

<b>UNITED STATES BANKRUPTCY COURT</b> <b>MIDDLE DISTRICT OF FLORIDA</b> <b>JACKSONVILLE DIVISION</b>		<b>PROOF OF CLAIM</b>		 <b>YOUR CLAIM IS SCHEDULED AS:</b> Schedule/Claim ID    s3255 Amount/Classification Undetermined Unsecured Disputed \$77,550,366.76 Secured Disputed	
In re: <b>TAYLOR, BEAN &amp; WHITAKER MORTGAGE CORP.</b>		Case Number: <b>3:09-bk-07047-JAF</b>			
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.			
<b>Name of Creditor and Address:</b> the person or other entity to whom the debtor owes money or property If necessary, please cross out pre-printed address and write in change of address.		<b>CLAIM FILED</b>  2183693500365 <b>JUN 15 2010</b> CLERK, U. S. BANKRUPTCY COURT MIDDLE DISTRICT OF FLORIDA		The amount(s) reflected above constitute your claim as scheduled by the Debtor. If you agree with the amounts set forth herein, and have no other claim against the Debtor, you do not need to file this proof of claim EXCEPT as stated below.  If the amounts shown above are listed as Contingent, Unliquidated or Disputed "CUD", a proof of claim must be filed. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again.	
Creditor Telephone Number (    ) <input type="checkbox"/> Check box if address is where Notice is to be sent		Name and address where payment should be sent (if different from above): <b>Healey Holdings, LLC</b> <b>Attn: Richard Roy</b> <b>620 Market Street, Knoxville, TN 37902</b>		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.  <input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Claim Number (if known): Filed on:	
Payment Telephone Number (    ) <b>865-251-7535</b>		<b>1. AMOUNT OF CLAIM AS OF DATE CASE FILED</b> \$ <b>76,503,107 - subject to and qualified by Schedule I attached here to</b> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5.			
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.					
<b>2. BASIS FOR CLAIM:</b> <u>See Schedule I attached here to</u>		(See instructions #2 and #3a on reverse side.)		<b>3. LAST FOUR DIGITS OF ANY NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR:</b> 3a. Debtor may have scheduled account as:	
<b>4. SECURED CLAIM</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of set off and provide the requested information. <b>Nature of property or right of setoff:</b> Describe: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other <u>Mortgage Loans and Proceeds Thereof</u> Value of Property: \$ <u>Unknown</u> Annual Interest Rate:    %    if any: \$    Basis for Perfection: <u>UCC Filings and Possession</u> Secured Claim Amount: \$ <u>See Schedule I attached here to</u> <b>DO NOT</b> include the priority portion of your claim here. Unsecured Claim Amount: \$ <u>See Schedule I attached here to</u> Amount of arrearage and other charges as of time case filed included in secured claim.					
<b>5. PRIORITY CLAIM</b> <input type="checkbox"/> Amount of Claim Entitled to Priority under 11 U.S.C. § 507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. <b>You MUST specify the priority of the claim:</b> <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*), earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (    ). * Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.					
<b>6. CREDITS:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.    Include <b>ONLY</b> the priority portion of your unsecured claim here.					
<b>7. SUPPORTING DOCUMENTS:</b> Attach redacted copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of evidence of perfection of a security interest. (See definition of "redacted" on reverse side.)    If the documents are not available, please explain. <b>DATE-STAMPED COPY</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b>					
The original of this completed proof of claim form must be sent by mail, hand, courier or overnight delivery (facsimile, telecopy or other electronic means NOT accepted), so that it is actually received on or before 5:00 p.m. prevailing Eastern Time on June 15, 2010, the Bar Date (as defined in the Bar Date Notice). <b>By Regular Mail to:</b> BMC Group, Inc. Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Processing PO Box 3020 Chanhassen, MN 55317-3020				<b>THIS SPACE FOR COURT USE ONLY</b> T, B & W Mortgage Corp.  03064	
<b>By Hand, Courier, Or Overnight Delivery to:</b> BMC Group, Inc. Attn: Taylor, Bean & Whitaker Mortgage Corp. Claim Process 18750 Lake Drive East Chanhassen, MN 55317					
<b>DATE</b> <b>6/14/10</b>		<b>SIGNATURE:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from above. Attach copy of power of attorney, if any. <u>Douglas C. Franch, Douglas C. Franch, Bradley Arant Boult Cummings LLP, Attorneys for Claimant</u>			

## Schedule I to Proof of Claim

The Debtor listed in its Schedules Henley Holdings, LLC ("Henley Holdings") as a secured creditor (scheduling Henley Holdings as a holder of approximately \$77.5 million of secured debt payable by TBW). Henley Holdings asserts that by virtue of the below described transaction, however, that it is the legal titled and beneficial owner of the property that the Debtor claims is collateral for Henley Holdings secured claim.

The transactions involving the Debtor and the Debtor's affiliate, TBW Funding III Company III, LLC ("TBW Funding III"), and Henley Holdings originated pursuant to a Mortgage Loan Sales Agreement dated as of October 17, 2007 between TBW and TBW Funding III (the "MLSA") whereby TBW sold and transferred mortgage loans (the "Mortgage Loans") to TBW Funding III. TBW Funding III is not a debtor in a bankruptcy case. A copy of the MLSA is attached as Exhibit A hereto. The Mortgage Loans sold to Henley Holdings were subprime second lien mortgage loans.

The Mortgage Loans, which were then owned by TBW Funding III (a non-Debtor), were subsequently sold by TBW Funding III to Henley Holdings pursuant to a Mortgage Loan Sales and Servicing Agreement (the "MLSSA") dated as of October 17, 2007. A copy of the MLSSA is attached as Exhibit B hereto. The Debtor serviced the Mortgage Loans for Henley Holdings until approximately August 14, 2009, following the occurrence of various Material Defaults and Trigger Events under the MLSSA. Henley Holdings delivered notices of Material Defaults and Trigger Events to the Debtor pursuant to the MLSSA on August 5, 2009 and August 8, 2009. The collection and servicing rights for the Mortgage Loans was transferred to 21<sup>st</sup> Mortgage Corporation (an affiliate of Henley Holdings) on or about August 14, 2009, which was approximately ten days prior to August 24, 2009, the date that the Debtor filed a voluntary Chapter 11 petition in the U.S. Bankruptcy Court for the Middle District of Florida.

The transactions were a sale of the Mortgage Loans from the Debtor to TBW Funding III and a subsequent sale of such loans from TBW Funding III to Henley Holdings LLC. In accordance with the express terms of the MLSA and MLSSA and in connection with the Material Defaults and Trigger Events thereunder, neither the Debtor nor TBW Funding III has any interest in the Mortgage Loans.

Both the MLSA and MLSSA describe each of the transactions as between the Debtor and TBW Funding III on the one hand, and TBW Funding III and Henley Holdings on the other hand, as sales (and not secured loans) and further provide that the intent of the parties was to treat the transactions for all purposes as sales of the Mortgage Loans to Henley Holdings. Accordingly, Henley Holdings owns all right, title and interest in the Mortgage Loans sold under the MLSSA and all proceeds thereof.

The Debtor and TBW Funding III also have certain obligations under the MLSA and MLSSA, including obligations arising from breach of representations, warranties and covenants. TBW Funding III remains obligated for its various representations, warranties, covenants and other obligations under the MLSSA.

If the transaction was characterized as a loan, any such loan would be secured by a first priority perfected security interest in the Mortgage Loans and proceeds thereof. In connection with the sale of the Mortgage Loans from the Debtor to TBW Funding III, a UCC financing statement was filed with the Secretary of State of Florida to assure perfection of TBW Funding III's security interest in the Mortgage Loans (as assigned to Henley Holdings), and in connection with the subsequent sale of the Mortgage Loans from TBW Funding III to Henley Holdings, a UCC financing statement was filed with the Delaware Secretary of State to perfect Henley Holdings security interest in the Mortgage Loans. A copy of each of the two UCC financing statements filed in connection with these transactions is attached as Exhibit D hereto. In addition, under the MLSSA, the Debtor and TBW Funding III were required to deliver the original Mortgage Loan Documents including original promissory notes to Henley Holdings.

To the extent Debtor attempts to characterize the Mortgage Loan sales transactions as a secured loan transaction (which Henley Holdings vigorously disputes because it is Henley Holdings' position that it is the legal and beneficial owner of the Mortgage Loans), Henley Holding's calculation of the amount owing to Henley Holdings as of August 24, 2009, Debtor's bankruptcy filing date, is listed in Item 1 of the Proof of Claim form to which this schedule is attached and such claim would be secured by a perfected first priority security interest in the Mortgage Loans and proceeds thereof. Under such a secured loan characterization scenario, the amount listed in Item 1 of the Proof of Claim form would include \$1,344,637 in Facility Fees and \$108,104 of reimbursable legal expenses payable to Henley Holdings as of August 24, 2009.

Furthermore, under the terms of the MLSSA, the Debtor has a contractual indemnity obligation in favor and for the benefit of Henley Holdings for up to \$10 million to the extent there is any shortfall in requisite payments to Henley Holdings under the MLSSA and certain other matters. The Debtor has not made any payments under such indemnity obligations to date. In addition to such other claims herein, Henley Holdings asserts a \$10,000,000 claim against the Debtor pursuant to the Indemnity Payment Obligations set forth in Subsection 12.02 of the MLSSA.

In addition to the above claims, Henley Holdings has an additional contingent claim of an unknown amount related to the ongoing Servicing, Payment and Asset Reconciliation process that is being conducted by the Debtor. Depending upon the outcome of such reconciliation and any related claims (including any third party claims), Henley Holdings may have claims and reserves the right to make such claims accordingly.

See also the following Exhibits:

Exhibit A – MLSA

Exhibit B - MLSSA

Exhibit C - As filed UCC Financing Statements (Florida Secretary of State Filing and Delaware Secretary of State Filing)

**MORTGAGE LOAN SALES AGREEMENT**

This MORTGAGE LOAN SALES AGREEMENT dated as of the 17th day of October, 2007 (the "Agreement") is made by and between Taylor, Bean & Whitaker Mortgage Corp., a Florida corporation ("Seller") and TBW Funding Company III LLC, a Delaware limited liability company ("Purchaser") for mutual considerations set forth herein. Seller and Purchaser are hereinafter collectively referred to as the "Parties".

**WITNESSETH:**

WHEREAS, the Seller desires to sell, to the Purchaser, and the Purchaser desires to purchase, from the Seller, certain mortgage loans on a servicing-retained basis as described herein and subject to the terms hereof;

WHEREAS, each mortgage loan is secured by a mortgage, deed of trust or other security instrument creating a first or second lien on a residential dwelling as described herein;

WHEREAS, the Purchaser and the Seller wish to prescribe the manner of the conveyance of the mortgage loans; and

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. Definitions. For purposes of this Agreement the following capitalized terms shall have the respective meanings set forth below.

Affiliate: As to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "controls," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" or "controlled" have meanings correlative to the foregoing.

Appraised Value: With respect to any Mortgaged Property, the lesser of (i) the value thereof as determined by an appraisal made for the originator of the Mortgage Loan at the time of origination of the Mortgage Loan by an appraiser who met the minimum requirements of the Seller's Underwriting Guidelines and FHLMC and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and (ii) the purchase price paid for the related Mortgaged Property by the Mortgagor with the proceeds of the Mortgage Loan.

Business Day: Any day other than a Saturday or Sunday, or a day on which banking and savings and loan institutions in the State of Florida or the State of Tennessee are authorized or obligated by law or executive order to be closed.

Closing Date: October 17, 2007.

Combined Loan-to-Value Ratio or CLTV: With respect to any Mortgage Loan as of any date of determination, the ratio on such date of the outstanding principal amount of the Mortgage Loan and any other mortgage loan which is secured by a lien on the related Mortgaged Property to the Appraised Value of the Mortgaged Property.

Credit Score: The credit score of the Mortgagor provided by Fair, Isaac & Company, Inc. or such other nationally recognized organization providing credit scores at the time of the origination of a Mortgage Loan. If two credit scores are obtained, the Credit Score shall be the lower of the two credit scores. If three credit scores are obtained, the Credit Score shall be the middle of the three credit scores.

Custodian: The custodian shall be the Purchaser or its assignee until such time as a third party custodian is designated by Purchaser or its assigns.

Cut-Off Date: 11:59 P.M. Eastern Time on October 14, 2007.

Deleted Mortgage Loan: A Mortgage Loan replaced or to be replaced by a Qualified Substitute Mortgage Loan.

Due Date: With respect to each Mortgage Loan the day of the calendar month on which each Monthly Payment is due on such Mortgage Loan, exclusive of any days of grace.

Escrow Payments: With respect to any Mortgage Loan, the amounts constituting taxes, municipal charges, mortgage insurance policy premiums, fire and hazard insurance premiums, and any other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to the Mortgage, applicable law or any other related document.

FHLMC: Freddie Mac or any successor thereto.

MERS Loan: Any Mortgage Loan registered with the MERS System, where MERS is the nominee mortgagee/lienholder of record.

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

MERS® System: The system of recording transfers of Mortgages electronically maintained by MERS.

MIN: The Mortgage Identification Number of the Mortgage Loan(s) registered with MERS on the MERS® System.

Monthly Payment: With respect to any Mortgage Loan, the scheduled combined payment of principal and interest payable by a Mortgagor under the related Mortgage Note on each Due Date.

Mortgage: A mortgage, deed of trust, security deed, deed to secure debt or similar evidence of lien, creating at least a first or second lien on the Mortgaged Property which secures such Mortgage Loan.

Mortgage Interest Rate: With respect to each Mortgage Loan the fixed annual rate of interest provided for in the related Mortgage Note.

Mortgage Loan: Each first or second lien, residential mortgage loan, sold, assigned, or transferred to the Purchaser pursuant to this Agreement and identified on the Mortgage Loan Schedule on the Closing Date or which is otherwise a Qualified Substitute Mortgage Loan. The Mortgage Loans include, without limitation, the related Mortgage Loan File and all related Mortgages and security interests and liens created thereby, rights under related insurance policies, all related insurance proceeds and other proceeds, and any and all rights to receive payments (including principal, interest and fees) pursuant thereto after the Cut-Off Date, but exclude any rights to receive payments which are received on or prior to the Cut-Off Date and applied on or prior to the Cut-Off Date. For avoidance of doubt, the parties acknowledge and agree that in the event a Mortgage Loan is reassigned, sold or transferred to Seller under the terms of this Agreement in connection with a repurchase obligation of Seller, any and all payments and proceeds (including Repurchase Price proceeds) derived from such Mortgage Loans prior to or on the effective date of the reassignment (or other reasonable cut-off date for such repurchase/reassignment as determined by Purchaser) shall not be included as part of the Mortgage Loan that is sold or reassigned to Seller.

Mortgage Loan Documents: The documents listed in Exhibit A hereto pertaining to any Mortgage Loan.

Mortgage Loan File: The items pertaining to a particular Mortgage Loan referred to in Exhibit B annexed hereto, and any additional documents required to be added to the Mortgage Loan File pursuant to this Agreement.

Mortgage Loan Schedule: The schedule of Mortgage Loans, to be annexed to the related Assignment and Conveyance on the Closing Date delivered on such Closing Date in electronic form, such schedule setting forth the following information with respect to each Mortgage Loan: (1) the Seller's Mortgage Loan identifying number; (2) the Mortgagor's first and last name; (3) the street address of the Mortgaged Property including the state and zip code; (4) a code indicating whether the Mortgaged Property is owner-occupied; (5) the type of Residential Dwelling constituting the Mortgaged Property; (6) the original months to maturity; (7) the original date of the Mortgage Loan and the remaining months to maturity from the Cut-Off Date, based on the original amortization schedule; (8) the Combined Loan-to-Value Ratio at origination; (9) the Mortgage Interest Rate in effect immediately following the Cut-Off Date; (10) the date on which the first Monthly Payment was due on the Mortgage Loan; (11) the stated maturity date (taking into account any extensions); (12) the amount of the Monthly Payment at origination; (13) the amount of the Monthly Payment as of the Cut-Off Date; (14) the last Due Date on which a Monthly Payment was actually applied to the unpaid Stated Principal Balance; (15) the original

principal amount of the Mortgage Loan and with respect to second liens the related first lien on the Mortgaged Property and the current holder of the first lien; (16) the Stated Principal Balance of the Mortgage Loan as of the Cut-Off Date and with respect to second liens the principal balance of the related first lien on the Mortgaged Property as of the Cut-Off Date; (17) a code indicating the purpose of the loan (i.e., purchase financing, Rate/Term Refinancing, Cash-Out Refinancing); (18) the Mortgage Interest Rate at origination; (19) the date on which the first Monthly Payment was due on the Mortgage Loan and, if such date is not consistent with the Due Date currently in effect, such Due Date; (20) a code indicating the documentation style (i.e., full (providing two years employment verification - 2 years W-2's and current pay stub or 2 years 1040's for self employed borrowers), alternative or reduced); (21) the Appraised Value of the Mortgaged Property; (22) the sale price of the Mortgaged Property, if applicable; (23) with respect to each MERS Loan, the related MIN; (24) a code indicating whether a borrower is a non-resident alien; (25) the points and fees charged in connection with the origination of such Mortgage Loan, (26) whether the Mortgage is secured by a first or second lien on the Mortgaged Property, and (27) whether any Monthly Payment on the Mortgage Loan is more than thirty (30) days delinquent, and if so, the number of days delinquent. With respect to the Mortgage Loans in the aggregate, the Mortgage Loan Schedule shall set forth the following information, as of the Closing Date: (1) the number of Mortgage Loans; (2) the current Stated Principal Balance of the Mortgage Loans as of the Cut-Off Date; (3) the weighted average Mortgage Interest Rate of the Mortgage Loans; and (4) the weighted average maturity of the Mortgage Loans.

Mortgage Note: The original executed note evidencing the Mortgage Loan indebtedness of a Mortgagor.

Mortgaged Property: The Mortgagor's real property securing repayment of a related Mortgage Note, consisting of a fee simple interest in a single parcel of real property improved by a Residential Dwelling.

Mortgagor: 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 successor's in title to the Mortgaged Property, provided there may be more than one Mortgagor obligated under a Mortgage Loan.

Person: An individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, other entity, trust, unincorporated organization or government or any agency or political subdivision thereof.

Purchase Price: The Purchase Price shall equal \$99,970,000.

Qualified Substitute Mortgage Loan: A mortgage loan substituted for a Deleted Mortgage Loan pursuant to the terms of this Agreement which must, on the date of such substitution, (i) have an outstanding principal balance, after application of all scheduled payments of principal and interest due during or prior to the month of substitution, not in excess of the Stated Principal Balance of the Deleted Mortgage Loan as of the Due Date in the calendar month during which the substitution occurs, (ii) have a Mortgage Interest Rate

not less than (and not more than one percentage point in excess of) the Mortgage Interest Rate of the Deleted Mortgage Loan, (iii) have a remaining term to maturity not greater than (and not more than one year less than) that of the Deleted Mortgage Loan, (iv) have a Combined Loan-to-Value Ratio as of the date of substitution equal to or lower than the Combined Loan-to-Value Ratio of the Deleted Mortgage Loan as of such date, (v) have a Credit Score for the related Mortgagor not lower than that of the Mortgagor under the Deleted Mortgage Loan; (vi) conform to each representation and warranty set forth in Subsection 7.01 of this Agreement (provided that (a) the cut-off date information for a Qualified Substitute Mortgage Loan shall reflect and be updated as of the date that is on or about the date of transfer of the Qualified Substitute Mortgage Loan to Purchaser as determined by Purchaser, and (b) Seller shall provide Purchaser with the same information that is required under the Mortgage Loan Schedule for such Qualified Substitute Mortgage Loan, which Seller represents and warrants shall be true and correct), (vii) if an Investor Mortgage Loan, have not been more than 30 days delinquent at any time during the immediately preceding twelve month period and which Due Date(s) have not been extended during the immediately preceding twelve month period, (viii) if any Mortgage Loan (other than an Investor Mortgage Loan), have not been delinquent by more than 30 days with respect to its most recent Due Date and which Due Date(s) have not been extended during the immediately preceding 183 day period, and (ix) be the same type of mortgage loan (and if required by Purchaser, having a similar geographic location of the Mortgaged Property acceptable to Purchaser). In the event that one or more mortgage loans are substituted for one or more Deleted Mortgage Loans as of a particular date or with respect to a particular monthly period, (a) the amounts described in clause (i) hereof shall be determined on the basis of aggregate principal balances of the Deleted Mortgage Loans, (b) the Mortgage Interest Rates described in clause (ii) hereof shall be determined on the basis of weighted average Mortgage Interest Rates for Qualified Substitute Mortgage Loans substituted during the respective monthly period, (c) the terms described in clause (iii) shall be determined on the basis of weighted average remaining terms to maturity of the Deleted Mortgage Loans, (d) the Combined Loan-to-Value Ratios described in clause (iv) hereof shall be satisfied as to each such Mortgage Loan, and (e) except to the extent otherwise provided in this sentence or unless otherwise waived in writing by Purchaser, the representations and warranties and criteria described above for a Qualified Substitute Mortgage Loan must be satisfied as to each Qualified Substitute Mortgage Loan. A Qualified Substitute Mortgage Loan shall not be a current or former Deleted Mortgage Loan.

Repurchase Price: The Repurchase Price for any Mortgage Loan that is required to be repurchased pursuant to this Agreement shall be equal to the sum of (i) the Stated Principal Balance of such Mortgage Loan as of the date of repurchase, plus (ii) interest on such Stated Principal Balance at the Mortgage Interest Rate from and including the last Due Date through which interest has been paid by or on behalf of the Mortgagor to the day immediately prior to the date of repurchase, plus (iii) any costs and expenses incurred by the Purchaser in respect of the breach or defect giving rise to the repurchase obligation including, without limitation, any costs and damages incurred by any such party in connection with any violation by any such Mortgage Loan of any predatory or abusive lending law.



Residential Dwelling: Any one of the following: (i) a detached one-family dwelling, (ii) a detached two- to four-family dwelling, (iii) a one-family dwelling unit in a condominium project generally acceptable to prudent investors in the secondary mortgage market, or (iv) a detached one-family dwelling in a planned unit development.

Stated Principal Balance: As to each Mortgage Loan as of the applicable date of determination, (i) the principal balance of the Mortgage Loan as of the Cut-Off Date after giving effect to payments of principal received or written off or otherwise reduced before the Cut-Off Date, minus (ii) all principal amounts collected and/or recovered and applied as a reduction of the principal balance following the Cut-Off Date through the applicable date of determination with respect to the related Mortgage Loan.

Underwriting Guidelines: The Seller's written underwriting guidelines in effect with respect to the Mortgage Loans purchased by Purchaser on the Closing Date.

SECTION 2. Agreement to Purchase Mortgage Loans. Subject to the terms hereof, on the Closing Date, the Seller agrees to sell, assign and convey to Purchaser on a servicing-retained basis as described herein, and the Purchaser agrees to purchase Mortgage Loans having an aggregate Stated Principal Balance as of the Cut-off Date in an amount as set forth in the Mortgage Loan Schedule.

SECTION 3. [Reserved]

SECTION 4. Purchase Price. Subject to satisfaction of the conditions to Closing, Purchaser shall pay to Seller the Purchase Price as of the effective time of closing on the Closing Date, such payment to be made via wire transfer to Seller's account designated by Seller. Upon Closing, Purchaser shall own the Mortgage Loans and be entitled to receive with respect to each Mortgage Loan acquired: (1) all recoveries of principal collected after the Cut-Off Date, (2) all payments of interest on the respective Mortgage Loans collected after the Cut-Off Date, and (3) all other amounts payable to the holder of the Mortgage Note that are derived from the Mortgage Loans.

SECTION 5. Examination of Mortgage Loan Files. The Purchaser shall have the right to review the Mortgage Loan Files prior to the Closing Date. At least five (5) Business Days prior to the Closing Date, the Seller shall (a) deliver to the Custodian in escrow, for examination with respect to each Mortgage Loan to be purchased on such Closing Date, the related Mortgage Loan File, pertaining to each Mortgage Loan, or (b) make the related Mortgage Loan File available to the Purchaser for examination at the Seller's offices or such other location as shall otherwise be agreed upon by the Purchaser and the Seller. Such examination may be made by the Purchaser or its designee at any reasonable time before or after the Closing Date.

SECTION 6. Conveyance from Seller to Purchaser.

Subsection 6.01

(a) Conveyance of Mortgage Loans. On the Closing Date, Seller shall deliver to Purchaser an executed Assignment and Conveyance document in the form of

Exhibit C attached hereto, evidencing the transfer and assignment of the Mortgage Loans from Seller to Purchaser.

(b) MERS Loans. In addition, in connection with the assignment of any MERS Loans, the Seller agrees that it will cause, at its own expense, the MERS System to indicate that such Mortgage Loans (and related Mortgages) have been assigned by the Seller to the Purchaser in accordance with this Agreement by including in such computer files the information required by the MERS System to identify the Purchaser of such Mortgage Loans, and that Purchaser is the assignee lienholder under each such Mortgage. Seller agrees that it will not, and will not permit any servicer to, alter the codes and information required by this paragraph with respect to any Mortgage Loan without the prior written instructions of Purchaser to Seller and to MERS unless and until such Mortgage Loan is repurchased or substituted by Seller in accordance with the terms of this Agreement.

(c) Non-MERS Loans. For any Mortgage Loan that is not a MERS Loan, Seller or Servicer will record, whenever requested by Purchaser, a physical assignment in appropriate form at the proper public recording office of any related Mortgage assigning such Mortgage Loan to MERS solely as lienholder of record, as nominee for the Purchaser, which assignment shall be valid and enforceable.

Subsection 6.02      Books and Records. Record title to each Mortgage and the related Mortgage Note as of the Closing Date shall be in the name of the Purchaser (provided that with respect MERS Loans, MERS shall be permitted to be noted as the lienholder of record (as nominee on behalf of Purchaser)) under the related Mortgage unless otherwise directed by Purchaser in writing to Seller and/or MERS. Seller shall provide Purchaser with all instructions Seller provides to MERS regarding the MERS Loans such other information as requested by Purchaser that evidences the transfer of the Mortgage Loans (and related Mortgages) to Purchaser or any assignee designated by Purchaser. Notwithstanding the foregoing, beneficial ownership of each Mortgage and the related Mortgage Note shall be vested solely in the Purchaser or any Person the Purchaser so designates in writing as an assignee of Purchaser.

Subsection 6.03      Delivery of Mortgage Loan Documents.

At least five (5) Business Days prior to the Closing Date, Seller shall deliver and release to the Custodian those Mortgage Loan Documents as required by this Agreement with respect to each Mortgage Loan to be acquired by Purchaser on the Closing Date and set forth on the Mortgage Loan Schedule delivered with such Mortgage Loan Documents. Seller shall obtain such releases as are necessary for the Mortgage Loans to be transferred to Purchaser free and clear of all liens, claims and encumbrances.

The Seller shall forward to the Custodian (who shall act on behalf of the Purchaser to the extent it is not the Purchaser) original documents evidencing an assumption, modification, consolidation or extension of any Mortgage Loan entered into in accordance with this Agreement within two weeks of their execution, provided, however, that the Seller shall provide the Custodian with a certified true copy of any such document

submitted for recordation within two weeks of its execution, and shall provide the original of any document submitted for recordation or a copy of such document certified by the appropriate public recording office to be a true and complete copy of the original within ninety (90) days of its submission for recordation; provided further, that if the original or copy of any document submitted for recordation to the appropriate recording office is not delivered to the Purchaser or its designee within such ninety (90) days of submission due to a delay at the applicable recording office, the Seller shall deliver to the Purchaser an officer's written certification certifying that the delay in delivering the original recorded document to the Purchaser is due solely to delays at the applicable recording office and that the Seller shall deliver the original recorded documents no later than twelve (12) months after the Closing Date.

Subsection 6.04. UCC Filing.

