the parties to this Agreement acknowledge that each of them (and each of their employees, representatives, or other agents) has been and is permitted to disclose to any and all persons, without limitation of any kind, the federal tax treatment and structure of this Agreement (including Confidential Information) and all materials of any kind (including opinions or other tax analyses) that are or have been provided to them relating to such federal tax treatment and structure. This provision is intended to qualify for the presumption that this Agreement is not offered under conditions of confidentiality as set forth in Treasury Regulation Section 1.6011-4(b)(3) and shall be interpreted to authorize disclosure only to the extent necessary to so qualify.

#### **Section 6.16 Delivery of Mortgage Files.**

(a) Not later than five Business Days prior to the Closing Date (or on such later date as Purchaser shall reasonably request), Sellers shall deliver to Purchaser or



Purchaser's custodian as Purchaser's designee the Mortgage File for each Mortgage Loan.

(b) In connection with the transfer of any MERS Loan pursuant to Section 2.1 hereof, Sellers shall request that the MERS system indicate that such MERS Loan has been assigned to Purchaser. Purchaser may, at its cost and in its discretion, direct Sellers to deliver for recording to the appropriate public recording office of the jurisdiction in which the Mortgaged Property is located, and cause to be duly recorded, any of the original assignments of mortgage. Purchaser shall pay all recording fees relating to the recordation of the assignments of mortgage from a Seller to Purchaser and any intervening assignments.

(c) Purchaser shall cause the notice required by Section 404 of the Homes Act to be provided within 30 days of the Closing Date to each Mortgagor with respect to each Mortgage Loan and each such notice shall, to the extent permitted by the Helping Families Act, specify (i) Purchaser or its assignee as designated by Purchaser on the Closing Date is a "creditor" for purposes of the Homes Act; (ii) the address of Purchaser or its assignee as designated by Purchaser, as applicable; (iii) the Closing Date; (iv) that the entity selected by Purchaser to assume obligations to service the Mortgage Loan on the Closing Date is the contact person with authority to act on behalf of Purchaser or its assignee, as applicable; and (v) assignments of mortgage are not being recorded in connection with the sale of the Mortgage Loans. If the Mortgage Loan is a MERS Loan, such notice shall state: "Ownership of your Mortgage Loan is also recorded on Mortgage Electronic Registrations System's registry at 1818 Library Street, Suite 300 Reston, Virginia 20190."

**Section 6.17 Third Party Servicing Agreement.** Sellers and Purchaser shall use commercially reasonable efforts to cooperate with each other in order to negotiate and enter into the Third Party Servicing Agreement with the Winning Bidder, pursuant to which the Winning Bidder or its subservicer will provide servicing to Purchaser following the Closing Date.

**Section 6.18 Transfer of Servicing.** Without limiting the generality of this Section 6.18, Sellers or their designees shall take, or cause to be taken, the following actions with respect to the Mortgage Loans (other than SBO Loans) prior to the Closing Date (or within such time as may otherwise be specified below) in order to effect the transfer of the servicing of such Mortgage Loans to Purchaser or its designee on the Closing Date:

(a) Notice to Mortgagors. Sellers (or their designees) shall inform in writing all Mortgagors of the change in servicer from any Seller (or its designee) to Purchaser (or its designee) all in accordance with Applicable Law and the terms of such "goodbye" letter (which may be combined, to the extent permitted by Applicable Law, with any "hello" letter to be sent to Mortgagors by Purchaser) shall be reasonably acceptable to Purchaser.

(b) Transfer of Servicing. On the Closing Date (or such later date as Purchaser shall reasonably request), Sellers shall transfer servicing of the related Mortgage Loans to Purchaser or its designee pursuant to the terms of this Agreement and

the procedures set forth in reasonable and customary servicing transfer instructions agreed to by Purchaser and Sellers.

(c) Delivery of Files. Within 10 Business Days after the Closing Date (or such later date as Purchaser shall reasonably request), Sellers shall forward to Purchaser the Servicing Files and the Credit Files for each Mortgage Loan.

(d) Payments Received Prior to the Closing Date. Sellers shall transfer all amounts received with respect to the Mortgage Loans on and after the Cut-off Date and prior to the Closing Date to Purchaser by wire transfer within three Business Days after the Closing Date to such account or accounts as may be designated by Purchaser to Sellers by prior written notice.

(e) Escrow Payments. The aggregate balances of all Escrow Payments as of the Closing Date shall be remitted to Purchaser by wire transfer within three Business Days after the Closing Date to such account or accounts as may be designated by Purchaser to Sellers by prior written notice.

(f) Reconciliation Statement. On the Closing Date or within three Business Days thereafter, Sellers shall provide Purchaser with an electronic accounting statement in a format agreed to by Sellers and Purchaser of the amounts received with respect to the Mortgage Loans on and after the Cut-off Date, Escrow Payments and remaining negative escrow balances, if any, sufficient to enable Purchaser to reconcile the amount of such payments with the accounts of the related Mortgage Loans.

(g) Notice to Hazard, Flood and Earthquake Insurers. Sellers shall deliver an electronic or written notice to all hazard, flood and earthquake insurance companies or their agents of the transfer of servicing within five Business Days after the Closing Date (or such other date as Purchaser shall reasonably request).

(h) Notice to Taxing Authorities and Tax Servicers. Sellers shall deliver an electronic or written notice to all taxing authorities and tax servicers and/or their agents of the transfer of servicing within five Business Days after the Closing Date (or such other date as Purchaser shall reasonably request).

(i) Payments Received After the Closing Date. Any payments with respect to the Mortgage Loans received by Sellers on the Closing Date or within 90 days after the Closing Date shall be remitted to Purchaser by wire transfer within two Business Day to such account or accounts as may be designated by Purchaser to Sellers by prior written notice, provided, that any payment received by Sellers for the purposes of a full payoff shall be forwarded to Purchaser within two Business Days of receipt by courier or overnight mail.

**Section 6.19 Use of Proceeds.** In no event shall any Seller use the Transaction Proceeds under this Agreement to directly or indirectly fund any challenge, complaint, action, suit, proceeding, hearing, investigation, claim or demand, whether in law, equity or otherwise, either (a) against Purchaser or its Affiliates or (b) that has a material adverse effect on Purchaser or its Affiliates; provided, that this Section 6.19 shall in no way prevent Sellers from using the

Transaction Proceeds to repay loans outstanding under the DIP Financing Agreements in accordance with the terms thereof.

**Section 6.20 Electronic Data Files.** Sellers shall deliver to Purchaser an updated version of the Electronic Data Files, which shall provide loan level information with respect to the Whole Loans, with the loan level fields set forth on the Mortgage Loan Schedule, within 15 Business Days after the end of each month during the period from the date hereof to the Closing Date.

**Section 6.21 Transfer of Assets to DIP Borrowers.** In accordance with the terms and conditions of the DIP Financing Agreements, promptly after approval of such agreements by the Bankruptcy Court, Sellers will transfer the Purchased Assets that are currently pledged to Purchaser under the Master Repurchase Agreement, dated as of December 21, 2011, as amended, by and among Purchaser, GMAC Mortgage, RFC and ResCap to the respective DIP Borrowers, and from and after that transfer, the DIP Borrowers will be “Additional Sellers” hereunder.

**Section 6.22 Mortgage Loan Modifications.** With respect to each HAMP Loan and each Mortgage Loan that becomes subject to a HAMP modification agreement after the Cut-off Date, Purchaser shall, or shall cause its servicer to, comply with the terms of each modification agreement applicable to such Mortgage Loan and all guidelines, procedures and directives issued by the United States Treasury, Fannie Mae or Freddie Mac applicable to the servicing of such Mortgage Loan. With respect to any Mortgage Loan that is the subject of an application for modification or is in its trial period pursuant to the terms of the related modification on the Closing Date, and is not a HAMP Loan, Purchaser shall, or shall cause its servicer to, accept and continue processing such pending loan modification requests and shall honor trial and permanent loan modifications entered into by the prior servicer in effect on the Closing Date, in all cases to the extent set forth on a schedule to be delivered by Sellers to Purchaser no later than June 1, 2012. The parties hereto acknowledge and agree that the related Mortgagor on any such Mortgage Loan shall be deemed a third party beneficiary of this Section 6.22 with respect to its Mortgage Loan.

## **ARTICLE VII.**

### **BANKRUPTCY COURT MATTERS**

**Section 7.1 Competing Transaction.** From the date hereof until the earlier of the entry of the Sale Procedures Order and the termination of this Agreement, no Seller shall and each Seller shall cause its Affiliates and such Seller’s and Affiliates’ respective officers, directors, managers, employees, representatives and agents not to, directly or indirectly, (i) engage in substantive negotiations or discussions with, or enter into any agreement or understanding with, any Person (other than Purchaser and its Affiliates, agents and representatives) concerning any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of the Purchased Assets (each a “Competing Transaction”), or (ii) furnish any non-public information concerning any of the Purchased Assets; provided, that notwithstanding the foregoing, Seller and its Affiliates shall be permitted to (a) communicate with prospective bidders concerning the proposed sale process, including the proposed timetable and the requirements for Qualified Bids (as defined in the Sale Procedures

Order), and (b) enter into confidentiality agreements with prospective bidders (no more favorable to such bidders than the Confidentiality Agreement) and take such other actions that may facilitate a prospective bidder's ability immediately to commence (or resume) diligence as soon as the Sale Procedures Order has been entered. Following entry of the Sale Procedures Order, other than pursuant to and in compliance with the terms and conditions of the Sale Procedures Order, in no event may Sellers or their respective Affiliates initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (other than Purchaser and its Affiliates, agents and representatives) with respect to a Competing Transaction or accept an offer or proposal from any Person (other than Purchaser and its Affiliates, agents and representatives) with respect to a Competing Transaction.

**Section 7.2 Bankruptcy Court Filings.** As promptly as practicable but no later than two Business Days following the execution of this Agreement, Sellers shall file Petitions for relief under Chapter 11 of the Bankruptcy Code and shall file, together with other customary "first day" motions, the Sale Motion with the Bankruptcy Court. Subject to Section 7.1, Sellers shall thereafter pursue diligently the entry of the Sale Procedures Order and the Sale Approval Order. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Procedures Order and the Sale Approval Order and all parties hereto shall use their respective reasonable best efforts to obtain a finding demonstrating that Purchaser is a "good-faith" purchaser under Section 363(m) of the Bankruptcy Code, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court. In the event the entry of the Sale Procedures Order or the Sale Approval Order shall be appealed, Sellers and Purchaser shall use their respective reasonable efforts to defend such appeal.

## ARTICLE VIII.

### CONDITIONS

**Section 8.1 Conditions to Obligations of Purchaser and Sellers.** The respective obligations of each party to consummate the Closing shall be subject to the satisfaction, or waiver by Purchaser and Sellers, on or prior to the Closing Date of all of the following conditions precedent:

(a) Sale Procedures Order. The Sale Procedures Order (i) shall have been entered by the Bankruptcy Court and not be subject to any stay of effectiveness, (ii) shall not have been modified or amended in any manner materially adverse to Purchaser unless agreed to in writing by Purchaser in its sole discretion and (iii) shall have become a Final Order; provided, that the condition set forth in clause (iii) shall be waivable only by Purchaser on behalf of the parties.

(b) Sale Approval Order. The Sale Approval Order (i) shall have been entered by the Bankruptcy Court and not be subject to any stay of effectiveness, (ii) shall not have been modified or amended in any manner adverse to Purchaser unless agreed to in writing by Purchaser in its sole discretion and (iii) shall have become a Final Order.

(c) The Confirmation Order. The Confirmation Order shall have been entered by the Bankruptcy Court and not be subject to any stay of effectiveness, and the Chapter 11 Plan Effective Date shall have occurred as of or concurrently with the Closing Date; provided, that if the Confirmation Order has not been entered by October 31, 2012, or the Chapter 11 Plan Effective Date has not occurred by December 15, 2012, then this condition precedent shall be deemed to be waived by all parties.

(d) No Law, Judgments, Etc. No Government Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or any decree, judgment, injunction or other Order, which is in effect and that restricts, prevents, prohibits, makes illegal or enjoins the consummation of the transactions contemplated by this Agreement. No proceeding or investigation by any Government Entity or other Person shall have been instituted that restricts, prevents, prohibits, makes illegal, enjoins or results in material damages in respect of the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement.

(e) Injunctions. No Government Entity shall have issued an Order enjoining, restraining or prohibiting the completion of the transactions contemplated hereby and no suit, action or proceeding shall have been instituted by a Government Entity or any other Person that would reasonably be expected to have a Material Adverse Effect on the Purchased Assets or enjoin, restrain, prohibit or otherwise challenge the transactions contemplated by this Agreement, or that would be reasonably likely to prevent or make illegal the consummation of the transactions contemplated by this Agreement, and no Government Entity shall have notified Purchaser or Sellers in writing that this Agreement or the consummation of the transactions contemplated by this Agreement would in any manner constitute a violation of any Law and that it intends to commence any suit, action, or proceeding to restrain, enjoin or prohibit the transactions contemplated by this Agreement.

(f) Agency Approvals. Purchaser shall be approved (i) by HUD to hold FHA Loans and (ii) by the VA to hold VA Loans, in each case to the extent necessary.

(g) Antitrust Clearances. The waiting period applicable to the transactions contemplated by this Agreement under the HSR Act shall have expired or been terminated.

