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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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

For the Quarterly Period Ended March 31, 2012

or

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File No. 001-34063

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**TREE.COM, INC.**

(Exact name of Registrant as specified in its charter)

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

**26-2414818**  
(I.R.S. Employer  
Identification No.)

**11115 Rushmore Drive, Charlotte, North Carolina 28277**  
(Address of principal executive offices)

**(704) 541-5351**  
(Registrant's telephone number, including area code)

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Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a  
smaller reporting company)

Smaller reporting company

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

As of May 8, 2012 there were 11,285,488 shares of the Registrant's common stock, par value \$.01 per share, outstanding, excluding treasury shares.



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## PART 1—FINANCIAL INFORMATION

## Item 1. Financial Statements

## TREE.COM, INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

	Three Months Ended March 31,	
	2012	2011
	(In thousands, except per share amounts)	
Revenue	\$ 13,235	\$ 13,919
Costs and expenses (exclusive of depreciation shown separately below)		
Cost of revenue	796	1,206
Selling and marketing expense	10,652	15,529
General and administrative expense	4,803	5,472
Product development	774	1,246
Litigation settlements and contingencies	222	4,749
Restructuring expense	(64)	94
Amortization of intangibles	107	307
Depreciation	1,224	1,059
Total costs and expenses	18,514	29,662
Operating loss	(5,279)	(15,743)
Other expense		
Interest expense	(121)	(79)
Total other expense, net	(121)	(79)
Loss before income taxes	(5,400)	(15,822)
Income tax benefit (provision)	2,131	(265)
Net loss from continuing operations	(3,269)	(16,087)
Income (loss) from operations of discontinued operations, net of tax	17,418	(23,408)
Net income (loss) attributable to common shareholders	\$ 14,149	\$ (39,495)
Weighted average common shares outstanding	11,173	10,882
Weighted average diluted shares outstanding	11,414	10,882
Net loss per share from continuing operations		
Basic	\$ (0.29)	\$ (1.48)
Diluted	\$ (0.29)	\$ (1.48)
Net income (loss) per share from discontinued operations		
Basic	\$ 1.56	\$ (2.15)
Diluted	\$ 1.53	\$ (2.15)
Net income (loss) per share attributable to common shareholders		
Basic	\$ 1.27	\$ (3.63)
Diluted	\$ 1.24	\$ (3.63)

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

## TREE.COM, INC. AND SUBSIDIARIES

## CONSOLIDATED BALANCE SHEETS

	March 31, 2012 (unaudited)	December 31, 2011
	(In thousands, except par value and share amounts)	
<b>ASSETS:</b>		
Cash and cash equivalents	\$ 58,953	\$ 45,541
Restricted cash and cash equivalents	14,852	12,451
Accounts receivable, net of allowance of \$87 and \$86, respectively	5,645	5,474
Prepaid and other current assets	1,204	1,060
Current assets of discontinued operations	175,620	232,425
Total current assets	256,274	296,951
Property and equipment, net	7,696	8,375
Goodwill	3,632	3,632
Intangible assets, net	11,082	11,189
Other non-current assets	231	246
Non-current assets of discontinued operations	11,011	10,947
Total assets	<u>\$ 289,926</u>	<u>\$ 331,340</u>
<b>LIABILITIES:</b>		
Accounts payable, trade	\$ 6,758	\$ 9,072
Deferred revenue	188	176
Deferred income taxes	4,335	4,335
Accrued expenses and other current liabilities	15,201	16,712
Current liabilities of discontinued operations	197,901	250,030
Total current liabilities	224,383	280,325
Income taxes payable	7	7
Other long-term liabilities	4,013	4,070
Deferred income taxes	510	435
Non-current liabilities of discontinued operations	908	1,032
Total liabilities	229,821	285,869
Commitments and contingencies (Note 9)		
<b>SHAREHOLDERS' EQUITY:</b>		
Preferred stock \$.01 par value; authorized 5,000,000 shares; none issued or outstanding	—	—
Common stock \$.01 par value; authorized 50,000,000 shares; issued 12,398,397 and 12,169,226 shares, respectively, and outstanding 11,275,136 and 11,045,965 shares, respectively	124	121
Additional paid-in capital	912,469	911,987
Accumulated deficit	(843,956)	(858,105)
Treasury stock 1,123,261 shares	(8,532)	(8,532)
Total shareholders' equity	60,105	45,471
Total liabilities and shareholders' equity	<u>\$ 289,926</u>	<u>\$ 331,340</u>

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

## TREE.COM, INC. AND SUBSIDIARIES

## CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY

(Unaudited)

	Common Stock				Accumulated Deficit	Treasury Stock	
	Total	Number of Shares	Amount	Additional Paid-in Capital (In thousands)		Number of Shares	Amount
<b>Balance as of December 31, 2011</b>	\$ 45,471	12,169	\$ 121	\$ 911,987	\$ (858,105)	1,123	\$ (8,532)
Comprehensive income:							
Net income for the three months ended March 31, 2012	14,149	—	—	—	14,149	—	—
Comprehensive income	14,149	—	—	—	—	—	—
Non-cash compensation	1,312	—	—	1,312	—	—	—
Issuance of common stock upon exercise of stock options and vesting of restricted stock units, net of withholding taxes	(827)	229	3	(830)	—	—	—
<b>Balance as of March 31, 2012</b>	<u>\$ 60,105</u>	<u>12,398</u>	<u>\$ 124</u>	<u>\$ 912,469</u>	<u>\$ (843,956)</u>	<u>1,123</u>	<u>\$ (8,532)</u>

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

TREE.COM, INC. AND SUBSIDIARIES  
CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

	Three Months Ended March 31,	
	2012	2011
(In thousands)		
<b>Cash flows from operating activities attributable to continuing operations:</b>		
Net income (loss)	\$ 14,149	\$ (39,495)
Less loss (income) from discontinued operations, net of tax	(17,418)	23,408
<b>Loss from continuing operations</b>	<b>(3,269)</b>	<b>(16,087)</b>
Adjustments to reconcile net loss from continuing operations to net cash used in operating activities attributable to continuing operations:		
Loss on disposal of fixed assets	60	—
Amortization of intangibles	107	307
Depreciation	1,224	1,059
Non-cash compensation expense	1,184	1,120
Deferred income taxes	76	249
Bad debt expense	(5)	5
Changes in current assets and liabilities:		
Accounts receivable	(166)	(2,592)
Prepaid and other current assets	(129)	(1,624)
Accounts payable and other current liabilities	(3,721)	6,791
Income taxes payable	(103)	(3)
Deferred revenue	12	(55)
Other, net	(57)	364
<b>Net cash used in operating activities attributable to continuing operations</b>	<b>(4,787)</b>	<b>(10,466)</b>
<b>Cash flows from investing activities attributable to continuing operations:</b>		
Capital expenditures	(606)	(2,267)
Other, net	(2,401)	(10)
<b>Net cash used in investing activities attributable to continuing operations</b>	<b>(3,007)</b>	<b>(2,277)</b>
<b>Cash flows from financing activities attributable to continuing operations:</b>		
Issuance of common stock, net of withholding taxes	(827)	25
<b>Net cash provided by (used in) financing activities attributable to continuing operations</b>	<b>(827)</b>	<b>25</b>
<b>Total cash used in continuing operations</b>	<b>(8,621)</b>	<b>(12,718)</b>
Net cash provided by operating activities attributable to discontinued operations	71,421	40,480
Net cash provided by (used in) investing activities attributable to discontinued operations	6,066	(8,910)
Net cash used in financing activities attributable to discontinued operations	(55,454)	(34,151)
<b>Total cash provided by (used in) discontinued operations</b>	<b>22,033</b>	<b>(2,581)</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>13,412</b>	<b>(15,299)</b>
Cash and cash equivalents at beginning of period	45,541	68,819
<b>Cash and cash equivalents at end of period</b>	<b>\$ 58,953</b>	<b>\$ 53,520</b>

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

**TREE.COM, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**NOTE 1—ORGANIZATION**

**Company Overview**

Tree.com, Inc. ("we", "Tree.com" or the "Company") is the parent of LendingTree, LLC, which owns several brands and businesses that provide information, tools, advice, products and services for critical transactions in consumers' lives. Our family of brands includes: LendingTree.com®, GetSmart.com®, DegreeTree.com®, LendingTreeAutos.com, DoneRight.com®, ServiceTree, InsuranceTree.com® and HealthTree.com. Together, these brands serve as an ally for consumers who are looking to comparison shop for loans and other services from multiple businesses and professionals who will compete for their business. We refer to the collection of these brands and businesses as our Exchanges business, which comprises our continuing operations, as detailed herein.

**Segment Reporting**

Through the quarter ended March 31, 2011, we operated in two reportable business segments: LendingTree Loans and Exchanges. The LendingTree Loans segment originates, processes, approves and funds various residential real estate loans through Home Loan Center, Inc. dba LendingTree Loans ("HLC"). The HLC and LendingTree Loans brand names are collectively referred to in this report as "LendingTree Loans." The Exchanges segment consists of online lead generation networks and call centers that connect consumers and service providers principally in the lending, higher education, automobile, home services and insurance marketplaces.

In connection with entering into an agreement in the second quarter of 2011 that provides for the sale of substantially all of the operating assets of our LendingTree Loans segment to Discover Bank, a wholly-owned subsidiary of Discover Financial Services, that is discussed below and in Note 6, management re-evaluated its reporting segments based on our continuing operations. We refer to Discover Financial Services and/or any of its affiliates, including Discover Bank, as "Discover." We have determined that our continuing operations are now one reportable segment, which represents the previous "Exchanges" segment. Prior period results have been reclassified to conform with discontinued operations presentation and the change in reportable segments.

We maintain operations solely in the United States.

**Discontinued Operations**

The businesses of RealEstate.com and RealEstate.com, REALTORS® (which together represent the former Real Estate segment) and LendingTree Loans are presented as discontinued operations in the accompanying consolidated balance sheets and consolidated statements of operations and cash flows for all periods presented. The notes accompanying these consolidated financial statements reflect our continuing operations and, unless otherwise noted, exclude information related to the discontinued operations.

*Real Estate*

On March 10, 2011, management made the decision and finalized a plan to close all of the field offices of the proprietary full-service real estate brokerage business known as RealEstate.com, REALTORS®. We exited all markets in which we previously operated by March 31, 2011. In September 2011, we sold the remaining assets of RealEstate.com, which consisted primarily of internet domain names and trademarks, for \$8.3 million and recognized a gain on sale of \$7.8 million.



**TREE.COM, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE 1—ORGANIZATION (Continued)**

*LendingTree Loans*

On May 12, 2011, we entered into an asset purchase agreement with Discover, as amended by an amendment to the asset purchase agreement dated as of February 7, 2012. The asset purchase agreement provides for the sale of substantially all of the operating assets of our LendingTree Loans business to Discover.

Under the terms of the asset purchase agreement as amended, Discover will pay approximately \$55.9 million in cash for the assets, subject to certain conditions. The transaction is subject to various closing conditions. The acquisition is expected to close by mid-year 2012. Subject to certain exceptions stated in the asset purchase agreement, we have agreed to operate the LendingTree Loans business in the ordinary course until the closing of the acquisition.

Discover generally will not assume liabilities of the LendingTree Loans business that arose before the closing date, except for certain liabilities directly related to assets Discover is acquiring. A portion of the initial purchase price payment will be held in escrow pending the discharge of certain liabilities that will remain with us.

Our stockholders approved the transaction on August 26, 2011.

The asset purchase agreement contains customary representations, warranties, covenants and indemnification obligations of the parties.

We and Discover have agreed to certain covenants under the asset purchase agreement. Our covenants include requirements to maintain personnel in our LendingTree Loans business, to maintain certain quality thresholds for our loan pipeline, to maintain warehouse line capacity and compliance with our warehouse lending agreement, and subject to certain exceptions, not to introduce new loan products without Discover's consent. If the requirements of these covenants are not met, Discover has the option to terminate the asset purchase agreement. As of May 15, 2012, we are in compliance with our covenants. Subject to certain exceptions, we have also agreed not to solicit or initiate discussion with third parties regarding other proposals to acquire the assets of the LendingTree Loans business or substantial equity interests in our company, and to certain restrictions on our ability to respond to or accept any such proposals.

Separate from the asset purchase agreement, we have also agreed to provide certain marketing-related services to Discover in connection with its mortgage origination business for approximately seventeen months following the closing of the transactions contemplated by the asset purchase agreement, or such earlier point as the agreed-upon services are satisfactorily completed. Discover has also agreed to be a participating lender in the LendingTree Network following the closing of the acquisition.

*Business Combinations*

On March 15, 2011, our wholly-owned subsidiary, HLC, completed its acquisition of certain assets of First Residential Mortgage Network, Inc. dba SurePoint Lending pursuant to an asset purchase agreement dated November 15, 2010. SurePoint, a LendingTree network lender for eleven years, was a full-service residential mortgage provider licensed in 45 states and employed over 500 people, including more than 300 licensed loan officers. HLC purchased certain specified assets and assumed certain liabilities of SurePoint related to its business of originating, refinancing, processing, underwriting,

**TREE.COM, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE 1—ORGANIZATION (Continued)**

funding and closing residential mortgage loans; providing title and escrow services; and providing other mortgage-related services. The acquired assets also include all of the equity interests of Real Estate Title Services, LLC. HLC paid \$8.0 million in cash upon the closing of the transaction, subject to certain adjustments as described in the asset purchase agreement, and \$0.2 million in cash for contingent consideration subsequent to the close. HLC used available cash to fund the acquisition.

This asset purchase was accounted for under the acquisition method of accounting. Accordingly, the purchase price was allocated to the acquired assets and liabilities based on their estimated fair values at the acquisition date. The purchase price was allocated as \$5.6 million to goodwill, \$0.7 million to intangible assets with useful lives of three months to five years, and \$1.7 million to equipment and other assets. The pro forma effect of this purchase was not material to our results of operations.

**Basis of Presentation**

The accompanying unaudited interim consolidated financial statements as of March 31, 2012 and 2011 and for the three months then ended have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and the rules and regulations of the U.S. Securities and Exchange Commission ("SEC"). Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for annual financial statements. In the opinion of management, the unaudited interim consolidated financial statements have been prepared on the same basis as the audited financial statements, and include all adjustments, consisting only of normal recurring adjustments, necessary for the fair presentation of our financial position for the periods presented. The results for the three months ended March 31, 2012 are not necessarily indicative of the results to be expected for the year ending December 31, 2012, or any other period. These financial statements and notes should be read in conjunction with the audited financial statements and notes thereto included in our annual report on Form 10-K for the year ended December 31, 2011.

**NOTE 2—SIGNIFICANT ACCOUNTING POLICIES**

**Accounting Estimates**

Management is required to make certain estimates and assumptions during the preparation of the consolidated financial statements in accordance with GAAP. These estimates and assumptions impact the reported amount of assets and liabilities and disclosures of contingent assets and liabilities as of the date of the consolidated financial statements. They also impact the reported amount of net earnings during any period. Actual results could differ from those estimates.

Significant estimates underlying the accompanying consolidated financial statements, including discontinued operations, include: valuation allowance for impaired loans held for sale; loan loss obligations; the fair value of loans held for sale and related derivatives; the recoverability of long-lived assets, goodwill and intangible assets; the determination of income taxes payable and deferred income taxes, including related valuation allowances; restructuring reserves; contingent consideration related to business combinations; various other allowances, reserves and accruals; and assumptions related to the determination of stock-based compensation.