(a) On or prior to the Closing Date (or as soon thereafter as practicable), Purchaser, in its discretion, shall cause to be filed in the office of the Secretary of State of Florida, a UCC financing statement (the "Financing Statement") describing the Mortgage Loans sold and transferred to Purchaser pursuant to this Agreement and in a form acceptable to Purchaser. The Financing Statement shall bear a statement indicating that the parties intend the Financing Statement to evidence a true sale of the Mortgage Loans, but if the transaction is recharacterized as a loan from Purchaser to Seller, the financing statement is to perfect the Purchaser's security interest in the Mortgage Loans. Seller authorizes Purchaser to file such Financing Statement. Seller shall pay any transfer taxes, stamp taxes or related taxes that are required by law in connection with the transactions contemplated herein including any taxes or fees required in connection with UCC financing statements (including the Financing Statement) contemplated hereby and the filing(s) thereof. The Purchaser shall have the right to file amendments to or continuation statement(s) for the foregoing described Financing Statement at its discretion, and Seller shall execute such documents and take such actions as reasonably requested by Purchaser to file such amendments or continuation statements.

(b) Seller hereby represents and warrants that it is a corporation organized under the laws of the State of Florida. If any change in Seller's state of formation or any change in Seller's name, identity or relocation of its principal executive office would make the Financing Statement misleading or require a new UCC filing in the same or different state under the Uniform Commercial Code, Seller shall promptly notify Purchaser, and Purchaser shall have the authority and right to file such amendments or new financing statements as Purchaser may require in order to preserve and protect the perfection of Purchaser's interest in the Mortgage Loans. Upon request by Purchaser, Seller shall file such amendments as may be reasonably required by Purchaser. The costs and expenses of filing any continuation statements or amendments to financing statements contemplated by this Section 6(b), including any requisite transfer taxes, stamp taxes or related taxes, shall be borne by Seller.

## SECTION 7. Seller's Representations and Warranties.

### Subsection 7.01. Seller's Representations and Warranties Regarding the Mortgage Loans.

Seller represents and warrants to Purchaser that (a) as of the Closing Date as to each Mortgage Loan (other than a Qualified Substitute Mortgage Loan), (b) as of the respective date the Purchaser is assigned a Mortgage Loan that is a Qualified Substitute Mortgage Loans and (c) as of such other date if the context so requires:

(1) The Mortgage Note and Mortgage and any and all other documents executed and delivered by any Mortgagor in connection with each Mortgage Loan, are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its terms. All parties to the Mortgage Loan Documents had legal capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Loan Documents, the Mortgage Loan Documents have been duly and properly executed by such parties, and there is no verbal understanding or written modification of the Mortgage Loan Documents which would affect the terms of the Mortgage Loan except by written instrument delivered and expressly made known to the Purchaser. The documents, instruments and agreements submitted for loan underwriting were not falsified and contain no untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading.

(2) Immediately prior to the sale/assignment of such Mortgage Loan to Purchaser as contemplated by this Agreement, Seller is the sole owner of the Mortgage Loan, has good marketable title thereto and has authority to sell, transfer and assign the same on the terms set forth herein free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest. Following the sale or assignment of the Mortgage Loan to the Purchaser hereunder, the Purchaser will own such Mortgage Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest.

(3) The information set forth in the Mortgage Loan Schedule is true and accurate in all respects. The full principal amount of the Mortgage Loan has been advanced to the Mortgagor, either by payment directly to such person or by payment made on such person's request or approval. The Stated Principal Balance of the Mortgage Loan as of the Cut-Off Date is as represented by Seller. All costs, fees and expenses incurred in making, closing and recording the Mortgage Loan have been paid. No Mortgaged Property has been released from the lien of the

Mortgage Loan, the terms of the Mortgage Loan have in no way been changed, waived or modified, and the Mortgage Loan is current and not in default.

(4) Each Mortgage Loan is either a valid first or second lien on the Mortgaged Property as indicated in the Mortgage Loan Schedule, and Purchaser shall hold a valid first or second lien on the related Mortgaged Property, as applicable. The Mortgaged Property is free and clear of all encumbrances and liens having priority over the lien of such Loan, except for (a) liens for real estate taxes and special assessments not yet due and payable, and (b) with respect to each Mortgage Loan which is a second lien on the Mortgaged Property (as reflected on the Mortgage Loan Schedule), the first lien on such Mortgaged Property; and the Mortgaged Property may be subject to covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and which do not adversely affect the Appraised Value of the Mortgaged Property or materially alter the owner's rights to use and occupy the Mortgaged Property.

(5) The Mortgaged Property is free and clear of all mechanics' liens, materialmen's liens and all other liens in the nature thereof, and no rights are outstanding that under law could give rise to any such lien, nor is Seller aware of any facts which could give rise to any such lien.

(6) All federal and state laws, rules and regulations applicable to the Mortgage Loans, including without limitation, the origination, documentation, terms and servicing thereof, have been complied with, including but not limited to: the Real Estate Settlement Procedures Act, the Flood Disaster Protection Act, the Federal Consumer Credit Protection Act including the Truth-in-Lending and Equal Credit Opportunity Acts, and all applicable statutes or regulations governing fraud, lack of consideration, unconscionability, consumer credit transactions, predatory and abusive lending or interest charges. All points, fees and charges (including finance charges), whether or not financed, assessed, collected or to be collected in connection with the origination of each Mortgage Loan have been disclosed in writing to the Mortgagor in accordance with applicable state and federal law and regulation.

(7) No Mortgage Loan is the subject of, and Seller is not aware of any facts which could give rise to, litigation or any legal or administrative proceeding which could affect the Purchaser's ability to enforce the terms of the obligation or its rights under the Mortgage Loan

Documents, and no litigation or administrative or other legal proceeding of or before any court, tribunal or governmental body is currently or threatened against Seller or any of its affiliates or any current or prior servicer or owner with respect to the Mortgage Loan.

(8) The Mortgage Loan is covered by an ALTA lender's title insurance policy or other form of policy or insurance that is generally acceptable to FHLMC that was issued by a title insurer licensed and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring the Seller, its successors and assigns, as to the first or second priority lien of the Mortgage, as applicable, in the original principal amount of the Mortgage Loan, subject only to (a) the lien of current real property taxes and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and which do not adversely affect the Appraised Value of the Mortgaged Property or materially alter the owner's rights to use and occupy the Mortgaged Property, and (c) with respect to each second lien Mortgage, the first lien on the Mortgaged Property. Where required by state law or regulation, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance. Additionally, such lender's title insurance policy affirmatively insures ingress and egress, and against encroachments by or upon the Mortgaged Property or any interest therein. The title policy does not contain any special exceptions (other than the standard exclusions) for zoning and uses and has been marked to delete the standard survey exception or to replace the standard survey exception with a specific survey reading. The Seller, its successor and assigns, are the sole insureds of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement and Purchaser shall be afforded the rights of insured under such title policy. No claims have been made under such lender's title insurance policy, and no prior holder of the related Mortgage, including the Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Seller.

(9) There is in force for each Mortgage Loan valid hazard insurance policy coverage and, where applicable, valid flood insurance

policy coverage, which following Closing, shall among other things insure the Mortgaged Property and the first and second lien interest thereof for an amount no less than the then aggregate unpaid principal balance of the first and second lien on the Mortgaged Property, and the Purchaser shall be entitled to the benefits of such coverage.

(10) The assignment of each Mortgage Loan and related Mortgage is valid and enforceable. Seller will record and if applicable, cause MERS to record, whenever required by Purchaser, a physical assignment in appropriate form of any related Mortgage securing a Mortgage Loan into the name of the Purchaser, which assignment shall be valid and enforceable. For each MERS Loan, Purchaser shall be noted as the assignee of the Mortgage and related Mortgage Loan in the MERS System as required by Subsection 6.01(b) herein.

(11) The Mortgagor has no rights of rescission, set-offs, counter-claims or defenses to the Mortgage Note or deed of trust/mortgage securing the Mortgage Note arising from the acts and/or omissions of Seller.

(12) Seller has no knowledge that any improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law or regulation.

(13) All improvements included for the purpose of determining the Appraised Value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of such property, and no improvements on adjoining properties encroach upon the Mortgaged Property.

(14) There is no proceeding pending (or that has previously occurred) for total or partial condemnation of any Mortgaged Property and said property is free of substantial damage (including, but not limited to, any damage by fire, earthquake, windstorm, vandalism or other casualty) and in good repair.

(15) Seller has no knowledge of any circumstances or conditions with respect to any Mortgage Loan, Mortgaged Property, Mortgagor or Mortgagor's credit standing that reasonably could be expected to cause private institutional investors to regard any Mortgage Loan as an unacceptable investment, cause any Mortgage Loan to become delinquent or adversely affect the value of marketability of the Mortgage Loan.

(16) All documents submitted in connection with the Mortgage Loan are genuine and contain genuine signatures. Each

document that the Purchaser requires to be an original document is an original document. At Closing, Seller or a Custodian (on behalf of Seller) shall have the possession of the Mortgage Loan File (which shall include the Mortgage Loan Documents), and none of the Mortgage Loan Documents shall be stamped as owned by or pledged to another Person.

(17) The consideration received by the Seller upon the sale of any Mortgage Loan under this Agreement constitutes fair consideration and reasonably equivalent value for the Mortgage Loan.

(18) The Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2003, and the laws and regulations administered by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), which prohibit dealings with certain countries, territories, entities and individuals named in OFAC's Sanction Programs and on Specially Designated Nationals and Blocked Persons List (collectively, the "Anti-Money Laundering Laws"). The Seller has established an anti-money laundering compliance program to the extent required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Mortgage Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Mortgagor and the origin of the assets used by said Mortgagor to purchase the property in question, and maintains, and will maintain sufficient information to identify the applicable Mortgagor for purposes of the Anti-Money Laundering Laws.

(19) The Mortgagor has not notified the Seller, and the Seller has no knowledge of any relief requested or allowed to a Mortgagor under the Servicemembers' Relief Act or any other federal or state law that would have the effect of suspending or reducing the Mortgagor's payment obligation under a Mortgage Loan or that would prevent or restrict the ability of Seller to commence or continue with foreclosure of the Mortgaged Property securing a Mortgage Loan or any other remedies available under the Mortgage Loan Documents.

(20) No Mortgage Loan is subject to the requirements of the Home Ownership and Equity Protection Act of 1994. No Mortgage Loan is classified as a "high cost," "threshold," "covered," "abusive" or "predatory" loan or a similar loan under any applicable state, federal or local law.

(21) No Mortgagor was encouraged or required to select a loan product offered by Seller which is a higher cost product designed



for less creditworthy borrowers, unless at the time of the Mortgage Loan's origination, such Mortgagor did not qualify taking into account credit history and debt to income ratios for a lower cost credit product then offered by the Seller.

(22) No Mortgaged Property securing a Mortgage Loan is in a zip code declared by the Federal Emergency Management Agency ("FEMA") as being an "Individual Assistance" property or "Category 1" property (or such similar term(s) or classification(s) that may be used by FEMA from time to time).

(23) With respect to each Mortgage Loan, by the Closing Date, the related Mortgage Loan File contains the documents described in Exhibit B hereto.

(24) As of the Cut-Off Date (and as of the date of transfer to the Purchaser in the case of Qualified Substitute Mortgage Loans), such Mortgage Loan was not delinquent for more than thirty (30) days (except for certain Mortgage Loans as disclosed to Purchaser in the Mortgage Loan Schedule that comprise no more than 5.0% of the Mortgage Loans as measured by the aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-Off Date) which are up to fifty-nine (59) days delinquent), nor was the Mortgage Loan or related Mortgagor or collateral securing such Mortgage Loan subject to bankruptcy or other similar proceedings and the most recent scheduled payment was made by or on behalf of the respective Mortgagor (without any advance from any Seller or any Person acting at the request of the Seller). As of the Cut-Off Date and Closing Date (and as of the date of transfer to the Purchaser in the case of Qualified Substitute Mortgage Loans), (a) none of the Mortgage Loans were subject to legal proceedings against the respective Mortgagors or related Mortgaged Property, (b) none of the Mortgage Loans or the related Mortgaged Properties were subject to replevin, foreclosure or repossession proceedings, (c) none of the Mortgaged Properties securing such Mortgage Loans were vacant (except that the Mortgage Property related to Investor Mortgage Loans may be vacant) or abandoned, and (d) no Due Date for any Monthly Payment due within 100 days of the Cut-Off Date has been extended by the Seller or any Affiliate of Seller or any servicer on behalf of Seller, in order to satisfy the delinquency or other representations set forth in Section 7 of this Agreement.

(25) There are no persons, firms, associates, corporations, business organizations or other entities holding general or special powers of attorney from Seller or other Person with respect to the Mortgage Loans.

(26) With respect to each Mortgage Loan, by the Closing Date, Seller will have caused the portions of the electronic ledger relating to such Mortgage Loan to be clearly and unambiguously marked to indicate that such Mortgage Loan is owned by Purchaser.

(27) The Seller has in the Mortgage Loan File an appraisal of the Mortgaged Property signed prior to the approval of the Mortgage application by an appraiser qualified under applicable law who (i) is licensed in the state where the Mortgaged Property is located, (ii) has no interest, direct or indirect, in the Mortgaged Property or in any Mortgage Loan or the security therefor, and (iii) does not receive compensation that is affected by the approval or disapproval of the Mortgage Loan. The appraisal and appraiser both satisfy the requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the regulations promulgated thereunder, all as in effect on the date the Mortgage Loan was originated. The appraisal shall have been made within one hundred and eighty (180) days of the origination of the Mortgage Loan and shall be completed in compliance with the Uniform Standards of Professional Appraisal Practice, and all applicable Federal and state laws and regulations. If the appraisal was made more than one hundred and twenty (120) days before the origination of the Mortgage Loan, the Seller shall have received and delivered to the Purchaser a recertification of the appraisal.

(28) The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Mortgage Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to a Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage, subject to applicable federal and state laws and judicial precedent with respect to bankruptcy and right of redemption or similar law. There are no agreements in effect applicable to or binding upon the holder of the Mortgage Loan that restrict, limit or provide standstill limitation upon the holder of the Mortgage Loan from realizing upon, or exercising its rights under such Mortgage Loan and related Mortgage.

(29) The Mortgage Loan has been closed and the proceeds of the Mortgage Loan have been fully disbursed and there is no

requirement for future advances thereunder, and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with. All costs, fees and expenses incurred in making or closing the Mortgage Loan and the recording of the Mortgage were paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Mortgage Loan or Mortgage.

(30) The Mortgaged Property securing the Mortgage Loan is the principal residence of the Mortgagor, except for certain Mortgage Loans as disclosed to Purchaser in the Mortgage Loan Schedule as being an Investor Mortgage Loans.

(31) The Mortgage Interest Rates on each Mortgage Loan are fixed rates of interest.

Subsection 7.02. Representations and Warranties Regarding the Seller.

Seller represents and warrants to the Purchaser that as of the Closing Date and as of the date of each transfer/assignment of a Mortgage Loan to Purchaser:

- (1) Seller is duly incorporated, validly existing and in good standing under the laws of its state of incorporation and is qualified and/or licensed as necessary to transact business, including the origination, selling and servicing of mortgage loans.
- (2) Seller has the full power and authority to hold and sell each Mortgage Loan; and neither the execution and delivery of this Agreement, nor the acquisition or origination of the Mortgage Loans, nor the sale of the Mortgage Loans, nor the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with, or result in a breach of any term, condition or provision of Seller's applicable articles of incorporation, bylaws, or any license, permit or registration held by Seller or governing Seller's activities or any agreement to which Seller is a party or by which Seller is bound, or constitute a material default or result in an acceleration under any of the foregoing.
- (3) No consent, approval, authorization or order of any court, government body or any other person or entity is required for execution, delivery and performance by Seller of this Agreement, including but not limited to, the sale of the Mortgage Loans to the Purchaser, which consent, approval or authorization has not been obtained by the Seller prior to entering into this Agreement.

- (4) Seller has no knowledge of any suit, action, arbitration or legal or administrative or other proceeding pending or threatened against Seller which would affect its ability to perform its obligations under this Agreement.
- (5) Seller is not a party to, bound by or in breach or violation of any agreement of instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it, which materially and adversely affects, or may in the future materially and adversely affect the ability of Seller to perform its obligations under this Agreement, including, without limitation, Seller's repurchase and indemnification obligations set forth herein.
- (6) The Seller has not dealt with any broker, agent or other person that may be entitled to any commission or compensation in connection with the sale of any Mortgage Loan to the Purchaser pursuant to the terms of this Agreement, other than agents engaged by the Purchaser.
- (7) Neither this Agreement nor any statement, report or other document furnished or to be furnished by Seller pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of fact or omits to state a fact necessary to make the statements contained therein not misleading.
- (8) The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of Seller, and the transfer, assignment and conveyance of the Mortgage Loans pursuant to this Agreement are not subject to bulk transfer or any similar statutory provisions in effect in any applicable jurisdiction.

Subsection 7.03      Certain Remedies for Breach of Representations and Warranties.

(a) It is understood and agreed that the representations, warranties, covenants and agreements of Seller set forth herein shall survive the sale of the Mortgage Loans to the Purchaser and shall inure to the benefit of the Purchaser, notwithstanding any restrictive or qualified endorsement on any Mortgage Note (including any endorsement that is "without recourse") or the examination or lack of examination of any Mortgage Loan File. Upon discovery by the Seller or the Purchaser of a breach of any of Seller's representations and warranties herein that adversely effects or is reasonably likely to have an adverse effect upon: (i) the value of the Mortgage Loans or the interest of the Purchaser therein, (ii) the value or collectability of a Mortgage Loan or the interest of the Purchaser therein, or (iii) the Purchaser in any material manner including, without limitation, its

business or financial condition or prospects (any of the foregoing, referred to herein as an "Adverse Effect"), the party discovering such breach shall give prompt notice thereof to the other party.

(b) Within 30 days of the earlier of either discovery by the Seller, or notice to the Seller, of any breach of a representation or warranty by Seller which has or is reasonably likely to have an Adverse Effect, the Seller shall use its best efforts promptly to cure such breach.

(c) If, with respect to a Mortgage Loan, such breach cannot be cured within such thirty (30) day period, the Seller shall, at the Purchaser's option, repurchase such Mortgage Loan at the Repurchase Price. In the event that a breach shall involve any representation or warranty set forth in Subsection 7.02 and such breach cannot be cured within 60 days of the earlier of either discovery by or notice to the Seller of such breach, all of the Mortgage Loans shall, at the Purchaser's option, be repurchased by the Seller at the respective Repurchase Price. The Seller shall, at the request of the Purchaser and assuming that Seller has a Qualified Substitute Mortgage Loan (reasonably acceptable to Purchaser), rather than repurchase the Mortgage Loan as provided above, remove such Mortgage Loan and substitute in its place a Qualified Substitute Mortgage Loan or Loans; provided that any such substitution shall be effected not later than 20 days following Purchaser's request on a date acceptable to Purchaser. If the Seller has no Qualified Substitute Mortgage Loan, it shall repurchase the respective Mortgage Loan(s) as provided herein. Any repurchase of a Mortgage Loan(s) pursuant to the provisions of this Subsection 7.03 shall occur on a date designated by the Purchaser and shall be accomplished by wire transfer of immediately available funds on the repurchase date to an account designated by the Purchaser.

(d) [Reserved]

(e) At the time of (i) a repurchase of any Mortgage Loan which is subject to repurchase, or (ii) the substitution of a Qualified Substitute Mortgage Loan for a Deleted Mortgage Loan, the Purchaser and the Seller shall arrange for the reassignment of the repurchased Mortgage Loan or the Deleted Mortgage Loan, as applicable to the Seller and the delivery to the Seller of any documents held by the Custodian relating to the repurchased Mortgage Loan or Deleted Mortgage Loan, as applicable. Any such assignment by Purchaser to Seller of a repurchased Mortgage Loan or Deleted Mortgage Loan, as applicable, shall be without recourse to Purchaser and Purchaser makes no representations or warranties with respect thereto, except that such repurchased Mortgage Loan or Deleted Mortgage Loan is being transferred free and clear of any lien due solely to the acts of Purchaser. Upon such repurchase or substitution, the Mortgage Loan Schedule shall be amended to reflect the withdrawal of the repurchased Mortgage Loan or Deleted Mortgage Loan from this Agreement.

(f) As to any Deleted Mortgage Loan for which the Seller substitutes a Qualified Substitute Mortgage Loan or Loans, the Seller shall effect such substitution by delivering to the Purchaser for such Qualified Substitute Mortgage Loan or Loans on a date designated by Purchaser, the related Mortgage Note, the Mortgage, and any such other

documents and agreements as are necessary or requested by Purchaser to effect the substitution (including the items required by the Mortgage Loan File), with the substituted Mortgage Note endorsed as required herein. In connection with any substitution, the Seller shall deliver such other documents and representations and warranties (consistent with this Agreement and updated where the context requires) with respect to the applicable Qualified Substitute Mortgage Loan as reasonably requested by Purchaser. The Seller shall deposit in the applicable account, designated by Purchaser, the Monthly Payments (minus Escrow Payments) due on such Qualified Substitute Mortgage Loan or Loans following the date of such substitution, and the Seller shall thereafter be entitled to retain all amounts subsequently received by the Seller following the date of substitution in respect of such Deleted Mortgage Loan. The Seller shall give written notice to the Purchaser that such substitution has taken place and shall amend the Mortgage Loan Schedule, to reflect the removal of such Deleted Mortgage Loan from such schedule and the substitution of the Qualified Substitute Mortgage Loan. In connection with such Qualified Substitute Mortgage Loan or Loans shall be subject to Purchaser's review and approval and the terms of this Agreement in all respects, and the Seller shall be deemed to have made with respect to such Qualified Substitute Mortgage Loan or Loans as of the date of substitution, the covenants, representations and warranties set forth in Subsections 7.01 and 7.02, updated through the date of substitution where the context requires.

(g) With respect to the Mortgage Loans, for any month in which the Seller substitutes one or more Qualified Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Seller will determine the amount (if any) by which the aggregate principal balance of all such Qualified Substitute Mortgage Loans as of the date of substitution is less than the aggregate Stated Principal Balance of all such Deleted Mortgage Loans as of the date of substitution. An amount equal to the sum of (x) the amount of such shortfall and (y) accrued interest on the amount of such shortfall to the last day of the month such substitution occurs, shall be paid and distributed by the Seller to Purchaser in the month of substitution. Accordingly, on the date of such substitution, the Seller, as applicable, will deposit from its own funds into the applicable account designated by Purchaser an amount equal to such amount, which shall be distributed to Purchaser accordingly.

(h) In addition to such cure, repurchase and substitution obligation, the Seller shall indemnify Purchaser and hold Purchaser harmless from and against any losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and other costs and expenses resulting from any claim, demand, defense or assertion based on or grounded upon, or resulting from, a breach of the Seller's representations and warranties, respectively, contained in this Section 7. It is understood and agreed that the obligations of the Seller set forth in this Subsection 7.03 to cure, substitute for or repurchase a Mortgage Loan subject to repurchase/substitution and to indemnify the Purchaser as provided in this Subsection 7.03 are in addition to such other rights and remedies available to Purchaser and its assigns, whether under this Agreement, at law or in equity, which remedies shall be cumulative and nonexclusive. Notwithstanding the foregoing, Seller shall not have any liability in respect of the representations or warranties made by Seller herein, or any covenant or agreement in this Agreement to be performed by

Seller, to the extent such liability would not have arisen but for Purchaser's assign's own willful misconduct or gross negligence.

(i) Seller agrees and acknowledges that notwithstanding any restrictive or qualified endorsement on any Mortgage Note or Mortgage or assignment, that Seller's obligations (including its repurchase obligations) set forth in this Agreement shall remain in full force and effect. Seller's obligations to repurchase under this Section 7 shall be unconditional and without any right of setoff or deduction.

SECTION 8. Closing. The Closing shall take place on the Closing Date. At the Purchaser's option, the closing shall be either by telephone, confirmed by letter or wire as the parties shall agree, or conducted in person, at such place as the parties shall agree.

The closing for the Mortgage Loans to be purchased and acquired by Purchaser on the Closing Date shall be subject to each of the following conditions:

(a) all of the representations and warranties of the Seller under this Agreement shall be true and correct as of the Closing Date and no event shall have occurred which, with reasonable notice to the Seller or the passage of time, would constitute a default under this Agreement;

(b) the Purchaser shall have received, or the Purchaser's attorneys shall have received in escrow, all Closing Documents as specified in Section 9, in such forms as are agreed upon and acceptable to the Purchaser, duly executed by all signatories other than the Purchaser as required pursuant to the terms hereof;

(c) the Seller shall have delivered and released to the Custodian all documents (including the Mortgage Loan Files) for the Mortgage Loans as required pursuant to this Agreement;

(d) the execution and delivery by the parties of the closing statement which shall among other things indicate the total Purchase Price (the "Closing Statement");

(e) the Mortgage Loan Schedule shall have been received by the Purchaser and be satisfactory to Seller and Purchaser;

(f) the UCC financing statement contemplated by Section 6.04 hereof shall have been filed with the Secretary of State of Florida;

(g) all necessary consents and approvals for the parties to perform their obligations under this Agreement shall have been obtained;

(h) all other documents and items required by Purchaser shall have been delivered;

(i) Seller shall have satisfied its obligations under Section 6.01(b); and

(j) all other terms and conditions of this Agreement shall have been complied with.

Subject to the foregoing conditions, the Purchaser shall pay to the Seller on the Closing Date the Purchase Price, by wire transfer of immediately available funds to the account designated by the Seller.

SECTION 9. Closing Documents. On or before the Closing Date, the Seller shall submit to the Purchaser fully executed originals of the following documents:

- (1) this Agreement;
- (2) the Assignment and Conveyance document; and
- (3) the related Mortgage Loan Schedule.

SECTION 10. Costs. The Purchaser shall pay any commissions due its salesmen and the legal fees and expenses of its attorneys incurred in connection with the preparation of this Agreement. All other costs and expenses incurred in connection with the preparation of this Agreement and the transfer and delivery of the Mortgage Loans, including without limitation recording fees, stamp or recording taxes, fees for title policy endorsements and continuations, fees for recording assignments of mortgage, as applicable, and the Seller's attorney's fees, shall be paid by the Seller.

SECTION 11. Servicing. The parties acknowledge that the Seller, as an independent contractor servicer, shall service and administer the Mortgage Loans in accordance with the terms of that certain Mortgage Loan Sales and Servicing Agreement dated as of the date hereof to which Purchaser and Seller are parties thereto (the "SPE Mortgage Loan Sale Agreement"). Seller shall remit all recoveries of principal and interest and any other amounts received by Seller derived from the Mortgage Loans (including any Qualified Substitute Mortgage Loans) following the Cut-Off Date in accordance with Seller's servicing obligations under the SPE Mortgage Loan Sale Agreement.

#### SECTION 12. Additional Covenants.

##### Subsection 12.01 Indemnification by the Seller.

In addition to the indemnification provided in Subsection 7.03, the Seller shall indemnify the Purchaser and hold the Purchaser harmless against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and any other costs, fees and expenses that the Purchaser may sustain in any way related to or arising from (a) the failure of the Seller to perform its obligations under this Agreement, (b) any breach by Seller of its representations, warranties, covenants or agreements set forth herein, (c) all court costs and other costs of collecting any obligations or amounts payable to Purchaser under or in connection with this Agreement, and (d) any adverse third party claims (including claims by Mortgagor(s)) or proceedings arising from acts or omissions of any of the Seller, originator, prior owner or servicer or any of their agents, employees or Affiliates related to the Mortgage Loans, including the origination



and servicing of the Mortgage Loans or that otherwise relate to the transactions contemplated by this Agreement and which are not the result of the negligence or willful misconduct of Purchaser's assignee. The indemnification obligation of the Seller set forth herein shall survive the termination of this Agreement indefinitely notwithstanding any applicable statute of limitations, which the Seller hereby expressly waives. Seller shall be required to perform or pay its obligations under this section in full within three (3) days following written demand by Purchaser.