**Section 8.2 Conditions to Obligations of Sellers.** The obligations of Sellers to consummate the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing Date, of the following conditions:

(a) Warranties of Purchaser True as of Closing Date. The representations and warranties of Purchaser contained herein that are qualified by materiality or Material Adverse Effect shall be accurate, true and correct in all respects, and all other representations and warranties of Purchaser contained herein shall be accurate, true and correct in all material respects, in each case on and as of the date hereof and as of the Closing Date as though made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date).

(b) Compliance with Covenants. Purchaser shall have performed and complied in all material respects with each of the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date.

(c) Certificate. Sellers shall have received a certificate, signed by a duly authorized officer of Purchaser and dated the Closing Date, to the effect that the conditions set forth in Sections 8.2(a) and 8.2(b) have been satisfied.

(d) Third Party Consents. All Consents set forth on Schedule 5.3 shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Sellers, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect.

**Section 8.3 Conditions to Obligations of Purchaser.** The obligations of Purchaser to consummate the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing Date of each of the following conditions:

(a) Warranties of Sellers True as of Closing Date. The representations and warranties of Sellers or any Affiliate Seller contained herein that are qualified by materiality or Material Adverse Effect shall be accurate, true and correct in all respects, and all other representations and warranties of Sellers or any Affiliate Seller contained herein shall be accurate, true and correct in all material respects, in each case on and as of the date hereof and as of the Closing Date as though made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date).

(b) Compliance with Covenants. Sellers shall have performed and complied with the covenants set forth in Sections 6.12(d) in all respects, and shall have performed and complied in all material respects with each of the covenants and agreements contained in this Agreement required to be performed and complied with by them on or prior to the Closing Date.

(c) Certificate. Purchaser shall have received certificates, signed by duly authorized officers of Sellers and dated the Closing Date, to the effect that the conditions set forth in Sections 8.3(a) and 8.3(b) have been satisfied.

(d) Sale Approval Order.

(i) Solely with respect to the purchase of HELOCs under this Agreement, the Sale Approval Order shall have been entered and become a Final Order in form and substance reasonably satisfactory to Purchaser (including with respect to the treatment of HELOC advances); and

(ii) With respect to obligations and benefits that can be realized prior to the Closing Date, Sellers shall have complied, in all material respects, with all of their obligations under, and Purchaser shall have received the benefits of, the Sale Approval Order.

(e) Other Third Party Consents. All Consents set forth on Schedule 4.3 shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Purchaser, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect.

(f) Licenses. Purchaser shall have obtained all Licenses and Permits necessary to own the Purchased Assets in all material respects, including those set forth in Section 6.6.

## ARTICLE IX.

### TERMINATION AND SURVIVAL

**Section 9.1 Termination.** Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time on or prior to the Closing Date:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by Sellers or Purchaser if any court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order shall have become a Final Order unless such Final Order or action was issued or taken at the request or with the support of the party seeking to terminate this Agreement (or any of its Affiliates); it being agreed that the parties hereto shall promptly appeal any such adverse order or other determination that is appealable (and argue such appeal with reasonable diligence);

(c) by Purchaser, upon written notice to Seller if:

(i) any condition to the obligations of Purchaser set forth in Sections 8.1 and 8.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(ii) there has been a material violation or breach by any Seller of any covenant, agreement, representation or warranty contained in this Agreement, which violation or breach (A) has not been cured within ten Business Days following the delivery of written notice of such violation or breach or (B) is not capable of being cured within a ten Business Day period;

(iii) Sellers do not file the Petitions within two Business Days of the date hereof;

(iv) the Sale Motion is not filed on the Petition Date;

(v) the Sale Procedures Order has not been entered by the Bankruptcy Court by June 18, 2012, or if the Sale Procedures Order, once entered, is changed

in a manner that is materially adverse to Purchaser without the consent of Purchaser in its sole discretion;

(vi) the Sale Procedures Order does not provide for the final bid deadline to occur not later than 90 calendar days following the entry by the Bankruptcy Court of the Sale Procedures Order;

(vii) the Auction, if any, is not concluded within seven Business Days following the final bid deadline;

(viii) the Sale Hearing does not occur within 30 days following the conclusion of the Auction, or such other date as may be scheduled by the Bankruptcy Court that is no more than 40 days following the conclusion of the Auction;

(ix) the Confirmation Order has not been entered by October 31, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of its effectiveness by November 15, 2012;

(x) the Chapter 11 Plan Effective Date has not occurred by December 15, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of effectiveness by December 15, 2012;

(xi) the Sale Approval Order once entered, is changed in a manner that is adverse to Purchaser without the consent of Purchaser in its sole discretion;

(xii) any Seller seeks to have the Bankruptcy Court enter an order dismissing the Bankruptcy Case of any Seller or converting it to a case under Chapter 7 of the Bankruptcy Code, or if the Bankruptcy Court enters an order dismissing the Bankruptcy Case of any Seller or converting the Bankruptcy Case of any Seller to a case under Chapter 7 of the Bankruptcy Code, or appoints a trustee in any Seller's Bankruptcy Case or an examiner with enlarged powers relating to the operation of Sellers' businesses, and such dismissal, conversion or appointment is not reversed or vacated within three business days after the entry thereof; or

(xiii) Sellers' respective Boards of Directors approve an Alternative Restructuring or Sellers execute a letter of intent (or similar document) indicating their intention to pursue an Alternative Restructuring.

(d) by Sellers, upon written notice to Purchaser:

(i) if any condition to the obligations of Sellers set forth in Sections 8.1 and 8.2 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers; or



(ii) if there has been a material violation or breach by Purchaser or any covenant, agreement, representation or warranty contained in this Agreement, which violation or breach (A) has not been cured within ten Business Days following the delivery of written notice of such violation or breach or (B) is not capable of being cured within a ten Business Day period.

(e) automatically if the Bankruptcy Court shall enter an Order approving a Competing Transaction; provided, that if the Auction is held pursuant to the Sale Procedures, and Purchaser is designated as the Next-Highest Bidder (as such term is defined in the Sale Procedures), then this Agreement shall not terminate pursuant to this subsection (e) until the earlier of (i) the Bankruptcy Court approval of the "Successful Bid" (as such term is defined in the Sale Procedures); and (ii) 30 calendar days following the Auction. While Purchaser remains the Next-Highest Bidder (as such term is defined in the Sale Procedures), the obligations of Purchaser and Sellers described in Sections 6.1 and 6.12(c) shall be held in abeyance until the purchase agreement with the bidder or purchase agreements with the bidders, as the case may be, who made the "Successful Bid" at the Auction (as such term is defined in the Sale Procedures) are terminated.

**Section 9.2 Procedure and Effect of Termination.** In the event of termination of this Agreement and abandonment of the transactions contemplated by this Agreement by either or both of the parties pursuant to Section 9.1, three Business Days' written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated by this Agreement shall be abandoned, without further action by any of the parties hereto; provided, that no notice shall be required with respect to termination pursuant to Section 9.1(e) and provided, further, that (a) this Section 9.2 and Article X (other than Section 10.15) shall survive the termination of this Agreement and (b) no such termination shall relieve any party from any Losses arising out of any breach of this Agreement by a party that occurs upon or prior to the termination of this Agreement.

**Section 9.3 No Survival.** Sellers and Purchaser agree that all of the representations, warranties and covenants of Sellers and Purchaser contained in this Agreement, or any instrument delivered pursuant to this Agreement, shall terminate at the Closing Date, except that the representations, warranties and covenants that by their terms survive the Closing Date shall survive the Closing Date.

## ARTICLE X.

### MISCELLANEOUS

**Section 10.1 Expenses.** Except as otherwise provided in this Agreement or the Sale Procedures Order, (i) all expenses relating to the preparation of assignments, the transfer of ownership of MERS Loans, and other transfer taxes, fees and expenses shall be paid by Sellers, (ii) all expenses relating to the recording of assignments from Sellers to Purchaser shall be paid by Purchaser and (iii) all other costs and expenses incurred in connection with this Agreement and the consummation of the transactions hereunder shall be paid by the party incurring such expenses. Following approval of the Sale Procedures Order, any claims arising from breaches by any Sellers of their obligations pursuant to the terms of this Agreement shall constitute

administrative expense claims against Sellers under Sections 503(b)(1) and 507(a)(1), as applicable, of the Bankruptcy Code.

**Section 10.2 Amendment; Waiver.** This Agreement may be amended, modified or supplemented only in writing signed by each of the parties hereto. Any provisions of this Agreement may be waived, but only if such waiver is in writing and signed by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**Section 10.3 Notices.** Any written notice to be given hereunder shall be deemed given: (a) when received if given in person or by nationally recognized courier; (b) on the date of transmission if sent by telecopy, e-mail or other wire transmission (receipt confirmed in each case); (c) five Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid, return receipt requested; and (d) if sent by an internationally recognized overnight delivery service, the second Business Day following the date given to such overnight delivery service (specified for overnight delivery and receipt confirmed). All notices shall be addressed as follows:

if to Sellers, to:

Residential Capital, LLC  
1177 Avenue of the Americas  
New York, New York 10036  
Facsimile: 646-257-2703  
Attention: Mr. Thomas Marano  
Telephone: 646-257-2703  
email: [tom.marano@gmacreacap.com](mailto:tom.marano@gmacreacap.com)

with copies to (which copies shall not constitute notice):

Residential Capital, LLC  
1100 Virginia Drive  
Fort Washington, Pennsylvania 19034  
Facsimile: 866-572-7524  
Attention: Tammy Hamzehpour, Esq., General Counsel  
Telephone: 215-682-1307  
email: [tammy.hamzehpour@gmacreacap.com](mailto:tammy.hamzehpour@gmacreacap.com)

*and*

Morrison & Foerster LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Facsimile: 212-468-7900  
Attention: Gary S. Lee, Esq.  
Telephone: 212-468-8163  
email: [glee@mofo.com](mailto:glee@mofo.com)

*and*

Attention: Larren M. Nashelsky, Esq.  
Telephone : 212-506-7365  
email: [lnashelsky@mofo.com](mailto:lnashelsky@mofo.com)

if to Purchaser, to:

BMMZ Holdings LLC  
c/o Ally Financial Inc.  
200 Renaissance Center  
Detroit, Michigan 48265  
Facsimile: 313-656-6124  
Attention: William B. Solomon, VP and General Counsel  
Telephone: 313-656-6128  
email: [william.b.solomon@ally.com](mailto:william.b.solomon@ally.com)

with copies to (which copies shall not constitute notice):

Ally Financial Inc.  
200 Renaissance Center, 12th Floor  
Detroit, MI 48265  
Facsimile: 313-656-6124  
Attention: William B. Solomon, VP and General Counsel  
Telephone: 313-656-6128  
email: [william.b.solomon@ally.com](mailto:william.b.solomon@ally.com)

*and*

Mayer Brown LLP  
71 South Wacker Drive  
Chicago, Illinois 60606  
Facsimile: 312-706-8192  
Attention: Elizabeth A. Raymond  
Telephone: 312-701-7322  
email: [eraymond@mayerbrown.com](mailto:eraymond@mayerbrown.com)

**Section 10.4 Waivers.** The failure of a party to require performance of any provision hereof shall not affect its right at a later time to enforce the same. No waiver by a party of any term, covenant, representation or warranty contained herein shall be effective unless in writing.

No such waiver in any one instance shall be deemed a further or continuing waiver of any such term, covenant, representation or warranty in any other instance.

**Section 10.5 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 10.6 Applicable Law; WAIVER OF JURY TRIAL; Venue and Retention of Jurisdiction.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to any conflicts of law principles thereof or any other jurisdiction that would apply the law of another jurisdiction and, to the extent applicable, the Bankruptcy Code.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.3 hereof; provided, that if the Bankruptcy Case of Sellers has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 10.3.

**Section 10.7 Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided, that no assignment of either party's rights or obligations may be made without the written consent of the other party, which consent shall not be unreasonably withheld or delayed; and provided, further,

that Purchaser may assign this Agreement and any or all rights or obligations hereunder (including Purchaser's rights to purchase the Purchased Assets) to one or more Affiliates of Purchaser if any such Affiliate has at the Closing all Licenses necessary to own such Purchased Assets; provided, that Purchaser shall remain obligated to fulfill its obligations pursuant to this Agreement and for any damages arising from an unlawful breach hereof. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

**Section 10.8 No Third-Party Beneficiaries.** Except as provided in Section 6.22, this Agreement is solely for the benefit of the parties hereto, and no provision of this Agreement shall be deemed to confer any remedy, claim or right upon any third party, including any employee or former employee of Sellers or any participant or beneficiary in any benefit plan, program or arrangement.

**Section 10.9 Public Announcements.** Sellers and Purchaser each agree that they and their Affiliates shall not issue any press release or otherwise make any public statement or respond to any media inquiry with respect to this Agreement or the transactions contemplated hereby without the prior approval of the other parties, which shall not be unreasonably withheld or delayed, except as may be required by Law or by any stock exchanges having jurisdiction over Sellers, Purchaser or their Affiliates. Sellers, Affiliate Sellers and Purchaser will consult with each other regarding the content and timing of any internal announcements regarding the transactions contemplated by this Agreement and the Ancillary Agreements to Sellers' employees.

**Section 10.10 Severability.** Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

**Section 10.11 Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that Purchaser shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court referenced in Section 10.6(c), this being in addition to any other remedy to which they are entitled at Law or in equity.