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 2—SIGNIFICANT ACCOUNTING POLICIES (Continued)

**Reclassifications**

Certain prior period amounts have been reclassified to conform with the current presentation with no effect on net income (loss) or accumulated deficit. Specifically, certain costs within continuing operations totaling \$0.2 million for the three months ended March 31, 2011 were reclassified from general and administrative expense to litigation settlements and contingencies. Prior period results have also been reclassified to conform with discontinued operations presentation.

**Cash and Cash Equivalents**

Cash and cash equivalents include cash and short-term, highly liquid money market investments.

**Restricted Cash**

Restricted cash and cash equivalents consists of the following (in thousands):

	March 31, 2012	December 31, 2011
Cash in escrow for surety bonds	\$ 6,500	\$ 6,500
Cash in escrow for corporate purchasing card program	800	800
Minimum required balances for warehouse lines of credit	2,000	4,250
Other	5,552	901
Total restricted cash and cash equivalents	<u>\$ 14,852</u>	<u>\$ 12,451</u>

**Recent Accounting Pronouncements**

In May 2011, the FASB issued amendments to the fair value accounting guidance. The amendments clarify the application of the highest and best use, and valuation premise concepts, preclude the application of blockage factors in the valuation of all financial instruments and include criteria for applying the fair value measurement principles to portfolios of financial instruments. The amendments additionally prescribe enhanced financial statement disclosures for Level 3 fair value measurements. The new amendments were effective on January 1, 2012. The adoption of this guidance did not have a material impact on our consolidated financial statements. See Note 6 for further information.

In June 2011, the FASB issued new accounting guidance on the presentation of comprehensive income in financial statements. The new guidance requires entities to report components of comprehensive income in either a continuous statement of comprehensive income or two separate but consecutive statements. In December 2011, the FASB deferred certain provisions of this guidance pertaining to the presentation of reclassification adjustments. This new accounting guidance is effective for the three months ended March 31, 2012. The adoption of this guidance did not have a material impact on our consolidated financial statements.

In September 2011, the FASB issued the updated accounting standard on testing goodwill for impairment. The update simplifies how an entity tests goodwill for impairment. The amendments allow both public and nonpublic entities an option to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Under that option, an entity

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 2—SIGNIFICANT ACCOUNTING POLICIES (Continued)

no longer would be required to calculate the fair value of a reporting unit unless the entity determines, based on that qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The amendments will be effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of this guidance did not have a material impact on our consolidated financial statements.

In December 2011, the FASB issued new accounting guidance that requires additional disclosures on financial instruments and derivative instruments that are either offset in accordance with existing accounting guidance or are subject to an enforceable master netting arrangement or similar agreement. The new requirements do not change the accounting guidance on netting, but rather enhance the disclosures to more clearly show the impact of netting arrangements on a company's financial position. This new accounting guidance will be effective, on a retrospective basis for all comparative periods presented, beginning on January 1, 2013. The adoption of this guidance is not expected to have a material impact on our consolidated financial statements.

## NOTE 3—GOODWILL AND INTANGIBLE ASSETS

The balance of goodwill and intangible assets, net is as follows (in thousands):

	March 31, 2012	December 31, 2011
Goodwill	\$ 3,632	\$ 3,632
Intangible assets with indefinite lives	\$ 10,142	\$ 10,142
Intangible assets with definite lives, net	940	1,047
Total intangible assets, net	<u>\$ 11,082</u>	<u>\$ 11,189</u>

Intangible assets with indefinite lives relate to our trademarks.

At March 31, 2012, intangible assets with definite lives relate to the following (in thousands):

	Cost	Accumulated Amortization	Net	Weighted Average Amortization Life (Years)
Purchase agreements	\$ 50,411	\$ (50,305)	\$ 106	5.0
Technology	25,194	(25,070)	124	3.0
Customer lists	6,682	(6,060)	622	4.2
Other	1,516	(1,428)	88	2.5
Total	<u>\$ 83,803</u>	<u>\$ (82,863)</u>	<u>\$ 940</u>	

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 3—GOODWILL AND INTANGIBLE ASSETS (Continued)

At December 31, 2011, intangible assets with definite lives relate to the following (in thousands):

	Cost	Accumulated Amortization	Net	Weighted Average Amortization Life (Years)
Purchase agreements	\$ 50,411	\$ (50,293)	\$ 118	5.0
Technology	25,194	(25,034)	160	3.0
Customer lists	6,682	(6,045)	637	4.2
Other	1,516	(1,384)	132	2.5
Total	<u>\$ 83,803</u>	<u>\$ (82,756)</u>	<u>\$ 1,047</u>	

Amortization of intangible assets with definite lives is computed on a straight-line basis and, based on March 31, 2012 balances, such amortization for the next five years is estimated to be as follows (in thousands):

	Amount
Nine months ending December 31, 2012	\$ 251
Year ending December 31, 2013	147
Year ending December 31, 2014	86
Year ending December 31, 2015	60
Year ending December 31, 2016	60
Thereafter	336
Total	<u>\$ 940</u>

## NOTE 4—PROPERTY AND EQUIPMENT

The balance of property and equipment, net is as follows (in thousands):

	March 31, 2012	December 31, 2011
Computer equipment and capitalized software	\$ 25,170	\$ 24,940
Leasehold improvements	2,055	2,042
Furniture and other equipment	1,482	1,450
Projects in progress	921	826
	<u>29,628</u>	<u>29,258</u>
Less: accumulated depreciation and amortization	(21,932)	(20,883)
Total property and equipment, net	<u>\$ 7,696</u>	<u>\$ 8,375</u>

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 5—ACCRUED EXPENSES AND OTHER CURRENT LIABILITIES

Accrued expenses and other current liabilities consist of the following (in thousands):

	March 31, 2012	December 31, 2011
Litigation accruals	\$ 2,218	\$ 3,077
Accrued advertising expense	4,312	2,659
Accrued compensation and benefits	1,070	624
Accrued professional fees	1,179	635
Accrued restructuring costs	306	439
Customer deposits and escrows	2,199	2,211
Deferred rent	202	186
Other	3,715	6,881
Total accrued expenses and other current liabilities	<u>\$ 15,201</u>	<u>\$ 16,712</u>

The other category above includes an earnout payable related to an acquisition, franchise taxes, self-insured health claims and other miscellaneous accrued expenses.

An additional \$0.8 million and \$0.9 million of accrued restructuring liability is classified in other long-term liabilities at March 31, 2012 and December 31, 2011, respectively.

## NOTE 6—DISCONTINUED OPERATIONS

On March 10, 2011, management made the decision and finalized a plan to close all of the field offices of the proprietary full-service real estate brokerage business known as RealEstate.com, REALTORS®. We exited all markets by March 31, 2011. In September 2011, we sold the remaining assets of RealEstate.com, which consisted primarily of internet domain names and trademarks. Accordingly, these Real Estate businesses are presented as discontinued operations in the accompanying consolidated balance sheets and consolidated statements of operations and cash flows for all periods presented.

On May 12, 2011, we entered into an asset purchase agreement with Discover, which provides for the sale of substantially all of the operating assets of our LendingTree Loans business to Discover. On February 7, 2012, we entered into an amendment to the asset purchase agreement. We have evaluated the facts and circumstances of the pending transaction and the applicable accounting guidance for discontinued operations, and have concluded that the LendingTree Loans business should be reflected as discontinued operations in the accompanying consolidated balance sheets and consolidated statements of operations and cash flows for all periods presented.

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

The revenue and net loss for the Real Estate businesses that are reported as discontinued operations for the three months ended March 31, 2012 and 2011 were as follows (in thousands):

	Three Months Ended March 31,	
	2012	2011
Revenue	\$ 41	\$ 1,997
Loss before income taxes	\$ (74)	\$ (16,106)
Income tax benefit (expense)	—	—
Net loss	\$ (74)	\$ (16,106)

Net loss for the three months ended March 31, 2011 includes non-cash goodwill disposal charges totaling \$8.0 million, non-cash trademark impairment charges of \$4.1 million and restructuring expense totaling \$1.9 million.

The revenue and net income (loss) for LendingTree Loans that are reported as discontinued operations for the three months ended March 31, 2012 and 2011 were as follows (in thousands):

	Three Months Ended March 31,	
	2012	2011
Revenue	\$ 50,866	\$ 19,250
Income (loss) before income taxes	\$ 19,722	\$ (7,302)
Income tax expense	(2,230)	—
Net income (loss)	\$ 17,492	\$ (7,302)

The assets and liabilities of Real Estate that are reported as discontinued operations as of March 31, 2012 and December 31, 2011 were as follows (in thousands):

	March 31, 2012	December 31, 2011
Current assets	\$ 12	\$ 33
Current liabilities	490	702
Non-current liabilities	27	54
Net liabilities	\$ (505)	\$ (723)

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

The assets and liabilities of LendingTree Loans that are reported as discontinued operations as of March 31, 2012 and December 31, 2011 were as follows (in thousands):

	March 31, 2012	December 31, 2011
Loans held for sale	\$ 157,880	\$ 217,467
Other current assets	17,728	14,925
Current assets	175,608	232,392
Property and equipment	4,246	4,181
Goodwill	5,579	5,579
Other non-current assets	1,186	1,187
Non-current assets	11,011	10,947
Warehouse lines of credit	142,205	197,659
Other current liabilities	55,206	51,669
Current liabilities	197,411	249,328
Non-current liabilities	881	978
Net liabilities	<u>\$ (11,673)</u>	<u>\$ (6,967)</u>

**Significant Assets and Liabilities of LendingTree Loans**

Upon closing of the sale of substantially all of the operating assets of our LendingTree Loans business to Discover, LendingTree Loans will cease to originate consumer loans and will no longer have additional borrowings available under the warehouse lines of credit it currently maintains. The remaining operations will be wound down following the closing of the transaction. These wind-down activities will include, among other things, selling the balance of loans held for sale to investors, which historically has occurred within thirty days of funding, and paying off and then terminating the warehouse lines of credit. Additionally, liability for losses on previously sold loans will remain with LendingTree Loans. Below is a discussion of these significant items.

***Loans Held for Sale***

LendingTree Loans originates all of its residential real estate loans with the intent to sell them in the secondary market. Loans held for sale consist primarily of residential first mortgage loans that are secured by residential real estate throughout the United States.



## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

The following table represents the loans held for sale by type of loan as of March 31, 2012 and December 31, 2011 (\$ amounts in thousands):

	March 31, 2012		December 31, 2011	
	Amount	%	Amount	%
Conforming	100,318	64%	\$ 171,375	79%
FHA and Alt-A	55,242	35%	40,433	18%
Jumbo	2,320	1%	5,659	3%
<b>Total</b>	<u>157,880</u>	<u>100%</u>	<u>\$ 217,467</u>	<u>100%</u>

The following presents the difference between the aggregate principal balance of loans on nonaccrual status for which the fair value option has been elected and for loans measured at lower of cost or market valuation as of March 31, 2012 and December 31, 2011 (in thousands):

	As of March 31, 2012		
	Loans on Nonaccrual— Measured at Fair Value	Loans on Nonaccrual— Measured at LOCOM	Total Loans on Nonaccrual
Aggregate unpaid principal balance	\$ 641	\$ 660	\$ 1,301
Difference between fair value and aggregate unpaid principal balance	(229)	(198)	(427)
Loans on nonaccrual	<u>\$ 412</u>	<u>\$ 462</u>	<u>\$ 874</u>

	As of December 31, 2011		
	Loans on Nonaccrual— Measured at Fair Value	Loans on Nonaccrual— Measured at LOCOM	Total Loans on Nonaccrual
Aggregate unpaid principal balance	\$ 539	\$ —	\$ 539
Difference between fair value and aggregate unpaid principal balance	(244)	—	(244)
Loans on nonaccrual	<u>\$ 295</u>	<u>\$ —</u>	<u>\$ 295</u>

Included within the loans on nonaccrual status are repurchased loans with a net book value of \$0.5 million at March 31, 2012 and \$-0- at December 31, 2011. During the three months ended March 31, 2012, LendingTree Loans repurchased two loans with an unpaid principal balance of \$0.7 million. During the three months ended March 31, 2011, LendingTree Loans did not repurchase any loans.

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

*Fair Value Measurements*

We categorize our assets and liabilities measured at fair value into a fair value hierarchy that prioritizes the assumptions used in pricing the asset or liability into the following three levels:

- Level 1: Observable inputs such as quoted prices for identical assets and liabilities in active markets obtained from independent sources.
- Level 2: Other inputs that are observable directly or indirectly, such as quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and inputs that are derived principally from or corroborated by observable market data.
- Level 3: Unobservable inputs for which there is little or no market data and which require us to develop our own assumptions, based on the best information available in the circumstances, about the assumptions market participants would use in pricing the asset or liability.

A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Transfers in and out of Level 1, 2 or 3 are recorded at fair value at the beginning of the reporting period.

Following is a description of valuation methodologies used for instruments measured at fair value as well as the general classification of such instruments pursuant to the fair value hierarchy.

LendingTree Loans enters into commitments with consumers to originate loans at a specified interest rate (interest rate lock commitments—"IRLCs"). We report IRLCs as derivative instruments at fair value with changes in fair value being recorded in discontinued operations. IRLCs for loans to be sold to investors using a mandatory or assignment of trade ("AOT") method are hedged using "to be announced mortgage-backed securities" ("TBA MBS") and are valued using quantitative risk models. The IRLCs derive their base value from an underlying loan type with similar characteristics using the TBA MBS market, which is actively quoted and easily validated through external sources. The most significant data inputs used in this valuation include, but are not limited to, loan type, underlying loan amount, note rate, loan program, and expected sale date of the loan. IRLCs for loans sold to investors on a best-efforts basis are hedged using best-efforts forward delivery commitments and were valued on an individual loan basis using a proprietary database program prior to January 1, 2012. These valuations were based on investor pricing tables stratified by product, note rate and term. The valuations were adjusted at the loan level to consider the servicing release premium and loan pricing adjustments specific to each loan. Effective January 1, 2012, LendingTree Loans began valuing IRLCs for loans sold to investors on a best-efforts basis using quantitative risk models on a loan level basis. The decision to modify the valuation calculation for IRLCs for loans sold on a best-efforts basis evolved from a desire to achieve principally two goals: 1) to include this portion of the IRLCs into the main operating system we use for fair value (known as QRM) allowing us to improve our estimate of loan funding probability and 2) to include elements of the all-in fair value that we could not previously calculate in the previous models. The most significant data inputs used in the valuation of these IRLCs include, but are not limited to, investor pricing tables stratified by product, note rate and term, adjusted for current market conditions. These valuations are adjusted at the loan level to consider the servicing release premium and loan pricing adjustments specific to each loan. LendingTree Loans applies an anticipated loan funding probability based on its own experience to value IRLCs, which results in the classification of these derivatives as Level 3. The value of the underlying loans and the

**TREE.COM, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE 6—DISCONTINUED OPERATIONS (Continued)**

anticipated loan funding probability are the most significant assumptions affecting the valuation of IRLCs. A significant change in the unobservable inputs may result in a significant change in the ending fair value measurement.