Subsection 12.02      Merger or Consolidation of Seller.

(a) The Seller shall each keep in full force and effect its existence, rights and franchises as a corporation under the laws of its state of incorporation except as permitted herein, and shall obtain and preserve its qualification to do business as a foreign entity in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans and to enable the Seller to perform its obligations under this Agreement.

(b) For so long as Seller has any obligations under this Agreement, Seller shall not merge or consolidate with another entity or sell or transfer or otherwise dispose of all or substantially all of its assets in one or a series of related transactions, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Any Person into which Seller may be merged or consolidated, or any corporation resulting from any merger, conversion or consolidation to which Seller shall be a party, or any Person succeeding to the business of Seller shall be the successor of Seller hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that the successor or surviving Person shall be an institution whose deposits are insured by FDIC or a company whose business is the origination and servicing of mortgage loans, and shall be a FNMA or FHLMC approved seller/servicer.

Subsection 12.03      Certain Additional Covenants of Seller.

(a) Seller agrees to give Purchaser prompt written notice of each default or breach by Seller hereunder.

(b) Upon request of the Purchaser, the Seller will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Agreement.

SECTION 13. Mandatory Delivery. The sale and delivery of each Mortgage Loan on or before the Closing Date is mandatory from and after the date of the execution of this Agreement.

SECTION 14. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed, by registered or certified mail, return receipt requested, or sent via nationally recognized

overnight courier for next business day delivery, or, if by other means, when received by the other party at the address as follows:

if to the Seller:

Taylor, Bean & Whitaker Mortgage Corp.  
101 NE 2nd Street  
Ocala, Florida 34470  
Attention: President

if to the Purchaser:

TBW Funding Company III LLC  
5150 Stilesboro Road  
Building 500, Suite 500  
Kennesaw, Georgia 30152  
Attention: Secretary

With a copy to:

Jeffery W. Cavender, Esq.  
General Counsel  
5150 Stilesboro Road  
Building 500, Suite 500  
Kennesaw, Georgia 30152

or such other address as may hereafter be furnished to the other party by like notice, and in the case of the Purchaser, to the address of any assignee of Purchaser, if Seller is so notified of such assignment. Any such demand, notice or communication hereunder shall be deemed to have been received on the date delivered to or received at the premises of the addressee (as evidenced, in the case of registered or certified mail, by the date noted on the return receipt or if sent via overnight courier, the date when delivered by the overnight courier to the addressee).

SECTION 15. Severability Clause. Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any part, provision, representation or warranty of this Agreement which is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall be ineffective, as to such jurisdiction, to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction as to any Mortgage Loan shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof. If the invalidity of any part, provision, representation or warranty of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, the parties shall

negotiate, in good-faith, to develop a structure the economic effect of which is nearly as possible the same as the economic effect of this Agreement without regard to such invalidity.

SECTION 16. Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. The parties intend that faxed signatures and electronically imaged signatures such as .pdf files for signature pages to this Agreement shall constitute original signatures and are binding on all parties.

SECTION 17. Governing Law. This Agreement (including the matters set forth in Section 18 hereof) shall be governed and construed in accordance with the laws of the State of Delaware without regard to any conflicts of law provisions and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with the laws of the State of Delaware, except to the extent preempted by Federal law.

SECTION 18. Characterization and Intention of the Parties.

It is the intention of the parties that the Purchaser is purchasing, and the Seller is selling, the Mortgage Loans. To the extent any portion of the conveyance is not deemed a sale, then such portion of the conveyance that is not deemed a sale shall be deemed a contribution of equity capital by Seller to Purchaser (a wholly owned subsidiary of Seller).

In addition, the Parties intend that following the Closing Date:

(i) The Mortgage Loans will be the property and assets of the Purchaser;

(ii) The Seller, its creditors or, in any insolvency proceeding with respect to the Seller or the Seller's property, a bankruptcy trustee, receiver, debtor, debtor in possession or similar person, shall have no rights, legal or equitable, whatsoever to reacquire; reclaim, recover, repudiate, disaffirm, redeem or recharacterize as property of the Seller any of the Mortgage Loans transferred and conveyed by the Seller to the Purchaser pursuant to this Agreement (provided that nothing in this clause (ii) shall negate or diminish Seller's obligations under Section 7.03 of this Agreement); and

(iii) In the event of a bankruptcy, receivership or other insolvency proceeding with respect to the Seller or the Seller's property, the Mortgage Loans transferred and conveyed by the Seller to the Purchaser pursuant to this Agreement shall not be deemed to be part of the Seller's property, assets, rights or estate.

Notwithstanding clause (ii) above, Seller may reacquire and hold any of the following property which may be transferred to it by the Purchaser (or its assign): (x) any repurchased Mortgage Loans or Deleted Mortgage Loans pursuant to this Agreement, or (y) any Mortgage Loan that has been repurchased or otherwise acquired by TBW Funding

Company III LLC pursuant to the terms of the SPE Mortgage Loan Sale Agreement and transferred to TBW Funding Company III LLC as may be permitted thereunder.

While the parties intend that the conveyance of Seller's right, title and interest in and to the Mortgage Loans to Purchaser pursuant to this Agreement shall constitute a sale thereof and not a financing, if such conveyance (or any portion thereof) is deemed to be a financing, the parties intend that the rights and obligations of the parties to such financing shall be established pursuant to the terms of this Agreement. If, notwithstanding the foregoing, the transactions contemplated hereby (or any portion thereof) should be deemed a financing, the parties intend and agree that Seller shall be deemed to have granted to Purchaser, and Seller hereby does grant to Purchaser, a security interest in all of the right, title and interest in, to and under the Mortgage Loans (including Qualified Substitute Mortgage Loans and any after acquired Mortgage Loans contemplated under this Agreement) and all proceeds thereof, which will be a perfected first priority lien and security interest as of Closing, such security interest shall secure the payment and performance of all existing and hereafter arising obligations of Seller under this Agreement and that this Agreement shall constitute a security agreement under applicable law.

SECTION 19. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Seller and the Purchaser and the respective successors and assigns of the Seller and the Purchaser. Seller shall not assign its rights or delegate its obligations under this Agreement without the prior written consent of Purchaser, and notwithstanding any assignment or delegation that may be so consented to by Purchaser, Seller shall remain obligated for its obligations hereunder. Purchaser shall have the right to assign its rights and obligations under this Agreement upon written notice to the Seller.

SECTION 20. Waivers. No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and signed by the party against whom such waiver or modification is sought to be enforced.

SECTION 21. Nonsolicitation. The Seller covenants and agrees for a period twelve (12) months from the date hereof that it shall not take any action to solicit the refinancing of any Mortgage Loans following the date hereof or cause any of its agents or Affiliates to solicit the refinancing of any Mortgage Loan; provided that, the foregoing shall not preclude the Seller from engaging in solicitations to the general public by newspaper, radio, television or other media which are not directed toward the Mortgagors or from refinancing the Mortgage Loan of any Mortgagor who, without solicitation, contacts the Seller to request the refinancing of the related Mortgage Loan.

SECTION 22. General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the

singular, and the use of any gender herein shall be deemed to include the other gender;

- (b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;
- (c) references herein to "Articles," "Sections," "Subsections," "Paragraphs," and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of this Agreement;
- (d) reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions;
- (e) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and
- (f) the term "include" or "including" shall mean without limitation by reason of enumeration.

SECTION 23. Reproduction of Agreement. This Agreement may be reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

SECTION 24. Further Agreements. The Seller and the Purchaser each agree to execute and deliver to the other such reasonable and appropriate additional documents, instruments or agreements as may be necessary or appropriate to effectuate the purposes of this Agreement.

SECTION 25. Confidentiality. The parties will keep confidential, and will cause their respective employees, contractors, Affiliates and agents to keep confidential, any and all information obtained from the other party which is designated as confidential, and will not use such information for any purpose other than those intended by this Agreement. However, the parties will not be subject to this obligation for any information provided by the other party which either (a) was in such party's possession at the time of disclosure and was not subject to any confidentiality obligations; (b) was in the public domain at the time of disclosure, or subsequently enters the public domain through no act or failure to act on the part of such party; (c) is lawfully obtained by such party from a

third party; (d) the Parties agrees in writing may be provided to a third party; or (e) is required to be disclosed by applicable law, regulation, rule or court order.

#### SECTION 26 Privacy.

(a) All customer information in the possession of the either party ("Customer Information") is and shall remain confidential and propriety information of each party except (i) as otherwise set forth in this Agreement; and (ii) information independently obtained by the Parties and not derived in any manner from information obtained under or in connection with this Agreement.

(b) The Parties agree to comply with all applicable consumer privacy laws (any and all federal, state and local statutes, regulations and rules applicable to the protection and privacy of consumer information, including but not limited to the privacy provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.) (the "Privacy Requirements") and implementation of appropriate measures designed to safeguard Customer Information (an "Information Security Program").

(c) The Parties shall not disclose any Customer Information to any person or entity, other than the employees, agents, contractors and Affiliates of the Parties who have a need to know such information or as otherwise required by law or court order.

(d) The Parties shall maintain at all times an Information Security Program.

(e) The Parties shall assess, manage, and control risks relating to the security and confidentiality of Customer Information, and shall implement the standards relating to such risks in the manner set forth in the Interagency Guidelines Establishing Information Security Standards, Section 216 of the Fair and Accurate Transaction Act (including its implementing regulations) as well as any amendments thereto or other applicable regulations regarding safeguarding information enacted or released by any regulatory agency having jurisdiction over Seller.

(f) Without limiting the scope of the above, the Parties shall use at least the same physical and other security measures to protect all Customer Information in such Parties' possession or control, as the Parties use for their own confidential and propriety information.

(g) If a Party provides an account number to another to enable the Parties to carry out the purposes of the Agreement, the receiving party shall (i) use such account number only for such specific purpose and for no

other purpose; and (ii) destroy all records relating to such account number upon providing party's request.

(h) In no event shall either of the Parties use any account number to (i) market any product or service of such Party or any other person or entity or (ii) initiate unlawful charges to any customer's account.

(i) From time to time upon the request, each Party shall allow the other during normal business hours to inspect such Party's books and records relating to: (i) compliance with the Privacy Requirements; and (ii) Information Security Program.

(j) The Parties shall comply with all Privacy Requirements and shall immediately notify the other party if there is a breach of its security related to the customers of the other party so that they may be notified in accordance with any applicable Privacy Requirements.

SECTION 27. Consent to Jurisdiction; Exclusive Venue; Waiver of Jury Trial. Each party to this Agreement hereby irrevocably consents to the jurisdiction of the United States District Court for the Eastern District of Tennessee and of all Tennessee state courts sitting in Knox County, Tennessee, unless such venue designation is waived by the Purchaser, for the purpose of any litigation to which Purchaser may be a party and which arises from or is related to this Agreement. It is further agreed that venue for any such action shall lie exclusively with courts sitting in Knox County, Tennessee, unless such venue designation is waived by the Purchaser. The parties waive any right to assert that the elected forum is not convenient and to raise any other objection to this election of exclusive venue. Each party to this Agreement hereby knowingly, voluntarily, and with full benefit of counsel, irrevocably waives any right to obtain a trial by jury in any litigation arising from or related to this Agreement and confirms that the effect of this waiver is that all issues of fact and law in any such litigation shall be determined by a judge acting without a jury. This waiver is a material inducement to the execution of this Agreement and is intended to apply regardless of the basis of any claim raised in such litigation and, without limitation, shall apply to any litigation involving any claim or defense arising under contract law, tort, or under any statute or constitution.

SECTION 28. Entire Agreement. This Agreement and the exhibits and schedules hereto constitute the entire agreement and understanding of the parties with respect to the matters and transactions contemplated by this Agreement and, except to the extent otherwise set forth in writing, supersedes any prior agreement and understandings with respect to those matters and transactions, provided, that for avoidance of doubt, nothing herein shall negate or supersede the terms of the SPE Mortgage Loan Sale Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Seller and the Purchaser have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the date first above written.

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.  
(Seller)

By: Sherry Dickinson

Name: Sherry Dickinson  
Title: Vice Chairman

TBW FUNDING COMPANY III LLC  
(Purchaser)

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

Name: Paul R. Allen  
Title: Vice President



IN WITNESS WHEREOF, the Seller and the Purchaser have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the date first above written.

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.  
(Seller)

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

Name: Sherry Dickinson  
Title: Vice Chairman

TBW FUNDING COMPANY III LLC  
(Purchaser)

By: 

Name: Paul R. Allen  
Title: Vice President

**EXHIBIT A**  
**MORTGAGE LOAN DOCUMENTS**

- (a) the original Mortgage Note bearing all intervening endorsements necessary to show a complete chain of endorsements from the original payee, endorsed in blank, "Pay to the order of \_\_\_\_\_, without recourse" and, if previously endorsed, signed in the name of the last endorsee by a duly qualified officer of the last endorsee. If the Mortgage Loan was acquired by the last endorsee in a merger, the endorsement must be by "[name of last endorsee], successor by merger to [name of predecessor]". If the Mortgage Loan was acquired or originated by the last endorsee while doing business under another name, the endorsement must be by "[name of last endorsee], formerly known as [previous name]";
- (b) with respect to Mortgage Loans that are not MERS Loans, the original assignment of mortgage for each Mortgage Loan to \_\_\_\_\_, in form and substance acceptable for recording; with respect to MERS Loans, the original mortgage and assignment thereof to MERS, with evidence of recording indicated thereon, or a copy of the Mortgage certified by the public recording office in which such Mortgage has been filed reflecting MERS as the lienholder of record;
- (c) the original of each guarantee executed in connection with the Mortgage Note, if any;
- (d) the original recorded Mortgage, with evidence of recording thereon. If in connection with any Mortgage Loan, the Seller has not delivered or caused to be delivered the original Mortgage with evidence of recording thereon on or prior to the Closing Date because of a delay caused by the public recording office where such Mortgage has been delivered for recordation or because such Mortgage has been lost or because such public recording office retains the original recorded Mortgage, the Seller shall deliver or cause to be delivered to the Custodian, (i) in the case of a delay caused by the public recording office, a copy of such Mortgage certified by the Seller, escrow agent, title insurer or closing attorney to be a true and complete copy of the original recorded Mortgage with the original recorded Mortgage to be promptly delivered to the Custodian upon receipt thereof by the Seller (and in any event, within 120 days following the Closing Date) and (ii) in the case where a public recording office retains the original recorded Mortgage or in the case where a Mortgage is lost after

recordation in a public recording office, a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage;

- (e) originals or a certified copy of each modification agreement, if any;
- (f) the originals of all intervening assignments of mortgage with evidence of recording thereon evidencing a complete chain of ownership from the originator of the Mortgage Loan to the last assignee, or if any such intervening assignment of mortgage has not been returned from the applicable public recording office or has been lost or if such public recording office retains the original recorded intervening assignments of mortgage, a photocopy of such intervening assignment of mortgage, together with (i) in the case of a delay caused by the public recording office, an Officer's Certificate of the Seller, escrow agent, closing attorney or the title insurer insuring the Mortgage stating that such intervening assignment of mortgage has been delivered to the appropriate public recording office for recordation and that such original recorded intervening assignment of mortgage or a copy of such intervening assignment of mortgage certified by the appropriate public recording office to be a true and complete copy of the original recorded intervening assignment of mortgage will be promptly delivered to the Custodian upon receipt thereof by the party delivering the Officer's Certificate or by the Seller; or (ii) in the case of an intervening assignment of mortgage where a public recording office retains the original recorded intervening assignment of mortgage or in the case where an intervening assignment of mortgage is lost after recordation in a public recording office, a copy of such intervening assignment of mortgage with recording information thereon certified by such public recording office to be a true and complete copy of the original recorded intervening assignment of mortgage;
- (g) if the Mortgage Note, the Mortgage, any assignment of mortgage or any other related document has been signed by a Person on behalf of the Mortgagor, the copy of the power of attorney or other instrument that authorized and empowered such Person to sign;
- (h) the original lender's title insurance policy (or a marked title insurance commitment, in the event that an original lender's title insurance policy has not yet been issued) in the form of an ALTA mortgage title insurance policy, containing each of the endorsements generally required by prudent investors in the secondary mortgage market and required by FHLMC and insuring the Purchaser and its successors and assigns as to the second

priority lien of the Mortgage in the original principal amount of the Mortgage Loan; and

- (i) original of any security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage, if any.

**EXHIBIT B**  
**MORTGAGE LOAN FILE**

With respect to each Mortgage Loan, the Mortgage Loan File (which shall be delivered to Purchaser prior to Closing) shall include each of the following items:

1. Mortgage Loan Documents.
2. Residential loan application.
3. Mortgage Loan closing statement.
4. Verification of employment and income.
5. Verification of acceptable evidence of source and amount of downpayment.
6. Credit report on Mortgagor.
7. Residential appraisal report.
8. Photograph of the Mortgaged Property, if available.
9. Survey of the Mortgaged Property.
10. Copy of each instrument necessary to complete identification of any exception set forth in the exception schedule in the title policy, i.e., map or plat, restrictions, easements, sewer agreements, home association declarations, etc.
11. All required disclosure statements and statement of Mortgagor confirming receipt thereof.
12. If available, termite report, structural engineer's report, water potability and septic certification.
13. Sales Contract, if applicable.
14. Hazard insurance policy.
15. To the extent retained by Seller, tax receipts, insurance premium receipts, ledger sheets, payment history from date of origination, insurance claim files, correspondence, current and historical computerized data files, and all other processing, underwriting and closing papers and records which are customarily contained in a mortgage loan file and which are required to document the Mortgage Loan or to service the Mortgage Loan .
16. Amortization schedule, if available.

## EXHIBIT C

### ASSIGNMENT AND CONVEYANCE

On this \_\_\_\_\_ day of October, 2007, Taylor, Bean & Whitaker Mortgage Corp. ("Seller") as the Seller under that certain Mortgage Loan Sales Agreement, dated as of October \_\_\_\_\_, 2007 (the "Agreement") does hereby sell, transfer, assign, set over and convey to TBW Funding Company III, LLC as Purchaser under the Agreement, without recourse except as provided in and subject to the terms of the Agreement, all rights, title and interest of the Seller in and to the Mortgage Loans listed on the Mortgage Loan Schedule attached hereto. Pursuant to Subsection 6.03 of the Agreement, the Seller has delivered to the Purchaser the documents for each Mortgage Loan to be sold and transferred to Purchaser pursuant to the Agreement. The ownership of each Mortgage Note, Mortgage, and the contents of the Mortgage Loan File is vested in the Purchaser and the ownership of all records and documents with respect to the related Mortgage Loan prepared by or which come into the possession of the Seller shall immediately vest in the Purchaser.

The Seller confirms to the Purchaser that the representations and warranties set forth in Subsections 7.01 and 7.02 of the Agreement are true and correct with respect to the Seller and the Mortgage Loans listed on the Mortgage Loan Schedule attached hereto as of the date hereof, and that all statements made in the Seller's Officer's Certificates and all Attachments thereto remain complete, true and correct in all respects as of the date hereof, and that the Mortgage Loan characteristics identified on the attached Mortgage Loan Schedule are true and correct as of the date hereof.

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

Taylor, Bean & Whitaker Mortgage Corp.  
Seller

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **Mortgage Loan Schedule**

*[Attached]*

**MORTGAGE LOAN SALES AND SERVICING AGREEMENT**

This MORTGAGE LOAN SALES AND SERVICING AGREEMENT dated as of the 17th day of October, 2007 (the "Agreement") is made by and between Henley Holdings LLC, a Delaware limited liability company ("Purchaser"), TBW Funding Company III LLC, a Delaware limited liability company ("Seller"), and Taylor, Bean & Whitaker Mortgage Corp., a Florida corporation (referred to herein as "TBW" or "Servicer"), for mutual considerations set forth herein. Purchaser, Seller and Servicer are hereinafter collectively referred to as the "Parties."

**W I T N E S S E T H :**

WHEREAS, the Seller has acquired a portfolio of mortgage loans from TBW;

WHEREAS, the Seller desires to sell, to the Purchaser, and the Purchaser desires to purchase, from the Seller, certain mortgage loans as described herein and subject to the terms hereof;

WHEREAS, each mortgage loan is secured by a mortgage, deed of trust or other security instrument creating a first or second lien on a residential dwelling as described herein;

WHEREAS, the Purchaser and the Seller wish to prescribe the manner of the conveyance of the mortgage loans; and

WHEREAS, the Purchaser desires to engage TBW to service the mortgage loans, and TBW desires to service such mortgage loans, on the terms set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. Definitions. For purposes of this Agreement the following capitalized terms shall have the respective meanings set forth below.

Adverse Effect: As defined in Subsection 7.03(a) hereof.

Affiliate: As to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, "controls," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" or "controlled" have meanings correlative to the foregoing.



Appraised Value: With respect to any Mortgaged Property, the lesser of (i) the value thereof as determined by an appraisal made for the originator of the Mortgage Loan at the time of origination of the Mortgage Loan by an appraiser who met the minimum requirements of the TBW's Underwriting Guidelines, FHLMC and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and (ii) the purchase price paid for the related Mortgaged Property by the Mortgagor with the proceeds of the Mortgage Loan.

Business Day: Any day other than a Saturday or Sunday, or a day on which banking and savings and loan institutions in the State of Florida or the State of Tennessee are authorized or obligated by law or executive order to be closed.

Closing Date: October 17, 2007.

Closing Statement: As defined in Section 8(d) hereof.

Combined Loan-to-Value Ratio or CLTV: With respect to any Mortgage Loan as of any date of determination, the ratio on such date of the outstanding principal amount of the Mortgage Loan and any other mortgage loan which is secured by a lien on the related Mortgaged Property to the Appraised Value of the Mortgaged Property.

Credit Score: The credit score of the Mortgagor provided by Fair, Isaac & Company, Inc. or such other nationally recognized organization providing credit scores at the time of the origination of a Mortgage Loan. If two credit scores are obtained, the Credit Score shall be the lower of the two credit scores. If three credit scores are obtained, the Credit Score shall be the middle of the three credit scores.

Custodial Account: The separate bank depository account created and maintained for the benefit of Purchaser with Colonial Bank, N.A. (or its successor) or other bank selected by Servicer pursuant to this Agreement that is acceptable to Purchaser, which shall be entitled "Taylor, Bean & Whitaker Mortgage Corp., as servicer, in trust for and for the benefit of Henley Holdings LLC and its assigns", or, following a Trigger Event, if so designated by Purchaser in writing to Servicer, such other bank depository account as designated by Purchaser for the benefit of Purchaser and its assigns.

Custodian: The custodian shall be the Purchaser until such time as Purchaser elects in writing to designate a third party custodian to act on its behalf.

Cut-Off Date: 11:59 P.M. Eastern Time on October 14, 2007.

Default Notice: As defined in Subsection 2(e) hereof.

Deleted Mortgage Loan: A Mortgage Loan replaced or to be replaced by a Qualified Substitute Mortgage Loan.

Due Date: With respect to each Mortgage Loan, the day of the calendar month on which each Monthly Payment is due on such Mortgage Loan, exclusive of any days of grace.

Effective Performance Minimum: As defined in Subsection 2(b) hereof.

Escrow Account: Each separate trust account or accounts created and maintained pursuant to this Agreement which shall be entitled "Taylor, Bean & Whitaker Mortgage Corp., as servicer, in trust for Henley Holdings LLC and its assigns, and various Mortgagors".

Escrow Payments: With respect to any Mortgage Loan, the amounts constituting taxes, municipal charges, mortgage insurance policy premiums, fire and hazard insurance premiums, and any other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to the Mortgage, applicable law or any other related document.

Facility Fee Rate: Ten percent (10%) per annum, provided that upon and following a Trigger Event, such fee rate shall automatically be increased to fifteen percent (15%) per annum.

FHLMC: Freddie Mac or any successor thereto.

Investment Balance: The initial Investment Balance is the total Purchase Price paid by Purchaser pursuant to this Agreement. Thereafter, the Investment Balance, as of the applicable date of determination, is the total Purchase Price paid by Purchaser pursuant to this Agreement less:

- (1) all amounts received by Purchaser pursuant to Subsection 4(b)(i);
- (2) all amounts received by Purchaser pursuant to Subsection 4(c)(i) which are not otherwise applied pursuant to clause (A) or (B) of Subsection 4(c)(i);
- (3) if Purchaser has directed payment for any repurchased Mortgage Loan to an account other than the Custodial Account; then all principal proceeds paid to Purchaser in connection with such repurchased Mortgage Loan;
- (4) with respect to any Mortgage Loan repurchased by TBW pursuant to the TBW Sales Agreement, all principal proceeds paid to Purchaser in connection with such repurchased Mortgage Loan;
- (5) amounts received by Purchaser under Subsection 4(c)(ii)(c) hereof for the express purpose of reducing the Investment Balance;
- (6) amounts received by Purchaser from Seller under Subsection 2(f)(iii) or Subsection 4(f) hereof as may be required by Purchaser for the express purpose of reducing the Investment Balance; and
- (7) as determined by Purchaser in its discretion, such other amounts received by Purchaser pursuant to this Agreement for the express purpose of reducing the Investment Balance;

provided that, any payments or other amounts reducing the Investment Balance as described in clauses (1)-(7) above shall not apply more than once. For avoidance of doubt, Monthly Facility Fee payments to Purchaser shall not constitute a reduction in the Investment Balance.

Investor Mortgage Loan: A Mortgage Loan in which the Mortgaged Property is not owner-occupied.

Legal Proceeding Loan: A Mortgage Loan (including any collateral securing such Mortgage Loan) that is or becomes subject to any litigation or administrative or other legal proceeding of or before any court, tribunal (including any arbitrator) or governmental body prior to, on or following the Closing Date, including any foreclosure or similar proceedings or any proceeding that is against or adverse to Seller or Servicer or any of their respective Affiliates or any current or prior servicer or owner or the Purchaser with respect to such Mortgage Loan, excluding any such legal proceedings that are caused solely by the willful misconduct or gross negligence of the Purchaser.

Material Default: As defined in Subsection 2(e) hereof.

Maximum Aggregate Indemnity Amount: As defined in Subsection 12.02 hereof.

MERS Loan: Any Mortgage Loan registered with the MERS System, where MERS is the nominee mortgagee/lienholder of record.

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

MERS® System: The system of recording transfers of Mortgages electronically maintained by MERS.

MIN: The Mortgage Identification Number of the Mortgage Loan(s) registered with MERS on the MERS® System.

Minimum CA Holdback: The Minimum CA Holdback for any calendar monthly period following the Closing Date shall equal the aggregate of the Monthly Facility Fees paid or payable to Purchaser for the three (3) most recent monthly periods subject to the time necessary for the requisite funding of such Minimum CA Holdback Amount pursuant to Subsection 4(b)(ii)(c) hereof.

Monthly Facility Fee: The monthly fee amount paid to the Purchaser under this Agreement, which shall, for each calendar month be equal to the product of (a) (i) the Facility Fee Rate multiplied by 30 days (assuming twelve 30 day calendar months per year) (ii) divided by 360, and (b) the aggregate Investment Balance as of the first day of the immediately preceding calendar month (except with respect to the first Monthly Facility Fee due hereunder which shall be based on the aggregate Purchase Price and prorated based on the number of days from the Closing Date until the end of the initial

calendar month in which the Closing Date occurs). Such fee shall be computed on a monthly basis based upon twelve 30 day months. The Monthly Facility Fee shall be paid in whole or in part from the aggregate collections of interest on the Mortgage Loans; provided, however, that if and to the extent that the Monthly Facility Fee exceeds the interest collected on the Mortgage Loans and remitted to Purchaser for a particular month, then Seller shall pay from its own funds the difference between the Monthly Facility Fee and the monthly interest collected on the Mortgage Loans and remitted to Purchaser. Any such payment by Seller for a deficiency amount shall not be deemed an advance. Each Monthly Facility Fee shall be payable in full to Purchaser on a monthly basis.