**Section 10.12 Waiver of Bulk Transfer Laws.** Seller and Purchaser agree to waive compliance with Article 6 of the Uniform Commercial Code as adopted in each of the

jurisdictions in which any of the Purchased Assets are located to the extent that such Article is applicable to the transactions contemplated hereby and any other bulk sale or bulk transfer or similar Law.

**Section 10.13 Personal Liability.** This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any officer, director, employee, representative or investor of any party hereto.

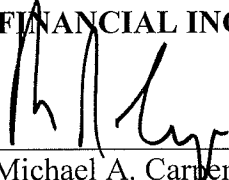
**Section 10.14 Entire Agreement.** This Agreement, together with the Ancillary Agreements, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

**Section 10.15 Parent Guaranty.** Parent hereby irrevocably, absolutely and unconditionally guarantees to Sellers the prompt and full payment by Purchaser of all of Purchaser's monetary obligations under this Agreement and any Ancillary Agreements as and when payment is due and payable in accordance with the terms hereof and thereof (collectively, the "Guaranteed Obligations"). Parent acknowledges and agrees that, with respect to all Guaranteed Obligations, such guaranty constitutes a guaranty of payment and not of collection and shall not be conditioned or contingent upon the pursuit by Sellers of any remedies which they now or may hereafter have against Purchaser, whether at law, in equity or otherwise. Upon receipt of written notice requesting payment of the Guaranteed Obligations, Parent shall forthwith make full payment of any amount due with respect thereto, at its sole cost and expense, to the extent that such payment has not previously been made by Purchaser. This Section 10.15 shall terminate and be of no further force or effect upon and after the date that the Guaranteed Obligations shall have been paid in full.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, Purchaser and Sellers have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

**ALLY FINANCIAL INC.**

By   
Name: Michael A. Carpenter  
Title: Chief Executive Officer

**BMMZ HOLDINGS LLC**

By \_\_\_\_\_  
Name:  
Title:

**RESIDENTIAL CAPITAL, LLC**

By \_\_\_\_\_  
Name:  
Title:

**RESIDENTIAL FUNDING COMPANY,  
LLC**

By \_\_\_\_\_  
Name:  
Title:

**GMAC MORTGAGE, LLC**

By \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Purchaser and Sellers have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

**ALLY FINANCIAL INC.**

By \_\_\_\_\_  
Name: Michael A. Carpenter  
Title: Chief Executive Officer

**BMMZ HOLDINGS LLC**

By Courtney Lowman  
Name: Courtney Lowman  
Title: Assistant Treasurer

**RESIDENTIAL CAPITAL, LLC**

By \_\_\_\_\_  
Name:  
Title:

**RESIDENTIAL FUNDING COMPANY,  
LLC**

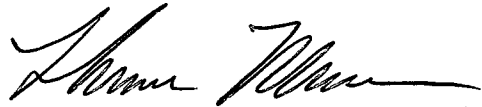
By \_\_\_\_\_  
Name:  
Title:

**GMAC MORTGAGE, LLC**

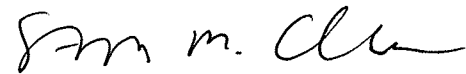
By \_\_\_\_\_  
Name:  
Title:




**RESIDENTIAL CAPITAL, LLC**

By   
Name:  
Title:

**RESIDENTIAL FUNDING COMPANY, LLC**

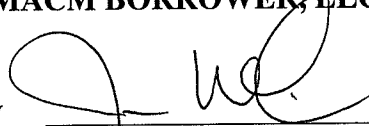
By   
Name:  
Title:

**GMAC MORTGAGE, LLC**

By   
Name:  
Title:

**GMACM BORROWER, LLC**

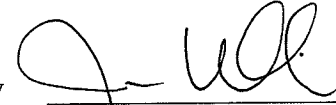
By



Name: JAMES WHITINGER  
Title: CFO

**RFC BORROWER, LLC**

By



Name: JAMES WHITINGER  
Title: CFO

## SCHEDULE F

### PURCHASE PRICE SCHEDULE

For Purchase Price calculation as of December 31, 2011, see limited example below:

#### Purchase Price Calculation with Deficiency Multiplier (Example Only)

	<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>	<i>g</i>	<i>h</i>	<i>i</i>
1	Whole Loan Bucket	Bucket Count	Bucket UPB	Mortgage Files w Exceptions	Base Px(%)	Base Px (\$)	Doc Deficiency %	Doc Deficiency Multiplier	Adjusted Purchase Px
2						<i>c x e</i>	<i>d / b</i>		<i>h x f</i>
3	Performing First Lien	30	\$ 7,500,000	3	49.20%	\$ 3,690,000	10%	1.021	\$ 3,767,490
4	Exception Report								
5	Loan Number	Doc Type	Description						
6	472378546	MODF	Missing Mod Doc						
7	472378546	ASN5	Unrecorded Original						
8	472378546	NOTE	Missing Deed/Note						
9	11011353	ASN3	Unrecorded Original						
10	511946204	TPOL	Missing Doc						
11	511946204	NOTE	Missing Deed/Note						
12	Total Exceptions	6							
13	Loans with Exceptions	3							

#### Full Multiplier Scale

MLD % Deficient	<=6%	8%	10%	12%	15%	18%	20%	22%	>=24%
PP Multiplier	1.033	1.029	1.021	1.013	BASE Px (1.00)	0.979	0.962	0.948	0.937
Performing First Lien	\$ 3,811,770	\$ 3,797,010	\$ 3,767,490	\$ 3,737,970	\$ 3,690,000	\$ 3,612,510	\$ 3,549,780	\$ 3,498,120	\$ 3,457,530

**EXHIBIT C-1**

**AFI APA TERM SHEET**

## SUMMARY OF AFI APA AGREEMENT<sup>1</sup>

Asset Purchase Agreement, dated as of May 13, 2012, between Ally Financial Inc. (“Parent”) and BMMZ Holdings LLC (“Purchaser”), and Residential Capital, LLC, Residential Funding Company, LLC, GMAC Mortgage, LLC and the additional sellers indentified therein (collectively “Sellers”) (the “Agreement”).

Terms used but not defined in this term sheet shall have the meaning set forth in the Agreement.

<b>Purchase and Sale of Purchased Assets</b>	<p>Purchaser will acquire the following assets of the Sellers:</p> <ul style="list-style-type: none"> <li>the pool of Whole Loans, servicing released to the extent of the Purchased Servicing Rights (including any and all Primary Servicing Rights and Master Servicing Rights included in the Purchased Servicing Rights owned by a Seller), and the right to all payments of Accrued Interest, principal, penalties, fees, charges and other amounts received or receivable on or in respect of the Mortgage Loans after the Closing Date (except to the extent that an SBO Servicer is entitled to such amounts under an SBO Servicing Agreement), together with the Mortgage Files and the Credit Files, and any and all proceeds of the foregoing;</li> <li>Mortgage Securities;</li> <li>Advances as of the Closing Date related to the Mortgage Loans; and</li> <li>Purchased Servicing Rights and the related Servicing Files.</li> </ul> <p>In addition, the Purchaser will acquire certain rights in litigation, certain rights under insurance policies, and to the extent transferable, all guaranties, warranties and indemnities related to the Purchased Assets.</p>
<b>Purchase Price</b>	<p>In consideration for the sale of the Purchased Assets to Purchaser, Sellers will receive approximately \$1.6 billion<sup>2</sup> if the sale is consummated pursuant to a chapter 11 plan of the Sellers. Such Purchase Price is subject to adjustment. If the sale is consummated pursuant to a section 363 sale outside of a chapter 11 plan, Sellers will receive approximately \$1.4 billion,<sup>3</sup> subject to adjustment.</p>
<b>Required Consents</b>	<p>None, other than the approvals required from the Bankruptcy Court.</p>
<b>Representations</b>	<p>Sellers have made representations and warranties to Purchaser with</p>

<sup>1</sup> This summary has been prepared solely for the convenience of the parties. To the extent any of the terms described herein are in any way inconsistent with the terms of the AFI APA, the AFI APA shall control in all respects.

<sup>2</sup> The purchase price calculation is as of the 2/29/2012 balance sheet and data tapes.

<sup>3</sup> The purchase price calculation is as of the 2/29/2012 balance sheet and data tapes.

<b>and Warranties</b>	<p>respect to:</p> <ul style="list-style-type: none"><li>(i) Organization and Authority;</li><li>(ii) Non-contravention;</li><li>(iii) Consents and Approvals;</li><li>(iv) Title to Assets;</li><li>(v) Mortgage Loan Portfolio;</li><li>(vi) Litigation and Claims;</li><li>(vii) Brokers, Finders and Financial Advisors;</li><li>(viii) Whole Loans; and</li><li>(ix) Mortgage Securities.</li></ul> <p>These representations and warranties are subject to materiality and other exceptions, some of which are set forth in the Disclosure Memorandum provided by the Sellers to Purchaser.</p> <p>The Purchaser has made representations and warranties to the Sellers with respect to :</p> <ul style="list-style-type: none"><li>(i) Organization and Authority;</li><li>(ii) Non-Contravention;</li><li>(iii) Consents and Approvals;</li><li>(iv) Financing;</li><li>(v) Non-reliance on information not expressly provided in the Agreement; and</li><li>(vi) Brokers, Finders and Financial Advisors.</li></ul> <p>Except for the representations and warranties set forth in the Agreement, the sale of the Purchased Assets is “AS IS,” “WHERE IS.”</p>
<b>Pre-Closing Covenants</b>	<p>Other pre-closing covenants relate to:</p> <ul style="list-style-type: none"><li>(i) Subsequent Actions; Further Assurances, including using commercially reasonable efforts to actions to consummate the transactions contemplated by the Agreement;</li></ul>

	<ul style="list-style-type: none"> <li>(ii) Third Party Consents;</li> <li>(iii) Access to Information;</li> <li>(iv) Interim operations of the Business, particularly outside the Ordinary Course of Business;</li> <li>(v) Mortgage Approvals and Licenses;</li> <li>(vi) Notices of Certain Events;</li> <li>(vii) Tax Matters;</li> <li>(viii) Insurance;</li> <li>(ix) Mortgage Loan Schedules;</li> <li>(x) Bankruptcy Actions;</li> <li>(vii) Antitrust Clearances;</li> <li>(viii) Post-Closing Amounts Received and Paid;</li> <li>(ix) Confidentiality;</li> <li>(x) Delivery of Mortgage Files;</li> <li>(xi) Third Party Servicing Agreement;</li> <li>(xii) Transfer of Servicing;</li> <li>(xiii) Use of Proceeds;</li> <li>(xiv) Electronic Data Files;</li> <li>(xv) Transfer of Assets to DIP Borrowers; and</li> <li>(xvi) Mortgage Loan Modifications.</li> </ul>
<b>Closing Date and Closing Conditions</b>	<p>Closing shall occur after the necessary conditions to closing have been satisfied or waived. Material conditions to the obligations of each party to consummate the closing include:</p> <ul style="list-style-type: none"> <li>(i) The entry of the Sale Procedures Order, the Sale Approval Order and the Confirmation Order;</li> <li>(ii) No judgments or injunction barring Closing;</li> </ul>

	<p>(iii) The Purchaser's receipt of the necessary Agency Approvals; and</p> <p>(iv) Expiration of the applicable antitrust waiting period.</p> <p>Additional conditions to the obligations of Sellers to consummate the closing include:</p> <p>(i) Purchaser's representations and warranties being true on the Closing Date and Purchaser having complied with all covenants; and</p> <p>(ii) Receipt of required third-party consents.</p> <p>Additional conditions to the obligations of Purchaser to consummate the closing include:</p> <p>(i) Sellers' representations and warranties being true on the Closing Date and Sellers having complied with all covenants;</p> <p>(ii) Sale Approval Order having been entered and become a Final Order; and</p> <p>(iii) Purchaser's receipt of all Licenses and Permits necessary to own the Purchased Assets in all material respects.</p>
<b>Termination</b>	<p>The Agreement may be terminated:</p> <p>(i) By mutual written consent of Sellers and Purchaser;</p> <p>(ii) By either party if a permanent injunction or similar order against the transaction is entered;</p> <p>(iii) By Purchaser if:</p> <ol style="list-style-type: none"> <li>a. the conditions to its obligations are not satisfied;</li> <li>b. Sellers breach the Agreement;</li> <li>c. the Sellers do not file the Petitions within two business days of the date of the Agreement; or</li> <li>d. the Sale Procedures Order has not been entered by the Bankruptcy Court by June 18, 2012;</li> <li>e. the Sale Procedures Order does not provide for the final bid deadline to occur not later than 90 calendar days following the entry of the Sale Procedures Order;</li> <li>f. the Auction, if any, is not concluded within seven</li> </ol>



	<p>Business Days following the final bid deadline;</p> <ul style="list-style-type: none"> <li>g. the Sale Hearing does not occur within 30 days following the conclusion of the Auction; or such other date as may be scheduled by the Bankruptcy Court that is no more than 40 days following the conclusion of the Auction;</li> <li>h. the Confirmation Order has not been entered by October 31, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of its effectiveness by November 15, 2012;</li> <li>i. the Chapter 11 Plan Effective Date has not occurred by December 15, 2012 and the Sale Approval Order has not been entered and become a Final Order without stay of effectiveness by December 15, 2012;</li> <li>j. the Sale Approval Order once entered, is changed in a manner that is adverse to Purchaser without the consent of Purchaser in its sole discretion;</li> <li>k. any Seller seeks to have the Bankruptcy Court enter an order dismissing the Bankruptcy Case of any Seller or converting it to a case under Chapter 7 of the Bankruptcy Code, or if the Bankruptcy Court enters an order dismissing the Bankruptcy Case of any Seller or converting the Bankruptcy Case of any Seller to a case under Chapter 7 of the Bankruptcy Code, or appoints a trustee in any Seller's Bankruptcy Case or an examiner with enlarged powers relating to the operation of Sellers' businesses, and such dismissal, conversion or appointment is not reversed or vacated within three business days after the entry thereof; or</li> <li>l. Sellers' respective Boards of Directors approve an Alternative Restructuring or Sellers execute a letter of intent (or similar document) indicating their intention to pursue an Alternative Restructuring.</li> </ul> <p>(iv) By Sellers if:</p> <ul style="list-style-type: none"> <li>a. the conditions to the obligations of the Sellers are not satisfied;</li> <li>b. Purchaser breaches the Agreement; or</li> </ul> <p>(v) Automatically if the Bankruptcy Court enters an order approving a</p>
--	---

	Competing Transaction.
<b>Regulatory Matters</b>	The Agreement is subject to antitrust clearances. The waiting period applicable to the transactions contemplated by the Agreement under the HSR Act shall have expired or been terminated except for those which by their terms shall survive the Closing Date..
<b>Survival</b>	Sellers and Purchaser agree that all of the representations, warranties and covenants of Sellers and Purchaser contained in the Agreement shall terminate at the Closing Date.