Loans held for sale measured at fair value and sold to investors using a mandatory or AOT method are also hedged using TBA MBS and valued using quantitative risk models. The valuation is based on the loan amount, note rate, loan program and expected sale date of the loan. Loans held for sale measured at fair value and sold to investors on a best-efforts basis are hedged using best-efforts forward delivery commitments and were valued using a proprietary database program prior to January 1, 2012. The best-efforts valuations prior to that date were based on daily investor pricing tables stratified by product, note rate and term. These valuations were adjusted at the loan level to consider the servicing release premium and loan pricing adjustments specific to each loan. Effective January 1, 2012, LendingTree Loans began valuing the loans held for sale and sold to investors on a best-efforts basis using quantitative risk models. The most significant data inputs used in the valuation of these loans include investor pricing tables stratified by product, note rate and term, adjusted for current market conditions. Loans held for sale, excluding impaired loans, are classified as Level 2. Loans held for sale measured at fair value that become impaired are transferred from Level 2 to Level 3, as the estimate of fair value is based on LendingTree Loans' experience considering lien position and current status of the loan. A significant change in the unobservable inputs may result in a significant change in the ending fair value measurement. LendingTree Loans recognizes interest income separately from other changes in fair value.

Under LendingTree Loans' risk management policy, LendingTree Loans economically hedges the changes in fair value of IRLCs and loans held for sale caused by changes in interest rates by using TBA MBS and entering into best-efforts forward delivery commitments. These hedging instruments are recorded at fair value with changes in fair value recorded in current earnings as a component of revenue from the origination and sale of loans. TBA MBS used to hedge both IRLCs and loans are valued using quantitative risk models based primarily on inputs related to characteristics of the MBS stratified by product, coupon and settlement date. These derivatives are classified as Level 2. Prior to January 1, 2012, best-efforts forward delivery commitments were valued using a proprietary database program using investor pricing tables considering the current base loan price. Effective January 1, 2012, best-efforts forward delivery commitments are valued using quantitative risk models based on investor pricing tables stratified by product, note rate and term, adjusted for current market conditions. An anticipated loan funding probability is applied to value best-efforts commitments hedging IRLCs, which results in the classification of these contracts as Level 3. The current base loan price and the anticipated loan funding probability are the most significant assumptions affecting the value of the best-efforts commitments. A significant change in the unobservable inputs may result in a significant change in the ending fair value measurement. The best-efforts forward delivery commitments hedging loans held for sale are classified as Level 2, so such contracts are transferred from Level 3 to Level 2 at the time the underlying loan is originated. For the purposes of the tables below, we refer to TBA MBS and best-efforts forward delivery commitments collectively as "Forward Delivery Contracts".

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

## Assets and liabilities measured at fair value on a recurring basis

The following presents our assets and liabilities that are measured at fair value on a recurring basis at March 31, 2012 and December 31, 2011 (in thousands):

	As of March 31, 2012			Total Fair Value Measurements
	Recurring Fair Value Measurements Using			
	Quoted Market Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Loans held for sale	\$ —	\$ 157,006	\$ 412	\$ 157,418
IRLCs	—	—	9,849	9,849
Forward delivery contracts	—	231	132	363
Total	\$ —	\$ 157,237	\$ 10,393	\$ 167,630

	As of December 31, 2011			Total Fair Value Measurements
	Recurring Fair Value Measurements Using			
	Quoted Market Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Loans held for sale	\$ —	\$ 217,172	\$ 295	\$ 217,467
IRLCs	—	—	9,122	9,122
Forward delivery contracts	—	(4,107)	19	(4,088)
Total	\$ —	\$ 213,065	\$ 9,436	\$ 222,501

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

The following presents the changes in our assets and liabilities that are measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the three months ended March 31, 2012 and 2011 (in thousands):

	March 31, 2012		
	Interest Rate Lock Commitments	Forward Delivery Contracts	Loans Held for Sale
Balance at January 1, 2012	\$ 9,122	\$ 19	\$ 295
Transfers into Level 3	—	—	229
Transfers out of Level 3	—	(516)	—
Total net gains (losses) included in earnings (realized and unrealized)	42,387	629	18
Purchases, sales, and settlements			
Purchases	—	—	—
Sales	—	—	—
Settlements	(2,634)	—	(130)
Transfers of IRLCs to closed loans	(39,026)	—	—
Balance at March 31, 2012	\$ 9,849	\$ 132	\$ 412

	March 31, 2011		
	Interest Rate Lock Commitments	Forward Delivery Contracts	Loans Held for Sale
Balance at January 1, 2011	\$ 5,986	\$ 3	\$ 884
Transfers into Level 3	—	—	335
Transfers out of Level 3	—	(28)	—
Total net gains (losses) included in earnings (realized and unrealized)	15,940	195	(32)
Purchases, sales, and settlements			
Purchases	970	(58)	—
Sales	—	—	(220)
Settlements	(3,441)	—	(5)
Transfers of IRLCs to closed loans	(13,827)	—	—
Balance at March 31, 2011	\$ 5,628	\$ 112	\$ 962

**TREE.COM, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE 6—DISCONTINUED OPERATIONS (Continued)**

The following presents the gains (losses) included in earnings for the three months ended March 31, 2012 and 2011 relating to our assets and liabilities that are measured at fair value on a recurring basis using significant unobservable inputs (Level 3) (in thousands):

	Three Months Ended March 31, 2012			Three Months Ended March 31, 2011		
	Interest Rate Lock Commitments	Forward Delivery Contracts	Loans Held for Sale	Interest Rate Lock Commitments	Forward Delivery Contracts	Loans Held for Sale
Total net gains (losses) included in earnings, which are included in discontinued operations	\$ 42,387	\$ 629	\$ 18	\$ 15,940	\$ 195	\$ (32)
Change in unrealized gains (losses) relating to assets and liabilities still held at March 31, 2012 and 2011, which are included in discontinued operations	\$ 9,849	\$ 132	\$ (23)	\$ 4,832	\$ 129	\$ (99)

The following table summarizes our derivative instruments not designated as hedging instruments as of March 31, 2012 and December 31, 2011 (in thousands):

	Balance Sheet Location	March 31, 2011	December 31, 2011
		Fair Value	Fair Value
Interest Rate Lock Commitments	Current assets of discontinued operations	\$ 10,007	\$ 9,282
Forward Delivery Contracts	Current assets of discontinued operations	1,220	480
Interest Rate Lock Commitments	Current liabilities of discontinued operations	(158)	(160)
Forward Delivery Contracts	Current liabilities of discontinued operations	(857)	(4,568)
<b>Total Derivatives</b>		<b>\$ 10,212</b>	<b>\$ 5,034</b>

The gain (loss) recognized in the consolidated statements of operations for derivatives for the three months ended March 31, 2012 and 2011 was as follows (in thousands):

	Location of Gain (Loss) Recognized in Income on Derivative	Three Months Ended March 31, 2012	Three Months Ended March 31, 2011
Interest Rate Lock Commitments	Discontinued operations	\$ 42,387	\$ 15,940
Forward Delivery Contracts	Discontinued operations	4,561	(904)
<b>Total</b>		<b>\$ 46,948</b>	<b>\$ 15,036</b>

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

## Assets and liabilities under the fair value option

LendingTree Loans has elected to account for loans held for sale originated on or after January 1, 2008 at fair value. Electing the fair value option allows a better offset of the changes in fair values of the loans and the forward delivery contracts used to economically hedge them without the burden of complying with the requirements for hedge accounting.

LendingTree Loans did not elect the fair value option on loans held for sale originated prior to January 1, 2008 and on loans that were repurchased from investors on or subsequent to that date. As of March 31, 2012 and December 31, 2011, 2 and -0- such loans, respectively, both of which were impaired, were included in loans held for sale and were carried at the lower of cost or market ("LOCOM") value assessed on an individual loan basis. The market value (or fair value) of these impaired loans at March 31, 2012 and December 31, 2011, measured on a non-recurring basis using significant unobservable inputs (Level 3), was \$0.5 million and \$-0-, respectively. This fair value measurement is management's best estimate of the market value of such loans and considers the lien position and loan status.

The following presents the difference between the aggregate principal balance of loans held for sale for which the fair value option has been elected and for loans measured at LOCOM as of March 31, 2012 and December 31, 2011 (in thousands):

	As of March 31, 2012		
	Loans Held for Sale— Measured at Fair Value	Loans Held for Sale— Measured at LOCOM	Total Loans Held For Sale
Aggregate unpaid principal balance	\$ 151,743	\$ 660	\$ 152,403
Difference between fair value and aggregate unpaid principal balance	5,675	—	5,675
Lower of cost or market valuation allowance	—	(198)	(198)
Loans held for sale	<u>\$ 157,418</u>	<u>\$ 462</u>	<u>\$ 157,880</u>

	As of December 31, 2011		
	Loans Held for Sale— Measured at Fair Value	Loans Held for Sale— Measured at LOCOM	Total Loans Held For Sale
Aggregate unpaid principal balance	\$ 208,918	\$ —	\$ 208,918
Difference between fair value and aggregate unpaid principal balance	8,549	—	8,549
Loans held for sale	<u>\$ 217,467</u>	<u>\$ —</u>	<u>\$ 217,467</u>

During the three months ended March 31, 2012 and 2011, the change in fair value of loans held for sale for which the fair value option was elected was a gain of \$0.4 million and a loss of \$1.6 million, respectively, and is included in discontinued operations in the accompanying consolidated statements of operations.

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

## Significant unobservable inputs for assets and liabilities measured at fair value on a recurring basis and non-recurring basis

The table below presents quantitative information about the significant unobservable inputs for assets and liabilities measured at fair value on a recurring and non-recurring basis as of March 31, 2012 (dollars in thousands):

Quantitative Information about Level 3 Fair Value Measurements				
	Fair Value as of March 31, 2012	Valuation Technique	Significant Unobservable Input	Range (Weighted Average)
Impaired loans—fair value option elected	\$ 412	Estimated Investor Bid	NA	NA
Impaired loans—fair value option not elected	462	Estimated Investor Bid	NA	NA
IRLCs	9,849	Quantitative Risk Model	Anticipated Loan Funding Probability	5.64% – 98.2% (60.6%)
Forward delivery contracts	132	Quantitative Risk Model	Anticipated Loan Funding Probability	5.64% – 98.2% (60.6%)

**Loan Loss Obligations**

LendingTree Loans sells loans it originates to investors on a servicing-released basis so the risk of loss or default by the borrower is generally transferred to the investor. However, LendingTree Loans is required by these investors to make certain representations and warranties relating to credit information, loan documentation and collateral. These representations and warranties may extend through the contractual life of the loan. Subsequent to the sale, if underwriting deficiencies, borrower fraud or documentation defects are discovered in individual loans, LendingTree Loans may be obligated to repurchase the respective loan or indemnify the investors for any losses from borrower defaults if such deficiency or defect cannot be cured within the specified period following discovery.

In the case of early loan payoffs and early defaults on certain loans, LendingTree Loans may be required to repay all or a portion of the premium initially paid by the investor. The estimated obligation associated with early loan payoffs and early defaults is calculated based on historical loss experience by type of loan.

The obligation for losses related to the representations and warranties and other provisions discussed above is initially recorded at its estimated fair value, which includes a projection of expected future losses as well as a market-based premium. Because LendingTree Loans does not service the loans it sells, it does not maintain nor have access to the current balances and loan performance data with respect to the individual loans previously sold to investors. Accordingly, LendingTree Loans is unable to determine, with precision, its maximum exposure for breaches of the representations and



## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

warranties it makes to the investors that purchase such loans. However, LendingTree Loans utilizes the original loan balance (before it was sold to an investor), historical and projected loss frequency and loss severity ratios by loan type as well as analyses of losses in process to estimate its exposure to losses on loans previously sold. LendingTree Loans maintains a liability related to this exposure based, in part, on historical and projected loss frequency and loss severity using its loan loss history (adjusted for recent trends in loan loss experience), the original principal amount of the loans previously sold, the years the loans were sold and loan types. Accordingly, subsequent adjustments to the obligation, if any, are not made based on changes in the fair value of the obligation, which might include an estimated change in losses that may be expected in the future, but are made once further losses are determined to be both probable and estimable. As such, given current general industry trends in mortgage loans as well as housing prices, market expectations around losses related to LendingTree Loans' obligations could vary significantly from the obligation recorded as of the balance sheet date or the range estimated below. In estimating its exposure to loan losses, LendingTree Loans segments its loan sales into four segments based on the extent of the documentation provided by the borrower to substantiate income and/or assets (full or limited documentation) and the lien position of the mortgage in the underlying property (first or second position). Each of these segments has a different loss experience, with full documentation, first lien position loans generally having the lowest loss ratios, and limited documentation, second lien position loans generally having the highest loss ratios.

Tree.com has guaranteed certain loans sold to three investors in the event that LendingTree Loans is unable to satisfy its repurchase and warranty obligations related to such loans. The original principal balance of the loans sold to two of these investors is approximately \$2.4 billion and \$1.5 billion as of March 31, 2012 and December 31, 2011, respectively. The unpaid principal balance of the loans sold to the third investor is approximately \$62.0 million and \$32.4 million as of March 31, 2012 and December 31, 2011, respectively.

The following table represents the loans sold for the periods shown and the aggregate loan losses through March 31, 2012:

Period of Loan Sales	As of March 31, 2012				
	Number of loans sold	Original principal balance (in billions)	Number of loans with losses	Original principal balance of loans with losses (in millions)	Amount of aggregate losses (in millions)
2012	5,000	\$ 1.0	—	\$ —	\$ —
2011	12,500	2.7	1	0.3	—
2010	12,400	2.8	4	1.1	0.1
2009	12,800	2.8	4	0.9	0.1
2008	11,000	2.2	31	6.6	1.7
2007	36,300	6.1	158	21.9	7.9
2006	55,000	7.9	205	23.9	13.3
2005 and prior years	86,700	13.0	88	12.1	5.0
<b>Total</b>	<b>231,700</b>	<b>\$ 38.5</b>	<b>491</b>	<b>\$ 66.8</b>	<b>\$ 28.1</b>

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

The pipeline of 340 requests for loan repurchases and indemnifications was considered in determining the appropriate reserve amount. The status of these loans varied from an initial review stage, which may result in a rescission of the request, to in-process, where the probability of incurring a loss is high, to indemnification, whereby LendingTree Loans has agreed to reimburse the purchaser of that loan if and when losses are incurred. The indemnification obligation may have a specific term, thereby limiting the exposure to LendingTree Loans. The original principal amount of these loans is approximately \$65.2 million, comprised of approximately 67% full documentation first liens, 2% full documentation second liens, 28% limited documentation first liens, and 4% limited documentation second liens.

In the fourth quarter of 2009, LendingTree Loans entered into settlement negotiations with two buyers of previously purchased limited documentation loans. The settlement with one buyer was completed in December 2009 and included a payment of \$1.9 million related to all second lien loans sold to this buyer, including both full and limited documentation. The settlement was included as a charge-off to the reserve in 2009. Negotiations with the second buyer were completed in January 2010. This settlement of \$4.5 million, which was paid in four equal quarterly installments in 2010, relates to all future losses on limited documentation second lien loans sold to this buyer. LendingTree Loans was also required to pay an additional amount of up to \$0.3 million in conjunction with this settlement since it did not sell a certain volume of loans to this buyer in 2010. This amount is included in the total settlement amount and was included as a charge-off to the reserve in 2010. These settlement amounts were not determined on an individual loan basis and are, therefore, not included in the loss amounts disclosed above for the years such loans were sold.

In December 2011, LendingTree Loans agreed to a \$1.2 million settlement related to specific loans, and such losses were charged to the reserve in 2011 and are included in the table above. The \$0.3 million settlement amount discussed above and this \$1.2 million settlement were recorded as liabilities separate from the loss reserve at December 31, 2011, and were paid in January 2012.