Monthly Payment: With respect to any Mortgage Loan, the scheduled combined payment of principal and interest payable by a Mortgagor under the related Mortgage Note on each Due Date.

Monthly Retention Amount: The amount that is required to be deposited and retained in the Custodial Account in accordance with Subsection 4(b)(ii)(c) hereof to fund and maintain the Minimum CA Holdback, provided that to the extent the Minimum CA Holdback is fully funded as of an applicable monthly period, no additional Monthly Retention Amount shall be required to be deposited and retained in the Custodial Account for such monthly period.

Monthly Servicing Fee: The monthly fee to Servicer in an amount equal to one-twelfth ( $1/12^{\text{th}}$ ) multiplied by 0.30% (30 basis points) multiplied by the Stated Principal Balance of the Mortgage Loans as of the first day of the immediately preceding calendar month (except with respect to the first Monthly Servicing Fee due hereunder which shall be based on the aggregate Purchase Price and prorated based upon the number of days from the Closing Date until the end of the initial calendar month in which the Closing Date occurs) in accordance with and subject to the terms herein.

Mortgage: A mortgage, deed of trust, security deed, deed to secure debt or similar evidence of lien, creating at least a first or second lien on the Mortgaged Property which secures such Mortgage Loan.

Mortgage Interest Rate: With respect to each Mortgage Loan, the fixed annual rate of interest provided for in the related Mortgage Note.

Mortgage Loan: Each second or first lien, residential mortgage loan, sold, assigned, or transferred to the Purchaser pursuant to this Agreement and identified on the Mortgage Loan Schedule on the Closing Date or which is otherwise a Qualified Substitute Mortgage Loan. The Mortgage Loans include, without limitation, the related Mortgage Loan File and all related Mortgages and security interests and liens created thereby, rights under related insurance policies, all related insurance proceeds and other proceeds, and any and all rights to receive payments (including principal, interest and fees) pursuant thereto after the Cut-Off Date, but exclude any rights to receive payments which are received on or prior to the Cut-Off Date and applied on or prior to the Cut-Off Date. For avoidance of doubt, the parties acknowledge and agree that in the event a Mortgage Loan is reassigned, sold or transferred to Seller under the terms of this Agreement in connection with a

repurchase obligation of Seller, a Clean-Up Call purchase, a transfer to Seller pursuant to Subsection 4(g)(ii) hereof or other re-assignment, any and all payments and proceeds (including Repurchase Price proceeds, Clean-Up Call purchase price proceeds or other sales proceeds) derived from such Mortgage Loans prior to or on the effective date of the reassignment (or other reasonable cut-off date for such repurchase/reassignment as determined by Purchaser) shall not be included as part of the Mortgage Loan that is sold or reassigned to Seller.

Mortgage Loan Documents: The documents listed in Exhibit A hereto pertaining to any Mortgage Loan.

Mortgage Loan File: The items pertaining to a particular Mortgage Loan referred to in Exhibit B annexed hereto, and any additional documents required to be added to the Mortgage Loan File pursuant to this Agreement.

Mortgage Loan Schedule: The schedule of Mortgage Loans, to be annexed to the related Assignment and Conveyance on the Closing Date delivered on such Closing Date in electronic form, such schedule setting forth the following information with respect to each Mortgage Loan: (1) the Seller's Mortgage Loan identifying number; (2) the Mortgagor's first and last name; (3) the street address of the Mortgaged Property including the state and zip code; (4) a code indicating whether the Mortgaged Property is owner-occupied; (5) the type of Residential Dwelling constituting the Mortgaged Property; (6) the original months to maturity; (7) the original date of the Mortgage Loan and the remaining months to maturity from the Cut-Off Date, based on the original amortization schedule; (8) the Combined Loan-to-Value Ratio at origination; (9) the Mortgage Interest Rate in effect immediately following the Cut-Off Date; (10) the date on which the first Monthly Payment was due on the Mortgage Loan; (11) the stated maturity date (taking into account any extensions); (12) the amount of the Monthly Payment at origination; (13) the amount of the Monthly Payment as of the Cut-Off Date; (14) the last Due Date on which a Monthly Payment was actually applied to the unpaid Stated Principal Balance; (15) the original principal amount of the Mortgage Loan and with respect to second liens the related first lien on the Mortgaged Property and the current holder of the first lien; (16) the Stated Principal Balance of the Mortgage Loan as of the Cut-Off Date and with respect to second liens the principal balance of the related first lien on the Mortgaged Property as of the Cut-Off Date; (17) a code indicating the purpose of the loan (i.e., purchase financing, Rate/Term Refinancing, Cash-Out Refinancing); (18) the Mortgage Interest Rate at origination; (19) the date on which the first Monthly Payment was due on the Mortgage Loan and, if such date is not consistent with the Due Date currently in effect, such Due Date; (20) a code indicating the documentation style (i.e., full (providing two years employment verification - 2 years W-2's and current pay stub or 2 years 1040's for self employed borrowers), alternative or reduced); (21) the Appraised Value of the Mortgaged Property; (22) the sale price of the Mortgaged Property, if applicable; (23) with respect to each MERS Loan, the related MIN; (24) a code indicating whether a borrower is a non-resident alien; (25) the points and fees charged in connection with the origination of such Mortgage Loan; (26) whether the Mortgage Loan is secured by a first or second lien on the Mortgaged Property; and (27) whether any Monthly Payment on the Mortgage Loan is more than thirty (30) days delinquent, and if so, the schedule shall state how many days

delinquent. With respect to the Mortgage Loans in the aggregate, the Mortgage Loan Schedule shall set forth the following information, as of the Closing Date: (1) the number of Mortgage Loans; (2) the current Stated Principal Balance of the Mortgage Loans as of the Cut-Off Date; (3) the weighted average Mortgage Interest Rate of the Mortgage Loans; and (4) the weighted average maturity of the Mortgage Loans.

Mortgage Note: The original executed note evidencing the Mortgage Loan indebtedness of a Mortgagor.

Mortgaged Property: The Mortgagor's real property securing repayment of a related Mortgage Note, consisting of a fee simple interest in a single parcel of real property improved by a Residential Dwelling.

Mortgagor: 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 successor's in title to the Mortgaged Property, provided there may be more than one Mortgagor obligated under a Mortgage Loan.

Performing Mortgage Loans: The Mortgage Loans that satisfy each of the following criteria as determined as of the last day of each respective calendar month end: (a) such Mortgage Loans have no more than two Monthly Payments that are due and unpaid, (b) such Mortgage Loans have no more than two Monthly Payment Due Dates that have been extended during the 120 day period prior to such month end, (c) such Mortgage Loans have no more than one Monthly Payment Due Date that has been extended during the 90 day period prior to such month end and no Monthly Payment is delinquent more than 20 days past a scheduled Due Date, and (d) such Mortgage Loans are not Legal Proceeding Loans.

Person: An individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, other entity, trust, unincorporated organization or government or any agency or political subdivision thereof.

Purchase Price: The Purchase Price shall equal One Hundred Million Dollars (\$100,000,000).

Purchaser Financing Statement: As defined in Subsection 6.04(a) hereof.

Qualified Substitute Mortgage Loan: A mortgage loan substituted for a Deleted Mortgage Loan pursuant to the terms of this Agreement which must, on the date of such substitution, (i) have an outstanding principal balance, after application of all scheduled payments of principal and interest due during or prior to the month of substitution, not in excess of the Stated Principal Balance of the Deleted Mortgage Loan as of the Due Date in the calendar month during which the substitution occurs, (ii) have a Mortgage Interest Rate not less than (and not more than one percentage point in excess of) the Mortgage Interest Rate of the Deleted Mortgage Loan, (iii) have a remaining term to maturity not greater than (and not more than one year less than) that of the Deleted Mortgage Loan, (iv) have a Combined Loan-to-Value Ratio as of the date of substitution equal to or lower than the

Combined Loan-to-Value Ratio of the Deleted Mortgage Loan as of such date, (v) have a Credit Score for the related Mortgagor not lower than that of the Mortgagor under the Deleted Mortgage Loan; (vi) conform to each representation and warranty set forth in Subsection 7.01 of this Agreement (provided that (a) the cut-off date information for a Qualified Substitute Mortgage Loan shall reflect and be updated as of the date that is on or about the date of transfer of the Qualified Substitute Mortgage Loan to Purchaser as determined by Purchaser, and (b) Seller shall provide Purchaser with the same information that is required under the Mortgage Loan Schedule for such Qualified Substitute Mortgage Loan, which Seller represents and warrants shall be true and correct), (vii) if an Investor Mortgage Loan, have not been more than 30 days delinquent at any time during the immediately preceding twelve month period and which Due Date(s) have not been extended during the immediately preceding twelve month period, (viii) if any Mortgage Loan (other than an Investor Mortgage Loan), have not been delinquent by more than 30 days with respect to its most recent Due Date and which Due Date(s) have not been extended during the immediately preceding 183 day period, and (ix) be the same type of mortgage loan (and if required by Purchaser, having a similar geographic location of the Mortgaged Property acceptable to Purchaser). In the event that one or more mortgage loans are substituted for one or more Deleted Mortgage Loans as of a particular date or with respect to a particular monthly period, (a) the amounts described in clause (i) hereof shall be determined on the basis of aggregate principal balances of the Deleted Mortgage Loans, (b) the Mortgage Interest Rates described in clause (ii) hereof shall be determined on the basis of weighted average Mortgage Interest Rates for Qualified Substitute Mortgage Loans substituted during the respective monthly period, (c) the terms described in clause (iii) shall be determined on the basis of weighted average remaining terms to maturity of the Deleted Mortgage Loans, (d) the Combined Loan-to-Value Ratios described in clause (iv) hereof shall be satisfied as to each such Mortgage Loan, and (e) except to the extent otherwise provided in this sentence or unless otherwise waived in writing by the Purchaser, the representations and warranties and criteria described above for a Qualified Substitute Mortgage Loan must be satisfied as to each Qualified Substitute Mortgage Loan. A Qualified Substitute Mortgage Loan shall not be a current or former Deleted Mortgage Loan.

Reassignment Collateral: As defined in Section 19 hereof.

Reassignment Financing Statement: As defined in Section 19 hereof.

Repurchase Price: The Repurchase Price for any Mortgage Loan that is required to be repurchased pursuant to this Agreement shall be equal to the sum of (i) the Stated Principal Balance of such Mortgage Loan as of the date of repurchase, plus (ii) interest on such Stated Principal Balance at the Mortgage Interest Rate from and including the last Due Date through which interest has been paid by or on behalf of the Mortgagor to the day immediately prior to the date of repurchase, plus (iii) any costs and expenses incurred by the Purchaser in respect of the breach or defect giving rise to the repurchase obligation including, without limitation, any costs and damages incurred by any such party in connection with any violation by any such Mortgage Loan of any predatory or abusive lending law.

Residential Dwelling: Any one of the following: (i) a detached one-family dwelling, (ii) a detached two- to four-family dwelling, (iii) a one-family dwelling unit in a condominium project generally acceptable to prudent investors in the secondary mortgage market, or (iv) a detached one-family dwelling in a planned unit development.

Seller Operating Agreement: As defined in Subsection 12.04(A)(vii).

Servicer: Taylor, Bean & Whitaker Mortgage Corp., a Florida corporation.

Stated Principal Balance: As to each Mortgage Loan as of the applicable date of determination, (i) the principal balance of the Mortgage Loan as of the Cut-Off Date after giving effect to payments of principal received or written off or otherwise reduced before the Cut-Off Date, minus (ii) all principal amounts collected and/or recovered following the Cut-Off Date through the applicable date of determination with respect to the related Mortgage Loan. There shall be no waiver or write-off of any principal balance under a Mortgage Loan following the applicable Cut-Off Date so long as Purchaser owns and/or has a security interest in such Mortgage Loan unless otherwise directed by Purchaser in writing.

TBW Indemnity Payment Obligation: As defined in Subsection 12.02 hereof.

TBW Sales Agreement: As defined in Section 6.01(d) hereof.

Trigger Event: As defined in Subsection 2(f) hereof.

Underwriting Guidelines: TBW's written underwriting guidelines in effect with respect to the Mortgage Loans purchased by Purchaser on the Closing Date.

## SECTION 2. Agreement to Purchase Mortgage Loans.

(a) Subject to the terms hereof, on the Closing Date, the Seller agrees to sell, assign and convey to Purchaser, and the Purchaser agrees to purchase, Mortgage Loans having an aggregate Stated Principal Balance as of the Cut-Off Date in an amount as set forth in the Mortgage Loan Schedule and Closing Statement as agreed to by Seller and Purchaser on the Closing Date.

(b) Seller represents, warrants and covenants to Purchaser that the outstanding aggregate Stated Principal Balance of Performing Mortgage Loans (as determined as of the end of each calendar month) shall, subject to the proviso below:

(i) at all times from the Closing Date to August 31, 2009, equal at least 135% of the outstanding Investment Balance as of the end of each calendar month during such period (the "135% Performance Minimum"),

(ii) at all times on and after September 1, 2009 through August 31, 2010, equal at least 130% of the outstanding Investment Balance as of the end of each calendar month during such period (the "130% Performance Minimum"),



(iii) at all times on and after September 1, 2010 through August 31, 2011, equal at least 125% of the outstanding Investment Balance as of the end of each calendar month during such period (the "125% Performance Minimum"), and

(iv) at all times on and after September 1, 2011, equal at least 120% of the outstanding Investment Balance as of the end of each calendar month until all amounts owed to Purchaser under this Agreement (including full payment of the Investment Balance and full payment of all Monthly Facility Fees payable under this Agreement) have been paid (the "120% Performance Minimum")

(each of the foregoing performance minimums that is applicable and effective as of any given date shall be referred to herein as the "Effective Performance Minimum"); provided that upon the occurrence of a Trigger Event, the Effective Performance Minimum shall at all times following the date of the occurrence of the related Material Default continue to equal at least the Effective Performance Minimum then in effect as of the date of the occurrence of the related Material Default (and no further reduction in Effective Performance Minimum shall occur).

In the event the Stated Principal Balance of Performing Mortgage Loans is reduced below the Effective Performance Minimum due to principal payments, payoffs, refinancings, delinquencies, failure to satisfy the criteria for Performing Mortgage Loans or otherwise as determined as of the end of each calendar month either, (A) the Seller shall assign and transfer to Purchaser additional Qualified Substitute Mortgage Loans (with minimum outstanding principal balances of at least \$10,000 per loan) as of a date designated by Purchaser promptly following the shortfall or deficiency determination (and in any event within 30 days thereafter) such that the amount of Performing Mortgage Loans shall be at least equal to the Effective Performance Minimum taking into account such assignment of additional Qualified Substitute Mortgage Loans (provided in the case of the assignment of additional Qualified Substitute Mortgage Loans as provided in this subsection, there shall not be a corresponding assignment of non-Performing Mortgage Loans (e.g. Deleted Mortgage Loans) by Purchaser to Seller unless otherwise directed by Purchaser to Seller in writing), or (B) if directed by the Purchaser in writing to the Seller, the Seller shall repurchase such number and amount of non-Performing Mortgage Loans as selected by Purchaser at the applicable Repurchase Price within twenty (20) days following the date of notice of such election such that the amount of Performing Mortgage Loans shall be at least equal to the Effective Performance Minimum taking into account such repurchases and any related reduction in the Investment Balance. Any repurchase of a Mortgage Loan(s) pursuant to the foregoing provisions of clause (B) of this Subsection 2(b) shall occur on a date designated by the Purchaser within such twenty (20) day period, and shall be accomplished by wire transfer of immediately available funds on the repurchase date to the Custodial Account or other account as may be designated by the Purchaser. At the time of a repurchase of any Mortgage Loan which is subject to repurchase as provided above, the Purchaser and the Seller shall arrange for the reassignment of the repurchased Mortgage Loan to the Seller and the delivery to the Seller of any documents held by the Custodian relating to the repurchased Mortgage Loan. Any such assignment by Purchaser to Seller of a repurchased Mortgage Loan or, if applicable, a Deleted Mortgage Loan, shall be without recourse to Purchaser and Purchaser makes no representations or warranties

with respect thereto except that Purchaser's interest in such repurchased Mortgage Loan or Deleted Mortgage Loan is being transferred free and clear of any lien attributable solely to acts of Purchaser. Upon such repurchase, the Mortgage Loan Schedule shall be amended to reflect the withdrawal of the repurchased Mortgage Loan from such schedule.

(c) [Reserved].

(d) [Reserved].

(e) Purchaser may deliver written notice to Seller or Servicer (a "Default Notice") at any time upon or after:

(i) Seller or Servicer fails to make one or more payments or distributions to Purchaser required under this Agreement in a timely manner, provided, however, that the Seller and Servicer, as applicable, shall have three (3) Business Days to cure such payment default upon receipt of notice thereof (which notice may be sent via electronic mail) from the Purchaser (provided that such cure period shall apply to no more than two (2) payment defaults per twelve month period),

(ii) Seller fails to perform within the time period required its repurchase and substitution obligation under this Agreement (including Subsection 2(b) and Subsection 7.03 hereof),

(iii) The ratio of the aggregate Stated Principal Balance of the Performing Mortgage Loans to the Investment Balance is reduced below the Effective Performance Minimum as described in Subsection 2(b) for more than two (2) consecutive calendar monthly periods,

(iv) Seller or Servicer is in material default or breach of any of their other respective obligations under this Agreement, subject to any notice or right to cure provisions as expressly set forth herein,

(v) There is a breach involving any representation or warranty set forth in Subsection 7.02 which breach cannot be cured within 30 days of the earlier of either discovery by or notice to the Seller of such breach,

(vi) Seller or TBW commences any proceeding in bankruptcy or for dissolution, liquidation, winding-up, composition or other relief under state or federal bankruptcy laws,

(vii) Proceedings are commenced against Seller or Servicer, or a receiver or trustee is appointed for Seller or Servicer or a substantial part of any of their property, and such proceeding or appointment is not dismissed or discharged within sixty (60) days after its commencement,

(viii) Seller or Servicer defaults upon any material term of or fails to make payments when payments are due under any material indebtedness, securitization transaction, loan agreement, or promissory note or loan documents to which the

Seller or Servicer is bound or a party thereto, and any amendments and/or restatements thereof, subject to any applicable cure provisions or periods of grace set forth therein,

(ix) The audit report by independent certified public accountants for TBW's annual financial statements shall be qualified or limited by reference to the status of TBW as a "going concern,"

(x) TBW is in material default or breach of its obligations under the TBW Sales Agreement,

(xi) TBW is no longer an approved FHLMC seller/servicer, or

(xii) TBW's residential mortgage loan servicer rating is downgraded to "below average" (or similar rating downgrade if such rating category is no longer used) by Standard and Poor's or no longer rated by Standard and Poor's;

(each of the foregoing events known as a "Material Default").

(f) Upon the occurrence of any event described under Subsection 2(e)(vi) above (with or without the delivery of a Default Notice) or in the event a Default Notice has been delivered to Seller or Servicer (and to the extent a cure period applies to the Material Default referenced in the Default Notice, such Material Default has not been cured within the applicable cure period to the satisfaction of Purchaser) (each such event or occurrence, a "Trigger Event"), the Facility Fee Rate shall automatically increase to fifteen percent (15%) per annum, and in addition, any or all of the following may occur as determined by the Purchaser in its sole discretion:

(i) If so directed by Purchaser (by delivering written notice thereof to Seller or Servicer), all payments and proceeds received on or derived from the Mortgage Loans (including all interest collections) shall be distributed and allocated in accordance with Subsection 4(c) hereof, and Servicer (and Seller to extent received by Seller) shall thereafter remit (or caused to be remitted) all payments and proceeds accordingly;

(ii) If so elected by Purchaser (by delivering written notice thereof to Servicer), Purchaser may terminate TBW's duties and rights as "Servicer" as provided herein (including the terms in Exhibit C hereto) and Seller and Servicer shall take such other actions as Purchaser may require in order to effect the orderly transfer to Purchaser or its designee of the servicing and collection of the Mortgage Loans (which transfer shall be at Seller's and Servicer's cost and expense), including, without limitation, delivery of such notices to Mortgagors under the Mortgage Loans as required by Purchaser to cause all payments derived from the Mortgage Loans to be remitted and paid directly from the Mortgagors to an account designated by Purchaser, and if Seller or Servicer do not cooperate, Purchaser may deliver such notices and take such actions to cause payments from Mortgagors to be remitted to Purchaser;

(iii) The remaining outstanding Investment Balance and all unpaid Monthly Facility Fee(s) shall, if so elected by Purchaser by written notice delivered to Seller, be accelerated and payable in full as of a date determined by Purchaser in its discretion; and

(iv) Purchaser shall be entitled to exercise any and all other rights and remedies under this Agreement, at law or in equity, which rights and remedies shall be cumulative and non-exclusive.

SECTION 3. Mortgage Loan Schedules. The Seller shall deliver the Mortgage Loan Schedule to the Purchaser at least three (3) Business Days prior to the Closing Date for Purchaser's review.

SECTION 4. Purchase Price; Distributions and Allocations of Mortgage Payments and Proceeds.

(a) Subject to satisfaction of the conditions to Closing, Purchaser shall pay to Seller the Purchase Price as of the effective time of closing on the Closing Date, such payment to be made via wire transfer to Seller's account designated by Seller.

(b) As provided in Exhibit C and subject to the terms hereof, upon the Servicer's receipt of any payments or proceeds from the Mortgage Loans (including, without limitation, Monthly Payments, Repurchase Price proceeds and Clean-up Call proceeds), the Servicer shall deposit said payments or proceeds (excluding Escrow Payments) within two (2) days after receipt into the Custodial Account to be held and distributed as provided in this Agreement (provided that, if required by Purchaser following a Trigger Event, such payments may be required to be deposited into such other account of Purchaser as designated by Purchaser). Following the Closing Date, so long as the Mortgage Loans are outstanding and so long as a Trigger Event has not occurred requiring payments to be made in accordance with Subsection 4(c) hereof, payments and proceeds derived or collected from the Mortgage Loans (excluding Escrow Payments) during each preceding calendar monthly period shall be paid and distributed on or prior to the eighteenth (18<sup>th</sup>) day of each calendar month following the Closing Date as follows:

(i) all principal payments and principal proceeds derived from the Mortgage Loans (including the amount included in the Repurchase Price of any repurchased Mortgage Loans that is attributable to principal and any Clean-up Call proceeds attributable to principal) shall be paid and remitted to Purchaser on a monthly basis and such principal amounts shall reduce the Investment Balance on a dollar for dollar basis;

(ii) all interest payments derived from the Mortgage Loans (including the amount included in the Repurchase Price of any repurchased Mortgage Loans that is attributable to interest and any Clean-Up Call proceeds attributable to interest) shall be paid and remitted in the following order of priority:

(a) first, to the Purchaser, such that the Purchaser receives the Monthly Facility Fee with respect to such monthly collection period and any prior unpaid Monthly Facility Fee(s),

(b) second, to the Servicer, such amount as necessary to pay Servicer the Monthly Servicing Fee for such monthly collection period in accordance with Subsection 4(e) hereof,

(c) third, to the Custodial Account, the applicable Monthly Retention Amount, if any, and

(d) fourth, to the Seller, any remaining interest collected on the Mortgage Loans for such monthly collection period.

(c) Following the Closing Date, if a Trigger Event has occurred, and so long as there is one or more Mortgage Loans outstanding, at the option of the Purchaser (by delivering written notice thereof to Seller or Servicer), all payments and proceeds derived and/or collected from the Mortgage Loans (excluding Escrow Payments) during each preceding calendar monthly period (or such other period as may be designated by Purchaser) shall be paid and distributed on or prior to the eighteenth (18<sup>th</sup>) day of each calendar month (or, at Purchaser's election, paid and distributed to Purchaser on such earlier date or dates as Purchaser may designate to Seller or Servicer) as follows:

(i) all principal payments and principal proceeds derived from the Mortgage Loans (including the amount included in the Repurchase Price of any repurchased Mortgage Loans that is attributable to principal and any Clean-up Call proceeds attributable to principal) shall be paid and remitted to Purchaser on a monthly basis (or such other time period as may be designated by Purchaser) and such principal amounts shall reduce the Investment Balance on a dollar for dollar basis, or alternatively, the Purchaser, shall have the right in its sole discretion, to designate (by delivery of written notice to the Seller or Servicer) any such principal payments or proceeds to be applied (A) towards the reduction of any unpaid Monthly Facility Fee(s) to the extent timely payment of such unpaid Monthly Facility Fee(s) are not satisfied from interest collections as provided in clause (ii)(a) below, or (B) towards the reduction of any other amounts owed to Purchaser under this Agreement that do not constitute the Investment Balance or Facility Fees, in which case such principal payments or proceeds shall be applied as so designated by Purchaser;

(ii) all interest payments derived from the Mortgage Loans (including the amount included in the Repurchase Price of any repurchased Mortgage Loans that is attributable to interest and any Clean-up Call proceeds attributable to interest) shall be paid and remitted in the following order of priority:

(a) first, to the Purchaser, such amount as necessary such that the Purchaser receives the Monthly Facility Fee with respect to such collection period and any prior unpaid Monthly Facility Fee(s),

(b) second, to the Servicer, such amount as necessary to pay Servicer the Monthly Servicing Fee for such monthly collection period in accordance with Subsection 4(e) hereof, and

(c) third, to the Purchaser, any remaining interest collected on the Mortgage Loans during such collection period which shall reduce the Investment Balance on a dollar for dollar basis or, if directed by Purchaser, to be applied to any other amounts owed to Purchaser under this Agreement that do not constitute the Investment Balance or Facility Fees.

(d) The parties acknowledge and agree that the Minimum CA Holdback shall be funded in accordance with Section 4(b)(ii)(c). The funds comprising the Minimum CA Holdback shall be held for the benefit of the Purchaser and shall be used, at Purchaser's sole discretion, in funding any shortfalls in payments due to Purchaser under this Agreement or obligations of Seller under this Agreement, including any repurchase obligations described in Subsection 2(b) and Subsection 7.03 hereof. In the event Purchaser is not paid its Monthly Facility Fee(s) or other requisite payments under this Agreement in a timely manner, or at any time following a Trigger Event, Purchaser shall have the right to retain and/or be distributed such funds as Purchaser may determine, and Seller and Servicer shall comply with any such instructions from Purchaser. So long as there has not been a Trigger Event, to the extent the Minimum CA Holdback is overfunded as of any monthly period, the funds in excess of the Minimum CA Holdback shall be distributed in accordance with Subsection 4(b)(ii)(d).

(e) Subject to the rights of the Purchaser set forth herein, Servicer shall be entitled to payment of the Monthly Servicing Fee as compensation for servicing the Mortgage Loans; provided the payment of such Monthly Servicing Fee shall be subordinated to Purchaser's rights to payments and distributions under this Agreement, as provided in Subsection 4(b) and Subsection 4(c), as applicable, and such Monthly Servicing Fee shall be paid solely from collections derived from the Mortgage Loans that constitute interest as provided in Subsection 4(b) and Subsection 4(c), as applicable. In the event there are insufficient interest collections during a monthly collection period following payment of the Monthly Facility Fee(s) to pay the Monthly Servicing Fee, then the Monthly Servicing Fee shall be reduced by such shortfall but such shortfall shall be payable in the subsequent monthly period(s) in accordance with Subsection 4(b)(ii)(b) and 4(c)(ii)(b), as applicable, to the extent sufficient funds are then available to pay such accrued shortfall. In the event Servicer's servicing responsibilities are terminated under this Agreement or Servicer is in default of its obligations under this Agreement (as determined by Purchaser), Servicer shall no longer be entitled to the Monthly Servicing Fee.