**EXHIBIT D**

**PROPOSED NATIONSTAR SALE APPROVAL ORDER**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----  
In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.  
-----

)

)

)

)

)

)

)

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

**ORDER UNDER 11 U.S.C. §§ 105, 363, AND 365 AND FED BANKR. P. 2002, 6004, 6006,  
AND 9014 (I) APPROVING (A) SALE OF DEBTORS' ASSETS PURSUANT TO  
ASSET PURCHASE AGREEMENT WITH NATIONSTAR MORTGAGE  
LLC; (B) SALE OF PURCHASED ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (C) ASSUMPTION  
AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES THERETO; (D) RELATED AGREEMENTS;  
AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated May 14, 2012 (the "Motion"), of Residential Capital, LLC ("ResCap") and certain of its affiliates, as debtors in possession in the above-captioned Chapter 11 cases (collectively, the "Debtors"),<sup>1</sup> for entry of an order, under Bankruptcy Code sections 105, 363, and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9014 authorizing and approving (i) that certain Asset Purchase Agreement, dated as of May 13, 2012, a copy of which is attached hereto as Exhibit 1, (including all schedules, exhibits, and attachments thereto, including the Ancillary Agreements (as such term is defined therein) to be entered into by and among the parties as contemplated therein, collectively, the "Nationstar APA"), by and among Nationstar Mortgage LLC ("Purchaser"), ResCap, Residential Funding Company, LLC ("RFC"),

<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Nationstar APA. Creditors and parties-in-interest with questions or concerns regarding the Debtors' Chapter 11 cases or the relief granted herein may refer to <http://www.kccllc.net/rescap> for additional information.

GMAC Mortgage, LLC (“GMAC Mortgage”), Executive Trustee Services, LLC (“ETS LLC”), ETS of Washington, Inc. (“ETS WA”), and the additional sellers identified on schedule A to the Nationstar APA (such sellers, together with ResCap, RFC, GMAC Mortgage, ETS LLC, ETS WA, collectively, the “Sellers”, and each individually, a “Seller”); (ii) the sale and all related transactions, in accordance with the Nationstar APA and this Order (the “Sale”) of all of the Debtors’ right, title and interest in, to and under the Purchased Assets to the Purchaser free and clear of all Claims<sup>2</sup>, Liens<sup>3</sup>, encumbrances, or other interests (including without limitation, any and all “claims” as defined in section 101(5) of the Bankruptcy Code and any rights or claims based on any successor or transferee liability) other than the Assumed Liabilities and the Permitted Liens (collectively, all such Claims, Liens, encumbrances and other interests other than the Assumed Liabilities and the Permitted Liens, “Interests”), with such Interests transferring and attaching to the proceeds of the Sale with the same validity and priority as such Interests had in the Purchased Assets immediately prior to the Sale; (iii) the assumption by the Sellers and the assignment to the Purchaser of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code (together with the Sale and other transactions to be consummated pursuant to the Nationstar APA, the “Transactions”) and the fixing and satisfaction by the Sellers of Cure Amounts relating thereto and (iv) granting related relief; and upon the Whitlinger Affidavit, pursuant to Local Bankruptcy Rule 1007-2; the Greene Declaration; and the Hamzehpour

---

<sup>2</sup> For the convenience of the parties, the Nationstar APA defines “Claims” to mean “any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, known or unknown.”

<sup>3</sup> For the convenience of the parties, the Nationstar APA defines “Lien” to mean “any lien, charge, claim, pledge, deed of trust, right of first refusal, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, option, proxy, hypothecation, voting trust agreement, transfer restriction, easement, servitude, encroachment, or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).”

Declaration; and the Court having entered an order, dated [ ], 2012 (the “Sale Procedures Order”), authorizing and approving the Sale Procedures, bid protections, notice of the Sale, and the hearing to consider approval of the Transactions (the “Sale Hearing”)<sup>4</sup>; and an Auction having been held in accordance with the Sale Procedures Order; and at the conclusion of the Auction, Nationstar (the “Purchaser”) was chosen as the Successful Bidder (as defined in the Sale Procedures Order) in accordance with the Sales Procedures Order; and the Sale Hearing having been held on [ ], 2012 to consider the relief requested in the Motion; the record of the Sale Hearing, and all of the proceedings before the Court; and the Court having reviewed the Motion and any objections thereto (the “Objections”); and all parties in interest having been afforded an opportunity to be heard with respect to the Motion and all of the relief related thereto; and it appearing that the relief requested by the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefore, it is

**FOUND AND DETERMINED THAT:**<sup>5</sup>

A. **Jurisdiction and Venue.** This Court has jurisdiction over the Motion and the Transactions pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

---

<sup>4</sup> For the purposes of this Order, the term “Sale Hearing” shall be any hearing at which the approval of the Sale is considered, including a hearing to consider confirmation of a plan of reorganization if the Sale is approved in connection therewith.

<sup>5</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014. The consummation of the Transactions contemplated by the Nationstar APA and this Order is legal, valid and properly authorized under all such provisions of the Bankruptcy Code and Bankruptcy Rules, and all of the applicable requirements of such sections and rules have been complied with in respect of the Transactions.

C. **Notice.** As evidenced by the affidavits and certificates of service and publication notice previously filed with the Court and based on the representations of counsel at the Sale Procedures Hearing and the Sale Hearing, proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the Sale, the other Transactions, the Auction, the Assumption and Assignment Procedures, and the Sale Hearing have been provided in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a), 6004(a), 6006(c), 9007 and 9014 and in compliance with the Sale Procedures Order to all interested persons and entities including: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for ResCap's prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the agent under the Debtors' post-petition debtor-in-possession financing facility, (vi) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' Chapter 11 cases (the "Creditors' Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vii) the attorneys for the ad hoc bondholders' committee, (viii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the

Government National Mortgage Association, (ix) any party who, in the past year, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the APA, (x) each non-debtor counterparty to the Assumed Contracts, any known third party beneficiaries to such Assumed Contracts, all trustees, certificateholders, investors, rating agencies, mortgage insurers and any parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements (all such parties in this clause (ix), the “Interested Contract Parties”); (xi) all parties who are known to have asserted or believed by Debtors to hold any Interest in or on the Purchased Assets, (xii) the Securities and Exchange Commission, (xiii) the Internal Revenue Service, (xiv) all applicable state attorneys’ general, and local authorities, (xv) all applicable state and local taxing authorities, (xvi) the Federal Trade Commission, (xvii) the United States Department of Justice, (xviii) the United States Attorney’s Office, (xix) the Office of the United States Trustee for the Southern District of New York, (xx) the office of the New York Attorney General; and (xix) all entities that requested notice in these Chapter 11 cases under Bankruptcy Rule 2002 ((i)-(xx) collectively, the “Notice Parties”). The Debtors published the Sale Notice (as defined in the Sale Procedures Order) in the national edition of *The Wall Street Journal* and *The New York Times*. The Debtors provided notice of the assumption and assignment of Assumed Contracts (including Servicing Agreements) and any Cure Amounts related thereto to all Interested Contract Parties of such Assumed Contracts in accordance with the Sale Procedures Order. Such notice placed these Persons on notice that their failure to object to the Debtors’ assumption and assignment of the Assumed Contracts (including Servicing Agreements) or to the Cure Amounts would be deemed consent to the assumption and



assignment of the Assumed Contracts (including Servicing Agreements) and the Cure Amounts. The notice described in this Paragraph C is good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assumed Contracts (including the Servicing Agreements), the Cure Amounts, the Nationstar APA, Sale, the other Transactions and this Order is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors, the publication of the Sale Notice was sufficient and reasonably calculated under the circumstances to reach such parties.

D. **Extensive Efforts by Debtors.** As of the Petition Date and for a period of more than 7 months before the commencement of these Chapter 11 cases, the Debtors worked with their counsel and financial advisors, AFI, and various governmental constituencies to implement a viable transaction that would allow them to continue their operations. The Debtors presented credible evidence that, as of the Petition Date, they had explored various strategic alternatives for the Debtors' businesses over an extended period of time and had communicated with 5 parties about a possible sale of all or substantially all of the Debtors' assets. The Transactions are the result of the Debtors' extensive efforts in seeking to maximize recoveries to the Debtors' estates, for the benefit of creditors.

E. **Business Justification.** The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets. In light of the circumstances of these Chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the Sale, time is of the essence in (i) consummating the Sale and the other Transactions, (ii) preserving the viability of

the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, and their creditors and employees.

F. **Sale Procedures Order.** On [ ], 2012, this Court entered the Sale Procedures Order approving Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets.

G. **Adequate Marketing; Highest or Best Offer.** As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the Nationstar APA constitutes the highest or otherwise best offer for the Purchased Assets; (d) the consideration provides fair and reasonable consideration for the Purchased Assets and constitutes reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia; (e) the Sale will provide a greater recovery for the Debtors' creditors than would be provided by any other practically available alternative, including liquidation under Chapters 7 or 11 of the Bankruptcy Code; (f) taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; and (g) the Debtors' determination that the Nationstar APA constitutes the highest or best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

H. **Opportunity to Object.** A reasonable opportunity to object or be heard with respect to the Motion, the relief requested therein and the Cure Amounts has been afforded to all interested Persons, including the Notice Parties.

I. **Sale in Best Interests.** The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these Chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest. Approval of the Nationstar APA and of the Sale and other Transactions at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. **No *Sub Rosa* Plan.** In the event the Transactions are approved under section 363 of the Bankruptcy Code, the consummation of the Transactions outside of a plan of reorganization pursuant to the Nationstar APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Transactions do not constitute a *sub rosa* plan of reorganization.

K. **Arm's-Length Sale.** The Nationstar APA and the Transactions were negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, their insiders and affiliates, nor the Purchaser have engaged in any conduct that would cause or permit the Nationstar APA, the Sale, or any part of the Transactions thereby to be avoided under section 363(n) of the Bankruptcy Code.

L. **Good Faith Purchaser.** The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

M. **Prompt Consummation.** The Sale and the other Transactions must be approved and consummated as promptly as practicable in order to preserve the viability of the business to which the Purchased Assets relate as a going concern.

N. **Corporate Authority.** Each Debtor (i) has full corporate power and authority to execute the Nationstar APA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Nationstar APA, (iii) has taken all corporate action necessary to authorize and approve the Nationstar APA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) needs no consents or approvals, other than those expressly provided for in the Nationstar APA, which may be waived by the Purchaser, to consummate such transactions.

O. **Binding and Valid Transfer.** The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Assumed Liabilities, will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of all Interests, including (i) rights or claims based on any successor or transferee liability (ii) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers' or the Purchaser's interest in the Purchased Assets, or any similar rights, (iii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the closing, and (iv) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if

any, including any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether occurring or arising prior to or subsequent to the commencement of these Chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, Claims otherwise arising under doctrines of successor or transferee liability, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date.