Based on historical experience, it is anticipated that LendingTree Loans will continue to receive repurchase requests and incur losses on loans sold in prior years. However, the two global settlements discussed above will eliminate future repurchase requests from those buyers for the loan types included in those settlements. As of March 31, 2012, LendingTree Loans estimated the range of remaining possible losses due to breach of representations and warranties based on the methodology described above as \$30 million to \$40 million. We believe that we have adequately reserved for these losses.

The activity related to loss reserves on previously sold loans for the three months ended March 31, 2012 and 2011, is as follows (in thousands):

	<u>March 31,</u>	
	<u>2012</u>	<u>2011</u>
Balance, beginning of period	\$ 31,512	\$ 16,984
Provisions	2,466	3,250
Charge-offs to reserves	(475)	(196)
Balance, end of period	<u>\$ 33,503</u>	<u>\$ 20,038</u>

**TREE.COM, INC. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****NOTE 6—DISCONTINUED OPERATIONS (Continued)**

The liability for losses on previously sold loans is presented as current liabilities of discontinued operations in the accompanying consolidated balance sheet as of March 31, 2012 and December 31, 2011.

Tree.com will continue to be liable for indemnification obligations, repurchase obligations and premium repayment obligations following the anticipated sale of substantially all of the operating assets of the LendingTree Loans business to Discover. A portion of the initial purchase price to be paid by Discover will be held in escrow pending resolution of certain of these contingent liabilities. We plan to negotiate with secondary market purchasers to settle any then-existing and future contingent liabilities, but we may not be able to do so on acceptable terms, or at all.

***Warehouse Lines of Credit***

Borrowings on warehouse lines of credit were \$142.2 million and \$197.7 million at March 31, 2012 and December 31, 2011, respectively.

As of March 31, 2012, LendingTree Loans had two committed lines of credit and one uncommitted line of credit totaling \$325.0 million of borrowing capacity. Borrowings under these lines of credit are used to fund, and are secured by, consumer residential loans that are held for sale. Loans under these lines of credit are repaid using proceeds from the sales of loans by LendingTree Loans.

The \$125.0 million first line was scheduled to expire on the earliest of (i) forty-five days after the closing date of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover or (ii) April 25, 2012, but was extended to the earliest of (i) forty-five days after the closing date of such sale or (ii) October 25, 2012. This line is also guaranteed by Tree.com, LendingTree, LLC and LendingTree Holdings Corp. The interest rate under this first line is the 30-day adjusted LIBOR or 2.0% (whichever is greater) plus 1.5% to 1.75% for loans being sold to the lender and 30-day adjusted LIBOR or 2.0% (whichever is greater) plus 1.5% for loans not being sold to the lender.

The \$100.0 million second line is scheduled to expire on the earliest of (i) forty-five days after the closing date of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover or (ii) August 20, 2012. This line is guaranteed by Tree.com and LendingTree, LLC. The interest rate under this line is 30-day LIBOR plus 3.25% (LIBOR may be adjusted upward for any increase in the reserve requirement of the lender as further described in the master repurchase agreement).

The \$100.0 million third line is scheduled to expire on the earliest of (i) forty-five days after the closing date of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover or (ii) January 4, 2013. This line is guaranteed by Tree.com, LendingTree, LLC and LendingTree Holdings Corp. The interest rate under this line is the overnight interest rate incurred by the lender for borrowing funds plus 3.25% to 3.75% for most loans.

Under the terms of these lines, LendingTree Loans is required to maintain various financial and other covenants, and is restricted from paying dividends under the terms of the first two lines. These financial covenants include, but are not limited to, maintaining (i) for the first two lines, minimum tangible net worth of \$25.0 million, and for the third line, minimum adjusted net worth equaling the sum of \$20.0 million plus 50% of the positive quarterly net income for the three months prior to any date of determination, (ii) minimum liquidity, (iii) a minimum current ratio, (iv) a maximum ratio of

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 6—DISCONTINUED OPERATIONS (Continued)

total liabilities to net worth, (v) a minimum unrestricted cash amount, (vi) pre-tax net income requirements, (vii) for the first two lines, a maximum warehouse capacity ratio and (viii) for the third line, a minimum of one additional warehouse line. LendingTree Loans was in compliance with all covenants as of March 31, 2012, except for the requirement to provide audited financial statements to each of our lenders within 90 days after the end of the fiscal year. We have obtained a waiver for this violation.

The LendingTree Loans business is highly dependent on the availability of these lines. Although we believe that our existing lines are adequate for our current operations, reductions in our available credit, or the inability to extend, renew or replace these lines before completion of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover, could have a material adverse effect on our business, financial condition, results of operations and cash flows. In such instance, management has determined that it could continue to operate the LendingTree Loans business at a reduced capacity as long as one of the lines remains available.

## NOTE 7—EARNINGS PER SHARE AND STOCK-BASED COMPENSATION

The following table sets forth the computation of basic and diluted earnings per share:

	Three Months Ended March 31,			
	2012		2011	
	Basic	Diluted	Basic	Diluted
	(In thousands, except per share data)			
<b>Numerator:</b>				
Loss from continuing operations	\$ (3,269)	\$ (3,269)	\$ (16,087)	\$ (16,087)
Income (loss) from discontinued operations, net of tax	17,418	17,418	(23,408)	(23,408)
Net income (loss) attributable to common shareholders	<u>\$ 14,149</u>	<u>\$ 14,149</u>	<u>\$ (39,495)</u>	<u>\$ 39,495</u>
<b>Denominator:</b>				
Weighted average common shares	<u>11,173</u>	<u>11,414</u>	<u>10,882</u>	<u>10,882</u>
<b>Income (loss) per Share:</b>				
Loss from continuing operations	\$ (0.29)	\$ (0.29)	\$ (1.48)	\$ (1.48)
Income (loss) from discontinued operations, net of tax	1.56	1.53	(2.15)	(2.15)
Net income (loss) per common share	<u>\$ 1.27</u>	<u>\$ 1.24</u>	<u>\$ (3.63)</u>	<u>\$ (3.63)</u>

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 7—EARNINGS PER SHARE AND STOCK-BASED COMPENSATION (Continued)

Non-cash compensation expense related to equity awards is included in the following line items in the accompanying consolidated statements of operations for the three months ended March 31, 2012 and 2011 (in thousands):

	Three Months Ended March 31,	
	2012	2011
Cost of revenue	\$ 3	\$ 3
Selling and marketing expense	157	160
General and administrative expense	875	860
Product development	149	97
Non-cash compensation expense	<u>\$ 1,184</u>	<u>\$ 1,120</u>

The forms of stock-based awards granted to our employees are principally restricted stock units ("RSUs"), restricted stock and stock options. RSUs are awards in the form of units, denominated in a hypothetical equivalent number of shares of our common stock and with the value of each award equal to the fair value of our common stock at the date of grant. RSUs may be settled in cash, stock or both, as determined by the compensation committee of our board of directors at the time of grant. Each stock-based award is subject to service-based vesting, where a specific period of continued employment must pass before an award vests. Certain restricted stock awards also include performance-based vesting, where certain performance targets set at the time of grant must be achieved before an award vests. We recognize expense for all stock-based awards for which vesting is considered probable. For stock-based awards, the accounting charge is measured at the grant date as the fair value of the shares of our common stock subject to the award and expensed ratably as non-cash compensation over the vesting term. For performance-based awards, the expense is measured at the grant date as the fair value of the shares of our common stock subject to the award and expensed as non-cash compensation over the vesting period if the performance targets are considered probable of being achieved.

The amount of stock-based compensation expense recognized in the consolidated statement of operations is reduced by estimated forfeitures, as the amount recorded is based on awards ultimately expected to vest. The forfeiture rate is estimated at the grant date based on historical experience and revised, if necessary, in subsequent periods if the actual forfeiture rate differs from the estimated rate.

**TREE.COM, INC. AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**NOTE 7—EARNINGS PER SHARE AND STOCK-BASED COMPENSATION (Continued)**

A summary of changes in outstanding stock options for the three months ended March 31, 2012 is as follows:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (In years)	Aggregate Intrinsic Value (In thousands)
Outstanding at January 1, 2012	1,046,746	\$ 9.09		
Granted	150,000	7.43		
Exercised	(2,588)	5.14		
Forfeited	—	—		
Expired	(11,221)	12.14		
Outstanding at March 31, 2012	<u>1,182,937</u>	<u>\$ 8.86</u>	<u>6.3</u>	<u>\$ 337</u>
Options exercisable at March 31, 2012	<u>289,219</u>	<u>\$ 11.98</u>	<u>4.1</u>	<u>\$ 48</u>

The following table summarizes the information about stock options outstanding and exercisable as of March 31, 2012:

Range of Exercise Prices	Options Outstanding			Options Exercisable	
	Outstanding	Weighted Average Remaining Contractual Life in Years	Weighted Average Exercise Price	Exercisable	Weighted Average Exercise Price
\$0.01 to \$4.99	5,691	1.5	\$ 3.14	5,691	\$ 3.14
\$5.00 to \$7.45	310,000	9.3	6.65	6,132	6.70
\$7.46 to \$9.99	715,368	5.8	8.31	125,518	7.53
\$10.00 to \$14.99	24,299	2.1	12.41	24,299	12.41
\$15.00 to \$19.99	80,916	3.2	15.03	80,916	15.03
\$20.00 to \$24.99	46,663	3.2	20.19	46,663	20.19
	<u>1,182,937</u>	<u>6.3</u>	<u>\$ 8.86</u>	<u>289,219</u>	<u>\$ 11.98</u>

Included in the table above, on March 1, 2012 our Chairman and CEO was granted an option to purchase up to 150,000 shares of our common stock that vests in three equal installments beginning on March 1, 2013. The weighted average exercise price and the weighted average fair value related to this stock option were \$7.43 and \$3.63, respectively.

## TREE.COM, INC. AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

## NOTE 7—EARNINGS PER SHARE AND STOCK-BASED COMPENSATION (Continued)

Nonvested RSUs and restricted stock outstanding as of March 31, 2012 and changes during the three months ended March 31, 2012 were as follows:

	RSUs		Restricted Stock	
	Number of Shares	Weighted Average Grant Date Fair Value	Number of Shares	Weighted Average Grant Date Fair Value
Nonvested at January 1, 2012	933,051	\$ 6.48	299,642	\$ 6.70
Granted	61,012	6.49	—	—
Vested	(208,468)	7.07	(162,142)	6.61
Forfeited	(1,000)	7.28	—	—
Nonvested at March 31, 2012	784,595	\$ 6.38	137,500	\$ 6.80

## NOTE 8—INCOME TAXES

For the three months ended March 31, 2012 and 2011, we recorded a tax provision (benefit) of \$(2.1) million and \$0.3 million, respectively, which represents effective tax rates of 39.5% and (1.7)%, respectively. In the first quarter of 2012, the tax rate is higher than the federal statutory rate of 35% primarily due to the impact of state income taxes. In the first quarter of 2011, our tax rate was lower than the federal statutory rate of 35% due to a change in the valuation allowance on deferred tax assets.

For the three months ended March 31, 2012, we used the standard method of calculating a projected annual tax rate to determine the current period's tax provision. For the three months ended March 31, 2011, we determined that our activity yielded an unusual effective tax rate for this period; therefore, we utilized the actual year to date effective tax rate for purposes of determining year-to-date tax expense.

## NOTE 9—CONTINGENCIES

During the three months ended March 31, 2012 and 2011, provisions for litigation settlements of \$0.2 million and \$4.7 million, respectively, were recorded in litigation settlements and contingencies in the accompanying consolidated statements of operations. The balance of the related liability was \$2.2 million and \$3.1 million at March 31, 2012 and December 31, 2011, respectively. The litigation matters were either settled, or we extended a firm offer for settlement, thereby establishing an accrual amount that is both probable and reasonably estimable.

In the ordinary course of business, we are party to various lawsuits. We establish reserves for specific legal matters when we determine that the likelihood of an unfavorable outcome is probable and the loss is reasonably estimable. Management has also identified certain other legal matters where it believes an unfavorable outcome is not probable and, therefore, no reserve is established. We also evaluate other contingent matters, including tax contingencies, to assess the probability and estimated extent of potential loss.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

### **Cautionary Statement Regarding Forward-Looking Information**

This report contains "forward-looking statements" within the meaning of the Securities Act of 1933 and the Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995. These forward-looking statements also include statements related to our anticipated financial performance, business prospects and strategy; anticipated trends and prospects in the various industries in which our businesses operate; new products, services and related strategies; and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict. The use of words such as "anticipates," "estimates," "expects," "projects," "intends," "plans" and "believes," among others, generally identify forward-looking statements.

Actual results could differ materially from those contained in the forward-looking statements. Factors currently known to management that could cause actual results to differ materially from those in forward-looking statements include those matters discussed in Part II, Item 1A—Risk Factors.

Other unknown or unpredictable factors that could also adversely affect our business, financial condition and results of operations may arise from time to time. In light of these risks and uncertainties, the forward-looking statements discussed in this report may not prove to be accurate. Accordingly, you should not place undue reliance on these forward-looking statements, which only reflect the views of Tree.com management as of the date of this report. We undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or changes to future operating results or expectations, except as required by law.

### **Management Overview**

Tree.com is the parent of LendingTree, LLC which owns several brands and businesses that provide information, tools, advice, products and services for critical transactions in consumers' lives. Our family of brands includes: LendingTree.com®, GetSmart.com®, DegreeTree.com®, LendingTreeAutos.com, DoneRight.com®, ServiceTree.com, InsuranceTree.com® and HealthTree.com. Together, these brands serve as an ally for consumers who are looking to comparison shop for loans and other services from multiple businesses and professionals that will compete for their business.

Through the quarter ended March 31, 2011, we operated in two reportable business segments: LendingTree Loans and Exchanges. In connection with entering into the asset purchase agreement for the sale of substantially all of the operating assets of our LendingTree Loans business, we determined that our LendingTree Loans business should be presented as discontinued operations. Continuing operations are now one reportable segment, which represents the previous "Exchanges" segment. Prior period results have been reclassified to conform with discontinued operations presentation and the change in reportable segments.

Additionally, on March 10, 2011, management of the Company made the decision and finalized a plan to close all of the field offices of the proprietary full-service real estate brokerage business known as RealEstate.com, REALTORS®. The Company exited all markets by March 31, 2011. In September 2011, the Company sold the remaining assets of RealEstate.com, which consisted primarily of internet domain names and trademarks, for \$8.3 million and recognized a gain on sale of \$7.8 million. The businesses of RealEstate.com and RealEstate.com, REALTORS® (which together represent the former Real Estate segment) and LendingTree Loans are presented as discontinued operations in the accompanying consolidated financial statements for all periods presented.

The following discussion, unless otherwise noted, excludes information related to our discontinued operations.



### *Recent Mortgage Interest Rate Trends*

Interest rate and market risks can be substantial in the mortgage lead generation business. Fluctuations in interest rates affect consumer demand for new mortgages and the level of refinancing activity, which in turn affects lender demand for mortgage leads. Typically, a decline in mortgage interest rates will lead to reduced lender demand for leads from third-party sources, as there are more consumers in the marketplace seeking refinancings and accordingly, lenders receive more organic lead volume. Conversely, an increase in mortgage interest rates will typically lead to an increase in lender demand for leads, as there are fewer consumers in the marketplace and the overall supply of mortgage leads decreases.