(f) Seller ensures and guarantees to Purchaser that (1) Purchaser is paid and receives Mortgage Loan payments and proceeds (including recoveries of principal and interest upon the Mortgage Loans (including Qualified Substitute Mortgage Loans)) in accordance with the terms of this Agreement (including Subsections 4(b) and 4(c) above), (2) Purchaser receives repayment of the full amount of the Investment Balance plus the

timely payment of the Monthly Facility Fees (which shall be paid in full on a monthly basis) until the Investment Balance and respective Monthly Facility Fees are paid in full to Purchaser, and (3) any remaining Investment Balance and any unpaid Facility Fees are paid in full as of the earliest of the following dates: (i) December 31, 2027, (ii) the date the Clean-Up Call contemplated by Exhibit C hereto is exercised and effected, or (iii) such date as Purchaser may notify Seller in writing on or following a Trigger Event. Seller acknowledges and agrees that to extent there is a shortfall in any payments that are due to Purchaser under this Agreement (including without limitation the Monthly Facility Fee(s)), Seller shall pay such shortfall amount from its own funds upon demand by Purchaser. The obligations of Seller under this subsection 4(f) are primary, absolute, unconditional and irrevocable, and Seller hereby waives all special suretyship defenses, rights of setoff or deduction and notice requirements.

(g) Upon Purchaser's receipt of all amounts owed to Purchaser under this Agreement (including full payment of the Investment Balance and full payment of all Monthly Facility Fees payable under this Agreement), (i) the Purchaser shall have no further rights to payments or distributions derived from the Mortgage Loans as set forth in this Section 4, (ii) Purchaser shall promptly assign and transfer, without recourse and without any representation or warranty of any kind, to Seller all of Purchaser's right, title and interest in the remaining Mortgage Loans except that Purchaser's interest in such Mortgage Loans is being transferred free and clear of any lien attributable solely to acts of Purchaser, (iii) the Purchaser shall promptly deliver or cause the Custodian to deliver to Seller (at Seller's expense) all Mortgage Loan Documents in the possession of Purchaser for the remaining Mortgage Loans, (iv) the Purchaser shall promptly file a UCC termination statement for any Purchaser Financing Statement contemplated by Subsection 6.04(a) hereof that is then in effect and for any financing statement contemplated by Subsection 6.04 of the TBW Sales Agreement (which Seller grants Purchaser the authority to make such filing) that is then in effect, and (v) the covenants set forth in Subsection 12.03, Subsection 12.04 and Subsection 12.05 shall terminate, except for the covenants set forth in Subsection 12.03(C) and Subsection 12.04(A)(ix) which shall survive for an additional one year and one day thereafter.

(h) On the Closing Date, Seller agrees to pay and reimburse Purchaser \$30,000 in connection with a certain finders fee that is due and payable to Financial Marketing Associates, Inc. in connection with the transactions contemplated hereby, and such \$30,000 reimbursement may be withheld by Purchaser from the Purchase Price.

(i) Seller shall not prepay or permit the prepayment of all or any portion of the Investment Balance from the funds of Seller or any Affiliate thereof unless otherwise required or provided for pursuant to the terms of this Agreement.

**SECTION 5. Examination of Mortgage Loan Files.** The Purchaser shall have the right to review the Mortgage Loan Files prior to the Closing Date. At least five (5) Business Days prior to the Closing Date, the Seller shall (a) deliver to the Custodian in escrow, for examination with respect to each Mortgage Loan to be purchased on such Closing Date, the related Mortgage Loan File, pertaining to each Mortgage Loan, or (b) make the related Mortgage Loan File available to the Purchaser for examination at the

Seller's offices or such other location as shall otherwise be agreed upon by the Purchaser and the Seller. Such examination may be made by the Purchaser or its designee at any reasonable time before or after the Closing Date.

## SECTION 6. Conveyance from Seller to Purchaser.

### Subsection 6.01

(a) Conveyance of Mortgage Loans. On the Closing Date, Seller shall deliver to Purchaser an executed Assignment and Conveyance document in the form of Exhibit D attached hereto, evidencing the transfer and assignment of the Mortgage Loans from Seller to Purchaser.

(b) MERS Loans. In addition, in connection with the assignment of any MERS Loans, the Seller agrees that it will cause, at its own expense, the MERS System to indicate that such Mortgage Loans (and related Mortgages) have been assigned by the Seller to the Purchaser in accordance with this Agreement by including in such computer files the information required by the MERS System to identify the Purchaser of such Mortgage Loans; and that Purchaser is the assignee lienholder under each such Mortgage. Seller agrees that it will not, and will not permit the Servicer or any subservicer to, alter the codes and information required by this paragraph with respect to any Mortgage Loan without the prior written instructions of Purchaser to Seller and to MERS unless and until such Mortgage Loan is repurchased or substituted by Seller in accordance with the terms of this Agreement.

(c) Non-MERS Loans. For any Mortgage Loan that is not a MERS Loan, Seller or Servicer will record, whenever requested by Purchaser, a physical assignment in appropriate form at the proper public recording office of any related Mortgage assigning such Mortgage Loan to MERS solely as lienholder of record, as nominee for the Purchaser, which assignment shall be valid and enforceable.

(d) TBW Sales Agreement. On the Closing Date, Seller also hereby transfers, conveys and assigns to Purchaser all of Seller's rights under the Mortgage Loan Sales Agreement between TBW and Seller (as such may be amended or modified from time to time) (the "TBW Sales Agreement"), and Purchaser shall have the right to exercise any and all rights and remedies under the TBW Sales Agreement directly against TBW and for the sole benefit of Purchaser as if Purchaser had been the original contracting party thereunder. Seller shall take such actions and execute such documents as required by Purchaser in order for Purchaser to exercise such rights and remedies and otherwise benefit from the TBW Sales Agreement. Following the Closing Date, all decisions, acts, consents and waivers of the "Purchaser" (as such term is used and defined under the TBW Sales Agreement) shall be made by Purchaser, and Seller shall not take any actions which may adversely affect the rights and remedies of Purchaser under the TBW Sales Agreement. In no event shall Seller enter into an amendment, modification or waiver with respect to the TBW Sales Agreement. Seller shall not assign any of its rights or obligations under the TBW Sales Agreement to any Person other than Purchaser. Purchaser is also designated as the "Custodian" as such term is used and defined under the TBW Sales Agreement. TBW



acknowledges the terms hereof and consents to the assignment of the TBW Sales Agreement as contemplated hereby (to extent such consent is required), and TBW agrees to take such actions as necessary or as otherwise requested by Purchaser to enforce Purchaser's rights and remedies under the TBW Sales Agreement.

Subsection 6.02      Books and Records. Record title to each Mortgage and the related Mortgage Note as of the Closing Date shall be in the name of the Purchaser (provided that with respect MERS Loans, MERS shall be permitted to be noted as the lienholder of record (as nominee on behalf of Purchaser)) under the related Mortgage unless otherwise directed by Purchaser in writing to Seller and/or MERS. Seller shall provide Purchaser with all instructions Seller provides to MERS regarding the MERS Loans and such other information as requested by Purchaser that evidences the transfer of the Mortgage Loans (and related Mortgages) to Purchaser or any assignee designated by Purchaser. Notwithstanding the foregoing, beneficial ownership of each Mortgage and the related Mortgage Note shall be vested solely in the Purchaser or any Person the Purchaser so designates in writing as an assignee of Purchaser.

Subsection 6.03      Delivery of Mortgage Loan Documents.

At least five (5) Business Days prior to the Closing Date, Seller shall deliver and release to the Custodian those Mortgage Loan Documents as required by this Agreement with respect to each Mortgage Loan to be acquired by Purchaser on the Closing Date and set forth on the Mortgage Loan Schedule delivered with such Mortgage Loan Documents. Seller shall obtain such releases as are necessary for the Mortgage Loans to be transferred to Purchaser free and clear of all liens, claims and encumbrances.

The Seller shall forward to the Custodian (who shall act on behalf of the Purchaser to the extent it is not the Purchaser) original documents evidencing an assumption, modification, consolidation or extension of any Mortgage Loan entered into in accordance with this Agreement within two weeks of their execution, provided, however, that the Seller shall provide the Custodian with a certified true copy of any such document submitted for recordation within two weeks of its execution, and shall provide the original of any document submitted for recordation or a copy of such document certified by the appropriate public recording office to be a true and complete copy of the original within ninety (90) days of its submission for recordation; provided further, that if the original or copy of any document submitted for recordation to the appropriate recording office is not delivered to the Purchaser or its designee within such ninety (90) days of submission due to a delay at the applicable recording office, the Seller shall deliver to the Purchaser an officer's written certification certifying that the delay in delivering the original recorded document to the Purchaser is due solely to delays at the applicable recording office and that the Seller shall deliver the original recorded documents no later than twelve (12) months after the Closing Date.

Subsection 6.04. UCC Filings.

(a) On or prior to the Closing Date (or as soon thereafter as practicable), Purchaser, in its discretion, shall cause to be filed in the office of the Secretary of State of Delaware, a

UCC financing statement (the "Purchaser Financing Statement") describing the Mortgage Loans sold and transferred to Purchaser pursuant to this Agreement and in a form acceptable to Purchaser. The Purchaser Financing Statement shall bear a statement indicating that the parties intend the Purchaser Financing Statement to evidence a true sale of the Mortgage Loans, but if the transaction is recharacterized as a loan from Purchaser to Seller, the financing statement is to perfect the Purchaser's security interest in the Mortgage Loans. Seller authorizes Purchaser to file such Purchaser Financing Statement. Seller shall pay any transfer taxes, stamp taxes or related taxes that are required by law in connection with the transactions contemplated herein including any taxes or fees required in connection with UCC financing statements (including the Purchaser Financing Statement) contemplated hereby and the filing(s) thereof. The Purchaser shall have the right to file amendments to or continuation statement(s) for the foregoing described Purchaser Financing Statement at its discretion, and Seller shall execute such documents and take such actions as reasonably requested by Purchaser to file such amendments or continuation statements.

(b) Seller hereby represents and warrants that it is a limited liability company formed under the laws of the State of Delaware. If any change in Seller's state of formation or any change in Seller's name, identity or relocation of its principal executive office would make the Purchaser Financing Statement misleading or require a new UCC filing in the same or different state under the Uniform Commercial Code, Seller shall promptly notify Purchaser, and Purchaser shall have the authority and right to file such amendments or new financing statements as Purchaser may require in order to preserve and protect the perfection of Purchaser's interest in the Mortgage Loans. Upon request by Purchaser, Seller shall file such amendments as may be reasonably required by Purchaser. The costs and expenses of filing any continuation statements or amendments to financing statements contemplated by this Subsection 6(b), including any requisite transfer taxes, stamp taxes or related taxes, shall be borne by Seller.

(c) Seller shall have the right to file the Reassignment Financing Statement in accordance with and subject to the terms of Section 19 hereof.

#### SECTION 7. Seller's Representations and Warranties.

##### Subsection 7.01. Seller's Representations and Warranties Regarding the Mortgage Loans.

Seller represents and warrants to Purchaser as to each Mortgage Loan that as of the date Purchaser purchases or acquires an ownership or security interest in such Mortgage Loan (and such other date if the context so requires):

(1) The Mortgage Note and Mortgage and any and all other documents executed and delivered by any Mortgagor in connection with each Mortgage Loan, are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its terms. All parties to the Mortgage Loan Documents had legal

capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Loan Documents, the Mortgage Loan Documents have been duly and properly executed by such parties, and there is no verbal understanding or written modification of the Mortgage Loan Documents which would affect the terms of the Mortgage Loan except by written instrument delivered and expressly made known to the Purchaser. The documents, instruments and agreements submitted for loan underwriting were not falsified and contain no untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the information and statements therein not misleading.

(2) Immediately prior to the sale/assignment of such Mortgage Loan to Purchaser as contemplated by this Agreement, Seller is the sole owner of the Mortgage Loan, has good marketable title thereto and has authority to sell, transfer and assign the same on the terms set forth herein free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest. Following the sale or assignment of the Mortgage Loan to the Purchaser hereunder, the Purchaser will own such Mortgage Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest.

(3) The information set forth in the Mortgage Loan Schedule is true and accurate in all respects. The full principal amount of the Mortgage Loan has been advanced to the Mortgagor, either by payment directly to such person or by payment made on such person's request or approval. The Stated Principal Balance of the Mortgage Loan as of the Cut-Off Date is as represented by Seller. All costs, fees and expenses incurred in making, closing and recording the Mortgage Loan have been paid. No Mortgaged Property has been released from the lien of the Mortgage Loan, the terms of the Mortgage Loan have in no way been changed, waived or modified, and the Mortgage Loan is current and not in default.

(4) Each Mortgage Loan is either a valid first or second lien on the Mortgaged Property as indicated in the Mortgage Loan Schedule, and Purchaser shall hold a valid first or second lien on the related Mortgaged Property, as applicable. The Mortgaged Property is free and clear of all encumbrances and liens having priority over the lien of such Loan, except for (a) liens for real estate taxes and special assessments not yet due and payable, and (b) with respect to each Mortgage Loan which is a second lien on the Mortgaged Property (as reflected on the Mortgage Loan Schedule), the first lien on such Mortgaged Property; and the Mortgaged Property may be subject to covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending

institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and which do not adversely affect the Appraised Value of the Mortgaged Property or materially alter the owner's rights to use and occupy the Mortgaged Property.

(5) The Mortgaged Property is free and clear of all mechanics' liens, materialmen's liens and all other liens in the nature thereof, and no rights are outstanding that under law could give rise to any such lien, nor is Seller aware of any facts which could give rise to any such lien.

(6) All federal and state laws, rules and regulations applicable to the Mortgage Loans, including without limitation, the origination, documentation, terms and servicing thereof, have been complied with, including but not limited to: the Real Estate Settlement Procedures Act, the Flood Disaster Protection Act, the Federal Consumer Credit Protection Act including the Truth-in-Lending and Equal Credit Opportunity Acts, and all applicable statutes or regulations governing fraud, lack of consideration, unconscionability, consumer credit transactions, predatory and abusive lending or interest charges. All points, fees and charges (including finance charges), whether or not financed, assessed, collected or to be collected in connection with the origination of each Mortgage Loan have been disclosed in writing to the Mortgagor in accordance with applicable state and federal law and regulation.

(7) No Mortgage Loan is the subject of, and Seller is not aware of any facts which could give rise to, litigation or any legal or administrative proceeding which could affect the Purchaser's ability to enforce the terms of the obligation or its rights under the Mortgage Loan Documents, and no litigation or administrative or other legal proceeding of or before any court, tribunal or governmental body is currently or threatened against Seller or any of its Affiliates or any current or prior servicer or owner with respect to the Mortgage Loan.

(8) The Mortgage Loan is covered by an ALTA lender's title insurance policy or other form of policy or insurance that is generally acceptable to FHLMC that was issued by a title insurer licensed and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring the Seller, its successors and assigns, as to the first or second priority lien of the Mortgage, as applicable, in the original principal amount of the Mortgage Loan, subject only to (a) the lien of current real property taxes and assessments not yet due and payable, (b) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording being acceptable to mortgage lending institutions generally

and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and which do not adversely affect the Appraised Value of the Mortgaged Property or materially alter the owner's rights to use and occupy the Mortgaged Property, and (c) with respect to each second lien Mortgage, the first lien on the Mortgaged Property. Where required by state law or regulation, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance. Additionally, such lender's title insurance policy affirmatively insures ingress and egress, and against encroachments by or upon the Mortgaged Property or any interest therein. The title policy does not contain any special exceptions (other than the standard exclusions) for zoning and uses and has been marked to delete the standard survey exception or to replace the standard survey exception with a specific survey reading. The Seller, its successor and assigns, are the sole insureds of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement and Purchaser shall be afforded the rights of insured under such title policy. No claims have been made under such lender's title insurance policy, and no prior holder of the related Mortgage, including the Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other person or entity, and no such unlawful items have been received, retained or realized by the Seller.

(9) There is in force for each Mortgage Loan valid hazard insurance policy coverage and, where applicable, valid flood insurance policy coverage, which following Closing, shall among other things insure the Mortgaged Property and the first and second lien interest thereof for an amount no less than the then aggregate unpaid principal balance of the first and second lien on the Mortgaged Property, and the Purchaser shall be entitled to the benefits of such coverage.

(10) The assignment of each Mortgage Loan and related Mortgage is valid and enforceable. Seller will record and if applicable, cause MERS to record, whenever required by Purchaser, a physical assignment in appropriate form of any related Mortgage securing a Mortgage Loan into the name of the Purchaser, which assignment shall be valid and enforceable. For each MERS Loan, Purchaser shall be noted as the assignee of the Mortgage and related Mortgage Loan in the MERS System as required by Subsection 6.01(b) herein.

(11) The Mortgagor has no rights of rescission, set-offs, counter-claims or defenses to the Mortgage Note or deed of trust/mortgage securing the Mortgage Note arising from the acts and/or omissions of Seller.

(12) Seller has no knowledge that any improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law or regulation.

(13) All improvements included for the purpose of determining the Appraised Value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of such property, and no improvements on adjoining properties encroach upon the Mortgaged Property.

(14) There is no proceeding pending (or that has previously occurred) for total or partial condemnation of any Mortgaged Property and said property is free of substantial damage (including, but not limited to, any damage by fire, earthquake, windstorm, vandalism or other casualty) and in good repair.

(15) Seller has no knowledge of any circumstances or conditions with respect to any Mortgage Loan, Mortgaged Property, Mortgagor or Mortgagor's credit standing that reasonably could be expected to cause private institutional investors to regard any Mortgage Loan as an unacceptable investment, cause any Mortgage Loan to become delinquent or adversely affect the value or marketability of the Mortgage Loan.

(16) All documents submitted in connection with the Mortgage Loan are genuine and contain genuine signatures. Each document that the Purchaser requires to be an original document is an original document. At Closing, Seller or a Custodian (on behalf of Seller) shall have the possession of the Mortgage Loan File (which shall include the Mortgage Loan Documents), and none of the Mortgage Loan Documents shall be stamped as owned by or pledged to another Person.

(17) The consideration received by the Seller upon the sale of any Mortgage Loan under this Agreement constitutes fair consideration and reasonably equivalent value for the Mortgage Loan.

(18) The Seller has complied with all applicable anti-money laundering laws and regulations, including without limitation the USA Patriot Act of 2003, and the laws and regulations administered by the U.S. Department of Treasury's Office of Foreign Assets Control

("OFAC"), which prohibit dealings with certain countries, territories, entities and individuals named in OFAC's Sanction Programs and on Specially Designated Nationals and Blocked Persons List (collectively, the "Anti-Money Laundering Laws"). The Seller has established an anti-money laundering compliance program to the extent required by the Anti-Money Laundering Laws, has conducted the requisite due diligence in connection with the origination of each Mortgage Loan for purposes of the Anti-Money Laundering Laws, including with respect to the legitimacy of the applicable Mortgagor and the origin of the assets used by said Mortgagor to purchase the property in question, and maintains, and will maintain sufficient information to identify the applicable Mortgagor for purposes of the Anti-Money Laundering Laws.

(19) The Mortgagor has not notified the Seller, and the Seller has no knowledge of any relief requested or allowed to a Mortgagor under the Servicemembers' Relief Act or any other federal or state law that would have the effect of suspending or reducing the Mortgagor's payment obligation under a Mortgage Loan or that would prevent or restrict the ability of Seller to commence or continue with foreclosure of the Mortgaged Property securing a Mortgage Loan or any other remedies available under the Mortgage Loan Documents.

(20) No Mortgage Loan is subject to the requirements of the Home Ownership and Equity Protection Act of 1994. No Mortgage Loan is classified as a "high cost," "threshold," "covered," "abusive" or "predatory" loan or a similar loan under any applicable state, federal or local law.

(21) No Mortgagor was encouraged or required to select a loan product offered by Seller which is a higher cost product designed for less creditworthy borrowers, unless at the time of the Mortgage Loan's origination, such Mortgagor did not qualify taking into account credit history and debt to income ratios for a lower cost credit product then offered by the Seller.

(22) No Mortgaged Property securing a Mortgage Loan is in a zip code declared by the Federal Emergency Management Agency ("FEMA") as being an "Individual Assistance" property or "Category 1" property (or such similar term(s) or classification(s) that may be used by FEMA from time to time).

(23) With respect to each Mortgage Loan, by the Closing Date, the related Mortgage Loan File contains the documents described in Exhibit B hereto.

(24) As of the Cut-Off Date (and as of the date of transfer to the Purchaser in the case of Qualified Substitute Mortgage Loans), such Mortgage Loan was not delinquent for more than thirty (30) days (except for certain Mortgage Loans as disclosed to Purchaser in the Mortgage Loan Schedule that comprise no more than 5.0% of the Mortgage Loans as measured by the aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-Off Date) which are up to fifty-nine (59) days delinquent), nor was the Mortgage Loan or related Mortgagor or collateral securing such Mortgage Loan subject to bankruptcy or other similar proceedings and the most recent scheduled payment was made by or on behalf of the respective Mortgagor (without any advance from any Seller or any Person acting at the request of the Seller). As of the Cut-Off Date and Closing Date (and as of the date of transfer to the Purchaser in the case of Qualified Substitute Mortgage Loans), (a) none of the Mortgage Loans were subject to legal proceedings against the respective Mortgagors or related Mortgaged Property, (b) none of the Mortgage Loans or the related Mortgaged Properties were subject to replevin, foreclosure or repossession proceedings, (c) none of the Mortgaged Properties securing such Mortgage Loans were vacant (except that the Mortgaged Property related to certain Investor Mortgage Loans may be vacant) or abandoned, and (d) no Due Date for any Monthly Payment due within 100 days of the Cut-Off Date has been extended by the Seller or any Affiliate of Seller or any servicer on behalf of Seller, in order to satisfy the delinquency or other representations set forth in Section 7 of this Agreement.

(25) There are no persons, firms, associates, corporations, business organizations or other entities holding general or special powers of attorney from Seller or other Person with respect to the Mortgage Loans.

(26) With respect to each Mortgage Loan, by the Closing Date, Seller will have caused the portions of the electronic ledger relating to such Mortgage Loan to be clearly and unambiguously marked to indicate that such Mortgage Loan is owned by Purchaser.

(27) The Seller has in the Mortgage Loan File an appraisal of the Mortgaged Property signed prior to the approval of the Mortgage application by an appraiser qualified under applicable law who (i) is licensed in the state where the Mortgaged Property is located, (ii) has no interest, direct or indirect, in the Mortgaged Property or in any Mortgage Loan or the security therefor, and (iii) does not receive compensation that is affected by the approval or disapproval of the Mortgage Loan. The appraisal and appraiser both satisfy the requirements of Title XI of the Financial Institutions Reform, Recovery,



and Enforcement Act of 1989 and the regulations promulgated thereunder, all as in effect on the date the Mortgage Loan was originated. The appraisal shall have been made within one hundred and eighty (180) days of the origination of the Mortgage Loan and shall be completed in compliance with the Uniform Standards of Professional Appraisal Practice, and all applicable Federal and state laws and regulations. If the appraisal was made more than one hundred and twenty (120) days before the origination of the Mortgage Loan, the Seller shall have received and delivered to the Purchaser a recertification of the appraisal.

(28) The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Mortgage Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to a Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage, subject to applicable federal and state laws and judicial precedent with respect to bankruptcy and right of redemption or similar law. There are no agreements in effect applicable to or binding upon the holder of the Mortgage Loan that restrict, limit or provide standstill limitation upon the holder of the Mortgage Loan from realizing upon, or exercising its rights under such Mortgage Loan and related Mortgage.

(29) The Mortgage Loan has been closed and the proceeds of the Mortgage Loan have been fully disbursed and there is no requirement for future advances thereunder, and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with. All costs, fees and expenses incurred in making or closing the Mortgage Loan and the recording of the Mortgage were paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Mortgage Loan or Mortgage.

(30) The Mortgaged Property securing the Mortgage Loan is the principal residence of the Mortgagor, except for certain Mortgage Loans as disclosed to Purchaser in the Mortgage Loan Schedule as being an Investor Mortgage Loans.

(31) The Mortgage Interest Rates on each Mortgage Loan are fixed rates of interest.

Subsection 7.02. Representations and Warranties Regarding the Seller.

Seller represents and warrants to the Purchaser that as of the Closing Date and as of the date of each transfer/assignment of a Mortgage Loan to Purchaser:

- (1) Seller is duly formed, validly existing and in good standing under the laws of its state of formation and is qualified and/or licensed as necessary to transact business, including the selling of mortgage loans.
- (2) Seller has the full power and authority to hold and sell each Mortgage Loan; and neither the execution and delivery of this Agreement, nor the acquisition or origination of the Mortgage Loans, nor the sale of the Mortgage Loans, nor the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with, or result in a breach of any term, condition or provision of Seller's applicable certificate of formation, operating agreement, or any license, permit or registration held by Seller or governing Seller's activities or any agreement to which Seller is a party or by which Seller is bound, or constitute a material default or result in an acceleration under any of the foregoing.
- (3) No consent, approval, authorization or order of any court, government body or any other person or entity is required for execution, delivery and performance by Seller of this Agreement, including but not limited to, the sale of the Mortgage Loans to the Purchaser.
- (4) Seller has no knowledge of any suit, action, arbitration or legal or administrative or other proceeding pending or threatened against Seller which would affect its ability to perform its obligations under this Agreement.
- (5) Seller is not a party to, bound by or in breach or violation of any agreement of instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it, which materially and adversely affects, or may in the future materially and adversely affect the ability of Seller to perform its obligations under this Agreement, including, without limitation, Seller's repurchase and indemnification obligations set forth herein.

- (6) The Seller has not dealt with any broker, agent or other person that may be entitled to any commission or compensation in connection with the sale of any Mortgage Loan to the Purchaser pursuant to the terms of this Agreement, other than a finder engaged by the Purchaser.
- (7) Neither this Agreement nor any statement, report or other document furnished or to be furnished by Seller pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of fact or omits to state a fact necessary to make the statements contained therein not misleading.
- (8) The consummation of the transactions contemplated by this Agreement are in the ordinary course of business of Seller, and the transfer, assignment and conveyance of the Mortgage Loans pursuant to this Agreement are not subject to bulk transfer or any similar statutory provisions in effect in any applicable jurisdiction.
- (9) Immediately prior to Closing, (a) the only assets of the Seller are the Mortgage Loans, and (b) Seller has no creditors other than its obligations with respect to engaging the Independent Manager (as defined in the Seller's Operating Agreement). Immediately after Closing, Seller has no creditors or obligations other than its obligations under this Agreement and the TBW Sales Agreement (and any ancillary closing documents) and the Seller Operating Agreement.
- (10) No amounts have been advanced or loaned to Seller by TBW or any Affiliate of Seller in connection with Seller's acquisition of the Mortgage Loans.

Subsection 7.03      Certain Remedies for Breach of Representations and Warranties.

(a) It is understood and agreed that the representations, warranties, covenants and agreements of Seller set forth herein shall survive the sale of the Mortgage Loans to the Purchaser and shall inure to the benefit of the Purchaser, notwithstanding any restrictive or qualified endorsement on any Mortgage Note (including any endorsement that is "without recourse") or the examination or lack of examination of any Mortgage Loan File. Upon discovery by the Seller, Servicer or the Purchaser of a breach of any of Seller's representations and warranties herein that adversely effects or is reasonably likely to have an adverse effect upon: (i) the value of the Mortgage Loans or the interest of the Purchaser therein, (ii) the value or collectability of a Mortgage Loan or the interest of the Purchaser therein, or (iii) the Purchaser in any material manner including, without

limitation, its business or financial condition or prospects (any of the foregoing, referred to herein as an "Adverse Effect"), the party discovering such breach shall give prompt notice thereof to each other party.

(b) Within 30 days of the earlier of either discovery by the Seller or Servicer, or notice to the Seller, of any breach of a representation or warranty by Seller which has or is reasonably likely to have an Adverse Effect, the Seller shall use its best efforts promptly to cure such breach.