P. **Severability of Servicing Agreements.** The Servicing Agreements being assumed and assigned to the Purchaser pursuant to the Nationstar APA consist solely of enforceable contracts for providing servicing, subservicing or master servicing for Mortgage Loans. As used in this Order, "Other Agreements" means any right, obligation, representation, covenant or agreement (i) contained in a Servicing Agreement that is not related to (a) collections with respect to, or the administration or servicing or subservicing or master servicing of, or reporting in respect of, Mortgage Loans, (b) servicing fees or ancillary income, (c) the disbursement of collections with respect to Mortgage Loans, (d) the making of delinquency advances and servicing advances in connection with the servicing or subservicing or master servicing of Mortgage Loans, (e) payment of expenses associated with the administration, servicing or subservicing or master servicing of Mortgage Loans, (f) the limitation on liability of,

and indemnification in favor of, the servicer, subservicer or master servicer thereunder, or (g) representations, warranties and covenants running in favor of the servicer, subservicer or master servicer thereunder, or (ii) that relates to mortgage loan origination, or the sale of mortgage loans, in all cases regardless of whether such Other Agreement arises from, or is memorialized in, the same writing as a Servicing Agreement. The Servicing Agreements do not include any Other Agreements, regardless of whether such Other Agreements arise from, or are memorialized in, the same writing as the Servicing Agreements, and to the extent any Servicing Agreement arises from, or is memorialized in, one or more writings which include an Other Agreement, such Servicing Agreement is severable from any Other Agreements. The Sellers are not assuming and assigning to the Purchaser and the Purchaser has no Liability under any Other Agreement. Nothing in the Nationstar APA or this Order shall have any effect on any Other Agreement or any claims related thereto against the Debtors, and the rights, if any, of all parties against the Debtors in respect of Other Agreements are reserved. The rights, if any, of parties against the Debtors in respect of Other Agreements are not the subject matter of the Sale Hearing and are expressly reserved; provided, however, that no party to an Other Agreement may proceed against the Purchaser or the Purchased Assets. No delay or failure of performance by the Debtors under or in respect of any Other Agreement will (i) affect any right of the Purchaser, or any obligation of any other party, under any Assumed Contract (including, without limitation, any Servicing Agreement) or (ii) permit, result in or give rise to any setoff, delay, deferral, defense, recoupment, Claim, counterclaim, default or other impairment of the rights of Purchaser under any Assumed Contract (including, without limitation, any Servicing Agreement).

**Q. Satisfaction of 363(f) Standards.** The Sellers may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever, including rights or claims

based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests, including rights or claims based on any successor or transferee liability, and non-debtor parties to the Assumed Contracts who did not object, or who withdrew their Objections, to the Transactions or the Motion are (a) deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code and/or (b) adequately protected by having their Interests, if any, including rights or claims based on any successor or transferee liability, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an Interest, including rights or claims based on any successor or transferee liability. In all cases, each such Person with Interests in the Purchased Assets are enjoined from taking any action against the Purchaser, the Purchaser's Affiliates or any agent of the foregoing to recover any such Interest.

R. **Necessity of Order.** The Purchaser would not have entered into the Nationstar APA and would not consummate the Transactions without all of the relief provided for in this Order (including that (1) the transfer of the Purchased Assets to Purchaser be free and clear of all Interests and including rights or Claims based upon successor or transferee liability, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date, and (2) the Purchaser not be liable for any Cure Amounts or any other pre-Closing liabilities with respect to any Assumed Contracts). The consummation of the Transactions pursuant to this Order and the Nationstar APA is necessary for the Debtors to maximize the value of their estates for the benefit of all creditors and other parties in interest. The Purchaser has agreed to this Transaction with

the intent of purchasing the Purchased Assets and does not and would not agree to assume anything other than the Assumed Liabilities.

S. **Assumed Contracts.** The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to the Purchaser in connection with the consummation of the Sale, and the assumption and assignment of the Assumed Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Assumed Contracts being assigned to the Purchaser are an integral part of the Purchased Assets being purchased by the Purchaser, and, accordingly, such assumption and assignment of the Assumed Contracts and liabilities are reasonable, enhancing the value of the Debtors' estates.

T. **Cure/Adequate Assurance.** The Debtors have cured or demonstrated their ability to cure any default with respect to any act or omission that occurred prior to the Closing under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code. The Cure Amounts are deemed the amounts necessary to "cure" within the meaning of section 365(b)(1) of the Bankruptcy Code all "defaults" within the meaning of section 365(b) of the Bankruptcy Code under such Assumed Contracts. The Purchaser's promise to perform the obligations under the Assumed Contracts after the Closing Date shall constitute adequate assurance of its future performance of and under the Assumed Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Purchaser is not assuming any obligation under or in connection with the Assumed Contracts (including Servicing Agreements) occurring or arising prior to the Closing Date, whether encompassed within the Cure Amounts payable by the Debtors or otherwise (including, without limitation, fees or indemnification Claims relating to any period prior to the Closing Date or any acts or



omissions of the Sellers or any other Person occurring or arising prior to the Closing Date). All Interested Contract Parties of the Assumed Contracts (including the Servicing Agreements) who did not timely file an objection to the assumption and assignment of the Assumed Contract, are deemed to consent to the assumption by the Debtors of their respective Assumed Contract and the assignment thereof to the Purchaser. The objections of all Interested Contract Parties of Assumed Contracts (including Servicing Agreements) that did file a timely objection to the assumption and assignment of such parties' respective Assumed Contract or Cure Amount relating thereto were heard at the Sale Hearing (to the extent not withdrawn), were considered by the Court, and are overruled on the merits with prejudice. The Court finds that with respect to all such Assumed Contracts (including Servicing Agreements) the payment of the Cure Amounts is appropriate and is deemed to fully satisfy the Debtors' obligations under section 365(b) of the Bankruptcy Code. Accordingly, all of the requirements of sections 365(b) of the Bankruptcy Code have been satisfied for the assumption and the assignment by the Debtors to the Purchaser of each of the Assumed Contracts. To the extent any Assumed Contract is not an executory contract within the meaning of section 365 of the Bankruptcy Code, it shall be transferred to the Purchaser in accordance with the terms of this Order that are applicable to the Purchased Assets, and the Purchaser shall have no liability or obligation for any (a) defaults or breaches under such agreement that relate to acts or omissions that occurred in the period, or otherwise arose, prior to the date of the entry of this Order, and (b) Claims, counterclaims, offsets, or defenses (whether contractual or otherwise, including without limitation, any right of recoupment) with respect to such Assumed Contract, that relate to any acts or omissions that arose or occurred prior to the date of the entry of this Order.

U. **Unenforceability of Anti-Assignment Provisions.** Except as provided in section 8.3(v) and Schedule 4.3 of the Nationstar APA, anti-assignment provisions in any Assumed Contract shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assumed Contracts and should be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

V. **Personally Identifiable Information.** The Debtors have provided certain privacy policies to consumers that govern the disclosure of “personally identifiable information” (as defined in Bankruptcy Code section 101(41A)) to unaffiliated third parties. Debtors have proposed to sell certain assets, which may require the disclosure of personally identifiable information to third parties. The Debtors’ disclosure of personally identifiable information pursuant to the Transactions is in compliance with the Gramm-Leach-Bliley Act and is consistent with the privacy notices delivered by the Debtors to mortgage borrowers. For these reasons, no Consumer Privacy Ombudsman has been appointed under section 363(b)(1) of the Bankruptcy Code.

W. **Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED THAT:

1. **Motion is Granted.** The Motion is granted and the relief requested therein with respect to the Sale is granted and approved in its entirety, as further described herein.

2. **Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Motion, including any objections to Cure Amounts or the assumption and assignment of Assumed Contracts, that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

3. **Approval.** The Nationstar APA, and all the terms and conditions thereof, is approved. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under, and comply with the terms of, the Nationstar APA and consummate the Transactions pursuant to, and in accordance with, the terms and conditions of the Nationstar APA and this Order. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the Nationstar APA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the Nationstar APA and effectuate the Transactions, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to Purchaser's possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the Nationstar APA.

4. **Binding Effect of Order.** This Order and the Nationstar APA shall be binding in all respects upon all known and unknown creditors of, and equity security interests in, any Debtor, including any holders of Interests (including holders of rights or claims based on any successor or transferee liability), all Interested Contract Parties of the Assumed Contracts, all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, and any trustees appointed in the Debtors' Chapter 11 cases or upon a

conversion to cases under Chapter 7 of the Bankruptcy Code and this Order shall not be subject to amendment or modification and the Nationstar APA shall not be subject to rejection. Subject to the terms and conditions of the Nationstar APA, the terms of this Order shall apply in the event the Sale under the Nationstar APA is consummated by and under any Chapter 11 plan, and may be incorporated into any confirmation order. Nothing contained in any Chapter 11 plan confirmed in the Debtors' Chapter 11 cases or the order confirming any such Chapter 11 plan shall conflict with or derogate from the provisions of the Nationstar APA or this Order.

5. **Injunction.** All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the Nationstar APA and this Order. Following the Closing, except for Persons entitled to enforce Assumed Liabilities and Permitted Liens, all Persons (including, but not limited to, the Debtors and/or their respective successors (including any trustee), creditors, investors, certificateholders, securitization trustees, borrowers, current and former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state, and local officials, including those maintaining any authority relating to any environmental, health and safety laws, and the successors and assigns of each of the foregoing) holding Interests in the Purchased Assets or against the Debtors in respect of the Purchased Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any Interests of any kind or nature whatsoever (including, without limitation, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date) against the Purchaser or any Affiliate

of the Purchaser or any of their respective property, successors and assigns, or the Purchased Assets, as an alleged successor or on any other grounds, it being understood that nothing herein shall affect assets of the Debtors that are not Purchased Assets.

6. Upon the transfer or assignment of the Assumed Contracts to the Purchaser, each Interested Contract Party of an Assumed Contract is hereby forever barred, estopped, and permanently enjoined from asserting against the Purchased Assets, the Purchaser, its Affiliates or their respective property (a) any setoff, defense, recoupment, Claim, Interest, counterclaim or default asserted or assertable against, or otherwise delay, defer or impair any rights of the Purchaser with respect to the Purchased Assets with respect to an act or omission of, the Debtors, or (b) any rent acceleration, assignment fee, default, breach or Claim, or pecuniary loss or condition to assignment or transfer, arising under or related to an Assumed Contract existing as of the Closing, or arising by reason of the Closing. No delay or failure of performance under or in respect of any Other Agreement will (i) affect any right of the Purchaser, or any obligation of any other party, under any Assumed Contract (including, without limitation, any Servicing Agreement) or (ii) permit, result in or give rise to any setoff, delay, deferral, defense, recoupment, Claim, Interest, counterclaim, default or other impairment of the right to receive any payment or otherwise to enforce any other rights under any Assumed Contract (including, without limitation, any Servicing Agreement).

7. No Person shall assert, and the Purchaser and the Purchased Assets shall not be subject to, any defaults, breaches, counterclaims, offsets, defenses (whether contractual or otherwise, including, without limitation, any right of recoupment), Liabilities, Claims and Interests, or basis of any kind or nature whatsoever to delay, defer, or impair any right of the Purchaser or the Debtors, or any obligation of any other party, under or with respect to, any

Purchased Assets (including, without limitation, an Assumed Contract), with respect to any act or omission that occurred prior to the Closing or with respect to any Other Agreement or any obligation of Debtors that is not an Assumed Liability.

8. **General Assignment.** Upon the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Sellers' interests in the Purchased Assets (or such Assumed Contract, if applicable) and a bill of sale transferring good and marketable title in the Purchased Assets (or such Assumed Contract, if applicable) to the Purchaser. Each and every federal, state, and local governmental agency, quasi-agency, or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Transactions.

9. **Transfer Free and Clear.** Except for the Assumed Liabilities, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser as required under the Nationstar APA, and such transfer shall be free and clear of all Interests of any Person (including, without limitation, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date) and any and all rights and claims under any bulk transfer statutes and similar laws, whether arising by agreement, by statute or otherwise and whether occurring or arising before, on or after the date on which these Chapter 11 cases were commenced, whether known or unknown, occurring or arising prior to such transfer, with all such Interests to attach to the proceeds of the Sale ultimately attributable to the property against or in which the holder of a Claim or Interest claims or may claim a Claim or Interest, in the order

of their priority, with the same validity, force, and effect which they now have, subject to any claims and defenses the Sellers may possess with respect thereto.

10. **Valid Transfer.** The transfer of the Purchased Assets to the Purchaser pursuant to the Nationstar APA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all Interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, other than the Assumed Liabilities.

11. **Direction to Release Interests.** Upon the Closing, each of the Sellers' creditors and any other holder of an Interest, including rights or Claims based on any successor or transferee liability, is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interest in the Purchased Assets, if any, as such Interest may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing an Interest in the Sellers or the Purchased Assets shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (i) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (ii) the Purchaser are authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets. Each and every federal, state, and local governmental agency or department is

hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Nationstar APA, including, without limitation, recordation of this Order. This Order shall be binding upon and shall govern the acts of all Persons including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of such assets or other property interests.

12. **No Interference.** Following the Closing of the Sale, no holder of any Interest shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such Interest, or based on any actions the Debtors may take in their Chapter 11 cases.

13. **Surrender of Possession.** All entities that are currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets in which the Sellers hold an Interest hereby are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date, unless the Purchaser otherwise agrees.

14. **No Discriminatory Treatment.** To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 cases or the consummation of the Transactions contemplated by the Nationstar APA.



15. **Severing of Multi-Agreement Documents.** Any Servicing Agreement memorialized in the same writing as an Other Agreement (such writing, a “Multi-Agreement Document”) is hereby severed and deemed reformed to become a separate, independently enforceable agreement. Any provision of a Multi-Agreement Document that would allow any Person to terminate, recapture, impose any penalty, or modify any term or condition upon such reformation is void and of no force and effect. No delay or failure of performance under or in respect of any Other Agreement will (i) affect any right of the Purchaser, or any obligation of any other party, under any Assumed Contract (including, without limitation, any Servicing Agreement) or (ii) permit, result in or give rise to any setoff, delay, deferral, defense, recoupment, Claim, counterclaim, default or other impairment of the right to receive any payment or otherwise enforce any right under any Assumed Contract (including, without limitation, any Servicing Agreement). Except as provided in section 8.3(v) and Schedule 4.3 of the Nationstar APA, to the extent any Multi-Agreement Document provides that a Person’s consent is required for reformation, such consent requirement shall have no force and effect. Nothing in this Order or in such reformation shall affect any substantive provisions of an Other Agreement. Any indemnity or other provision, to the extent it relates to an Other Agreement, is not part of an Assumed Contract.