Average 30-year fixed mortgage rates increased in early 2011 from the end of 2010, causing the number of mortgage leads generated to drop off significantly in the first quarter of 2011. Mortgage interest rates then began to decline in the second quarter of 2011, ending the year 2011 at record low levels, which is where they remained throughout the first quarter of 2012.

### *Real Estate Market*

In 2011, our operations, cash flows and financial position were negatively impacted by the continued deterioration in the housing market. In particular, revenue was negatively impacted by falling home prices and a continued high level of foreclosures. While nationwide sales of existing homes rose modestly in 2011 and the first quarter of 2012, a portion of the increase was due to a rise in foreclosure sales and distressed transactions. Overall, home prices continued a multi-year decline into early 2012 and most economic forecasts indicate that conditions are unlikely to improve significantly in the near-term. Falling home prices also make it more difficult to make accurate home value appraisals and lenders typically require higher loan-to-value ratios and credit scores, which further restricts the pool of prospective borrowers.

### *Expenses*

As revenues have declined, we have focused on expense savings and have taken various initiatives to reduce costs. During the first quarter of 2011, we commenced a voluntary severance plan for certain corporate employees. In addition, we have taken steps to minimize ineffective marketing expenditures and dynamically align marketing expenses with lender demand for leads on our lending exchanges.

### *Discover Asset Sale*

On May 12, 2011, we entered into an asset purchase agreement with Discover Bank, a wholly-owned subsidiary of Discover Financial Services. We refer to Discover Financial Services and/or any of its affiliates, including Discover Bank, as "Discover." The asset purchase agreement provides for the sale of substantially all of the operating assets of our LendingTree Loans business to Discover. On February 7, 2012, we entered into an amendment to the asset purchase agreement. Under the terms of the asset purchase agreement as amended, Discover will pay approximately \$55.9 million in cash for the assets, subject to certain conditions. The transaction is expected to close by mid-year 2012.

Discover generally will not assume liabilities of the LendingTree Loans business that arose before the closing date. A portion of the initial purchase price payment, currently estimated to be \$20.1 million, will be held in escrow for certain actual and/or contingent liabilities that will remain with the Company. The transaction is subject to various closing conditions, including regulatory approvals. Subject to certain exceptions stated in the asset purchase agreement, the Company has agreed to operate the LendingTree Loans business in the ordinary course until the closing of the transaction.

**Results of operations for the three months ended March 31, 2012 and 2011:****Revenue**

	<b>Three Months Ended March 31,</b>			<b>2011</b>
	<b>2012</b>	<b>\$ Change</b>	<b>% Change</b>	
		<b>(Dollars in thousands)</b>		
Match fees	\$ 12,427	\$ (200)	(2)%	\$ 12,627
Closed loan fees	389	(469)	(55)%	858
Other	419	(15)	(4)%	434
Total revenue	<u>\$ 13,235</u>	<u>\$ (684)</u>	<u>(5)%</u>	<u>\$ 13,919</u>

Match fee revenue in 2012 decreased by 2% from 2011, even as overall matched requests increased by 7%, from 268,000 in 2011 to 286,000 in 2012. The increase in matched requests reflects an increase of 24% in mortgage matches and an aggregate decline of 7% in matches for the non-mortgage businesses. However, as compared to 2011, the average fee for mortgage matches decreased by 18%, which is a reflection of lower demand for mortgage leads because of higher levels of organic consumer traffic being generated by lenders on our network.

No single lender on our network accounted for revenue representing more than 10% of revenue for any periods presented.

We do not presently record revenue in our Exchanges business for leads provided to LendingTree Loans. Instead, we use a cost sharing approach for marketing expenses, whereby the Exchanges business and LendingTree Loans share marketing expenses on a pro rata basis, based on the quantity of leads sold to Network Lenders versus matched with LendingTree Loans. Following the sale of substantially all of the operating assets of our LendingTree Loans business to Discover, we anticipate that Discover will purchase leads from our Exchanges business, which would represent an additional source of revenue, with an associated increase in selling and marketing expenses. However, we anticipate that revenue from the sale of leads to Discover would be accretive to both gross and net margins.

**Cost of revenue**

	<b>Three Months Ended March 31,</b>			<b>2011</b>
	<b>2012</b>	<b>\$ Change</b>	<b>% Change</b>	
		<b>(Dollars in thousands)</b>		
Cost of revenue	\$ 796	\$ (410)	(34)%	\$ 1,206
As a percentage of total revenue		6%		9%

Cost of revenue consists primarily of costs associated with compensation and other employee-related costs (including stock-based compensation) relating to customer call centers, credit scoring fees, consumer incentive costs and website network hosting and server fees.

Cost of revenue in 2012 decreased from 2011 primarily due to a decrease of \$0.2 million in consumer incentive rebates related to fewer loan closings and \$0.1 million in compensation and other employee-related costs resulting from reduced headcount.

Following the sale of substantially all of the operating assets of our LendingTree Loans business to Discover, we anticipate that cost of revenue will decrease as a percentage of revenue due to an increase in revenue from the sale of leads currently provided to LendingTree Loans without corresponding increase in cost of revenue.

**Selling and marketing expense**

	<b>Three Months Ended March 31,</b>			
	<b>2012</b>	<b>\$</b>		<b>2011</b>
		<b>Change</b>	<b>% Change</b>	
	<b>(Dollars in thousands)</b>			
Selling and marketing expense	\$ 10,652	\$ (4,877)	(31)%	\$ 15,529
As a percentage of total revenue	80%			112%

Selling and marketing expense consists primarily of advertising and promotional expenditures, fees paid to lead sources and compensation and other employee-related costs (including stock-based compensation) for personnel engaged in sales and marketing functions. Advertising and promotional expenditures primarily include online marketing, as well as television, print and radio spending. Advertising production costs are expensed in the period the related ad is first run.

Advertising expense is the largest component of selling and marketing expense and is comprised of the following:

	<b>Three Months Ended March 31,</b>			
	<b>2012</b>	<b>\$</b>		<b>2011</b>
		<b>Change</b>	<b>% Change</b>	
	<b>(Dollars in thousands)</b>			
Online	\$ 6,818	\$ (1,024)	(13)%	\$ 7,842
Broadcast	1,448	(3,348)	(70)%	4,796
Other	555	(1,008)	(64)%	1,563
Total advertising expense	\$ 8,821	\$ (5,380)	(38)%	\$ 14,201

We reduced advertising expense in 2012 as compared to 2011 in response to changes in the interest rate environment during the two periods. Interest rates were higher in the first quarter of 2011, to which we responded by increasing advertising expense in order to generate mortgage leads. Interest rates were significantly lower in the first quarter of 2012, which allowed us to decrease our advertising expense while still generating a sufficient number of mortgage leads. In a low interest rate environment, the incentive for consumers to refinance existing mortgages increases, resulting in a reduced need to drive traffic to our lending exchanges through advertising, as well as lower network lender demand for externally-generated leads, further reducing the return on advertising expenditures.

The 38% decrease in advertising expense corresponded to only 7% fewer matched requests, as our marketing expenditures became more efficient. As a result, selling and marketing expense as a percentage of revenue declined to 80% in 2012 from 112% in 2011.

We will continue to adjust selling and marketing expenditures dynamically in relation to revenue producing opportunities.

Following the sale of substantially all of the operating assets of our LendingTree Loans business to Discover, selling and marketing expense will increase due to the elimination of pro rata allocation of such expenses to LendingTree Loans. However, we anticipate that selling and marketing expense will trend to a slightly lower percentage of revenue due to an increase in revenue from the sale of leads currently provided to LendingTree Loans, which we expect to be proportionately greater than the increase in selling and marketing expense.

**General and administrative expense**

	<b>Three Months Ended March 31,</b>			
	<b>2012</b>	<b>\$ Change</b>	<b>% Change</b>	<b>2011</b>
	(Dollars in thousands)			
General and administrative expense	\$ 4,803	\$ (669)	(12)%	\$ 5,472
As a percentage of total revenue	36%			39%

General and administrative expense consists primarily of compensation and other employee-related costs (including stock-based compensation) for personnel engaged in finance, legal, tax, corporate information technology, human resources and executive management functions, as well as facilities and infrastructure costs and fees for professional services.

General and administrative expense in 2012 decreased from 2011 primarily due to a \$0.4 million decrease in compensation and other employee related costs (excluding non-cash compensation) resulting from reduced headcount. Professional fees also decreased by \$0.2 million in 2012 as compared to 2011.

Following the sale of LendingTree Loans assets, we anticipate that general and administrative expense will decrease as a percentage of revenue due to an increase in revenue from the sale of leads currently provided to LendingTree Loans, without proportionate increase in general and administrative expense.

**Product development**

	<b>Three Months Ended March 31,</b>			
	<b>2012</b>	<b>\$ Change</b>	<b>% Change</b>	<b>2011</b>
	(Dollars in thousands)			
Product development	\$ 774	\$ (472)	(38)%	\$ 1,246
As a percentage of total revenue	6%			9%

Product development expense consists primarily of compensation and other employee-related costs (including stock-based compensation) for personnel engaged in the design, development, testing and enhancement of technology that are not capitalized.

Product development expense in 2012 decreased from 2011, primarily due to reduced compensation and other employee-related costs resulting from lower headcount, and due to reduced usage of third-party contractors.

Following the sale of substantially all of the operating assets of our LendingTree Loans business to Discover, we anticipate that product development expense will decrease as a percentage of revenue due to an increase in revenue from sale of leads currently provided to LendingTree Loans without a proportionate increase in product development expense.

**Litigation settlements and contingencies**

During 2012 and 2011, provisions for litigation settlements of \$0.2 million and \$4.7 million, respectively, were recorded for litigation settlements and contingencies. The provision in 2011 was due primarily to the settlement of the lawsuits filed between August 1, 2008 and June 1, 2009 by the State of South Carolina against LendingTree, LLC alleging that LendingTree failed to provide certain disclosures required by the South Carolina Registration of Mortgage Loan Brokers Act. The settlement amount was within our previously disclosed litigation loss reserve and we did not admit any liability as part of such settlement.

**Operating loss**

	Three Months Ended March 31,			
	2012	\$ Change	% Change	2011
	(Dollars in thousands)			
Operating loss	\$ (5,279)	\$ 10,464	66%	\$ (15,743)
As a percentage of total revenue	(40)%			(113)%

We were able to more than offset the slight decrease in revenue in 2012 of \$0.7 million by reducing our cost of revenue, selling and marketing expense, general and administrative expense, product development expense and litigation expense by \$10.9 million, which resulted in a significant decrease in operating loss in 2012 compared to 2011.

**Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization**

Adjusted Earnings Before Interest, Taxes, Depreciation and Amortization ("Adjusted EBITDA") is a non-GAAP measure and is defined in the section below entitled, "Tree.com's Principles of Financial

Reporting". Below is a reconciliation of Adjusted EBITDA to net income (loss) for both continuing operations and discontinued operations.

	Three Months Ended	
	March 31,	
	2012	2011
	(In thousands)	
Adjusted EBITDA from continuing operations	\$ (2,546)	\$ (8,414)
Adjustments to reconcile to net loss from continuing operations:		
Amortization of intangibles	(107)	(307)
Depreciation	(1,224)	(1,059)
Restructuring expense	64	(94)
Asset impairments	—	—
Loss on disposal of assets	(60)	—
Non-cash compensation	(1,184)	(1,120)
Litigation settlements and contingencies	(222)	(4,749)
Other expense, net	(121)	(80)
Income tax benefit (provision)	2,131	(265)
Net loss from continuing operations	<u>\$ (3,269)</u>	<u>\$ (16,088)</u>
Adjusted EBITDA from discontinued operations	\$ 19,814	\$ (7,497)
Adjustments to reconcile to net income (loss) from discontinued operations:		
Amortization of intangibles	—	—
Depreciation	—	(595)
Restructuring expense	(18)	(2,158)
Asset impairments	—	(12,974)
Loss on disposal of assets	—	—
Non-cash compensation	(128)	(181)
Litigation settlements and contingencies	(20)	(2)
Other expense, net	—	—
Income tax provision	(2,230)	—
Net income (loss) from discontinued operations	<u>\$ 17,418</u>	<u>\$ (23,407)</u>
Adjusted EBITDA from continuing operations per above	\$ (2,546)	\$ (8,414)
Adjusted EBITDA from discontinued operations per above	19,814	(7,497)
Total Adjusted EBITDA	<u>17,268</u>	<u>(15,911)</u>
Adjustments to reconcile to net income (loss):		
Amortization of intangibles	(107)	(307)
Depreciation	(1,224)	(1,654)
Restructuring expense	46	(2,252)
Asset impairments	—	(12,974)
Loss on disposal of assets	(60)	—
Non-cash compensation	(1,312)	(1,301)
Litigation settlements and contingencies	(242)	(4,751)
Other expense, net	(121)	(80)
Income tax provision	(99)	(265)
Net income (loss)	<u>\$ 14,149</u>	<u>\$ (39,495)</u>

	Three Months Ended March 31,			
	2012	\$ Change	% Change	2011
	(Dollars in thousands)			
Adjusted EBITDA from continuing operations	\$ (2,546)	\$ 5,868	70%	\$ (8,414)
As a percentage of total revenue	(19)%			(60)%

The improvement in Adjusted EBITDA from 2011 to 2012 reflects decreased operating costs, partially offset by the decrease in revenue, as detailed above.

#### ***Income tax provision***

For the three months ended March 31, 2012 and 2011, we recorded a tax provision (benefit) of \$(2.1) million and \$0.3 million, respectively, which represents effective tax rates of 39.5% and (1.7)%, respectively. In the first quarter of 2012, the tax rate was higher than the federal statutory rate of 35% primarily due to the impact of state income taxes. In the first quarter of 2011, our tax rate was lower than the federal statutory rate of 35% due to a change in the valuation allowance on deferred tax assets.

For the three months ended March 31, 2012, we used the standard method of calculating a projected annual tax rate to determine the current period's tax provision. For the three months ended March 31, 2011, we determined that our activity yielded an unusual effective tax rate for this period; therefore, we utilized the actual year to date effective tax rate for purposes of determining year-to-date tax expense.

#### ***Discontinued Operations***

Revenue from discontinued operations in 2012 was \$50.9 million, an increase of 140% as compared to 2011 revenue from discontinued operations of \$21.2 million. LendingTree Loans revenue for 2012 increased \$31.6 million compared to 2011 on 101% more closed units. Revenue from the Real Estate business was \$2.0 million in 2011, reflecting the shutdown of the company-owned brokerage in early 2011 and sale of the remaining assets of RealEstate.com in September 2011.

Gross margins at LendingTree Loans increased in 2012, driven by increased loan originations and a favorable interest rate environment. In addition, selling and marketing expenses in discontinued operations in 2012 were \$4.9 million, or 39% lower than in 2011. LendingTree Loans benefited in 2012 from lower marketing expenses as a result of lower interest rates and improved marketing efficiencies.

### **FINANCIAL POSITION, LIQUIDITY AND CAPITAL RESOURCES**

As of March 31, 2012, we had \$59.0 million of cash and cash equivalents and \$14.9 million of restricted cash and cash equivalents, compared to \$45.5 million of cash and cash equivalents and \$12.5 million of restricted cash and cash equivalents as of December 31, 2011.