(c) If, with respect to a Mortgage Loan, such breach cannot be cured within such thirty (30) day period, the Seller shall, at the Purchaser's option, repurchase such Mortgage Loan at the Repurchase Price. The Seller shall, at the request of the Purchaser and assuming that Seller has a Qualified Substitute Mortgage Loan (reasonably acceptable to Purchaser), rather than repurchase the Mortgage Loan as provided above, remove such Mortgage Loan and substitute in its place a Qualified Substitute Mortgage Loan or Loans; provided that any such substitution shall be effected not later than 20 days following Purchaser's request on a date acceptable to Purchaser. If the Seller has no Qualified Substitute Mortgage Loan, it shall repurchase the respective Mortgage Loan(s) as provided herein. Any repurchase of a Mortgage Loan(s) pursuant to the provisions of this Subsection 7.03 shall occur on a date designated by the Purchaser and shall be accomplished by wire transfer of immediately available funds on the repurchase date to the Custodial Account or other account as may be designated by the Purchaser.

(d) [Reserved]

(e) At the time of (i) a repurchase of any Mortgage Loan which is subject to repurchase or (ii) the substitution of a Qualified Substitute Mortgage Loan for a Deleted Mortgage Loan under this Subsection 7.03, the Purchaser and the Seller shall arrange for the reassignment of the repurchased Mortgage Loan or the Deleted Mortgage Loan, as applicable to the Seller and the delivery to the Seller of any documents held by the Custodian relating to the repurchased Mortgage Loan or Deleted Mortgage Loan, as applicable. Any such assignment by Purchaser to Seller of a repurchased Mortgage Loan or Deleted Mortgage Loan, as applicable, shall be without recourse to Purchaser and Purchaser makes no representations or warranties with respect thereto except that Purchaser's interest in such repurchased Mortgage Loan or Deleted Mortgage Loan is being transferred free and clear of any lien attributable solely to acts of Purchaser. Upon such repurchase or substitution, the related Mortgage Loan Schedule shall be amended to reflect the withdrawal of the repurchased Mortgage Loan or Deleted Mortgage Loan from such schedule.

(f) As to any Deleted Mortgage Loan for which the Seller substitutes a Qualified Substitute Mortgage Loan or Loans, the Seller shall effect such substitution by delivering to the Purchaser for such Qualified Substitute Mortgage Loan or Loans on a date designated by Purchaser, the related Mortgage Note, the Mortgage and other items required by the Mortgage Loan File, and any such other documents and agreements as are necessary or requested by Purchaser to effect the substitution, with the substituted Mortgage Note endorsed as required herein. In connection with any substitution, the Seller

shall deliver such other documents and representations and warranties (consistent with this Agreement and updated where the context requires) with respect to the applicable Qualified Substitute Mortgage Loan as reasonably requested by Purchaser. The Seller shall deposit in the Custodial Account, for the benefit of Purchaser, the Monthly Payments (minus Escrow Payments) due on such Qualified Substitute Mortgage Loan or Loans following the date of such substitution, and the Seller shall thereafter be entitled to retain all amounts subsequently received by the Seller following the date of substitution in respect of such Deleted Mortgage Loan. The Seller shall give written notice to the Purchaser that such substitution has taken place and the Seller or Purchaser shall amend the Mortgage Loan Schedule to reflect the removal of such Deleted Mortgage Loan from such schedule and the substitution of the Qualified Substitute Mortgage Loan. In connection with such substitution, such Qualified Substitute Mortgage Loan or Loans shall be subject to Purchaser's review and approval and the terms of this Agreement in all respects, and the Seller shall be deemed to have made with respect to such Qualified Substitute Mortgage Loan or Loans as of the date of substitution, the covenants, representations and warranties set forth in Subsections 7.01 and 7.02, updated through the date of substitution where the context requires.

(g) With respect to the Mortgage Loans, for any month in which the Seller substitutes one or more Qualified Substitute Mortgage Loans for one or more Deleted Mortgage Loans under this Subsection 7.03, the Seller will determine the amount (if any) by which the aggregate principal balance of all such Qualified Substitute Mortgage Loans as of the date of substitution is less than the aggregate Stated Principal Balance of all such Deleted Mortgage Loans as of the date of substitution. An amount equal to the sum of (x) the amount of such shortfall and (y) accrued interest on the amount of such shortfall to the last day of the month such substitution occurs, shall be paid and distributed by the Seller to Purchaser in the month of substitution. Accordingly, on the date of such substitution, the Seller, as applicable, will deposit from its own funds into the Custodial Account an amount equal to such amount, which shall be distributed to Purchaser accordingly.

(h) In addition to such cure, repurchase and substitution obligations, the Seller shall indemnify Purchaser and hold Purchaser harmless from and against any losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and other costs and expenses resulting from any claim, demand, defense or assertion based on or grounded upon, or resulting from, a breach of the Seller's representations and warranties, respectively, contained in this Section 7. It is understood and agreed that the obligations of the Seller set forth in this Subsection 7.03 to cure, substitute for or repurchase a Mortgage Loan subject to repurchase/substitution and to indemnify the Purchaser as provided in this Subsection 7.03 are in addition to such other rights and remedies available to Purchaser and its assigns, whether under this Agreement, at law or in equity, which remedies shall be cumulative and nonexclusive. Notwithstanding the foregoing, Seller shall not have any liability in respect of the representations or warranties made by Seller herein, or any covenant or agreement in this Agreement to be performed by Seller, to the extent such liability would not have arisen but for Purchaser's own willful misconduct or gross negligence.

(i) Seller agrees and acknowledges that notwithstanding any restrictive or qualified endorsement on any Mortgage Note or Mortgage or assignment (including any endorsement by Seller that is "without recourse"), that Seller's obligations (including its repurchase obligations) set forth in this Agreement shall remain in full force and effect. Seller's obligations to repurchase under this Section 7 shall be unconditional and without any right of setoff or deduction.

SECTION 8. Closing. The Closing shall take place on the Closing Date. At the Purchaser's option, the closing shall be either by telephone, confirmed by letter or wire as the parties shall agree, or conducted in person, at such place as the parties shall agree.

The closing for the Mortgage Loans to be purchased and acquired by Purchaser on the Closing Date shall be subject to each of the following conditions:

(a) all of the representations and warranties of the Seller under this Agreement shall be true and correct as of the Closing Date and no event shall have occurred which, with reasonable notice to the Seller or the passage of time, would constitute a default under this Agreement;

(b) the Purchaser shall have received, or the Purchaser's attorneys shall have received in escrow, all Closing Documents as specified in Section 9, in such forms as are agreed upon and acceptable to the Purchaser, duly executed by all signatories other than the Purchaser as required pursuant to the terms hereof;

(c) the Seller shall have delivered and released to the Custodian all documents (including the Mortgage Loan Files) for the Mortgage Loans as required pursuant to this Agreement;

(d) the execution and delivery by the parties of the closing statement which shall among other things indicate the total Purchase Price (the "Closing Statement");

(e) the Mortgage Loan Schedule shall have been received by the Purchaser and be satisfactory to Seller and Purchaser;

(f) the Purchaser Financing Statement contemplated by Subsection 6.04 hereof shall have been filed with the Secretary of State of Delaware;

(g) all necessary consents and approvals for the parties to perform their obligations under this Agreement shall have been obtained;

(h) all other documents and items required by Purchaser shall have been delivered;

(i) Seller shall have satisfied its obligations under Subsection 6.01(b);  
and

(j) all other terms and conditions of this Agreement shall have been complied with.

Subject to the foregoing conditions, the Purchaser shall pay to the Seller on the Closing Date the Purchase Price, by wire transfer of immediately available funds to the account designated by the Seller.

SECTION 9. Closing Documents. On or before the Closing Date, the Seller shall submit to the Purchaser fully executed originals of the following documents:

- (1) this Agreement;
- (2) the Assignment and Conveyance document; and
- (3) the related Mortgage Loan Schedule (which shall be delivered at least three (3) Business Days prior to Closing).

SECTION 10. Costs. The Purchaser shall pay any commissions or finders fees due any finder or broker that Purchaser has engaged (subject to certain reimbursement as provided in Subsection 4(h) hereof) and the legal fees and expenses of its attorneys incurred in connection with the preparation of this Agreement. All other costs and expenses incurred in connection with the preparation of this Agreement and the transfer and delivery of the Mortgage Loans, including without limitation recording fees, stamp or recording taxes, fees for title policy endorsements and continuations, fees for recording assignments of mortgage, as applicable, and the Seller's attorney's fees, shall be paid by the Seller.

SECTION 11. Servicer's Servicing Obligations. Subject to the terms herein (including Exhibit C hereto), the Servicer shall service the Mortgage Loans on behalf of Purchaser and shall remit the Monthly Facility Fee and other amounts as required under this Agreement to the Purchaser on a monthly basis. The Servicer, as independent contract servicer, shall service and administer the Mortgage Loans in accordance with all applicable laws, rules and regulations, the terms of the Mortgage Note and Mortgage, the FHLMC servicing guide and this Agreement during the servicing period. Subject to the terms and conditions of the this Agreement, the Servicer shall have the power and authority, acting alone or, unless objected to by Purchaser in writing, through the utilization of a subservicer or a subcontractor, to do or cause to be done any and all things in connection with such servicing and administration which the Servicer may deem necessary or desirable and consistent with the terms of this Agreement. Additional terms of servicing are attached as Exhibit C hereto. The Servicer shall be responsible for any and all acts of a subservicer and a subcontractor, and the Servicer's utilization of a subservicer or a subcontractor shall in no way relieve the liability of the Servicer under this Agreement.

## SECTION 12. The Seller and TBW.

### Subsection 12.01 Additional Indemnification by the Seller.

In addition to the indemnification provided in Subsection 7.03, the Seller shall indemnify and hold the Purchaser and its respective Affiliates (collectively, the "Purchaser Indemnitees") harmless from and against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and any other costs, fees and expenses that any of the Purchaser Indemnitees may sustain in any way related to or arising from (a) the failure of the Seller to perform its obligations under this Agreement, (b) any breach by Seller of its representations, warranties, covenants or agreements set forth herein, (c) all court costs and other costs of collecting any obligations or amounts payable to Purchaser under or in connection with this Agreement, and (d) any adverse third party claims (including claims by Mortgagor(s)) or proceedings arising from or related to the Mortgage Loans, including the servicing of the Mortgage Loans or that otherwise relate to the transactions contemplated by this Agreement and which are not the result of the negligence or willful misconduct of the Purchaser. The indemnification obligation of the Seller set forth herein shall survive the termination of this Agreement indefinitely notwithstanding any applicable statute of limitations, which the Seller hereby expressly waives. Seller shall be required to perform or pay its obligations under this section in full within three (3) days following written demand by Purchaser.

### Subsection 12.02 Indemnification by TBW.

In order to induce Purchaser to enter into the transactions contemplated by this Agreement, TBW agrees that at any time following a Trigger Event under this Agreement and upon written demand from Purchaser exercising its rights under this section, TBW shall pay and indemnify Purchaser for any and all amounts that are due and payable to Purchaser under the terms of this Agreement that are not paid by Seller in a timely manner (the "TBW Indemnity Payment Obligation") subject to the terms and limitations set forth in this Subsection. The maximum obligation of TBW under this subsection shall be Ten Million Dollars (\$10,000,000) in the aggregate (the "Maximum Aggregate Indemnity Amount"), provided that, for avoidance of doubt, the Parties acknowledge and agree that the following items and amounts shall not be counted toward the Maximum Aggregate Indemnity Amount: (1) contributions of capital (in the form of cash, assets, including mortgage loans, or otherwise) by TBW to Seller from time to time, (2) obligations of TBW under the TBW Sales Agreement, and (3) the fair market value, as agreed upon by Seller and Purchaser, of any asset transferred, returned to or provided to TBW or Seller in exchange for a payment made by TBW under this subsection and determined as of the date such asset is transferred to TBW or Seller; provided that, in the event Seller and Purchaser are unable to agree upon the fair market value within twenty (20) Business Days from the date such asset is transferred, then the fair market value shall be as determined by a third-party appraiser agreed upon by Seller and Purchaser. This indemnity is an irrevocable indemnity of payment and shall continue in effect notwithstanding any extension or modification of the terms of this Agreement. This indemnity is in no way conditioned upon any requirement that Purchaser first attempt to collect or enforce the indemnifiable obligations from or against Seller. So long as any obligation of Seller to Purchaser under



this Agreement remains unpaid or undischarged, TBW hereby waives all rights to subrogation arising out of any payment by it pursuant to this subsection. The obligations of TBW under this subsection shall be absolute and unconditional irrespective of the validity, legality or enforceability of this Agreement or any document related hereto, and shall not be affected by or contingent upon (a) the liquidation or dissolution of, or the merger or consolidation of Seller with or into any entity, or any sale or transfer by Seller of all or any part of its property or assets, (b) the bankruptcy, receivership, insolvency, reorganization or similar proceedings involving or affecting Seller, (c) any modification, alteration, amendment or addition of or to this Agreement, or (d) any disability or any other defense of Seller or any other person and any other circumstances whatsoever (with or without notice to or knowledge of TBW) which may in any manner or to any extent vary the risks of TBW or may otherwise constitute a legal or equitable discharge of a surety, indemnitor, guarantor or otherwise. The indemnification obligation of the Seller set forth herein shall survive the termination of this Agreement indefinitely notwithstanding any applicable statute of limitations, which TBW hereby expressly waives. TBW shall be required to perform or pay its obligations under this section in full within three (3) days following written demand by Purchaser.

Subsection 12.03      Merger or Consolidation of TBW; Sale of Seller and Other TBW Covenants.

(A) The Seller and TBW shall each keep in full force and effect their respective existence, rights and franchises as a limited liability company (in the case of Seller) and corporation (in the case of TBW) under the laws of their states of formation or organization except as permitted herein, and shall obtain and preserve its qualification to do business as a foreign entity in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans, and to enable the Seller and TBW to perform their respective duties under this Agreement.

(B) Until Purchaser receives all payments and other amounts required to be paid to Purchaser pursuant to this Agreement, TBW shall not merge or consolidate with another entity or sell or transfer or otherwise dispose of all or substantially all of its assets in one or a series of related transactions, without the prior written consent of Purchaser, which consent shall not be unreasonably withheld. Any Person into which TBW may be merged or consolidated, or any corporation resulting from any merger, conversion or consolidation to which TBW shall be a party, or any Person succeeding to the business of TBW, shall be the successor of TBW hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that the successor or surviving Person shall be an institution whose deposits are insured by FDIC or a company whose business is the origination and servicing of mortgage loans, and shall be a FNMA or FHLMC approved seller/servicer.

(C) TBW represents and warrants that it owns all of the equity interests of Seller. Until Purchaser receives in full all payments and other amounts required to be paid to Purchaser pursuant to this Agreement and for a period of one year and one day

thereafter, (a) TBW shall continue to wholly own Seller, (b) TBW shall not sell, transfer, assign or pledge its equity interests in Seller, and (c) TBW shall not, and shall not permit any of its Affiliates to, acquiesce, petition or otherwise invoke or cause the Seller to invoke the process of any court or government authority for the purpose of commencing or sustaining a case against the Seller under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or similar official of the Seller or any substantial part of its property, or ordering the winding up or liquidation of the affairs of the Seller.

(D) In addition, without the prior written consent of Purchaser, TBW shall not collect or receive (or attempt to collect or receive) from Seller any payments (in cash or other consideration) except for payments permitted under Subsection 12.04(D) hereof, until Purchaser has been paid in full all amounts (including the Investment Balance and all Facility Fee(s)) under this Agreement, provided that the provisions of this sentence shall not prevent TBW from receiving the "Purchase Price" from Seller as such term is defined and used in the TBW Sales Agreement.

Subsection 12.04      Certain Covenants of Seller.

(A) Without the prior written consent of Purchaser, the Seller shall not:

(i) except as expressly permitted by this Agreement, sell, transfer, exchange or otherwise dispose of any of the properties or assets of the Seller unless directed to do so by the Purchaser;

(ii) assert any claim against the Purchaser by reason of the payment of the taxes levied or assessed upon any part of the Seller's assets;

(iii) dissolve or liquidate in whole or in part;

(iv) merge or consolidate with or into another Person;

(v) (A) permit the validity or effectiveness of this Agreement (including the rights of Purchaser under this Agreement) to be impaired, or (B) permit any lien, charge, excise, claim, security interest, mortgage or other encumbrance (other than in favor of Purchaser pursuant to this Agreement) to be created on or extend to or otherwise arise upon or burden the assets of Seller or any part thereof or any interest therein or the proceeds thereof;

(vi) make any expenditure (by long-term or operating lease or otherwise) for capital assets (either realty or personalty);

(vii) enter into any agreements or contracts other than the TBW Sale Agreement and this Agreement, and the ancillary agreements referenced therein and herein, and its Limited Liability Company Operating Agreement dated on or about August 17, 2007 (the "Seller Operating Agreement"), and such other related agreements that are reasonably necessary for Seller to perform its obligations under the TBW Sale Agreement and this Agreement including, without limitation, bank

account agreements and engagement of an Independent Manager pursuant to the Seller Operating Agreement;

(viii) enter into or engage in any transaction(s) other than as contemplated by the TBW Sale Agreement and this Agreement and such other related agreements that are reasonably necessary for Seller to perform its obligations under the TBW Sale Agreement and this Agreement;

(ix) file a petition for voluntary bankruptcy, receivership or similar proceeding;

(x) change or amend any of its organizational or governing documents (including the Seller Operating Agreement);

(xi) take any actions in contravention of the terms of its organizational or governing documents (including the Seller Operating Agreement);

(xii) engage in any business other than the purposes and powers set forth in the Seller Operating Agreement, subject to the terms and limitations as set forth herein;

(xiii) permit any Person other than TBW to have an equity interest in Seller;

(xiv) issue, incur, assume, guarantee or otherwise become liable, directly or indirectly, for any indebtedness except for the obligations of Seller to Purchaser set forth in this Agreement; or

(xv) make any payments outside the ordinary course of Seller's business except as required or contemplated by this Agreement.

(B) Seller shall cause the Servicer to comply with all of its obligations under this Agreement.

(C) Except as contemplated by this Agreement, the Seller shall not make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

(D) Seller shall not, directly or indirectly, (i) pay any dividend or make any distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, to TBW or otherwise with respect to any ownership or equity interest or security in or of the Seller, (ii) redeem, purchase, retire or otherwise acquire for value any such ownership or equity interest or security, (iii) set aside or otherwise segregate any amounts for any such purpose or (iv) make any other payments (in cash or other

consideration) to TBW or its Affiliates; provided, however, that Seller may make, or cause to be made, cash distributions to TBW on no more frequently than a calendar quarterly basis, to the extent there has been no Material Default and Seller has its own available funds in an amount equal to 3.33% of the Investment Balance as of the end of the most recent calendar quarter after giving effect to such cash distributions to TBW. Notwithstanding anything to the contrary in this paragraph (D), (1) Seller may assign or distribute to TBW (x) any Mortgage Loans repurchased by Seller pursuant to this Agreement and (y) any Deleted Mortgage Loans that have been conveyed to the Seller, and (z) any Mortgage Loans acquired pursuant to Seller's exercise of the Clean-Up Call so long as Purchaser is paid in full under this Agreement, and (2) Seller shall have the right to make the payment of the "Purchase Price" to TBW as such term is defined and used in the TBW Sales Agreement.

(E) Seller shall comply and abide by the terms of its organizational and governing documents (including the Seller Operating Agreement).

(F) Seller and Servicer agrees to give Purchaser prompt written notice of each default or breach by Seller or Servicer hereunder or a breach by TBW under the TBW Sales Agreement.

(G) Upon request of the Purchaser, the Seller and Servicer will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Agreement.

Subsection 12.05      Additional Covenants of Seller and Servicer.

(a) From and after the date hereof, Seller and Servicer shall afford to Purchaser, its attorneys, accountants, and such other representatives of the Purchaser as Purchaser shall designate to the Seller or Servicer in writing, free and full access during regular business hours or such other reasonable times as may be requested by Purchaser, and upon reasonable prior notice, to the servicing records and information regarding the Mortgage Loans and the books and records of Seller and Servicer relating to the Mortgage Loans. In addition, Seller and Servicer shall provide to Purchaser and its representatives such additional financial and operating data and other information in respect of the Mortgage Loans, and the business and operations of Seller and Servicer, as Purchaser shall from time to time reasonably request.

(b) Following the date hereof, Seller and Servicer shall: (i) maintain its corporate or limited liability company existence in good standing, (ii) operate its business substantially as presently operated and only in the ordinary course and consistent with past operations, (iii) preserve intact its present business organization necessary to perform Seller's and Servicer's respective obligations under this Agreement, (iv) maintain at a minimum the respective insurance coverages in effect as of the Closing Date, and (v) not make or purport to make any further assignment, transfer or pledge of, nor permit any lien, encumbrance or security interest arising by, through or under Seller, to attach or exist against the Mortgage Loans (other than the interests of the Purchaser and Seller in the Mortgage Loans contemplated by this Agreement). Seller and Servicer shall further

comply in all respects with all applicable laws, rules and regulations and pay all taxes, charges and assessments when due, subject to any valid objection or contest of such amounts asserted in good faith and adequately reserved against.

(c) TBW shall deliver within three months of each fiscal year end to Purchaser annual financial statements of TBW that are audited by a nationally recognized independent accounting firm with experience in auditing mortgage banks (with the same level of details and reports as provided to Seller's largest creditor); and Seller will cause TBW to deliver quarterly unaudited financial statements within 45 days of the end of each of the first three fiscal quarters. The first audited annual financial statement of TBW shall be delivered by TBW by July 31, 2008; and the first quarterly financial report due hereunder shall be delivered by December 15, 2007. Promptly upon request by the Purchaser, Seller shall deliver to Purchaser such other financial statements as may be requested by the Purchaser.

(d) Seller and Servicer shall each provide Purchaser with prompt written notice (including a detail of the material facts surrounding such claim) regarding any litigation or administrative or other legal proceeding of or before any court, tribunal (including any arbitrator) or governmental body that Seller or Servicer has notice of regarding or relating to any Legal Proceeding Loans.

SECTION 13. Mandatory Delivery. The sale and delivery of each Mortgage Loan on or before the Closing Date is mandatory from and after the date of the execution of this Agreement.

SECTION 14. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if mailed, by registered or certified mail, return receipt requested, or sent via nationally recognized overnight courier for next business day delivery, or, if by other reasonable means (whereby the receiving party promptly confirms receipt), when received by the other party at the address as follows:

if to the Purchaser:

Henley Holdings LLC  
c/o 21<sup>st</sup> Mortgage Corporation  
620 Market Street, Suite 100  
Knoxville, Tennessee 37902  
Attn: President

if to the Seller:

TBW Funding Company III LLC  
5150 Stilesboro Road  
Building 500, Suite 500  
Kennesaw, Georgia 30152  
Attn: Secretary

if to the Servicer:

Taylor, Bean & Whitaker Mortgage Corp.  
101 NE 2nd Street  
Ocala, Florida 34470  
Attn: President

With a copy to:

Jeffery W. Cavender, Esq.  
General Counsel  
5150 Stilesboro Road  
Building 500, Suite 500  
Kennesaw, Georgia 30152

or such other address as may hereafter be furnished to the other party by like notice. Any such demand, notice or communication hereunder shall be deemed to have been received on the date delivered to or received at the premises of the addressee (as evidenced, in the case of registered or certified mail, by the date noted on the return receipt or if sent via overnight courier, the date when delivered by the overnight courier to the addressee).

SECTION 15. Severability Clause. Any part, provision, representation or warranty of this Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any part, provision, representation or warranty of this Agreement which is prohibited or unenforceable or is held to be void or unenforceable in any jurisdiction shall be ineffective, as to such jurisdiction, to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction as to any Mortgage Loan shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders void or unenforceable any provision hereof. If the invalidity of any part, provision, representation or warranty of this Agreement shall deprive any party of the economic benefit intended to be conferred by this Agreement, the parties shall negotiate, in good-faith, to develop a structure the economic effect of which is nearly as possible the same as the economic effect of this Agreement without regard to such invalidity.

SECTION 16. Counterparts; Facsimile Signatures. This Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. The parties intend that faxed signatures and electronically imaged signatures such as .pdf files for signature pages to this Agreement shall constitute original signatures and are binding on all parties.

SECTION 17. Governing Law. The Agreement shall be construed in accordance with the laws of the State of Delaware without regard to any conflicts of law provisions and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with the laws of the State of Delaware, except to the extent preempted by Federal law.

SECTION 18. Intention of the Parties.

Although the parties intend that the conveyance of Seller's right, title and interest in and to the Mortgage Loans to Purchaser pursuant to this Agreement shall constitute a sale thereof and not a financing, if such conveyance (or any portion thereof) is deemed to be a financing, the parties intend that the rights and obligations of the parties to such financing shall be established pursuant to the terms of this Agreement. If, notwithstanding the foregoing, the transactions contemplated hereby (or any portion thereof) should be deemed a financing, the parties intend and agree that Seller shall be deemed to have granted to Purchaser, and Seller hereby does grant to Purchaser, a security interest in all of the right, title and interest in, to and under the Mortgage Loans (including Qualified Substitute Mortgage Loans and any after acquired Mortgage Loans contemplated under this Agreement) and all proceeds thereof, which will be a perfected first priority lien and security interest as of Closing, such security interest shall secure the payment and performance of all existing and hereafter arising obligations of Seller under this Agreement, and that this Agreement shall constitute a security agreement under applicable law.

SECTION 19. Reassignment Security Interest.

(a) Purchaser hereby grants to Seller a security interest in all of Purchaser's right, title and interest in, to and under the Mortgage Loans (including Substitute Mortgage Loans and any after acquired Mortgage Loans contemplated under this Agreement) and proceeds thereof ("Reassignment Collateral").

(b) The security interest granted by Purchaser to Seller under this section shall be subordinated in full to the Purchaser's interest (including any security interest and/or lien interest) in the Reassignment Collateral and such security interest shall secure Purchaser's obligation to reassign the Reassignment Collateral as required under this Agreement. At any time on or after the Closing Date, provided that the Purchaser Financing Statement has been filed, Seller, in its sole discretion, may cause to be filed in the office of the Secretary of State of Delaware a UCC financing statement (the "Reassignment Financing Statement") in such form and substance that is reasonably acceptable to Purchaser describing the Reassignment Collateral. Seller shall have the right

to make such filing to perfect Seller's security interest in the Reassignment Collateral. Purchaser hereby authorizes Seller to file such Reassignment Financing Statement.

(c) Seller shall not take any action (including, without limitation, commence any legal proceeding) to enforce or realize upon its security interest and shall not collect or receive any amounts derived from the Reassignment Collateral except in the event of a breach by Purchaser of its obligation to reassign the Reassignment Collateral as required under this Agreement, which breach is not cured within fifteen (15) days following written notice thereof from Seller. In the event that Purchaser commences bankruptcy or similar insolvency proceedings or if bankruptcy or similar insolvency proceedings are commenced against Purchaser, Seller shall have the right to participate in such proceedings for the purpose of protecting and/or preserving its security interest in the Reassignment Collateral. Seller shall pay any and all taxes and fees in connection with the filing of such Reassignment Financing Statement, or any amendment or continuation thereof. Seller agrees that its Reassignment Financing Statement and Seller's security interest granted under this section shall at all times be subject and subordinate to (i) the interest and rights of Purchaser in the Reassignment Collateral, including those set forth in this Agreement, and (ii) the Purchaser Financing Statement under Section 6.04(a) hereof.