16. **Assumption and Assignment of Contracts.** Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and subject to and conditioned upon the Closing of the Sale, the Debtors’ assumption and assignment to the Purchaser of the Assumed Contracts is approved, and the requirements of section 365(b)(1) of the Bankruptcy Code with respect thereto are deemed satisfied.

17. The Debtors are authorized and directed in accordance with sections 105(a) and 365 of the Bankruptcy Code to (i) assume and assign to the Purchaser, effective as of the Closing, as provided by, and in accordance with, the Sale Procedures Order and the Nationstar APA, the Assumed Contracts free and clear of all Interests of any kind or nature whatsoever, including rights or Claims based on any successor or transferee liability, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date, other than the Assumed Liabilities, and (ii) execute and deliver to the Purchaser such documents or other instruments as the Purchaser reasonably deem may be necessary to assign and transfer the Assumed Contracts to the Purchaser.

18. The Assumed Contracts shall be transferred and assigned to, pursuant to the Sale Procedures Order and the Nationstar APA, and thereafter remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provision in any such Assumed Contract (including those of the type described in sections 365(b)(2), (e)(1), and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. The Sellers shall be relieved from any further liability, other than the Cure Amounts, with respect to the Assumed Contracts after such assumption and assignment to the Purchaser. The Debtors may assign each Assumed Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect. All other requirements and

conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of each Assumed Contract have been satisfied.

19. All defaults and all other obligations or Liabilities under any Assumed Contract occurring, arising or accruing prior to the date of the assignment or transfer to the Purchaser (including, without limitation, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date) shall be deemed cured or satisfied upon payment by the Sellers of the Cure Amount, and, without limiting the foregoing, no effect shall be given to any default of the type set forth in section 365(b)(2) of the Bankruptcy Code, or the type of default concerning an unexpired lease of real property described in section 365(b)(1) of the Bankruptcy Code whether or not such Assumed Contract is an executory contract within the meaning of section 365 of the Bankruptcy Code. The Cure Amounts reflect the sole amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under the Assumed Contracts, and no other amounts are or shall be due to the non-debtor parties in connection with the assumption by the Debtors and assignment to the Purchaser of the Assumed Contracts.

20. Except as provided in the Nationstar APA or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Contract other than certain Cure Amounts, and all holders of such claims arising from and after Closing under any Assumed Contract are forever barred and estopped from asserting any claims (other than for Cure Amounts) under any Assumed Contract against the Debtors, their successors or assigns, and their estates

21. The failure of the Sellers or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Sellers' and the Purchaser's rights to enforce every term and condition of the Assumed Contracts.

22. **No Successor Liability.** Neither the Purchaser, nor any of its successors or assigns, or any of their respective affiliates shall have any liability for any Interest that arose or occurred prior to the Closing, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing. The Purchaser shall not be deemed, as a result of any action taken in connection with the AFI APA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be legal successors, or otherwise be deemed successors to the Debtors; (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any Interests, including under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated.

23. **Fair Consideration.** The consideration provided by the Purchasers for the Purchased Assets under the Nationstar APA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Sales may not be avoided under section 363(n) of the Bankruptcy Code.

24. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order, all amendments thereto, and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to the Purchaser; (ii) interpret, implement, and enforce the provisions of this Order; (iii) protect the Purchaser against any Interests against the Sellers or the Purchased Assets of any kind or nature whatsoever, and (iv) enter any order under section 363 and 365 of the Bankruptcy Code.

25. **Good Faith.** The Transactions contemplated by the Nationstar APA is undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Transactions shall not affect the validity of the Transactions (including the assumption and assignment of any of the Assumed Contracts), unless such authorization is duly stayed pending such appeal. The Purchaser is a Purchaser in good faith of the Purchased Assets and is entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

26. **No Bulk Law Application.** No law of any state or other jurisdiction, including any bulk sales law or similar law, shall apply in any way to the transactions contemplated by the Sale, the Nationstar APA, the Motion, and this Order.

27. **Subsequent Plan Provisions.** Nothing contained in any Chapter 11 plan confirmed in any Debtor's bankruptcy case or any order confirming any such plan or in any other order in these Chapter 11 cases shall alter, conflict with, or derogate from, the provisions of the Nationstar APA or this Order.

28. **Failure to Specify Provisions.** The failure to specifically include any particular provisions of the Nationstar APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Nationstar APA be authorized and approved in their entirety.

29. **Non-Material Modifications.** The Nationstar APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have any adverse effect on the Debtors' estates.

30. **No Stay or Order.** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the Transactions immediately upon entry of this Order. Time is of the essence in closing the transactions referenced herein, and the Debtors and the Purchaser intend to close the Transactions as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

31. The relief granted by this Order shall apply to any affiliated future debtor (a "Future Debtor") in these jointly-administered cases. An affiliated debtor shall be deemed to be a Future Debtor upon the Court's entry of an order authorizing the joint administration of such Future Debtor's Chapter 11 case with the Chapter 11 cases of the Debtors.

32. **Appointment of Trustee.** The provisions of the Nationstar APA and this Order may be specifically enforced in accordance with the Nationstar APA notwithstanding the appointment of any chapter 7 or chapter 11 trustee after the Closing.

33. Notwithstanding anything herein to the contrary, this Order shall not modify or affect the terms and provisions of, nor the rights and obligations under, (a) the Board of Governors of the Federal Reserve System Consent Order, dated April 13, 2011, by and among AFI, Ally Bank, ResCap, GMAC Mortgage, LLC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, (b) the consent judgment entered April 5, 2012 by the District Court for the District of Columbia, dated February 9, 2012, (c) the Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, dated February 10, 2012, and (d) all related agreements with AFI and Ally Bank and their respective subsidiaries and affiliates (excluding ResCap and its subsidiaries).

34. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York  
[\_\_\_\_\_] , 2012

---

The Honorable Martin Glenn  
United States Bankruptcy Judge

**EXHIBIT 1**

**Nationstar APA**



**EXHIBIT E**

**PROPOSED AFI SALE APPROVAL ORDER**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**ORDER UNDER 11 U.S.C. §§ 105, 363, AND 365 AND FED  
BANKR. P. 2002, 6004, 6006, AND 9014 (I) APPROVING  
(A) SALE OF DEBTORS' ASSETS PURSUANT TO ASSET  
PURCHASE AGREEMENT WITH ALLY FINANCIAL INC. AND  
BMMZ HOLDINGS LLC; (B) SALE OF PURCHASED ASSETS FREE AND  
CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS;  
AND (C) RELATED AGREEMENTS; AND (II) GRANTING RELATED RELIEF**

Upon the motion, dated May 14, 2012 (the "Motion"), of Residential Capital, LLC ("ResCap") and certain of its affiliates, as debtors in possession in the above-captioned Chapter 11 cases (collectively, the "Debtors"),<sup>1</sup> for entry of an order, under Bankruptcy Code sections 105, 363, and 365 and Bankruptcy Rules 2002, 6004, 6006 and 9014 authorizing and approving (i) that certain Asset Purchase Agreement, dated as of May 13, 2012, a copy of which is attached hereto as Exhibit 1, (including all schedules, exhibits, and attachments thereto, including the Ancillary Agreements (as such term is defined therein) to be entered into by and among the parties as contemplated therein, collectively, the "AFI APA"), by and among Ally Financial Inc. ("AFI"), BMMZ Holdings LLC ("Purchaser"), ResCap, Residential Funding Company, LLC ("RFC"), and GMAC Mortgage, LLC ("GMAC Mortgage" and, together with

<sup>1</sup> Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the AFI APA. Creditors and parties-in-interest with questions or concerns regarding the Debtors' Chapter 11 cases or the relief granted herein may refer to <http://www.kccllc.net/rescap> for additional information.

ResCap and RFC, the “Sellers”, and each individually, a “Seller”); (ii) the sale and all related transactions, in accordance with the AFI APA and this Order (the “Sale”), of all of the Debtors’ right, title, and interest in, to and under the Purchased Assets to the Purchaser free and clear of all Claims<sup>2</sup>, Liens<sup>3</sup>, encumbrances, or other interests (including, any and all “claims” as defined in section 101(5) of the Bankruptcy Code and any rights or claims based on any successor or transferee liability) other than the Permitted Liens (collectively, all such Claims, Liens, encumbrances and other interests other than the Permitted Liens, “Interests”), with such Interests transferring and attaching to the proceeds of the Sale with the same validity and priority as such Interests had in the Purchased Assets immediately prior to the Sale; and (iii) granting related relief; and upon the Whitlinger Affidavit, pursuant to Local Bankruptcy Rule 1007-2; the Greene Declaration; and the Court having entered an order, dated [ ], 2012 (the “Sale Procedures Order”), authorizing and approving the Sale Procedures notice of the Sale and the hearing to consider approval of the Sale (the “Sale Hearing”)<sup>4</sup>; and an Auction having been held in accordance with the Sale Procedures Order; and at the conclusion of the Auction, the Purchaser was chosen as the Successful Bidder (as defined in the Sale Procedures Order) in accordance with the Sales Procedures Order; and the Sale Hearing having been held on [ ], 2012 to

---

<sup>2</sup> For the convenience of the parties, the AFI APA defines “Claims” to mean “any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, known or unknown.”

<sup>3</sup> For the convenience of the parties, the AFI APA defines “Lien” to mean “any lien, charge, claim, pledge, deed of trust, right of first refusal, security interest, conditional sale agreement or other title retention agreement, lease, mortgage, option, proxy, hypothecation, voting trust agreement, transfer restriction, easement, servitude, encroachment, or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction).”

<sup>4</sup> For the purposes of this Order, the term “Sale Hearing” shall be any hearing at which the approval of the Sale is considered, including a hearing to consider confirmation of a plan of reorganization if the Sale is approved in connection therewith.

consider the relief requested in the Motion; the record of the Sale Hearing, and all of the proceedings before the Court; and the Court having reviewed the Motion and any objections thereto (the “Objections”); and all parties in interest having been afforded an opportunity to be heard with respect to the Motion and all of the relief related thereto; and it appearing that the relief requested by the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefore, it is

**FOUND AND DETERMINED THAT:<sup>5</sup>**

A. **Jurisdiction and Venue.** This Court has jurisdiction over the Motion and the Sale pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (N). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief sought in the Motion are sections 105(a) and 363 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 2002, 6004, 9007 and 9014. The consummation of the Sale contemplated by the AFI APA and this Order is legal, valid and properly authorized under all such provisions of the Bankruptcy Code and Bankruptcy Rules, and all of the applicable requirements of such sections and rules have been complied with in respect of the Sale.

C. **Notice.** As evidenced by the affidavits and certificates of service and Publication Notice previously filed with the Court and based on the representations of counsel at

---

<sup>5</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052, made applicable to this proceeding pursuant to Fed. R. Bankr. P. 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

the Sale Procedures Hearing and the Sale Hearing, proper, timely, adequate, and sufficient notice of the Motion, the Sale Procedures, the Sale, the Auction, and the Sale Hearing have been provided in accordance with sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002(a), 6004(a), 9007 and 9014 and in compliance with the Sale Procedures Order to all interested persons and entities, including: (i) the Office of the United States Trustee for the Southern District of New York, (ii) the attorneys for the U.S. Treasury, (iii) the attorneys for ResCap's prepetition secured credit facilities, (iv) the attorneys for the agent under the Debtors' prepetition amended and restated secured revolving credit agreement, (v) the attorneys for the agent under the Debtors' post-petition debtor in possession financing facility, (vi) the attorneys for the statutory committee of unsecured creditors appointed in the Debtors' Chapter 11 cases (the "Creditors' Committee") (if no statutory committee of unsecured creditors has been appointed, the holders of the fifty largest unsecured claims against the Debtors on a consolidated basis), (vii) the attorneys for the ad hoc bondholders' committee, (viii) the attorneys for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association, (ix) any party who, in the past year, expressed in writing to the Debtors an interest in the Purchased Assets and who the Debtors and their representatives reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transaction contemplated in the APA, (x) all trustees, certificate holders, investors, rating agencies, mortgage insurers and any parties to any pooling and servicing agreements, assignment, assumption and recognition agreements, Servicing Agreements, subservicing agreements or similar agreements (all such parties in this clause (x), the "Interested Contract Parties"); (xi) all parties who are known to have asserted or believed by Debtors to hold any Interest in or on the Purchased Assets, (xii) the Securities and Exchange Commission,

(xiii) the Internal Revenue Service, (xiv) all applicable state attorneys' general, and local authorities, (xv) all applicable state and local taxing authorities, (xvi) the Federal Trade Commission, (xvii) the United States Department of Justice, (xviii) the United States Attorney's Office, (xix) the office of the New York Attorney General; and (xx) all entities that requested notice in these Chapter 11 cases under Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors published Notice of Auction and Sale Hearing in the national edition of *The Wall Street Journal* and *The New York Times*. The notice described in this Paragraph C is good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale Hearing, the AFI APA, the Sale, and this Order is or shall be required. With respect to parties who may have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors, the Publication Notice described above was sufficient and reasonably calculated under the circumstances to reach such parties.