### **Cash Flows from Continuing Operations**

In summary, our cash flows attributable to continuing operations are as follows:

	<b>Three Months Ended</b>	
	<b>March 31, 2012</b>	<b>March 31, 2011</b>
	(In thousands)	
Net cash used in operating activities	\$ (4,787)	\$ (10,466)
Net cash used in investing activities	(3,007)	(2,277)
Net cash provided by (used in) financing activities	(827)	25

Net cash used in operating activities attributable to continuing operations consists of loss from continuing operations adjusted for non-cash items, including non-cash compensation expense, depreciation, amortization of intangibles, deferred income taxes, asset impairment charges, and the effect of changes in working capital.

Net cash used in operating activities attributable to continuing operations in 2012 was \$4.8 million and consisted of losses from continuing operations of \$3.3 million, positive adjustments for non-cash items of \$2.7 million and cash used for working capital of \$4.2 million. Adjustments for non-cash items primarily consisted of \$1.2 million each of depreciation and non-cash compensation expense.

Net cash used in operating activities attributable to continuing operations in 2011 was \$10.5 million and consisted of losses from continuing operations of \$16.1 million, positive adjustments for non-cash items of \$2.7 million and cash used for working capital of \$2.9 million. Adjustments for non-cash items primarily consisted of \$1.1 million each of depreciation and non-cash compensation expense.

Net cash used in investing activities in 2012 of \$3.0 million primarily resulted from an increase in restricted cash of \$2.4 million. Net cash used in investing activities in 2011 of \$2.3 million primarily resulted from capital expenditures, reflecting new technology platforms built for both the mortgage and non-mortgage businesses.

Net cash used in financing activities in 2012 of \$0.8 million and provided by financing activities in 2011 of \$25 thousand was primarily due to the vesting and issuance of stock to employees (less withholding taxes).

### **Warehouse Lines of Credit for LendingTree Loans**

As of March 31, 2012, LendingTree Loans had two committed lines of credit and one uncommitted line of credit totaling \$325.0 million of borrowing capacity. Borrowings under these lines of credit are used to fund, and are secured by, consumer residential loans that are held for sale. Loans under these lines of credit are repaid using proceeds from the sales of loans by LendingTree Loans.

The \$125.0 million first line was scheduled to expire on the earliest of (i) forty-five days after the closing date of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover or (ii) April 25, 2012, but was extended to the earliest of (i) forty-five days after the closing date of such sale or (ii) October 25, 2012. This line is also guaranteed by Tree.com, LendingTree, LLC and LendingTree Holdings Corp. The interest rate under this first line is the 30-day adjusted LIBOR or 2.0% (whichever is greater) plus 1.5% to 1.75% for loans being sold to the lender and 30-day adjusted LIBOR or 2.0% (whichever is greater) plus 1.5% for loans not being sold to the lender.

The \$100.0 million second line is scheduled to expire on the earliest of (i) forty-five days after the closing date of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover or (ii) August 20, 2012. This line is guaranteed by Tree.com. and LendingTree, LLC. The interest rate under this line is 30-day LIBOR plus 3.25% (LIBOR may be



adjusted upward for any increase in the reserve requirement of the lender as further described in the master repurchase agreement).

The \$100.0 million third line is scheduled to expire on the earliest of (i) forty-five days after the closing date of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover or (ii) January 4, 2013. This line is guaranteed by Tree.com, LendingTree, LLC and LendingTree Holdings Corp. The interest rate under this line is the overnight interest rate incurred by the lender for borrowing funds plus 3.25% to 3.75% for most loans.

Under the terms of these lines, LendingTree Loans is required to maintain various financial and other covenants, and is restricted from paying dividends under the terms of the first two lines. These financial covenants include, but are not limited to, maintaining (i) for the first two lines, minimum tangible net worth of \$25.0 million, and for the third line, minimum adjusted net worth equaling the sum of \$20.0 million plus 50% of the positive quarterly net income for the three months prior to any date of determination, (ii) minimum liquidity, (iii) a minimum current ratio, (iv) a maximum ratio of total liabilities to net worth, (v) a minimum unrestricted cash amount, (vi) pre-tax net income requirements, (vii) for the first two lines, a maximum warehouse capacity ratio and (viii) for the third line, minimum of one additional warehouse line. LendingTree Loans was in compliance with all covenants as of March 31, 2012, except for the requirement to provide audited financial statements to each of our lenders within 90 days after the end of the fiscal year. We have obtained a waiver for this violation.

The LendingTree Loans business is highly dependent on the availability of these lines. Although we believe that our existing lines are adequate for our current operations, reductions in our available credit, or the inability to extend, renew or replace these lines before the sale of substantially all of the operating assets of our LendingTree Loans business to Discover, could have a material adverse effect on our business, financial condition, results of operations and cash flows. Management has determined that we could continue to operate the LendingTree Loans business at a reduced capacity as long as one of the warehouse lines remains available.

We believe that our sources of liquidity are sufficient to fund our operating needs, including operation of the LendingTree Loans business through the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover, including all debt requirements, commitments and contingencies, and capital and investing commitments for the foreseeable future. However, the operations of our LendingTree Loans business through completion of such pending sale could have a significant impact on our liquidity, and the results of such operations are highly dependent on interest rates. If interest rates increase above current levels before completion of such pending sale, or if such sale transaction is not completed, we may need to take more aggressive actions to manage our working capital, sell certain assets or seek equity or debt financing. We cannot assure you that, in such a situation, we would be able to sell assets or raise equity or debt financing on terms acceptable to us, or at all. Moreover, the asset purchase agreement with Discover contains certain covenants and conditions that may limit our ability to take certain of these actions without the consent of Discover while the sale transaction is pending. Additionally, we anticipate that we will want to make capital and other expenditures in connection with the development and expansion of our overall operations. We intend to use a portion of the proceeds from the sale transaction to fund these expenditures. If such proceeds are not sufficient after payments of transaction-related expenses and amounts held in escrow or otherwise restricted, we may seek equity or debt financing. We cannot assure you that such financing will be available on terms acceptable to us, or at all.

Upon closing of the pending sale of substantially all of the operating assets of our LendingTree Loans business to Discover, LendingTree Loans will cease to originate consumer loans and the warehouse lines of credit will no longer provide for additional borrowings. The remaining operations of LendingTree Loans will be wound down, which will include selling the balance of loans held for sale to investors, which generally has occurred within thirty days of funding, and paying off and then terminating the warehouse lines of credit.

## Seasonality

Revenue is subject to the cyclical and seasonal trends of the U.S. housing market. Home sales typically rise during the spring and summer months and decline during the fall and winter months, while refinancing and home equity activity is principally driven by mortgage interest rates as well as real estate values. However, in recent periods additional factors affecting the mortgage and real estate markets have impacted customary seasonal trends.

## New Accounting Pronouncements

See Note 2 to the consolidated financial statements for a description of recent accounting pronouncements.

## TREE.COM'S PRINCIPLES OF FINANCIAL REPORTING

We report Earnings Before Interest, Taxes, Depreciation and Amortization, adjusted for certain items discussed below (Adjusted EBITDA), as a supplemental measure to GAAP. This measure is one of the primary metrics by which we evaluate the performance of our businesses, on which our internal budgets are based and by which management is compensated. We believe that investors should have access to the same set of tools that we use in analyzing our results. This non-GAAP measure should be considered in addition to results prepared in accordance with GAAP, but should not be considered a substitute for or superior to GAAP results. We provide and encourage investors to examine the reconciling adjustments between the GAAP and non-GAAP measure discussed below.

### Definition of Adjusted EBITDA

We report Adjusted EBITDA as operating income or loss (which excludes interest expense and taxes) adjusted to exclude amortization of intangibles and depreciation, and excluding (1) non-cash compensation expense, (2) non-cash intangible asset impairment charges, (3) gain/loss on disposal of assets, (4) restructuring expenses, (5) litigation settlements and contingencies, (6) pro forma adjustments for significant acquisitions or dispositions, and (7) one-time items. Adjusted EBITDA has certain limitations in that it does not take into account the impact to our statement of operations of certain expenses, including depreciation, non-cash compensation and acquisition-related accounting. We endeavor to compensate for the limitations of the non-GAAP measure presented by also providing the comparable GAAP measure with equal or greater prominence and descriptions of the reconciling items, including quantifying such items, to derive the non-GAAP measure.

### One-Time Items

Adjusted EBITDA is adjusted for one-time items, if applicable. Items are considered one-time in nature if they are non-recurring, infrequent or unusual, and have not occurred in the past two years or are not expected to recur in the next two years, in accordance with SEC rules. For the periods presented in this report, there are no adjustments for one-time items.

### Non-Cash Expenses That Are Excluded From Adjusted EBITDA

Non-cash compensation expense consists principally of expense associated with the grants of restricted stock units and stock options. These expenses are not paid in cash, and we include the related shares in our calculations of fully diluted shares outstanding. Upon vesting of restricted stock units and the exercise of certain stock options, the awards will be settled, at our discretion, on a net basis, with us remitting the required tax withholding amount from our current funds.

Amortization and impairment of intangibles are non-cash expenses relating primarily to intangible assets acquired through acquisitions. At the time of an acquisition, the intangible assets of the acquired

company, such as purchase agreements, technology and customer relationships, are valued and amortized over their estimated lives.

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

Under the rules and regulations of the SEC, as a smaller reporting company we are not required to provide the information required by this item.

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

As required by Rule 13a-15(b) of the Securities Exchange Act of 1934, management, with the participation of our principal executive officer and principal financial officer, evaluated, as of the end of the period covered by this report, the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e). Based upon that evaluation, our principal executive officer and principal financial officer concluded that due to material weaknesses in our internal control over financial reporting, our disclosure controls and procedures were not effective as of March 31, 2012. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. The material weaknesses in our internal control over financial reporting relate to the maintenance of effective controls over the application and monitoring of our accounting for income taxes and the maintenance of effective controls over the timing and amount of impairment of our indefinite-lived intangible assets.

With respect to our controls over the application and monitoring of accounting of our accounting for income taxes, we did not have controls designed and in place to ensure effective oversight of the work performed by, and the accuracy of, financial information provided by third party tax advisors. This material weakness was identified in connection with our assessment of the effectiveness of internal control over financial reporting as of December 31, 2010, and was determined not to have been remediated as of March 31, 2012.

With respect to our controls over the timing and amount of impairment of our indefinite-lived intangible assets, we did not have controls designed and in place to ensure appropriate levels of review over the methodology and complex and judgmental business and valuation assumptions in accordance with generally accepted valuation techniques that were used in our indefinite-lived intangible assets impairment tests during 2011. As a result of this deficiency, management's interim indefinite-lived intangible assets impairment test in the second quarter of 2011 indicated no impairment, and such result led to the performance of an annual impairment test as of October 1, 2011 using improper data inputs, including the starting carrying value of the trade name and trademark assets and the assumed royalty rate, which in turn led to an initial indication of impairment as of October 1, 2011 that was significantly below the \$29.0 million impairment later determined to exist as of the end of the second quarter of 2011. We have restated our second and third quarter 2011 results of operations and financial position to reflect the \$29.0 million impairment charge occurring in the second quarter. See Note 4—Goodwill and Intangible Assets and Note 17—Quarterly Results (Unaudited) to the consolidated financial statements included in our annual report on Form 10-K for the year ended December 31, 2011 (the "2011 Form 10-K").

Notwithstanding the identified material weaknesses described above, management believes that the financial statements and other financial information included in this report present fairly in all material respects our financial condition, results of operations and cash flows at and for the periods presented in accordance with accounting principles generally accepted in the United States.

With the oversight of our management and the audit committee of our board of directors, we have begun taking steps and plan to take additional measures to remediate the underlying causes of the material weaknesses described above. With respect to the material weakness related to the application and monitoring of our accounting for income taxes, we have undertaken an evaluation of our available resources to provide effective oversight of the work performed by our third party tax advisors and are in the process of identifying necessary changes to our processes as required. Additionally, we are evaluating the resources available and provided to us by the third party tax advisor and identifying changes as required. With respect to the material weakness related to the timing and amount of impairment of our indefinite-lived intangible assets, we have strengthened our processes regarding intangible impairment analysis, which will subsequently include engaging a third party valuation firm for annual analyses and certain interim analyses. While we believe that these steps and measures will remediate the material weaknesses, there is a risk that these steps and measures will not be adequate to remediate the material weaknesses. Until we can provide reasonable assurance that these material weaknesses have been remediated, these material weaknesses could result in a misstatement in intangible asset or tax related accounts that could result in a material misstatement to our interim or annual consolidated financial statements and disclosures that may not be prevented or detected on a timely basis. In addition, we may be unable to meet our reporting obligations or comply with SEC rules and regulations, which could result in the violation of covenants in our warehouse lines, delisting actions by the NASDAQ Stock Market and investigation and sanctions by regulatory authorities. See the risk factor in the 2011 Form 10-K contained in Part I, Item 1A under the heading "Risk Factors—We have identified material weaknesses in our internal control over financial reporting, and we may be unable to develop, implement and maintain appropriate controls in future periods."

### **Changes in Internal Control Over Financial Reporting**

There was no change in our internal control over financial reporting that occurred during our first fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## **PART II OTHER INFORMATION**

### **Item 1. Legal Proceedings**

In the ordinary course of business, we are party to litigation involving property, contract, intellectual property and other claims. We included a discussion of certain legal proceedings in Part I, Item 3, of our 2011 Form 10-K. During the quarter ended March 31, 2012, there were no material developments to the legal proceedings disclosed in the 2011 Form 10-K and no new material proceedings except as set forth below.

***Schnee v. LendingTree, LLC and Home Loan Center, Inc., No. 06CC00211 (Cal. Super. Ct., Orange Cty.)***. In October 2006, four individual plaintiffs filed this putative class action against LendingTree, LLC and HLC in the California Superior Court for Orange County. The plaintiffs allege that they used the LendingTree.com website to find potential lenders and without their knowledge were referred to LendingTree's direct lender, HLC; that Lending Tree and HLC did not adequately disclose the relationship between them; and that HLC charged the plaintiffs higher rates and fees than they otherwise would have been charged. Based upon these allegations, Plaintiffs assert that LendingTree and HLC violated the California unfair competition law, California Business and Professions Code § 17500, and the Consumer Legal Remedies Act. The plaintiffs purport to represent a nationwide class of consumers who sought lender referrals from LendingTree and obtained loans from HLC since December 1, 2004. The plaintiffs seek damages, restitution, attorneys' fees and injunctive relief.

In September 2009, the plaintiffs' motion for class certification was denied in its entirety; the plaintiffs appealed such action and in July 2011, the Court of Appeals issued its opinion denying the plaintiffs' appeal. Remittitur was filed in September 2011. This matter is currently scheduled for trial in April 2013.

## Item 1A. Risk Factors

Other than the risk factors set forth below, there have been no material changes to the risk factors included in Part I, Item 1A, of the 2011 Form 10-K.

### *If our goodwill or amortizable intangible assets become impaired we may be required to record a significant charge to earnings.*

Under GAAP, we review the carrying value of goodwill and indefinite-lived intangible assets on an annual basis as of October 1 or more frequently if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. Factors that may be considered a change in circumstances, indicating that the carrying value of our goodwill or indefinite-lived intangible assets may not be recoverable, include a decline in stock price and market capitalization, reduced future cash flow estimates, and slower growth rates in our industry. We may be required to record a significant charge in our financial statements during the period in which any impairment of our goodwill or indefinite-lived intangible assets is determined, negatively impacting our results of operations.

## Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

### Issuer Purchases of Equity Securities

The following table provides information about the Company's purchases of equity securities during the quarter ended March 31, 2012.