(d) Seller acknowledges and agrees that (i) the Reassignment Collateral is comprised of amortizing mortgage loans which are subject to amortization, liquidation and payoff, (ii) proceeds and payments derived from the Reassignment Collateral are to be distributed and paid in accordance with the terms of this Agreement, and (iii) Purchaser makes no representation or warranty with respect to the value, if any, of the Reassignment Collateral following payment and distribution of the payments and proceeds derived from the Reassignment Collateral under the terms of this Agreement.

(e) In the event of a Trigger Event, Purchaser shall have the right to terminate Seller's rights and security interest granted to Seller under this section by delivering written notice thereof to Seller, at which time Seller's security interest in the Reassignment Collateral shall be automatically terminated and released immediately as of the date of such notice to Seller. In connection with any termination of the security interest granted to Seller under this section, Seller shall promptly file a UCC financing statement terminating the Reassignment Financing Statement and execute such other document(s) as may be requested by Purchaser to evidence such termination.

(f) Purchaser hereby represents and warrants that it is a limited liability company organized under the laws of the State of Delaware and wholly owned by 21<sup>st</sup> Mortgage Corporation, a Delaware corporation. If any change in Purchaser's state of formation or any change in Purchaser's name, identity or relocation of its principal executive office would make the Reassignment Financing Statement misleading or require a new UCC filing in the same or different state under the Uniform Commercial Code, Purchaser shall promptly notify Seller, and Seller shall have the authority and right to file such amendments or new financing statements as Seller may require in order to preserve and protect the perfection of Seller's security interest in the Reassignment Collateral as set forth in this section. Seller agrees to take such actions from time to time, at its expense, as



reasonably requested by Purchaser in order to fully subordinate Seller's security interest in and rights to the Reassignment Collateral as provided in this section. The parties acknowledge and agree that Purchaser shall have no liability regarding the perfection, validity or enforceability of the security interest in the Reassignment Collateral granted to Seller in this section.

SECTION 20. Successors and Assigns. This Agreement shall bind and inure to the benefit of and be enforceable by the Seller, TBW and the Purchaser and the respective successors and assigns of the Seller, TBW and the Purchaser. Seller and TBW (including it capacity as Servicer) shall not assign their respective rights or delegate their respective obligations under this Agreement without the prior written consent of Purchaser, and notwithstanding any assignment or delegation that may be so consented to by Purchaser, Seller and TBW shall remain obligated for its obligations hereunder. Purchaser shall have the right to assign its rights and obligations under this Agreement upon prior written notice to the Seller.

SECTION 21. Waivers. No term or provision of this Agreement may be waived or modified unless such waiver or modification is in writing and signed by the party against whom such waiver or modification is sought to be enforced.

SECTION 22. Nonsolicitation. The Seller covenants and agrees for a period of twelve (12) months from the date hereof that it shall not take any action to solicit the refinancing of any Mortgage Loan following the date hereof or cause any of its agents or Affiliates to solicit the refinancing of any Mortgage Loan; provided that, the foregoing shall not preclude the Seller from engaging in solicitations to the general public by newspaper, radio, television or other media which are not directed toward the Mortgagors or from refinancing the Mortgage Loan of any Mortgagor who, without solicitation, contacts the Seller to request the refinancing of the related Mortgage Loan.

SECTION 23. General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Agreement have the meanings assigned to them in this Agreement and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;
- (b) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;
- (c) references herein to "Articles," "Sections," "Subsections," "Paragraphs," and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of this Agreement;

- (d) reference to a Subsection without further reference to a Section is a reference to such Subsection as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions;
- (e) the words "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision; and
- (f) the term "include" or "including" shall mean without limitation by reason of enumeration.

SECTION 24. Reproduction of Agreement. This Agreement may be reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

SECTION 25. Further Agreements. The Seller and the Purchaser each agree to execute and deliver to the other such reasonable and appropriate additional documents, instruments or agreements as may be necessary or appropriate to effectuate the purposes of this Agreement.

SECTION 26. Confidentiality. The parties will keep confidential, and will cause their respective employees, contractors, Affiliates and agents to keep confidential, any and all information obtained from the other party which is designated as confidential, and will not use such information for any purpose other than those intended by this Agreement. However, the parties will not be subject to this obligation for any information provided by the other party which either (a) was in such party's possession at the time of disclosure and was not subject to any confidentiality obligations; (b) was in the public domain at the time of disclosure, or subsequently enters the public domain through no act or failure to act on the part of such party; (c) is lawfully obtained by such party from a third party; (d) the Parties agrees in writing may be provided to a third party; or (e) is required to be disclosed by applicable law, regulation, rule or court order.

#### SECTION 27 Privacy.

(a) All customer information in the possession of the either party ("Customer Information") is and shall remain confidential and propriety information of each party except (i) as otherwise set forth in this Agreement; and (ii) information independently obtained by the Parties and not derived in any manner from information obtained under or in connection with this Agreement.

(b) The Parties agree to comply with all applicable consumer privacy laws (any and all federal, state and local statutes, regulations and rules applicable to the protection and privacy of consumer information, including but not limited to the privacy provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.) (the "Privacy Requirements") and implementation of appropriate measures designed to safeguard Customer Information (an "Information Security Program").

(c) The Parties shall not disclose any Customer Information to any person or entity, other than the employees, agents, contractors and Affiliates of the Parties who have a need to know such information or as otherwise required by law or court order.

(d) The Parties shall maintain at all times an Information Security Program.

(e) The Parties shall assess, manage, and control risks relating to the security and confidentiality of Customer Information, and shall implement the standards relating to such risks in the manner set forth in the Interagency Guidelines Establishing Information Security Standards, Section 216 of the Fair and Accurate Transaction Act (including its implementing regulations) as well as any amendments thereto or other applicable regulations regarding safeguarding information enacted or released by any regulatory agency having jurisdiction over Seller.

(f) Without limiting the scope of the above, the Parties shall use at least the same physical and other security measures to protect all Customer Information in such Parties' possession or control, as the Parties use for their own confidential and propriety information.

(g) If a Party provides an account number to another to enable the Parties to carry out the purposes of the Agreement, the receiving party shall (i) use such account number only for such specific purpose and for no other purpose; and (ii) destroy all records relating to such account number upon providing party's request.

(h) In no event shall either of the Parties use any account number to (i) market any product or service of such Party or any other person or entity or (ii) initiate unlawful charges to any customer's account.

(i) From time to time upon the request, each Party shall allow the other during normal business hours to inspect such Party's books and records relating to: (i) compliance with the Privacy Requirements; and (ii) Information Security Program.

(j) The Parties shall comply with all Privacy Requirements and shall immediately notify the other party if there is a breach of its security related to the customers of the other party so that they may be notified in accordance with any applicable Privacy Requirements.

SECTION 28. Consent to Jurisdiction; Exclusive Venue; Waiver of Jury Trial. Each party to this Agreement hereby irrevocably consents to the jurisdiction of the United States District Court for the Eastern District of Tennessee and of all Tennessee state courts sitting in Knox County, Tennessee, unless such venue designation is waived by the Purchaser, for the purpose of any litigation to which Purchaser may be a party and which arises from or is related to this Agreement. It is further agreed that venue for any such action shall lie exclusively with courts sitting in Knox County, Tennessee, unless such venue designation is waived by the Purchaser. The parties waive any right to assert that the elected forum is not convenient and to raise any other objection to this election of exclusive venue. Each party to this Agreement hereby knowingly, voluntarily, and with full benefit of counsel, irrevocably waives any right to obtain a trial by jury in any litigation arising from or related to this Agreement and confirms that the effect of this waiver is that all issues of fact and law in any such litigation shall be determined by a judge acting without a jury. This waiver is a material inducement to the execution of this Agreement and is intended to apply regardless of the basis of any claim raised in such litigation and, without limitation, shall apply to any litigation involving any claim or defense arising under contract law, tort, or under any statute or constitution.

SECTION 29. Recourse; No Marshaling of Assets. Seller acknowledges that Seller's obligations to Purchaser under this Agreement (including all repurchase, indemnity, and loan substitution obligations) shall be full-recourse to Seller and that Purchaser's recovery of damages from Seller will not be limited to the amounts collected from the Mortgage Loans. Purchaser may proceed against the Mortgage Loans or against Seller or Seller's property not transferred to Purchaser under this Agreement in such order as Purchaser may elect, and neither Seller nor any surety or guarantor for Seller nor any creditor of Seller shall be entitled to require Purchaser to marshal assets. Seller hereby expressly waives the benefit of any rule of law or equity to the contrary.

SECTION 30. Entire Agreement. This Agreement and the exhibits and schedules hereto constitute the entire agreement and understanding of the parties with respect to the matters and transactions contemplated by this Agreement and, except to the extent otherwise set forth in writing, supersedes any prior agreement and understandings with respect to those matters and transactions, provided, that for avoidance of doubt, nothing herein shall negate or supersede the terms of the TBW Sales Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Seller, the Purchaser and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the date first above written.

TBW FUNDING COMPANY III LLC  
(Seller)

By: 

Name: Paul R. Allen  
Title: Vice President

HENLEY HOLDINGS LLC  
(Purchaser)

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

Name:  
Title:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.  
(Servicer)

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

Name: Sherry Dickinson  
Title: Vice Chairman

IN WITNESS WHEREOF, the Seller, the Purchaser and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the date first above written.

TBW FUNDING COMPANY III LLC  
(Seller)

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

Name:

Title:

HENLEY HOLDINGS LLC  
(Purchaser)

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

Name: David N. Jordan

Title: Manager

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.  
(Servicer)

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

Name:

Title:

IN WITNESS WHEREOF, the Seller, the Purchaser and the Servicer have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the date first above written.

TBW FUNDING COMPANY III LLC  
(Seller)

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

Name: Paul R. Allen  
Title: Vice President

HENLEY HOLDINGS LLC  
(Purchaser)

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

Name:  
Title:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.  
(Servicer)

By: Sherry Dickinson

Name: Sherry Dickinson  
Title: Vice Chairman

**EXHIBIT A**  
**MORTGAGE LOAN DOCUMENTS**

- (a) the original Mortgage Note bearing all intervening endorsements necessary to show a complete chain of endorsements from the original payee, endorsed in blank, "Pay to the order of \_\_\_\_\_, without recourse" (notwithstanding such endorsement, the obligations of the Seller with respect to each Mortgage Loan shall be as set forth in the Agreement) and, if previously endorsed, signed in the name of the last endorsee by a duly qualified officer of the last endorsee. If the Mortgage Loan was acquired by the last endorsee in a merger, the endorsement must be by "[name of last endorsee], successor by merger to [name of predecessor]". If the Mortgage Loan was acquired or originated by the last endorsee while doing business under another name, the endorsement must be by "[name of last endorsee], formerly known as [previous name]";
- (b) with respect to Mortgage Loans that are not MERS Loans, the original assignment of mortgage for each Mortgage Loan to \_\_\_\_\_, in form and substance acceptable for recording; with respect to MERS Loans, the original mortgage and assignment thereof to MERS, with evidence of recording indicated thereon, or a copy of the Mortgage certified by the public recording office in which such Mortgage has been filed reflecting MERS as the lienholder of record;
- (c) the original of each guarantee executed in connection with the Mortgage Note, if any;
- (d) the original recorded Mortgage, with evidence of recording thereon. If in connection with any Mortgage Loan, the Seller has not delivered or caused to be delivered the original Mortgage with evidence of recording thereon on or prior to the Closing Date because of a delay caused by the public recording office where such Mortgage has been delivered for recordation or because such Mortgage has been lost or because such public recording office retains the original recorded Mortgage, the Seller shall deliver or cause to be delivered to the Custodian, (i) in the case of a delay caused by the public recording office, a copy of such Mortgage certified by the Seller, escrow agent, title insurer or closing attorney to be a true and complete copy of the original recorded Mortgage, with the original recorded Mortgage to be promptly delivered to the Custodian upon receipt thereof by the Seller and (ii) in the case where a public recording office retains the original



recorded Mortgage or in the case where a Mortgage is lost after recordation in a public recording office, a copy of such Mortgage certified by such public recording office to be a true and complete copy of the original recorded Mortgage;

- (e) originals or a certified copy of each modification agreement, if any;
- (f) the originals of all intervening assignments of mortgage with evidence of recording thereon evidencing a complete chain of ownership from the originator of the Mortgage Loan to the last assignee, or if any such intervening assignment of mortgage has not been returned from the applicable public recording office or has been lost or if such public recording office retains the original recorded intervening assignments of mortgage, a photocopy of such intervening assignment of mortgage, together with (i) in the case of a delay caused by the public recording office, an Officer's Certificate of the Seller, escrow agent, closing attorney or the title insurer insuring the Mortgage stating that such intervening assignment of mortgage has been delivered to the appropriate public recording office for recordation and that such original recorded intervening assignment of mortgage or a copy of such intervening assignment of mortgage certified by the appropriate public recording office to be a true and complete copy of the original recorded intervening assignment of mortgage will be promptly delivered to the Custodian upon receipt thereof by the party delivering the Officer's Certificate or by the Seller; or (ii) in the case of an intervening assignment of mortgage where a public recording office retains the original recorded intervening assignment of mortgage or in the case where an intervening assignment of mortgage is lost after recordation in a public recording office, a copy of such intervening assignment of mortgage with recording information thereon certified by such public recording office to be a true and complete copy of the original recorded intervening assignment of mortgage;
- (g) if the Mortgage Note, the Mortgage, any assignment of mortgage or any other related document has been signed by a Person on behalf of the Mortgagor, the copy of the power of attorney or other instrument that authorized and empowered such Person to sign;
- (h) the original lender's title insurance policy (or a marked title insurance commitment, in the event that an original lender's title insurance policy has not yet been issued) in the form of an ALTA mortgage title insurance policy, containing each of the endorsements generally required by prudent investors in the secondary mortgage market and required by FHLMC and insuring

the Purchaser and its successors and assigns as to the first or second priority lien of the Mortgage, as applicable, in the original principal amount of the Mortgage Loan; and

- (i) original of any security agreement, chattel mortgage or equivalent document executed in connection with the Mortgage, if any.

**EXHIBIT B**  
**MORTGAGE LOAN FILE**

With respect to each Mortgage Loan, the Mortgage Loan File (which shall be delivered to Purchaser prior to Closing) shall include each of the following items:

1. Mortgage Loan Documents.
2. Residential loan application.
3. Mortgage Loan closing statement.
4. Verification of employment and income.
5. Verification of acceptable evidence of source and amount of downpayment.
6. Credit report on Mortgagor.
7. Residential appraisal report.
8. Photograph of the Mortgaged Property, if available.
9. Survey of the Mortgaged Property.
10. Copy of each instrument necessary to complete identification of any exception set forth in the exception schedule in the title policy, i.e., map or plat, restrictions, easements, sewer agreements, home association declarations, etc.
11. All required disclosure statements and statement of Mortgagor confirming receipt thereof.
12. If available, termite report, structural engineer's report, water potability and septic certification.
13. Sales Contract, if applicable.
14. Hazard insurance policy.
15. To the extent retained by Seller, tax receipts, insurance premium receipts, ledger sheets, payment history from date of origination, insurance claim files, correspondence, current and historical computerized data files, and all other processing, underwriting and closing papers and records which are customarily contained in a mortgage loan file and which are required to document the Mortgage Loan or to service the Mortgage Loan.
16. Amortization schedule, if available.

## **EXHIBIT C**

### **ADDITIONAL SERVICING RESPONSIBILITIES**

(A) Subject to the terms herein, on and following the Closing Date, Purchaser hereby appoints TBW as an independent contractor servicer, and Servicer agrees to service the Mortgage Loans in accordance with the terms set forth herein and use its best good faith efforts to collect all payments called for under the terms and provisions of the Mortgage Loans as and when the same shall become due and payable. TBW shall not resign as Servicer of the Mortgage Loans without the prior written consent of Purchaser. Servicer, on behalf of Purchaser, shall during the term of this Agreement (for purposes hereof, this Agreement includes the Agreement to which this exhibit is attached and all exhibits thereto), service the Mortgage Loans pursuant to its written policies and in accordance with prudent servicing standards of responsible financial institutions that service mortgage loans for mortgaged properties located in the jurisdictions in which the collateral securing the Mortgage Loans are located and in accordance with all applicable federal and state laws; provided, however that the Servicer shall not release or waive the right to collect the unpaid principal balance of or interest payments under any Mortgage Loan, without the prior written consent of Purchaser.

(B) Servicer shall exercise its duties under this Agreement within the requirements of applicable federal and state laws. Without the written consent of Purchaser, Servicer shall not waive, modify, or vary terms of a Mortgage Loan, or consent to the postponement of strict compliance with any such term or grant indulgence to any Mortgagor; provided that, Servicer shall have the right to make such modifications/extensions as required by law or in connection with applicable bankruptcy proceedings. Servicer may execute and deliver, on behalf of Purchaser, instruments of satisfaction or cancellation, or of partial or full release or discharge, or other comparable instruments, in order to evidence payments received with respect to the Mortgage Loans. In the event of a delinquency of a payment under a Mortgage Loan and, to the extent permitted under, and in compliance with applicable law and regulation, the Servicer may commence enforcement proceedings with respect to such Mortgage Loans.

(C) The parties hereto acknowledge that the neither Purchaser nor any of its Affiliates provides any guarantee or assurance whatsoever regarding the accuracy, timing or collectability of payments under the Mortgage Loans. Furthermore, no obligation or liability to any Mortgagor under any of the Mortgage Loans is intended to be assumed by Purchaser under or as a result of this Agreement, and Purchaser expressly disclaims such assumptions. Purchaser makes no representation or warranty as to the collateral which secures any Mortgage Loan and Seller assumes all responsibility and risk for the existence, character, quality, condition and value of such collateral. Unless otherwise directed by Purchaser in writing, Servicer shall ensure and take all such actions and pay all expenses to maintain the respective perfected lien in favor of Purchaser on the Mortgaged Property pursuant to each Mortgage and requisite assignments thereof. Servicer shall be responsible for maintaining the validity and perfection of any security interest, lien or mortgage in the collateral securing a Mortgage Loan. Servicer agrees to take such steps as are necessary to validate, perfect and maintain the perfection of each security interest and lien under

each Mortgage Loan in the Purchaser. Servicer shall indemnify and hold harmless Purchaser, its directors, officers, agents and Affiliates from and against any such claims, damages, losses or expenses (including reasonable attorneys fees) in connection therewith.

(D) The Purchaser shall have no liability for handling and administering any legal proceedings or adverse claims by any Mortgagors or any other Person(s) which relate to the Mortgage Loans. With respect to any such adverse claims by a Mortgagor or any third party, the Purchaser agrees to promptly forward to Servicer, and Servicer agrees to promptly forward to Purchaser, any notices of said legal proceedings or adverse claims that it receives, and Servicer shall be responsible for handling all such claims, costs, expenses (including attorney's fees) settlement payments, judgments and penalties ("losses") related to such legal proceedings and adverse claims; provided that, Purchaser shall have the right to participate in the defense of any such claims which are directed at Purchaser or its Affiliates (at its own cost and expense), and if so required by Purchaser, Purchaser shall have the right to assume the control of such defense (at its own cost or expense); provided, however, that if the Servicer (i) fails to participate as litigant in such a proceeding or adverse claim, (ii) is reasonably determined by the Purchaser to have been ineffective in such proceeding or adverse claim, or (iii) the interests of the Purchaser and Servicer, or the Purchaser and Seller, are directly in conflict as to an issue in such proceeding or claim, then the Servicer shall be responsible for the reasonable costs and expenses (including reasonable attorney's fees) of the Purchaser incurred in connection therewith.

(E) In the event of a default or Mortgagor bankruptcy or similar proceeding under a Mortgage Loan (each, a "Default Loan"), Servicer will continue to service such Default Loan subject to the terms of this Agreement, and in accordance with applicable law, with a view towards maximizing the amount of principal and interest recovered on the Default Loans. Servicer shall handle and administer customary foreclosure and repossession proceedings with respect to the Mortgage Loans following the Closing Date, provided that Purchaser shall be indemnified and held harmless by Servicer for any losses, damages, claims or expenses (including reasonable attorneys' fees) incurred by Purchaser or its Affiliates related to a Default Loan including the servicing, enforcement, collection thereof and foreclosure or repossession related thereto (provided that neither the indemnity nor the hold harmless obligations of Servicer pursuant to this paragraph is a guarantee of collectability or payment of such Default Loan).

(F) Prior to instituting any action to repossess or foreclose upon the collateral securing any Mortgage Loan, Servicer shall conduct its customary due diligence with respect to potential environmental hazards affecting the related Mortgaged Property. Servicer shall not repossess, foreclose upon, or otherwise comparably convert the ownership of any Mortgaged Property securing a Mortgage Loan in cases where the Servicer has knowledge that a Mortgaged Property has environmental contamination or is affected by hazardous substances, without the prior written consent of Purchaser.

(G) Servicer, at its own cost and expense, shall pay all costs and expenses incurred in the performance of its servicing obligations, including, but not limited to, the cost of (i) preservation, restoration and repair of a Mortgaged Property, (ii) any enforcement or judicial proceedings with respect to a Mortgage Loan, including foreclosure actions and (iii) the management and liquidation of any Mortgaged Property acquired as a result of the liquidation of a Mortgage Loan.

(H) Although the Purchaser will be the Custodian of each Mortgage Loan File, Servicer acknowledges that it shall act as custodian for each Mortgage Loan File (or any item or items contained therein) that at any time comes into the possession of Servicer and that it is held in trust for Purchaser, and shall be promptly returned to Purchaser in the event Servicer does not need such item or items to properly service such Mortgage Loans or upon request by Purchaser. Purchaser will reasonably cooperate with Servicer and any subservicer designated by Servicer to provide such documents or other information in the possession of Purchaser reasonably required by the Servicer to fulfill its servicing obligation hereunder. Servicer shall hold such items provided or delivered by Purchaser in trust for Purchaser and shall return such items to Purchaser as soon as practicable. With respect to any such requested items, Servicer shall execute and provide Purchaser with such documents and assurances as Purchaser may reasonably require in order to protect Purchaser's interest in such items.

(I) Upon its receipt of any payments or proceeds from the Mortgage Loans (including, without limitation, Monthly Payments, Repurchase Price proceeds and Clean-up Call proceeds), Servicer shall deposit said payments or proceeds (excluding Escrow Payments) within two (2) days after receipt into the Custodial Account held in trust for and for the benefit of Purchaser, or, if required by Purchaser following a Trigger Event, into such other account of Purchaser as designated by Purchaser. Any interest earned on the funds held in such Custodial Account shall be the property of Seller. Servicer and Purchaser acknowledge that the funds in the Custodial Account are the property of Purchaser and so long as such funds are held in the Custodial Account, such funds shall be held in trust for Purchaser until delivered to Purchaser as provided herein or otherwise directed by Purchaser in writing. The Servicer will not, directly or indirectly, make payments to or distributions from the Custodial Account except in accordance with this Agreement.

(J) The Servicer shall segregate and hold all funds collected and received pursuant to each Mortgage Loan which constitute Escrow Payments separate and apart from any of its own funds and general assets and shall establish and maintain an Escrow Account, in the form of time deposit or demand accounts. The Servicer shall deposit in the Escrow Account within two (2) days receipt thereof, and retain therein, (i) all Escrow Payments collected on account of the Mortgage Loans, and (ii) all insurance proceeds which are to be applied to the restoration or repair of any Mortgaged Property. Servicer shall be entitled to retain any interest paid on funds deposited in the Escrow Account by the depository institution other than interest on escrowed funds required by law to be paid to the Mortgagor and, to the extent required by law, the Servicer shall pay interest on escrowed funds to the Mortgagor notwithstanding that the Escrow Account is non-interest bearing or that interest paid thereon is insufficient for such purposes.

(K) The Servicer shall cause the collections of principal and interest and other proceeds derived from the Mortgage Loans (excluding the Escrow Payments) to be paid and distributed in a timely manner as provided in this Agreement (including Section 2, Section 4 and Section 7 hereof). Except as otherwise required by Purchaser, the Servicer shall recognize the end of each month as the cutoff date for purposes of calculating balances due from the Custodial Account, and all collections of principal and interest in the Custodial Account as of the end of each calendar month shall be wired/transmitted by Servicer within eighteen (18) days following the end of such calendar month (or such earlier timeframe as may be required by Purchaser) in accordance with the terms of this Agreement (including Sections 2, 4 and 7 hereof). Subsequent to a Trigger Event, all payments/proceeds under the Mortgage Loans shall be promptly distributed and paid as directed by

Purchaser (or to an account designated by Purchaser in writing) in accordance with this Agreement (including Section 2 and Section 4 thereof), in addition to such other rights and remedies available to Purchaser in the event of a Trigger Event.

(L) The Custodial Account shall only contain funds derived from the Mortgage Loans. The parties further acknowledge that the payments, indemnities and other amounts payable to the Purchaser pursuant to this Agreement are in no way limited to the amounts derived from the Mortgage Loans and/or deposited into the Custodial Account which constitute payments or proceeds thereof.

(M) Servicer shall maintain records of its receipt, maintenance and disbursement of all payments and proceeds derived from the Mortgage Loans that Servicer receives. Servicer shall furnish to the Purchaser via monthly e-mail no later than the tenth (10<sup>th</sup>) day of each calendar month, reports in a form mutually agreed between the Servicer and the Purchaser, as to the following items which reports may change from time to time, as requested by Purchaser:

(1) a master list of all delinquencies (in accordance with the calculation method promulgated by the Mortgage Bankers Association as of the date hereof, provided if such calculation method is subsequently amended by the Mortgage Bankers Association and the Servicer desires to use such amended method in its reporting, then such amended method shall be subject to Purchaser's prior approval) for the entire portfolio of Mortgage Loans serviced under this Agreement, broken down by 30-59 days delinquent, 60-89 days delinquent, 90+ days delinquent;

(2) a loss report detailing all losses incurred on any Mortgage Loan in the month;

(3) a foreclosure report identifying the Mortgaged Properties that have been foreclosed upon or otherwise repossessed by the Servicer;

(4) a report of the ratio of the Stated Principal Balance of Performing Mortgage Loans (as determined as of the end of each calendar month) divided by the outstanding Investment Balance as of the end of such calendar month period;

(5) In addition, the Servicer shall furnish to the Purchaser, no later than the tenth (10<sup>th</sup>) day of each calendar month (the "Monthly Report Date"), a monthly remittance report in both a summary format and in loan level detail showing the monthly activity of each Mortgage Loan in the preceding collection period, in a form reasonably requested by Purchaser; and

(6) In addition, the Servicer shall provide such other reports as required by Purchaser with respect to the Mortgage Loans. Purchaser shall have the right to conduct audits of books and records maintained by the Servicer (or subservicer) for one or more Mortgage Loans during regular business hours upon reasonable notice to the Servicer. Servicer shall provide Purchaser with adequate space, work environment and access to such books and records.

Purchaser may rely in good faith on the accuracy of all information contained in such monthly remittance reports and other reports related to the Mortgage Loans received from Servicer, and Servicer shall indemnify and hold harmless Purchaser for any and all claims (including third

party claims), damages, costs, liabilities, losses, expenses and fees (including attorneys' fees and settlement or court-ordered payments) that Purchaser incurs or may incur as a result of any inaccuracies or misrepresentations contained in such monthly reports.

(N) Servicer shall provide Form 1098 reporting information to each of Mortgagor(s), as applicable, under such Mortgage Loans.

(O) To the extent permitted by applicable law and if such insurance is required by an individual Mortgage Loan, Servicer shall cause to be maintained with respect to each Mortgage Loan one or more standard hazard insurance policies that provide, at a minimum, coverage against loss of, or damage to, the related Mortgaged Property under perils covered by a standard form fire and extended coverage insurance policy, issued by a qualified insurer (reasonably acceptable to Purchaser), providing coverage in an amount at least equal to the lesser of (1) the maximum insurable value of the related Mortgaged Property or (2) the principal balance due from the Mortgagor under such Mortgage Loan and all other mortgage loans secured by such Mortgaged Property. Whenever the Servicer shall determine that, to its knowledge, a Mortgaged Property is required under applicable federal laws and regulations to be covered by flood insurance and is not so covered (or is covered in an amount less than the amount required), the Servicer shall require from the Mortgagors (and to force place, if necessary) such flood insurance as specified by said laws and regulations.