**D. Extensive Efforts by Debtors.** As of the Petition Date and for a period of more than 7 months before the commencement of these Chapter 11 cases, the Debtors worked with their counsel and financial advisors, AFI, and various governmental constituencies to implement a viable transaction that would allow them to continue their operations. The Debtors presented credible evidence that, as of the Petition Date, they had explored various strategic alternatives for the Debtors' businesses over an extended period of time and had communicated with 5 parties about a possible sale of all or substantially all of the Debtors' assets. The Sale is the result of the Debtors' extensive efforts in seeking to maximize recoveries to the Debtors' estates, for the benefit of creditors.

**E. Business Justification.** The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the sale of

the Purchased Assets. In light of the circumstances of these Chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the Sale, time is of the essence in (i) consummating the Sale, (ii) preserving the viability of the Debtors' businesses as going concerns, and (iii) minimizing the widespread and adverse economic consequences for the Debtors, their estates, and their creditors and employees.

F. **Sale Procedures Order.** On [ ], 2012, this Court entered the Sale Procedures Order approving Sale Procedures for the Purchased Assets. The Sale Procedures provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets.

G. **Adequate Marketing; Highest or Best Offer.** As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing, and (ii) the representations of counsel made on the record at the Sale Hearing, (a) the Debtors have adequately marketed the Purchased Assets and conducted the sale process in compliance with the Sale Procedures Order; (b) a reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets; (c) the consideration provided for in the AFI APA constitutes the highest or otherwise best offer for the Purchased Assets; (d) the consideration provides fair and reasonable consideration for the Purchased Assets and constitutes reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia; (e) the Sale will provide a greater recovery for the Debtors' creditors than would be provided by any other practically available alternative, including liquidation under Chapters 7 or 11 of the Bankruptcy Code; (f) taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; and (g) the Debtors'

determination that the AFI APA constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

H. **Opportunity to Object.** A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested Persons, including the Notice Parties.

I. **Sale in Best Interests.** The actions represented to be taken by the Sellers and the Purchaser are appropriate under the circumstances of these Chapter 11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest. Approval of the AFI APA and circumstances of the Sale at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

J. **No *Sub Rosa* Plan.** In the event the Sale is approved under section 363 of the Bankruptcy Code, the consummation of the Sale outside of a plan of reorganization pursuant to the AFI APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Sale does not constitute a *sub rosa* plan of reorganization.

K. **Arm's-Length Sale.** The AFI APA was negotiated, proposed, and entered into by the Sellers and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Sellers, their insiders and affiliates, nor the Purchaser have engaged in any conduct that would cause or permit the AFI APA or any part of the Sale to be avoided under section 363(n) of the Bankruptcy Code.

L. **Good Faith Purchaser.** The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.



M. **Sale to Insider/“Entire Fairness”.** The sale of Purchased Assets pursuant to the AFI APA constitutes a sale to an insider of the Debtors. The AFI APA was heavily negotiated at arm’s length and was reviewed and approved by ResCap’s independent board of directors. The Sellers have taken adequate measures to ensure the fairness of the sale process and Sale and as such, the sale process and Sale meet the “entire fairness” standard applied to insider transactions.

N. **Corporate Authority.** Each Debtor (i) has full corporate power and authority to execute the AFI APA and all other documents contemplated thereby, and the sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the AFI APA, (iii) has taken all corporate action necessary to authorize and approve the AFI APA and the consummation by the Debtors of the transactions contemplated thereby, and (iv) needs no consents or approvals, other than those expressly provided for in the AFI APA, which may be waived by the Purchaser, to consummate such transactions.

O. **Binding and Valid Transfer.** The transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of all Interests, including (i) rights or claims based on any successor or transferee liability, including, (ii) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Sellers’ or the Purchaser’s interest in the Purchased Assets, or any similar rights, (iii) those relating to taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the

closing, and (iv) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, liens, judgments, demands, encumbrances, rights of first refusal, or charges of any kind or nature, if any, including, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership and (b) all debts arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, claims (as that term is defined in the Bankruptcy Code), obligations, liabilities, demands, guaranties, options, rights, contractual or other commitments, restrictions, interests and matters of any kind and nature, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these Chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, but not limited to, Claims otherwise arising under doctrines of successor or transferee liability, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date.

**P. Satisfaction of 363(f) Standards.** The Sellers may sell the Purchased Assets free and clear of all Interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests, including rights or claims based on any successor or transferee liability are (a) deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code and (b) adequately protected by having their Interests, if any, including rights or claims based on any successor or transferee liability, attach to the cash proceeds of the Sale ultimately attributable to the property

against or in which they claim an Interest, including rights or claims based on any successor or transferee liability. In all cases, each such Person with Interests in the Purchased Assets are enjoined from taking any action against the Purchaser, the Purchaser's Affiliates or any agent of the foregoing to recover any such Interest.

**Q. Necessity of Order.** The Purchaser would not have entered into the AFI APA and would not have consummated the Sale without all of the relief provided for in this Order (including that the transfer of the Purchased Assets to Purchaser be free and clear of all Interests and including rights or Claims based upon successor or transferee liability, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date).

**R. Personally Identifiable Information.** The Debtors have provided certain privacy policies to consumers that govern the disclosure of "personally identifiable information" (as defined in Bankruptcy Code section 101(41A)) to unaffiliated third parties. The Debtors have proposed to sell certain assets, which may require the disclosure of personally identifiable information to third parties. The Debtors' disclosure of personally identifiable information pursuant to the Sale is in compliance with the Gramm-Leach-Bliley Act and is consistent with the privacy notices delivered by the Debtors to mortgage borrowers. For these reasons, no Consumer Privacy Ombudsman has been appointed under section 363(b)(1) of the Bankruptcy Code.

**S. Final Order.** This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court

expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. **Motion is Granted.** The Motion is granted and the relief requested therein with respect to the Sale is granted and approved in its entirety, as further described herein.

2. **Objections Overruled.** Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.

3. **Approval.** The AFI APA, and all the terms and conditions thereof, is approved. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under, and comply with the terms of, the AFI APA and consummate the Sale pursuant to, and in accordance with, the terms and conditions of the AFI APA and this Order. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the AFI APA, together with all additional instruments and documents that the Sellers or the Purchaser deem necessary or appropriate to implement the AFI APA and effectuate the Sale, and to take all further actions as may reasonably be required by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to Purchaser's possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the AFI APA.

4. **Binding Effect of Order.** This Order and the AFI APA shall be binding in all respects upon all known and unknown creditors of, and equity security interests in, any Debtor, including any holders of Interests (including holders of rights or claims based on any successor or transferee liability), all successors and assigns of the Purchaser, each Seller and their Affiliates and subsidiaries, the Purchased Assets, and any trustees appointed in the Debtors' Chapter 11 cases or upon a conversion to cases under Chapter 7 of the Bankruptcy Code, and this Order shall not be subject to amendment or modification and the AFI APA shall not be subject to rejection. The terms of this Order shall apply in any sale pursuant to a Chapter 11 plan and may be incorporated into any confirmation order. Nothing contained in any Chapter 11 plan confirmed in the Debtors' Chapter 11 cases or the order confirming any such Chapter 11 plan shall conflict with or derogate from the provisions of the AFI APA or this Order.

5. **Injunction.** All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the AFI APA and this Order. Following the Closing, except for Persons entitled to enforce Permitted Liens, all Persons (including, but not limited to, the Debtors and/or their respective successors (including any trustee), creditors, investors, certificate holders, securitization trustees, borrowers, current and former employees and shareholders, administrative agencies, governmental units, secretaries of state, federal, state, and local officials, including those maintaining any authority relating to any environmental, health and safety laws, and the successors and assigns of each of the foregoing) holding Interests in the Purchased Assets or against the Debtors in respect of the Purchased Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any Interests of any kind or nature whatsoever

(including, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date) against the Purchaser or any Affiliate of the Purchaser or any of their respective property, successors and assigns, or the Purchased Assets, as an alleged successor or on any other grounds, it being understood that nothing herein shall affect assets of the Debtors that are not Purchased Assets.

6. No Person shall assert, and the Purchaser and the Purchased Assets shall not be subject to, any defaults, breaches, counterclaims, offsets, defenses (whether contractual or otherwise, including any right of recoupment), Liabilities, Claims and Interests, or basis of any kind or nature whatsoever to delay, defer, or impair any right of the Purchaser or the Debtors, or any obligation of any other party, under or with respect to, any Purchased Assets with respect to any act or omission that occurred prior to the Closing.

7. **General Assignment.** Upon the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Sellers' interests in the Purchased Assets and a bill of sale transferring good and marketable title in the Purchased Assets to the Purchaser. Each and every federal, state, and local governmental agency, quasi-agency, or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale.

8. **Transfer Free and Clear.** Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser as required under the AFI APA, and such transfer shall be free and clear of all Interests of any Person (including, Claims or Liabilities relating to any act or omission of any originator, holder or servicer of

Mortgage Loans prior to the Closing Date, and any indemnification Claims or Liabilities relating to any act or omission of the Sellers or any other Person prior to the Closing Date) and any and all rights and claims under any bulk transfer statutes and similar laws, whether arising by agreement, by statute or otherwise and whether occurring or arising before, on or after the date on which these Chapter 11 cases were commenced, whether known or unknown, occurring or arising prior to such transfer, with all such Interests to attach to the proceeds of the Sale ultimately attributable to the property against or in which the holder of a Claim or Interest claims or may claim a Claim or Interest, in the order of their priority, with the same validity, force, and effect which they now have, subject to any claims and defenses the Sellers may possess with respect thereto.

9. **Valid Transfer.** The transfer of the Purchased Assets to the Purchaser pursuant to the AFI APA constitutes a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest of the Sellers in and to the Purchased Assets free and clear of all Interests of any kind or nature whatsoever, including rights or claims based on any successor or transferee liability.

10. **Direction to Release Interests.** Upon the Closing, each of the Sellers' creditors and any other holder of an Interest, including rights or Claims based on any successor or transferee liability, is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interest in the Purchased Assets, if any, as such Interest may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, lis pendens, or other documents or agreements evidencing an Interest in the Sellers or the Purchased Assets shall not have delivered to the Sellers prior to the Closing, in proper form for filing and executed by the appropriate parties,

termination statements, instruments of satisfaction, releases of all Interests, which the person or entity has with respect to the Sellers or the Purchased Assets or otherwise, then (i) the Sellers are authorized and directed to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Sellers or the Purchased Assets, and (ii) the Purchaser are authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Sellers or the Purchased Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the AFI APA, including, without limitation, recordation of this Order. This Order shall be binding upon and shall govern the acts of all Persons including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of such assets or other property interests.

11. **No Interference.** Following the Closing of the Sale, no holder of any Interest shall interfere with the Purchaser's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such Interest, or based on any actions the Debtors may take in their Chapter 11 cases.



12. **Surrender of Possession.** All entities that are currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets in which the Sellers hold an interest hereby are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date, unless the Purchaser otherwise agrees.

13. **No Discriminatory Treatment.** To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 cases or the consummation of the Sale contemplated by the AFI APA.

14. **No Successor Liability.** Neither the Purchaser, nor any of its successors or assigns, or any of their respective affiliates shall have any liability for any Interest that arose prior to the Closing, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing. The Purchaser shall not be deemed, as a result of any action taken in connection with the AFI APA or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets, to: (i) be legal successors, or otherwise be deemed successors to the Debtors; (ii) have, de facto or otherwise, merged with or into the Debtors; or (iii) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any Interests, including under any theory of successor or transferee liability, de facto merger or continuity, environmental, labor and employment, and products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated.

15. **Fair Consideration.** The consideration provided by the Purchasers for the Purchased Assets under the AFI APA shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Sales may not be avoided under section 363(n) of the Bankruptcy Code.

16. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order, all amendments thereto, and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to the Purchaser; (ii) interpret, implement, and enforce the provisions of this Order; (iii) protect the Purchaser against any Interests against the Sellers or the Purchased Assets of any kind or nature whatsoever, and (iv) enter any order under section 363 and 365 of the Bankruptcy Code.

17. **Good Faith.** The transactions contemplated by the AFI APA is undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the Sale shall not affect the validity of the Sale, unless such authorization is duly stayed pending such appeal. The Purchaser is a purchaser in good faith of the Purchased Assets and is entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

18. **No Bulk Law Application.** No law of any state or other jurisdiction, including any bulk sales law or similar law, shall apply in any way to the transactions contemplated by the Sale, the AFI APA, the Motion, and this Order.

19. **Subsequent Plan Provisions.** Nothing contained in any Chapter 11 plan confirmed in any Debtor's bankruptcy case or any order confirming any such plan or in any other order in these Chapter 11 cases shall alter, conflict with, or derogate from, the provisions of the AFI APA or this Order.

20. **Failure to Specify Provisions.** The failure to specifically include any particular provisions of the AFI APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the AFI APA be authorized and approved in its entirety.

21. **Non-Material Modifications.** The AFI APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have any adverse effect on the Debtors' estates.

22. **No Stay or Order.** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after its entry and shall be effective immediately upon entry, and the Debtors and the Purchaser are authorized to close the Sale immediately upon entry of this Order. Time is of the essence in closing the transactions referenced herein, and the Debtors and the Purchaser intend to close the Sale as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

23. The relief granted by this Order shall apply to any affiliated future debtor (a "Future Debtor") in these jointly-administered cases. An affiliated debtor shall be deemed to

be a Future Debtor upon the Court's entry of an order authorizing the joint administration of such Future Debtor's Chapter 11 case with the Chapter 11 cases of the Debtors.