<u>Period</u>	<u>Total Number of Shares Purchased(1)</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs(2)</u>	<u>Maximum Number/Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (in thousands)</u>
01/01/12 - 01/31/12	21,772	\$ —	—	\$ 4,274
02/01/12 - 02/28/12	101,609	\$ —	—	\$ 4,274
03/01/12 - 03/31/12	—	\$ —	—	\$ 4,274
Total	123,381	\$ —	—	\$ 4,274

- (1) During the quarter ended March 31, 2012, 123,381 shares of our common stock were delivered by employees to satisfy federal and state withholding obligations upon the vesting of restricted stock awards granted to those individuals under the Tree.com Second Amended and Restated 2008 Stock and Award Incentive Plan. The withholding of those shares does not affect the dollar amount or number of shares that may be purchased under the publicly announced plans or programs described below.
- (2) On January 11, 2010, we announced that our board of directors approved a stock repurchase program for an amount up to \$10 million. The program authorizes repurchases of common shares in the open market or through privately-negotiated transactions. We began this program in February 2010 and expect to use available cash to finance these repurchases. We will determine the timing and amount of such repurchases based on our evaluation of market conditions, applicable SEC guidelines and regulations, and other factors. This program may be suspended or discontinued at any time at the discretion of our board of directors.

**Item 6. Exhibits**

<u>Exhibit</u>	<u>Description</u>	<u>Location</u>
2.1	Amendment to Asset Purchase Agreement dated as of February 7, 2012 by and among Home Loan Center, Inc., HLC Escrow, Inc., LendingTree, LLC, Tree.com, Inc., Discover Bank and Discover Financial Services.**	Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed February 8, 2012
10.1	Master Repurchase Agreement dated as of January 6, 2012 by and between Credit Suisse First Boston Mortgage Capital LLC and Home Loan Center, Inc.	†
10.2	Amendment No. 2 dated as of January 20, 2012 to the Master Repurchase Agreement dated as of October 13, 2011 by and between Home Loan Center, Inc. and Citibank, N.A.	†
10.3	Amendment No. 3 dated as of January 31, 2012 to the Master Repurchase Agreement dated as of October 13, 2011 by and between Home Loan Center, Inc. and Citibank, N.A.	†
10.4	Employment Agreement by and between David Norris and Tree.com, Inc. effective as of February 7, 2012*	†
10.5	Amended and Restated Master Repurchase Agreement dated as of February 17, 2012 by and between Citibank, N.A. and Home Loan Center, Inc.	†
10.6	Amendment No. 8 to Master Repurchase Agreement dated as of April 25, 2012, by and between Home Loan Center, Inc. and JPMorgan Chase Bank, N.A.	†
31.1	Certification of the Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	†
31.2	Certification of the Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934 as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	†
32.1	Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	††
32.2	Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	††
101.INS	XBRL Instance Document	†††
101.SCH	XBRL Taxonomy Extension Schema Document	†††
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	†††

<u>Exhibit</u>	<u>Description</u>	<u>Location</u>
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	†††
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	†††
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	†††

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† Filed herewith.

†† This certification is being furnished solely to accompany this report pursuant to 18 U.S.C. 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and is not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

††† Furnished herewith. Pursuant to Rule 406T of Regulation S-T, the Interactive Data Files on Exhibit 101 hereto are deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933 are deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934 and otherwise are not subject to liability under those sections.

\* Management or compensation plan or agreement.

\*\* Certain schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). The Company agrees to furnish supplementally a copy of all omitted schedules to the SEC upon its request.





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\*\* Certain schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(b)(2). The Company agrees to furnish supplementally a copy of all omitted schedules to the SEC upon its request.



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MASTER REPURCHASE AGREEMENT

CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL LLC, as buyer  
 (“Buyer”), and

HOME LOAN CENTER, INC. D/B/A LENDINGTREE LOANS, as seller (“Seller”)

Dated January 6, 2012

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Exhibit D — Form of Power of Attorney

Exhibit E — Form of Opinion of Seller’s counsel

Exhibit F — Reserved

Exhibit G — Seller’s and Guarantors’ Tax Identification Numbers

Exhibit H — Existing Indebtedness

Exhibit I — Reserved

Exhibit J — Form of Servicer Notice

**1. Applicability**

From time to time the parties hereto may enter into transactions in which Seller agrees to transfer to Buyer Mortgage Loans (as hereinafter defined) on a servicing released basis against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Mortgage Loans on a servicing released basis at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a “Transaction” and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in any annexes identified herein, as applicable hereunder.

**2. Definitions**

Whenever used in this Agreement, the following words and phrases, unless the context otherwise requires, shall have the following meanings:

“Acceptable State” means any state acceptable pursuant to Seller’s Underwriting Guidelines.

“Accepted Servicing Practices” means, with respect to any Mortgage Loan, those mortgage servicing practices of prudent mortgage lending institutions which service mortgage loans of the same type as such Mortgage Loan in the jurisdiction where the related Mortgaged Property is located.

“Act of Insolvency” means, with respect to any Person or its Affiliates, (a) the filing of a petition, commencing, or authorizing the commencement of any case or proceeding, or the voluntary joining of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law relating to the protection of creditors, or suffering any such petition or proceeding to be commenced by another which is consented to, not timely contested or results in entry of an order for relief; (b) the seeking of the appointment of a receiver, trustee, custodian or similar official for such party or an Affiliate or any substantial part of the property of either; (c) the appointment of a receiver, conservator, or manager for such party or an Affiliate by any governmental agency or authority having the jurisdiction to do so; (d) the making or offering by such party or an Affiliate of a composition with its creditors or a general assignment for the benefit of creditors or (e) the admission by such party or an Affiliate of such party of its inability to pay its debts or discharge its obligations as they become due or mature.

“Adjusted Net Worth” means, for any Person, Net Worth of such Person plus Subordinated Debt (provided that Subordinated Debt shall not be taken into account to the extent that it would cause Adjusted Net Worth to be comprised of greater than 25% Subordinated Debt), minus (a) prepaid assets, intercompany receivables and receivables from shareholders; (b) 25% of investment securities; (c) 50% of all mortgage loans held for investment; (d) 50% of real estate owned property and (e) net deferred taxes and expenses, deposits, mortgage servicing rights, all intangible assets, including goodwill, patents, tradenames, trademarks, copyrights, franchises, any organizational expenses, prepaid expenses, Affiliates or employees, and any

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other asset as shown as an intangible asset on the balance sheet of such Person on a consolidated basis as determined at a particular date in accordance with GAAP.

“Affiliate” means, with respect to any Person other than Seller, any “affiliate” of such Person, as such term is defined in the Bankruptcy Code. For Seller, “Affiliate” shall mean Seller’s Subsidiaries.

“Aged Loan” means a Mortgage Loan which has been subject to a Transaction hereunder for a period of greater than 30 days but not greater than 60 days.

“Agency” means Freddie Mac, Fannie Mae or GNMA, as applicable.

“Agency Approvals” has the meaning set forth in Section 14(w) hereof.

“Agency Security” means a mortgage-backed security issued by an Agency.

“Aging Limit” has the meaning assigned to such term in the Pricing Side Letter.

“Agreement” means this Master Repurchase Agreement, as it may be amended, supplemented or otherwise modified from time to time.

“Appraised Value” means the value set forth in an appraisal made in connection with the origination of the related Mortgage Loan as the value of the Mortgaged Property, whether such appraisal is a full appraisal or an exterior only property inspection, as permitted under certain circumstances by Fannie Mae solely with respect to Conforming Mortgage Loans originated in accordance with the Fannie Mae guidelines.

“Appraised Value Alternative” means with respect to refinancings underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, DU Refi Plus Mortgage Loans and Open Access Mortgage Loans, the value entered by the Seller into Fannie Mae’s Desktop Underwriter or Freddie Mac’s Loan Prospector system. In the case of FHA Streamline Mortgage Loans, the Appraised Value Alternative shall mean the appraised value reported in the FHA Connection system for the borrower’s previous loan which is being refinanced by the subject transaction.

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

“Bailee Letter” has the meaning assigned to such term in the Custodial Agreement.

“Bank” means Citibank, N.A. and any successor or assign.

“Bankruptcy Code” means the United States Bankruptcy Code of 1978, as amended from time to time.

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“Bid” has the meaning set forth in Section 4(c) hereof.

“Bid Fee” has the meaning set forth in Section 4(c) hereof.

“Business Day” means any day other than (A) a Saturday or Sunday and (B) a public or bank holiday in New York City.

“Buydown Amount” has the meaning set forth in Section 5(c) hereof.

“Buyer” means Credit Suisse First Boston Mortgage Capital LLC, and any successor or assign hereunder.

“Buyer’s Margin Amount” means with respect to any Transaction as of any date of determination, an amount equal to the product of (a) Buyer’s Margin Percentage and (b) the Purchase Price for such Transaction.

“Buyer’s Margin Percentage” means, with respect to any Transaction as of any date, a percentage equal to the percentage obtained by dividing the (a) Market Value of the Purchased Mortgage Loans on the Purchase Date for such Transaction by (b) the Purchase Price on the Purchase Date for such Transaction; provided, that, with respect to any Mortgage Loan which was not an Exception Mortgage Loan on the related Purchase Date and which, as of the date of determination, is an Exception Mortgage Loan, Buyer’s Margin Percentage as of such date of determination shall be equal to the percentage obtained by dividing (a) the Market Value of such Mortgage Loan on the related Purchase Date by (b) the amount the Purchase Price would have been on the Purchase Date if such Mortgage Loan had been categorized as the type of Mortgage Loan (e.g., Exception Mortgage Loan, etc.) that it is categorized on the date of determination.

“Capital Lease Obligations” means, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Cash Equivalents” means (a) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) certificates of deposit and eurodollar time deposits with maturities of 90 days or less from the date of acquisition and overnight bank deposits of Buyer or of any commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of Buyer or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven days with respect to securities issued or fully guaranteed or insured by the United States Government, (d) commercial paper of a domestic issuer rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody’s and in either case maturing within 90 days after the day of acquisition, (e) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the

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securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s, (f) securities with maturities of 90 days or less from the date of acquisition backed by standby letters of credit issued by Buyer or any commercial bank satisfying the requirements of clause (b) of this definition or (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“Change in Control” means:

- (a) any transaction or event as a result of which Guarantors collectively cease to own, beneficially or of record, 100% of the stock of Seller;
- (b) except for a sale of all of the assets of Seller (other than Repurchase Assets, which are the property of Buyer subject to Seller’s absolute obligation to repurchase them pursuant to the terms of this Agreement) to Discover Bank pursuant to the Discover Financial Transaction, the sale, transfer, or other disposition of all or substantially all of Seller’s or any Guarantor’s assets (excluding any such action taken in connection with any securitization transaction); or
- (c) the consummation of a merger or consolidation of Seller or any Guarantor with or into another entity or any other corporate reorganization, if more than 50% of the combined voting power of the continuing or surviving entity’s stock outstanding immediately after such merger, consolidation or such other reorganization is owned by Persons who were not stockholders of Seller or any Guarantor immediately prior to such merger, consolidation or other reorganization.

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

“Committed Mortgage Loan” means a Mortgage Loan which is the subject of a Take-out Commitment with a Take-out Investor.

“Conforming High CLTV Loan” means a Conforming Mortgage Loan originated using Desktop Underwriter for underwriting pursuant to the Fannie Mae DU Refi Plus™ program with a combined LTV of 95% or higher but not to exceed 110% as more specifically described in Fannie Mae Announcement 09-04.

“Conforming Mortgage Loan” means a first lien Mortgage Loan originated in accordance with the criteria of an Agency for purchase of Mortgage Loans, including, without limitation, conventional Mortgage Loans, as determined by Buyer in its sole discretion.

“CSCOF” means, in the Buyer’s sole discretion, which may be confirmed by notice to the Seller (which may be electronic), for each day, the rate of interest (calculated on a per annum basis) determined by Buyer (which such determination shall be dispositive absent manifest error), equal to the overnight interest expense incurred by Buyer for borrowing funds.

“Custodial Agreement” means the custodial agreement, dated as of the date hereof, among Seller, Buyer and Custodian, as it may be amended, supplemented or otherwise modified from time to time.

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“Custodial Mortgage Loan Schedule” has the meaning assigned to such term in the Custodial Agreement.

“Custodian” means Deutsche Bank National Trust Company or such other party specified by Buyer and agreed to by Seller, which approval shall not be unreasonably withheld.

“DE Compare Ratio” has the meaning set forth in the DE Compare Report.

“DE Compare Report” means with respect to the Seller, the top of the three rows of the report entitled “*Neighborhood Watch Early Warning System — Single Lender — Direct Endorsement Lender*” and found at <https://entp.hud.gov/sfnw/public/>. Such report shall be generated using the following criteria: Mortgagee Selections: “Direct Endorsement Lender;” Delinquent Choices: “Seriously Delinquent;” and 2 Year Performance Period: “Data as of [END OF MOST RECENT PRIOR MONTH].”

“Default” means an Event of Default or an event that with notice or lapse of time or both would become an Event of Default.

“Discover Financial Transaction” means the sale by Seller of substantially all of the operating and related assets of Seller (other than Repurchase Assets, which are the property of Buyer subject to Seller’s absolute obligation to repurchase them pursuant to the terms of this Agreement) to Discover Bank (or one of its Affiliates) on substantially the same terms as set forth in that certain Asset Purchase Agreement by and among Tree.com, Inc., Home Loan Center, Inc., LendingTree, LLC, HLC Escrow, Inc. and Discover Bank dated May 12, 2011 (as last presented to Buyer prior to the date of this Agreement).

“Dollars” and “\$” means dollars in lawful currency of the United States of America.

“DU Refi Plus Mortgage Loan” means a Conforming Mortgage Loan held or guaranteed by Fannie Mae that is refinanced using the Fannie Mae DU Refi Plus™ program.

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

“Due Diligence Cap” has the meaning assigned to such term in the Pricing Side Letter.

“Effective Date” means the date upon which the conditions precedent set forth in Section 10 shall have been satisfied.

“Electronic Tracking Agreement” means an Electronic Tracking Agreement among Buyer, Seller, MERS and MERSCORP, Inc., to the extent applicable as the same may be amended from time to time.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

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“ERISA Affiliate” means any corporation or trade or business that, together with Seller or any Guarantor is treated as a single employer under Section 414(b) or (c) of the Code or solely for purposes of Section 302 of ERISA and Section 412 of the Code is treated as single employer described in Section 414 of the Code.

“Escrow Payments” means, with respect to any Mortgage Loan, the amounts constituting ground rents, taxes, assessments, water rates, sewer rents, municipal charges, mortgage insurance premiums, fire and hazard insurance premiums, condominium charges, and any other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to the Mortgage or any other document.

“Event of Default” has the meaning specified in Section 15 hereof.