As part of its collection responsibilities, Servicer shall proceed to collect the premiums due on the standard hazard insurance policies and any required flood insurance from the Mortgagors in accordance with the degree of skill and care that is customarily used for such purpose in the mortgage loan industry. Each Standard Hazard Insurance Policy or policy of flood insurance caused to be maintained by any subservicer shall contain a standard loss payee clause in favor of the Seller, its successors and assigns. Any amounts received under any such insurance policies, which are not applied to the restoration or repair of any Mortgaged Property, shall be deposited in the Custodial Account and remitted to Purchaser as principal payments under the related Mortgage Loan.

(P) Purchaser shall have the optional right to cause the Seller to purchase all of the remaining Mortgage Loans, and provided that Seller is not then in breach of its obligations under this Agreement, Seller shall have the optional right to purchase all the remaining Mortgage Loans sold to Purchaser under this Agreement, at any time following the date the aggregate outstanding Stated Principal Balance of the Mortgage Loans has been reduced below ten percent (10%) of the aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-Off Date (the "Clean-Up Call"), at a purchase price equal to (i) the respective outstanding Stated Principal Balance of the Mortgage Loans plus (ii) the outstanding accrued interest thereon as of the effective date of the Clean-up Call purchase. In such case Purchaser and Seller each agrees to take such actions and execute such documents (including assignments of the applicable Mortgage Loans without recourse) at the expense of Seller as are reasonably requested to effect the sale and transfer of the remaining Mortgage Loans subject to the Clean-up Call to Seller as provided in this subsection. Subject to the terms hereof, either party may exercise these optional Clean-Up Call rights by delivering written notice of its exercise to other party (which notice shall include the intended transfer date, which shall be a date within 120 days following delivery of such notice), and the respective sale and transfer of the remaining Mortgage Loans shall be effected on the intended transfer date subject to Seller's payment of the applicable Clean-Up Call purchase price to



Purchaser. Any such assignment or transfer of any of the Mortgage Loans to Seller pursuant to a Clean-Up Calls shall be without recourse or warranty of any kind. The purchase price proceeds derived from the Clean-Up Call shall be distributed, allocated and paid in accordance with the terms of the Agreement including Subsection 4 hereof.

(Q) Servicer (in its capacity as Servicer and TBW) hereby represents and warrants and covenants to Purchaser, as of the date hereof and on a continuing basis following the Closing Date, that:

(i) Servicer shall remain a person/entity qualified to act as servicer of the Mortgage Loans pursuant to the terms of this Agreement, and shall remain a servicer of no less than an aggregate of \$1,000,000,000 in outstanding principal amount of mortgage loans.

(ii) Servicer shall hold all material licenses, certificates, franchises and permits from all governmental authorities necessary for the conduct of its business and will promptly notify Purchaser of any proceedings related to the revocation of any such license, certificate or permit that, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would affect materially and adversely the conduct of the business, results of operations, net worth, or condition (financial or otherwise) of the Servicer.

(iii) Servicer shall maintain standard errors and omissions policies and fidelity bond issued by a qualified insurer covering errors and omissions in the performance of its obligations as Servicer under this Agreement. Such policy or policies and bond shall be in such forms and amounts as generally customary among Persons that service portfolios of mortgage loans and which Persons are generally regarded as servicers acceptable to institutional investors.

(iv) Servicer is duly organized, validly existing and in good standing under the laws of its state of incorporation and is qualified and/or licensed as necessary to transact business, including the servicing of mortgage loans, and is in good standing in each state where the Mortgaged Property securing a Mortgage Loan is located.

(v) Servicer has the full power and authority to perform its obligations under this Agreement and neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms and conditions of this Agreement will conflict with, or result in a breach of any term, condition or provision of Servicer's applicable articles of incorporation, by-laws, or any license, permit or registration held by Servicer or governing Servicer's activities or any agreement to which Servicer is a party or by which Servicer is bound, or constitute a material default or result in an acceleration under any of the foregoing.

(vi) No consent, approval, authorization or order of any court, government body or any other person or entity is required for execution, delivery and performance by Servicer of this Agreement.

(vii) Neither Servicer nor its agents know of any suit, action, arbitration or legal or administrative or other proceeding pending or threatened against Servicer which would affect its ability to perform its obligations under this Agreement.

(viii) Servicer is not a party to, bound by or in breach or violation of any agreement of instrument, or subject to or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over it, which materially and adversely affects, or may in the future materially and adversely affect the ability of Servicer to perform its obligations under this Agreement.

(ix) Neither this Agreement nor any statement, report or other document furnished or to be furnished by Servicer pursuant to this Agreement or in connection with the transactions contemplated hereby contains any untrue statement of fact or omits to state a fact necessary to make the statements contained therein not misleading.

(x) The Servicer has provided the Purchaser with its audited balance sheets for the fiscal years ended April 30, 2007 and April 30, 2006, respectively, and the related audited statements of income and cash flows for the fiscal years then ended (the "Servicer Financial Statements"). The Servicer Financial Statements fairly present the assets, liabilities, financial condition, and results of operations of the Servicer as at the respective dates thereof and for the periods therein referred to, all in accordance with generally accepted accounting principles consistently applied.

(R) The Servicer covenants and agrees that for so long as the Purchaser has an interest in the Mortgage Loans that it shall not take any action to solicit the refinancing of any such Mortgage Loans following the date hereof or cause any of its agents or Affiliates to solicit the refinancing of any such Mortgage Loan; provided that, the foregoing shall not preclude the Servicer from engaging in solicitations to the general public by newspaper, radio, television or other media which are not directed toward the Mortgagors or from refinancing the Mortgage Loan of any Mortgagor who, without solicitation, contacts the Seller to request the refinancing of the related Mortgage Loan.

(S) The collection responsibilities of the Servicer on behalf of Purchaser and Servicer's servicing rights relating to the Mortgage Loans as set forth herein shall terminate (provided that, for avoidance of doubt, any other obligations of Servicer, including any indemnity or hold harmless obligations and any servicing transfer/transition obligations of the Servicer, shall not terminate) upon the earlier of the following dates: (i) a date mutually agreed to by the Servicer and the Purchaser in writing for such termination; or (ii) at the option of Purchaser following a Trigger Event, a date designated by Purchaser to Seller and Servicer in writing of the termination of Servicer's collection responsibilities and servicing rights. Unless otherwise mutually determined by Servicer and Purchaser in writing, (1) Servicer shall have no further rights as to the servicing (including any Monthly Servicing Fees or reimbursement, if applicable) following the termination of Servicer's collection responsibilities as provided in clause (i) and (ii) above. Following the earlier of (x) the date of the final payment or other liquidation of the last Mortgage Loan being serviced by the Servicer pursuant to the terms of this Agreement, (y) Purchaser's receipt of all amounts owed to Purchaser under this Agreement (including full payment of the Investment Balance and full payment of all Monthly Facility Fees payable under this Agreement), or (z) the date of the effective consummation of the Clean-Up Call pursuant to the terms of this Agreement, and in each case, so long as the remittance and payment of all funds and payments due to Seller under this Agreement (including Section 4 of this Agreement and this Exhibit C) have been paid in full and there is no Material Default, the collection and servicing responsibilities shall revert to the Servicer on behalf of the Seller.

(T) Upon and following any servicing termination event described in paragraph (S)(i) or (ii) above, as applicable, to the extent there are outstanding Mortgage Loans to be serviced and Purchaser has not been paid in full all amounts owed Purchaser under this Agreement (including full payment of the Investment Balance and full payment of all Monthly Facility Fees payable under this Agreement) and to the extent requested or required by Purchaser, Servicer shall promptly (i) provide to Purchaser all servicing files and other files for the Mortgage Loans in its possession (or in the possession of any subservicer), in either physical or electronic form as available, (ii) produce and deliver to Purchaser in a format compatible with Purchaser's computer systems and software, the computer and data tape for the Mortgage Loans in a format and with such data and information as requested by the Purchaser, (iii) within one (1) Business Day receipt or possession thereof, cause all payment/proceeds received upon the Mortgage Loans (including any proceeds in the Custodial Account) by Servicer (or any subservicer) to be remitted directly to Purchaser (or an account designated by Purchaser), and (iv) perform such other tasks, duties and obligations as reasonably requested by Purchaser for the transfer of the collection responsibilities to Purchaser, including without limitation, delivering such powers of attorney in favor of Purchaser or its designee in order to facilitate Purchaser's or its designee's servicing of the Mortgage Loans. Servicer shall pay the costs and expenses related to the transfer of collection functions from Servicer to Purchaser, including, without limitation, all necessary and reasonable delivery, copying, transportation and administrative costs and expenses related thereto. In connection with any servicing transfer, Servicer shall mail letters, at its expense, conforming to legal requirements (including 24 C.F.R. §3500.21(d)) and reasonably satisfactory in form and content to Purchaser to all Mortgagors on the Mortgage Loans.

(U) The Servicer shall indemnify the Purchaser and hold the Purchaser harmless against any and all claims, losses, damages, penalties, fines, forfeitures, reasonable legal fees and related costs, judgments, and any other costs, fees and expenses that the Purchaser may sustain in any way related to or arising from (a) the failure of the Servicer to perform its obligations under this Agreement including but not limited to its obligation to service and administer the Mortgage Loans in compliance with the terms of this Agreement, (b) any breach by Servicer of its representations, warranties, covenants or agreements set forth herein, (c) all court costs and other costs of collecting any obligations or amounts payable to Purchaser under or in connection with this Agreement, and (d) any adverse third party claims (including claims by Mortgagor(s)) or proceedings arising from or related to the Mortgage Loans, including the servicing of the Mortgage Loans or that otherwise relate to the transactions contemplated by this Agreement and which are not the result of the negligence or willful misconduct of the Purchaser. The indemnification obligation of the Servicer set forth herein shall survive the termination of this Agreement indefinitely notwithstanding any applicable statute of limitations, which the Servicer hereby expressly waives. Servicer shall be required to perform or pay its obligations under this section in full within three (3) days following written demand by Purchaser.

(V) Purchaser's right to indemnity or reimbursement pursuant to this Agreement (including Exhibit C) is in addition to any other rights of reimbursement and indemnity under this Agreement, or any other rights or remedies available at law or in equity which shall be cumulative and non-exclusive, and all such rights and remedies shall survive any termination of this Agreement and any termination of the collection responsibilities or servicing rights of Servicer herein.

**EXHIBIT D**  
**ASSIGNMENT AND CONVEYANCE**

SEE ATTACHED

## ASSIGNMENT AND CONVEYANCE

On this \_\_\_\_\_ day of October, 2007, TBW Funding Company III LLC ("Seller") as the Seller under that certain Mortgage Loan Sales and Servicing Agreement, dated as of October \_\_\_\_\_, 2007 (the "Agreement") does hereby sell, transfer, assign, set over and convey to Henley Holdings LLC as Purchaser under the Agreement, without recourse except as provided in and subject to the terms of the Agreement, all rights, title and interest of the Seller in and to the Mortgage Loans listed on the Mortgage Loan Schedule attached hereto. Pursuant to Subsection 6.03 of the Agreement, the Seller has delivered to the Purchaser the documents for each Mortgage Loan to be sold and transferred to Purchaser pursuant to the Agreement. The ownership of each Mortgage Note, Mortgage, and the contents of the Mortgage Loan File is vested in the Purchaser and the ownership of all records and documents with respect to the related Mortgage Loan prepared by or which come into the possession of the Seller shall immediately vest in the Purchaser.

The Seller confirms to the Purchaser that the representations and warranties set forth in Subsections 7.01 and 7.02 of the Agreement are true and correct with respect to the Seller and the Mortgage Loans listed on the Mortgage Loan Schedule attached hereto as of the date hereof, and that all statements made in the Seller's Officer's Certificates and all Attachments thereto remain complete, true and correct in all respects as of the date hereof, and that the Mortgage Loan characteristics identified on the attached Mortgage Loan Schedule are true and correct as of the date hereof.

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

TBW FUNDING COMPANY III LLC  
Seller .

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

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

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

## **Mortgage Loan Schedule**

[Attached]

STATE OF FLORIDA UNIFORM COMMERCIAL CODE  
FINANCING STATEMENT FORM

A. NAME & DAYTIME PHONE NUMBER OF CONTACT PERSON Lynn Jacobs (615) 252-3525	
B. SEND ACKNOWLEDGEMENT TO: Name Lynn Jacobs Address Boulton, Cummings, Connors & Berry, PLC Address 1600 Division Street, Suite 700 City/State/Zip Nashville TN 37203	

FLORIDA SECURED TRANSACTION REGISTRY

FILED

2007 Oct 17 AM 12:00

\*\*\*\* 200706799184 \*\*\*\*

\*\*\*C \* 10170796757601-31.00\*\*\*31.00\*\*\*

## 1. DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (1a OR 1b) - Do Not Abbreviate or Combine Names

1a. ORGANIZATION'S NAME Taylor, Bean & Whitaker Mortgage Corp.				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 101 NE 2nd Street		CITY Ocala	STATE FL	POSTAL CODE 34470
1d. TAX ID#	REQUIRED ADD'L INFO RE: ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION corporation	1f. JURISDICTION OF ORGANIZATION Florida	1g. ORGANIZATIONAL ID# S55203 <input type="checkbox"/> NONE

## 2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - INSERT ONLY ONE DEBTOR NAME (2a OR 2b) - Do Not Abbreviate or Combine Names

2a. ORGANIZATION'S NAME				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE
2d. TAX ID#	REQUIRED ADD'L INFO RE: ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID# <input type="checkbox"/> NONE

## 3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - INSERT ONLY ONE SECURED PARTY NAME (3a OR 3b)

3a. ORGANIZATION'S NAME TBW Funding Company III LLC				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 5150 Stilesboro Rd., Bldg. 500, Suite 500		CITY Kennesaw	STATE GA	POSTAL CODE 30152
				COUNTRY USA

4. This FINANCING STATEMENT covers the following collateral:

See Exhibit A attached hereto which is incorporated herein by reference.

5. ALTERNATE DESIGNATION (if applicable)

<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR
<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING	<input checked="" type="checkbox"/> SELLER/BUYER

6. Florida DOCUMENTARY STAMP TAX - YOU ARE REQUIRED TO CHECK EXACTLY ONE BOX

<input type="checkbox"/> All documentary stamps due and payable or to become due and payable pursuant to s. 201.22 F.S., have been paid.
<input checked="" type="checkbox"/> Florida Documentary Stamp Tax is not required.

7. OPTIONAL FILER REFERENCE DATA FLORIDA SECRETARY OF STATE (104716-009) (Doc ID 1558401)

STANDARD FORM - FORM UCC-1 (REV.12/2001)

Filing Office Copy

Approved by the Secretary of State, State of Florida

**EXHIBIT A**  
*to UCC Financing Statement*

Name and Address of Debtor/Seller

Taylor, Bean & Whitaker Mortgage Corp.  
101 NE 2<sup>nd</sup> Street  
Ocala, FL 34470

Name and Address of Secured Party/Purchaser

TBW Funding Company III LLC  
5150 Stilesboro Rd., Bldg. 500, Suite 500  
Kennesaw, GA 30152

This filing covers all right, title and interest of the Seller in, to and under any and all of the Mortgage Loans (including any after-acquired Qualified Substitute Mortgage Loans) sold, transferred and/or assigned by Seller to Purchaser pursuant to the Mortgage Loan Sales Agreement and all proceeds thereof.

For purposes of this Financing Statement, capitalized terms shall have the meanings set forth below.

Closing Date: Subject to the terms and conditions of the Mortgage Loan Sales Agreement, the Closing Date shall be October 17, 2007 or such other date as may be mutually agreed to by the Seller and Buyer.

Cut-Off Date: 11:59 P.M. Eastern Time on October 14, 2007.

Deleted Mortgage Loan: A Mortgage Loan replaced or to be replaced by a Qualified Substitute Mortgage Loan pursuant to the terms of the Mortgage Loan Sales Agreement.

Mortgage: A mortgage, deed of trust, security deed, deed to secure debt or similar evidence of lien, creating at least a first or second lien on the Mortgaged Property which secures such Mortgage Loan.

Mortgage Loan: Each first or second lien, residential mortgage loan, sold, assigned, or transferred to the Purchaser pursuant to the Mortgage Loan Sales Agreement and identified on the Mortgage Loan Schedule on the Closing Date or which is otherwise a Qualified Substitute Mortgage Loan. The Mortgage Loans include, without limitation, the related Mortgage Loan File and all related Mortgages and security interests and liens created thereby, rights under related insurance policies, all related insurance proceeds and other proceeds, and any and all rights to receive payments (including principal, interest and fees) pursuant thereto after the Cut-Off Date, but exclude any rights to receive payments which are received on or prior to the Cut-Off Date and applied on or prior to the Cut-Off Date.

Mortgage Loan Documents: The documents listed in Exhibit A to the Mortgage Loan Sales Agreement pertaining to any Mortgage Loan, including the related Mortgage Note and Mortgage.

Mortgage Loan File: The items pertaining to a particular Mortgage Loan referred to in Exhibit B to the Mortgage Loan Sales Agreement including the Mortgage Loan Documents, and any additional documents required to be added to the Mortgage Loan File pursuant to the Mortgage Loan Sales Agreement.

10/16/2007



**Mortgage Loan Schedule:** The schedule of Mortgage Loans, to be annexed to the related Assignment and Conveyance on the Closing Date in electronic form as provided in the Mortgage Loan Sales Agreement, such schedule setting forth the list of Mortgage Loans sold and assigned by Seller to Purchaser and the respective information required by the Mortgage Loans Sales Agreement with respect to each Mortgage Loan, as may be supplemented or amended in accordance with the Mortgage Loans Sales Agreement.

**Mortgage Note:** The original executed note evidencing the Mortgage Loan indebtedness of a Mortgagor.

**Mortgaged Property:** The Mortgagor's real property securing repayment of a related Mortgage Note, consisting of a fee simple interest in a single parcel of real property improved by a Residential Dwelling.

**Mortgagor:** 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 successor's in title to the Mortgaged Property, provided there may be more than one Mortgagor obligated under a Mortgage Loan.

**Mortgage Loans Sales Agreement:** The Mortgage Loans Sales Agreement, dated as of October 17, 2007 by and between Seller and Purchaser, together with all exhibits and schedules thereto and all subsequent written amendments and supplements thereto.

**Purchaser:** TBW Funding Company III LLC.

**Qualified Substitute Mortgage Loan:** A mortgage loan substituted for a Deleted Mortgage Loan pursuant to the terms of the Mortgage Loan Sales Agreement.

**Residential Dwelling:** Any one of the following: (i) a detached one-family dwelling, (ii) a detached two- to four-family dwelling, (iii) a one-family dwelling unit in a condominium project generally acceptable to prudent investors in the secondary mortgage market, or (iv) a detached one-family dwelling in a planned unit development.

**Seller:** Taylor, Bean & Whitaker Mortgage Corp.

*The parties hereto intend that this Financing Statement evidence a true sale of the Mortgage Loans from Seller to Purchaser, but if the transaction is recharacterized as a loan from the Purchaser to the Seller, this Financing Statement shall also perfect the Purchaser's security interest in the Mortgage Loans.*

*Additional information regarding the identification of the Mortgage Loans for purposes of this filing can be obtained at the principal offices of the Seller or Purchaser that are presently located at the above addresses.*

10/16/2007

Exhibit C  
UCC#2

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

Sandy Kemp, Paralegal

6152523549

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

BOULT CUMMINGS

1600 DIVISION STREET

SUITE 700

NASHVILLE TN 37203

DELAWARE DEPARTMENT OF STATE  
U.C.C. FILING SECTION  
FILED 10:26 AM 10/17/2007  
INITIAL FILING # 2007 3903621

SRV: 071124186

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

TBW FUNDING COMPANY III LLC

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

5150 STILESBO ROAD BUILDING 500 SUITE 500

CITY

KENNESAW

STATE

GA

POSTAL CODE

44093

COUNTRY

US

1e. TYPE OF ORGANIZATION

LTD LIABILITY COMPANY

1f. JURISDICTION OF ORGANIZATION

DE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

HENLEY HOLDINGS LLC

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

C/O 21ST MORTGAGE CORP. 620 MARKET STREET SUITE 100

CITY

KNOXVILLE

STATE

TN

POSTAL CODE

37902

COUNTRY

US

4. This FINANCING STATEMENT covers the following collateral:

Collateral Description - please see attachment

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum ☐ (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) ☐ (optional) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

104716-009

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER (optional)</b> Lynn Jacobs (615) 252-3525	
<b>B. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  Lynn Jacobs Boult, Cummings, Conners & Berry, PLC 1600 Division Street, Suite 700 Nashville, TN 37203	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

<b>1. DEBTOR'S EXACT FULL LEGAL NAME</b> - insert only <u>one</u> debtor name (1a or 1b) - do not abbreviate or combine names					
1a. ORGANIZATION'S NAME <b>TBW Funding Company III LLC</b>					
OR					
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
1c. MAILING ADDRESS <b>5150 Stilesboro Road, Building 500, Suite 500</b>		CITY <b>Kennesaw</b>	STATE <b>GA</b>	POSTAL CODE <b>30152</b>	COUNTRY <b>USA</b>
1d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION <b>LLC</b>	1f. JURISDICTION OF ORGANIZATION <b>Delaware</b>	1g. ORGANIZATIONAL ID #, if any <b>4409383</b>	<input type="checkbox"/> NONE
<b>2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME</b> - insert only <u>one</u> debtor name (2a or 2b) - do not abbreviate or combine names					
2a. ORGANIZATION'S NAME					
OR					
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY
2d. <u>SEE INSTRUCTIONS</u>	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any	<input type="checkbox"/> NONE
<b>3. SECURED PARTY'S NAME</b> (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only <u>one</u> secured party name (3a or 3b)					
3a. ORGANIZATION'S NAME <b>Henley Holdings LLC</b>					
OR					
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS <b>c/o 21st Mortgage Corp., 620 Market St., Suite 100</b>		CITY <b>Knoxville</b>	STATE <b>TN</b>	POSTAL CODE <b>37902</b>	COUNTRY <b>USA</b>
4. This FINANCING STATEMENT covers the following collateral.					

See Exhibit A attached hereto which is incorporated herein by reference.

5. ALTERNATIVE DESIGNATION (if applicable)		<input type="checkbox"/> LESSEE/LESSOR	<input type="checkbox"/> CONSIGNEE/CONSIGNOR	<input type="checkbox"/> BAILEE/BAILOR	<input checked="" type="checkbox"/> SELLER/BUYER	<input type="checkbox"/> AG. LIEN	<input type="checkbox"/> NON-UCC FILING	
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable)		7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional)		<input type="checkbox"/> All Debtors			<input type="checkbox"/> Debtor 1	<input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA								

DELAWARE SECRETARY OF STATE (104716-009) (Doc ID 1658411)

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

Scanned: 6/15/2010-12:40:15 PM

**EXHIBIT A**  
*to UCC Financing Statement*

Name and Address of Debtor/Seller

TBW Funding Company III LLC  
5150 Stilesboro Rd., Bldg. 500, Suite 500  
Kennesaw, GA 30152

Name and Address of Secured Party/Purchaser

Henley Holdings LLC  
c/o 21<sup>st</sup> Mortgage Corporation  
620 Market St., Suite 100  
Knoxville, TN 37902

This filing covers all right, title and interest of the Seller in, to and under any and all of the Mortgage Loans (including any after-acquired Qualified Substitute Mortgage Loans) sold, transferred and/or assigned by Seller to Purchaser pursuant to the Mortgage Loan Sales and Servicing Agreement and all proceeds thereof.

For purposes of this Financing Statement, capitalized terms shall have the meanings set forth below.

Closing Date: Subject to the terms and conditions of the Mortgage Loan Sales and Servicing Agreement, the Closing Date shall be October 17, 2007 or such other date as may be mutually agreed to by the Seller and Buyer.

Cut-Off Date: 11:59 P.M. Eastern Time on October 14, 2007.

Deleted Mortgage Loan: A Mortgage Loan replaced or to be replaced by a Qualified Substitute Mortgage Loan pursuant to the terms of the Mortgage Loan Sales and Servicing Agreement.

Mortgage: A mortgage, deed of trust, security deed, deed to secure debt or similar evidence of lien, creating at least a first or second lien on the Mortgaged Property which secures such Mortgage Loan.

Mortgage Loan: Each first or second lien, residential mortgage loan, sold, assigned, or transferred to the Purchaser pursuant to the Mortgage Loan Sales and Servicing Agreement and identified on the Mortgage Loan Schedule on the Closing Date or which is otherwise a Qualified Substitute Mortgage Loan. The Mortgage Loans include, without limitation, the related Mortgage Loan File and all related Mortgages and security interests and liens created thereby, rights under related insurance policies, all related insurance proceeds and other proceeds, and any and all rights to receive payments (including principal, interest and fees) pursuant thereto after the Cut-Off Date, but exclude any rights to receive payments which are received on or prior to the Cut-Off Date and applied on or prior to the Cut-Off Date.

Mortgage Loan Documents: The documents listed in Exhibit A to the Mortgage Loan Sales and Servicing Agreement pertaining to any Mortgage Loan, including the related Mortgage Note and Mortgage.

Mortgage Loan File: The items pertaining to a particular Mortgage Loan referred to in Exhibit B to the Mortgage Loan Sales and Servicing Agreement including the Mortgage Loan Documents, and any additional documents required to be added to the Mortgage Loan File pursuant to the Mortgage Loan

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Sales and Servicing Agreement.

Mortgage Loan Schedule: The schedule of Mortgage Loans, to be annexed to the related Assignment and Conveyance on the Closing Date in electronic form as provided in the Mortgage Loan Sales and Servicing Agreement, such schedule setting forth the list of Mortgage Loans sold and assigned by Seller to Purchaser and the respective information required by the Mortgage Loans Sales and Servicing Agreement with respect to each Mortgage Loan, as may be supplemented or amended in accordance with the Mortgage Loans Sales and Servicing Agreement.

Mortgage Note: The original executed note evidencing the Mortgage Loan indebtedness of a Mortgagor.

Mortgaged Property: The Mortgagor's real property securing repayment of a related Mortgage Note, consisting of a fee simple interest in a single parcel of real property improved by a Residential Dwelling.

Mortgagor: 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 successor's in title to the Mortgaged Property, provided there may be more than one Mortgagor obligated under a Mortgage Loan.

Mortgage Loans Sales and Servicing Agreement: The Mortgage Loans Sales and Servicing Agreement dated as of October 17, 2007 by and among, Seller, Purchaser and Taylor, Bean & Whitaker Mortgage Corp., together with all exhibits and schedules thereto and all subsequent written amendments and supplements thereto.

Purchaser: Henley Holdings LLC

Qualified Substitute Mortgage Loan: A mortgage loan substituted for a Deleted Mortgage Loan pursuant to the terms of the Mortgage Loan Sales and Servicing Agreement.

Residential Dwelling: Any one of the following: (i) a detached one-family dwelling, (ii) a detached two- to four-family dwelling, (iii) a one-family dwelling unit in a condominium project generally acceptable to prudent investors in the secondary mortgage market, or (iv) a detached one-family dwelling in a planned unit development.

Seller: TBW Funding Company III LLC

*The parties hereto intend that this Financing Statement evidence a true sale of the Mortgage Loans from Seller to Purchaser, but if the transaction is recharacterized as a loan from the Purchaser to the Seller, this Financing Statement shall also perfect the Purchaser's security interest in the Mortgage Loans.*

*Additional information regarding the identification of the Mortgage Loans for purposes of this filing can be obtained at the principal offices of the Seller or Purchaser that are presently located at the above addresses.*

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