24. **Appointment of Trustee.** The provisions of the AFI APA and this Order may be specifically enforced in accordance with the AFI APA notwithstanding the appointment of any chapter 7 or chapter 11 trustee after the Closing.

25. Notwithstanding anything herein to the contrary, this Order shall not modify or affect the terms and provisions of, nor the rights and obligations under, (a) the Board of Governors of the Federal Reserve System Consent Order, dated April 13, 2011, by and among AFI, Ally Bank, ResCap, GMAC Mortgage, LLC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation, (b) the consent judgment entered April 5, 2012 by the District Court for the District of Columbia, dated February 9, 2012, (c) the Order of Assessment of a Civil Money Penalty Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as amended, dated February 10, 2012, and (d) all related agreements with AFI and Ally Bank and their respective subsidiaries and affiliates (excluding ResCap and its subsidiaries).

26. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: New York, New York  
[\_\_\_\_], 2012

---

The Honorable Martin Glenn  
United States Bankruptcy Judge

**EXHIBIT 1**

**AFI APA**

**EXHIBIT F**

**PROPOSED NOTICE OF ASSUMPTION AND ASSIGNMENT**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----	)	
In re:	)	Case No. 12-12020 (MG)
	)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,	)	Chapter 11
	)	
Debtors.	)	Jointly Administered
-----	)	

**NOTICE OF (I) DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN  
EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY,  
AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND  
(II) CURE AMOUNTS RELATED THERETO**

PLEASE TAKE NOTICE THAT:

1. By the motion dated May 14, 2012 (the "Motion"), Residential Capital LLC ("ResCap") and its debtor subsidiaries, as debtors in possession (collectively, the "Debtors" or the "Company"),<sup>1</sup> sought, among other things, (i) authorization and approval of certain proposed procedures (the "Sale Procedures") with respect to two proposed sales (the "Sale Transactions" or "the Sales") by certain of the Debtors of (a) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Nationstar Mortgage LLC and certain of the Debtors (the "Nationstar APA")); and (b) the Purchased Assets (as such term is defined in the Asset Purchase Agreement by and between Ally Financial Inc. ("AFI") and BMMZ Holdings LLC ("BMMZ") and certain of the Debtors (the "AFI APA," together with Nationstar APA, the "APAs"); (ii) scheduling of a hearing on the Sales (the "Sale Hearing") and setting objection deadlines and bidding deadlines with respect to the Sales and Auction; (iii) approving the form and manner of notices for (a) an auction of the purchased assets (the "Auction") and (b) the Sale Hearing; and (iii) the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Assumed Contracts") in connection with the sale of the Purchased Assets pursuant to the Nationstar APA (the "Assumption and Assignment Procedures").

2. The Nationstar APA, together with its respective ancillary agreements, contemplates (i) the sale of the Purchased Assets subject to higher or better offers (the "Nationstar Sale Transaction") and (ii) the assumption and assignment of the Assumed Contracts.

---

<sup>1</sup> The names of the Debtors in these cases and their respective tax identification numbers are identified on Exhibit 1 to the Affidavit of James Whitlinger, Chief Financial Officer of Residential Capital LLC in Support of the Chapter 11 Petitions and First Day Pleadings.

3. The Nationstar APA contemplates, and the proposed order approving the Nationstar Sale Transaction (the “Nationstar Sale Approval Order”), which may be incorporated into a confirmation order, if approved, shall authorize the assumption and assignment of certain executory contracts and leases pursuant to the Nationstar APA, to the Purchaser (as defined in the Nationstar APA). The Sellers maintain schedules (the “Schedules”) containing the Assumed Contracts that the Purchaser has designated as Assumed Contracts (the “Designated Agreements”). You are receiving this Notice because you are a party to one or more of the Designated Agreements.

4. **THE ATTACHED SCHEDULES CONTAIN A LIST OF ASSUMED CONTRACTS THAT MAY BE ASSUMED. SUBJECT TO CERTAIN EXCEPTIONS EXPRESSLY PROVIDED FOR IN THE NATIONSTAR APA, THE PURCHASER RESERVES ITS RIGHTS UNDER THE NATIONSTAR APA TO EXCLUDE ANY ASSUMED CONTRACT FROM THE LIST OF ASSUMED CONTRACTS TO BE ASSUMED AND ASSIGNED BY NO LATER THAN THE DESIGNATION DEADLINE THAT IS TWO BUSINESS DAYS PRIOR TO THE CLOSING DATE, AS DISCUSSED IN PARAGRAPH 14 BELOW.**

5. Bankruptcy Code section 365(b)(1) requires a chapter 11 debtor to cure, or provide adequate assurance that it will promptly cure any defaults under executory contracts and unexpired leases at the time of assumption. The required cure amount (the “Cure Amount”) for each Designated Agreement calculated by the Debtors is listed on the Schedule attached hereto. Please note that if no amount is stated for a particular Designated Agreement, the Debtors believe that there is no Cure Amount outstanding for such Designated Agreement.

6. Please review the Cure Amount for your Assumed Contract. In some instances, additional terms or conditions of assumption and assignment with respect to a particular Assumed Contract are provided.

7. In cases where a Servicing Agreement is contained within the same writing as an agreement related to origination, (i) the Debtors intend to assume and assign to the Purchaser only the Servicing Agreement; (ii) the origination agreement shall be severed from the multi-agreement document pursuant to the Nationstar Sale Approval Order; and (iii) the Purchaser shall have no liability under any origination agreement. The Nationstar Sale Approval Order will also generally provide that no delay or failure of performance by the Debtors under or in respect to any origination agreement will (i) affect any right of Nationstar under any Servicing Agreement or (ii) permit, result in or give rise to any setoff, delay, deferral, defense, recoupment, claim, counterclaim, default or other impairment of the rights of the Purchaser under any Servicing Agreement.

8. Objections, if any, to the proposed assumption and assignment of the Assumed Contracts, including, but not limited to, (a) objections related to adequate assurance of future performance or whether applicable law excuses the non-debtor counterparty to the Designated Agreement (the “Non-debtor Counterparty”) from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code (an “Assignment Objection”), (b) the severing of a Servicing Agreement from any multi-agreement document or (c) the proposed Cure Amount (a “Cure Amount Objection,” and,



together with an Assignment Objection and an objection described in clause (b), a “Contract Objection”) must be made in writing and filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) so as to be received **[August 30, 2012]** (the “Assignment Objection Deadline”) by (i) the Debtors, Residential Capital, LLC, 1100 Virginia Drive, Fort Washington, Pennsylvania 19034, Attn: Tammy Hamzehpour, Esq. ([tammy.hamzehpour@ally.com](mailto:tammy.hamzehpour@ally.com)); (ii) Morrison & Foerster LLP, attorneys for the Debtors, 1290 Avenue of the Americas, New York, New York 10104 (Attn: Larren M. Nashelsky and Gary S. Lee); (iii) with respect to Assumed Contracts listed in the Nationstar APA, Sidley Austin LLP, attorneys for the Nationstar, One South Dearborn, Chicago, Illinois 60603 (Attn: Jessica C.K. Boelter [jboelter@sidley.com](mailto:jboelter@sidley.com)); (vi) the attorneys for the Creditors’ Committee; and (vii) the Office of the United States Trustee for the Southern District of New York (Attn: [ ], 33 Whitehall Street, 21st Floor, New York, New York 10004. Any objection that challenges a Cure Amount, or otherwise asserts that there exist outstanding defaults under an Assumed Contract, must set forth with specificity the Cure Amount being claimed by the objecting party or the nature of the asserted default, as applicable, and must include appropriate documentation in support thereof satisfactory to the Debtors and Nationstar.

9. Upon the filing of any Contract Objection, the Debtors, the Purchaser, and the objecting non-debtor counterparty shall meet and confer in good faith to attempt to resolve any such Objection without Bankruptcy Court intervention, with any resolution memorialized in a joint stipulation or as otherwise agreed by the parties. If the Contract Objection is solely as to the Cure Amount, then the Assumed Contract shall nevertheless be assumed and assigned to the Purchaser on the Assumption Effective Date (as defined in paragraph 16), the Sellers shall pay the undisputed portion of the Cure Amount, and the disputed portion of the Cure Amount shall be determined via the meet and confer process or by the Bankruptcy Court as described herein. The Purchasers shall have no liability to any contract counter-party for any Cure Amount (whether disputed or undisputed).

10. All objections to the assumption and assignment of the Assumed Contracts and the Cure Amounts shall be resolved by no later than the conclusion of the Sale Hearing. The Debtors will request that Contract Objections to the proposed Cure Amounts based upon unquantifiable or unknown pre-closing liability be overruled; provided, however, that no such liabilities may asserted against the Purchaser or the Purchased Assets, as further described in the Sale Approval Order.

11. If the Debtors, Purchaser, and the non-debtor counterparty determine that the Contract Objection cannot be resolved without judicial intervention, then such Contract Objection shall be determined by the Bankruptcy Court either at the Sale Hearing or such other date as determined by the Bankruptcy Court, unless the Debtors, the Purchaser, and the non-debtor counterparty to the Assumed Contract agree otherwise; if the Bankruptcy Court determines at such hearing that the Assumed Contract should not be assumed and assigned, then such contract or lease shall no longer be considered an Assumed Contract.

12. If you agree with the respective Cure Amount(s) listed in the Schedules with respect to your Assumed Contract(s), and otherwise do not object to the Debtors’ assumption and assignment of your Assumed Contract, you are not required to take any further action.

13. Unless an Objection is filed and served before the Objection Deadline, you shall be deemed to have consented to the assumption and assignment of your Assumed Contract and the Cure Amount(s) for your Assumed Contract(s), and acknowledged that no default exists under the Assumed Contract other than those being cured by the Cure Amounts or defaults that are not required to be cured under section 365(b)(2). You shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts against the Debtors, their estates, or the Purchaser.

14. No later than two business days prior to the Closing Date under the Nationstar APA (the "Contract Designation Deadline"), the Purchaser may, in its sole discretion, subject to certain limitations specified in the Nationstar APA (applicable only as between the parties thereto), exclude any of the Assumed Contracts by providing notice to the Sellers. Upon such designation, the contract or Lease referenced therein shall no longer be considered an Assumed Contract, shall not be deemed to be, or to have been, assumed or assigned, and shall remain subject to assumption, rejection, or assignment by the Debtors. Until the Contract Designation Deadline, the Purchaser also may, subject to certain limitations specified in the Nationstar APA (applicable only as between the parties thereto), designate additional contracts or leases as Assumed Contracts to be assumed and assigned by providing notice to the affected non-debtor counterparties indicating that the Debtors intend to assume and assign additional Assumed Contracts.

15. The Debtors' decision to assume and assign the Assumed Contracts is subject to Bankruptcy Court approval and consummation of the Nationstar Sale Transaction, and, absent such consummation, each of the Assumed Contracts will not be assumed or assigned to the Purchaser and shall in all respects be subject to further administration under the Bankruptcy Code.

16. All Assumed Contracts will be assumed by and assigned to the Purchaser on the Closing Date, except as may be otherwise set forth in the APA.

17. Until the Assumption Effective Date, assumption and assignment thereof is subject to the Purchaser's rights to modify the designation of Assumed Contracts as set forth in paragraph 14 above. Except as otherwise provided by the APA, the Purchaser shall have no rights in and to a particular Assumed Contract until such time as the particular Assumed Contract is assumed and assigned in accordance with the procedures set forth herein.

18. The inclusion of any document on the list of Designated Agreements shall not constitute or be deemed to be a determination or admission by the Debtors or the Purchaser that such document is, in fact, an executory contract or Lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

19. Any Assignment Objection or Cure Amount Objection shall not constitute an objection to the relief generally requested in the Motion (e.g., the sale of the Purchased Assets by the Debtors to the Purchaser free and clear of liens, claims, encumbrances, and interests), and parties wishing to object to the relief generally requested in the Motion must file and serve a separate objection in accordance with the procedures approved and set forth in the order of the Bankruptcy Court approving the Sale Procedures (the "Sale Procedures Order").

20. If a party other than Nationstar is determined to be the highest and best bidder for the assets to be sold pursuant to the Nationstar Sale Transactions, you will receive a separate notice providing additional information regarding the treatment of your contract(s) or Lease(s); *provided, however*, that if the applicable Cure Amount has been established pursuant to the procedures set forth in this Notice, it shall not be subject to further dispute if the new purchaser seeks to acquire such contract or Lease.

21. Nationstar is not assuming and parties will be enjoined from asserting against Nationstar any claims or obligations relating to the pre-closing period under any Assumed Contract (including any Servicing Agreement), whether such claims or obligations are known, unknown, fixed, contingent, unliquidated or liquidated at the time of the Closing, including, without limitation, any claims or liabilities relating to any act or omission of any originator, holder or servicer of mortgage loans prior to the Closing Date, and any indemnification claims or liabilities relating to any act or omission of the Sellers or any other person prior to the Closing Date. Any parties holding such claims or obligations will be required to file a Contract Objection if they disagree with the Cure Amount set forth on the Schedule.

22. This Notice is subject to the full terms and conditions of the Sale Procedures Order, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Dated: New York, New York  
[ ], 2012

---

Larren M. Nashelsky  
Gary S. Lee  
Todd M. Goren  
Alexandra Steinberg Barrage

MORRISON & FOERSTER LLP  
1290 Avenue of the Americas  
New York, New York 10104  
Telephone: (212) 468-8000  
Facsimile: (212) 468-7900

*Proposed Counsel for the Debtors and  
Debtors in Possession*