“Event of Termination” means with respect to Seller or any Guarantor (a) with respect to any Plan, a reportable event, as defined in Section 4043 of ERISA, as to which the PBGC has not by regulation waived the requirement of Section 4043(a) of ERISA that it be notified with 30 days of the occurrence of such event, or (b) the withdrawal of Seller, any Guarantor or any ERISA Affiliate thereof from a Plan during a plan year in which it is a substantial employer, as defined in Section 4001(a)(2) of ERISA, or (c) the failure by Seller, any Guarantor or any ERISA Affiliate thereof to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA with respect to any Plan, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code (or Section 430 (j) of the Code as amended by the Pension Protection Act) or Section 302(e) of ERISA (or Section 303 (j) of ERISA, as amended by the Pension Protection Act), or (d) the distribution under Section 4041 of ERISA of a notice of intent to terminate any Plan or any action taken by Seller, any Guarantor or any ERISA Affiliate thereof to terminate any plan, or (e) the failure to meet requirements of Section 436 of the Code resulting in the loss of qualified status under Section 401(a)(29) of the Code, or (f) the institution by the PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or (g) the receipt by Seller, any Guarantor or any ERISA Affiliate thereof of a notice from a Multiemployer Plan that action of the type described in the previous clause (f) has been taken by the PBGC with respect to such Multiemployer Plan, or (h) any event or circumstance exists which may reasonably be expected to constitute grounds for Seller, any Guarantor or any ERISA Affiliate thereof to incur liability under Title IV of ERISA or under Sections 412 (b) or 430 (k) of the Code with respect to any Plan.

“Exception Mortgage Loan” means any Mortgage Loan which is otherwise ineligible for purchase hereunder, or which otherwise becomes ineligible for purchase hereunder and which is approved by Buyer in its sole discretion; provided, however, that Seller shall pay to Buyer a fee of \$25 with respect to any such approval of an Exception Mortgage Loan other than a Wet-Ink Mortgage Loan and \$10 with respect to any such approval of an Exception Mortgage Loan which is a Wet-Ink Mortgage Loan; and provided, that upon 30 days’ notice to the Seller, Buyer may change such Exception Mortgage Loan approval fee. Buyer’s approval of a Mortgage Loan as an Exception Mortgage Loan shall expire on the earlier of (a) the date set forth by the Buyer in the written notice that such Mortgage Loan is approved as an Exception Mortgage Loan (an “Exception Notice”) or (b) the occurrence of any additional event, other than that set forth in the Exception Notice, which would cause the Mortgage Loan to become

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ineligible for purchase hereunder. The Pricing Rate, Market Value, Purchase Price and Buyer’s Margin Percentage with respect to Exception Mortgage Loans shall be set in the sole discretion of Buyer. Buyer may at any time, and in its sole discretion, no longer consider a Mortgage Loan an Exception Mortgage



Loan, in which case such Mortgage Loan shall have a Market Value of zero.

“Existing Indebtedness” has the meaning specified in Section 13(a)(23) hereof.

“Fannie Mae” means the Federal National Mortgage Association or any successor thereto.

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

“FHA Approved Mortgagee” means a corporation or institution approved as a mortgagee by the FHA under the National Housing Act, as amended from time to time, and applicable FHA Regulations, and eligible to own and service mortgage loans such as the FHA Loans.

“FHA Loan” means a Mortgage Loan which is the subject of an FHA Mortgage Insurance Contract.

“FHA Mortgage Insurance” means, mortgage insurance authorized under the National Housing Act, as amended from time to time, and provided by the FHA.

“FHA Mortgage Insurance Contract” means the contractual obligation of the FHA respecting the insurance of a Mortgage Loan.

“FHA Regulations” means the regulations promulgated by the Department of Housing and Urban Development under the National Housing Act, as amended from time to time and codified in 24 Code of Federal Regulations, and other Department of Housing and Urban Development issuances relating to FHA Loans, including the related handbooks, circulars, notices and mortgagee letters.

“FHA Streamline Mortgage Loan” means an FHA Loan that has been refinanced in accordance with the FHA Streamline Refinance program.

“FICO” means Fair Isaac & Co., or any successor thereto.

“Fidelity Insurance” shall mean insurance coverage with respect to employee errors, omissions, dishonesty, forgery, theft, disappearance and destruction, robbery and safe burglary, property (other than money and securities) and computer fraud in an aggregate amount acceptable to Seller’s regulators.

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“Freddie Mac” means the Federal Home Loan Mortgage Corporation or any successor thereto.

“GAAP” means generally accepted accounting principles in effect from time to time in the United States of America and applied on a consistent basis.

“GNMA” means the Government National Mortgage Association and any successor thereto.

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

“Gross Margin” means, with respect to each adjustable rate Mortgage Loan, the fixed percentage amount set forth in the related Mortgage Note.

“Guarantee” means, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise); provided that the term “Guarantee” shall not include (a) endorsements for collection or deposit in the ordinary course of business, or (b) obligations to make servicing advances for delinquent taxes and insurance or other obligations in respect of a Mortgaged Property, to the extent required by Buyer. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The terms “Guarantee” and “Guaranteed” used as verbs shall have correlative meanings.

“Guarantor” means each of Tree.com, Inc., LendingTree, LLC and LendingTree Holdings Corp., each in its capacity as guarantor under the Guaranty.

“Guaranty” means the guaranty of the Guarantors dated as of the date hereof as the same may be amended from time to time, pursuant to which each Guarantor fully and unconditionally guarantees the obligations of the Seller hereunder.

“High Cost Mortgage Loan” means a Mortgage Loan (a) classified as a “high cost” loan under the Home Ownership and Equity Protection Act of 1994; (b) classified as a “high cost,” “threshold,” “covered,” or “predatory” loan under any other applicable state, federal or local law (or a similarly classified loan using different terminology under a law, regulation or ordinance imposing heightened regulatory scrutiny or additional legal liability for residential mortgage loans having high interest rates, points and/or fees) or (c) having a percentage listed under the Indicative Loss Severity Column (the column that appears in the S&P Anti-Predatory Lending Law Update Table, included in the then-current S&P’s LEVELS® Glossary of Terms on Appendix E).

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“Income” means, with respect to any Purchased Mortgage Loan at any time until repurchased by the Seller, any principal received thereon or in respect thereof and all interest, dividends or other distributions thereon.

“Indebtedness” means, for any Person: at any time, and only to the extent outstanding at such time: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business, so long as such trade accounts payable are payable within 90 days of the date the respective goods are delivered or the respective services are rendered; (c) Indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective Indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such Person; (e) Capital Lease Obligations of such Person; (f) obligations of such Person under repurchase agreements, sale/buy-back agreements or like arrangements, including, without limitation, any Indebtedness arising hereunder; (g) Indebtedness of others Guaranteed by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) Indebtedness of general partnerships of which such Person is a general partner and (j) with respect to clauses (a)-(i) above both on and off balance sheet.

“Index” means, with respect to any adjustable rate Mortgage Loan, the index identified on the Mortgage Loan Schedule and set forth in the related Mortgage Note for the purpose of calculating the applicable Mortgage Interest Rate.

“Interest Only Adjustment Date” means, with respect to each Interest Only Loan, the date, specified in the related Mortgage Note on which the Monthly Payment will be adjusted to include principal as well as interest.

“Interest Only Loan” means a Mortgage Loan which only requires payments of interest for a period of time specified in the related Mortgage Note.

“Interest Rate Adjustment Date” means the date on which an adjustment to the Mortgage Interest Rate with respect to each Mortgage Loan becomes effective.

“Interest Rate Protection Agreement” means, with respect to any or all of the Purchased Mortgage Loans, any short sale of a US Treasury Security, or futures contract, or mortgage related security, or Eurodollar futures contract, or options related contract, or interest rate swap, cap or collar agreement or Take-out Commitment, or similar arrangement providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, entered into by Seller and an Affiliate of Buyer or such other party acceptable to Buyer in its sole discretion, which agreement is acceptable to Buyer in its sole discretion.

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“Lender Insurance Authority” means the permission granted to certain FHA-approved lenders to process single family mortgage applications without first submitting documentation to United States Department of Housing and Urban Development as set forth in 12 U.S.C. §1715z-21 and the regulations enacted thereunder set forth in 24 CFR §203.6.

“Lien” means any mortgage, lien, pledge, charge, security interest or similar encumbrance.

“Loan to Value Ratio” or “LTV” means with respect to any Mortgage Loan other than a refinancing underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, a DU Refi Plus Mortgage Loan, an FHA Streamline Mortgage Loan or an Open Access Mortgage Loan, the ratio of the original outstanding principal amount of such Mortgage Loan to the lesser of (a) the Appraised Value of the Mortgaged Property at origination or (b) if the Mortgaged Property was purchased within 12 months of the origination of such Mortgage Loan, the purchase price of the Mortgaged Property. With respect to refinancings underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, DU Refi Mortgage Loans, FHA Streamline Mortgage Loans and Open Access Mortgage Loans, Loan to Value Ratio or LTV means the ratio of the original outstanding principal amount of such Mortgage Loan to the Appraised Value Alternative of the Mortgaged Property at origination.

“Margin Call” has the meaning specified in Section 6(a) hereof.

“Margin Deadline” has the meaning specified in Section 6(b) hereof.

“Margin Deficit” has the meaning specified in Section 6(a) hereof.

“Market Value” has the meaning assigned to such term in the Pricing Side Letter.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, condition (financial or otherwise) or prospects of Seller, any Guarantor or any Affiliate that is a party to any Program Agreement taken as a whole; (b) a material impairment of the ability of Seller, any Guarantor or any Affiliate that is a party to any Program Agreement to perform under any Program Agreement and to avoid any Event of Default; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of any Program Agreement against Seller, any Guarantor or any Affiliate that is a party to any Program Agreement, in each case as determined by the Buyer in its sole discretion.

“Maximum Aggregate Purchase Price” has the meaning assigned to such term in the Pricing Side Letter.

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

“MERS System” means the system of recording transfers of mortgages electronically maintained by MERS.

“Monthly Payment” means the scheduled monthly payment of principal and/or interest on a Mortgage Loan.

“Moody’s” means Moody’s Investors Service, Inc. or any successors thereto.

“Mortgage” means each mortgage, assignment of rents, security agreement and fixture filing, or deed of trust, assignment of rents, security agreement and fixture filing, deed to secure debt, assignment of rents, security agreement and fixture filing, or similar instrument creating and evidencing a lien on real property and other property and rights incidental thereto.

“Mortgage File” means, with respect to a Mortgage Loan, the documents and instruments relating to such Mortgage Loan and set forth in an exhibit to the Custodial Agreement.

“Mortgage Interest Rate” means the rate of interest borne on a Mortgage Loan from time to time in accordance with the terms of the related Mortgage Note.

“Mortgage Interest Rate Cap” means, with respect to an adjustable rate Mortgage Loan, the limit on each Mortgage Interest Rate adjustment as set forth in the related Mortgage Note.

“Mortgage Loan” means any first lien closed Conforming Mortgage Loan, FHA Loan or VA Loan, which is a fixed or floating-rate, one-to-four-family residential mortgage or home equity loan evidenced by a promissory note and secured by a first lien mortgage, which satisfies the requirements set forth in the Underwriting Guidelines and Section 13(b) hereof; provided, however, that, except with respect to Conforming High CLTV Loans and as expressly approved in writing by Buyer, Mortgage Loans shall not include any “high-LTV” loans (i.e., a mortgage loan having a loan-to-value ratio in excess of (a) with respect to FHA Loans or VA Loans, 97% and (b) with respect to all other Mortgage Loans, 95% (provided that Conforming Mortgage Loans, other than Conforming High CLTV Loans, with an LTV of 80% or higher must be covered by primary mortgage insurance) or in excess of such lower percentage set forth in the Underwriting Guidelines or any High Cost Mortgage Loans and; provided, further, that the related Purchase Date is no more than thirty (30) days following the origination date.

“Mortgage Loan Documents” means the documents in the related Mortgage File to be delivered to the Custodian.

“Mortgage Loan Schedule” means, with respect to any Transaction as of any date, a mortgage loan schedule in the form of a computer tape or other electronic medium generated by Seller, and delivered to Buyer and Custodian, which provides information required by Buyer to enter into Transactions relating to the Purchased Mortgage Loans in a format acceptable to Buyer.

“Mortgage Note” means the promissory note or other evidence of the indebtedness of a Mortgagor secured by a Mortgage.

“Mortgaged Property” means the real property securing repayment of the debt evidenced by a Mortgage Note.

“Mortgagor” means the obligor or obligors on a Mortgage Note, including any person who has assumed or guaranteed the obligations of the obligor thereunder.

“Multiemployer Plan” means a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been or are required to be made by Seller or any ERISA Affiliate and that is covered by Title IV of ERISA.

“Net Income” means, for any period and any Person, the net income of such Person for such period as determined in accordance with GAAP.

“Net Worth” means, with respect to any Person, an amount equal to, on a consolidated basis, such Person’s stockholder equity (determined in accordance with GAAP).

“1934 Act” means the Securities Exchange Act of 1934, as amended from time to time.

“Non-Performing Mortgage Loan” means (a) any Mortgage Loan for which any payment of principal or interest is more than twenty-nine (29) days past due, (b) any Mortgage Loan with respect to which the related mortgagor is in bankruptcy or (c) any Mortgage Loan with respect to which the related mortgaged property is in foreclosure.

“Non-Utilization Fee” has the meaning assigned to such term in the Pricing Side Letter.

“Obligations” means (a) all of Seller’s indebtedness, obligations to pay the Repurchase Price on the Repurchase Date, the Price Differential on each Price Differential Payment Date, and other obligations and liabilities, to Buyer, its Affiliates or Custodian arising under, or in connection with, the Program Agreements, whether now existing or hereafter arising; (b) any and all sums paid by Buyer or on behalf of Buyer in order to preserve any Purchased Mortgage Loan or its interest therein; (c) in the event of any proceeding for the collection or enforcement of any of Seller’s indebtedness, obligations or liabilities referred to in clause (a), the reasonable expenses of retaking, holding, collecting, preparing for sale, selling or otherwise disposing of or realizing on any Purchased Mortgage Loan, or of any exercise by Buyer of its rights under the Program Agreements, including, without limitation, attorneys’ fees and disbursements and court costs; and (d) all of Seller’s indemnity obligations to Buyer or Custodian or both pursuant to the Program Agreements.

“OFAC” has the meaning set forth in Section 13(a)(27) hereof.

“Officer’s Compliance Certificate” has the meaning assigned to such term in the Pricing Side Letter.

“Open Access Mortgage Loan” means a Conforming Mortgage Loan owned or securitized by Freddie Mac that is refinanced using Freddie Mac’s “Relief Refinance Mortgage — Open Access” program.

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“PBGC” means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Pension Protection Act” means the Pension Protection Act of 2006.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

“Plan” means an employee benefit or other plan established or maintained by Seller or any ERISA Affiliate and covered by Title IV of ERISA, other than a Multiemployer Plan.

“Post Default Rate” has the meaning assigned to such term in the Pricing Side Letter.

“Price Differential” means with respect to any Transaction as of any date of determination, an amount equal to the product of (a) the Pricing Rate for such Transaction and (b) the Purchase Price for such Transaction, calculated daily on the basis of a 360-day year for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the Repurchase Date adjusted as provided by Section 5(c) hereof.

“Price Differential Payment Date” means, with respect to a Purchased Mortgage Loan, the 5th day of the month following the related Purchase Date and each succeeding 5th day of the month thereafter; provided, that, with respect to such Purchased Mortgage Loan, the final Price Differential Payment Date shall be the related Repurchase Date; and provided, further, that if any such day is not a Business Day, the Price Differential Payment Date shall be the next succeeding Business Day.

“Pricing Rate” has the meaning assigned to such term in the Pricing Side Letter.

“Pricing Side Letter” means, the letter agreement dated as of the date hereof, between Buyer and Seller, as the same may be amended from time to time.

“Program Agreements” means, collectively, this Agreement, the Guaranty, the Custodial Agreement, the Pricing Side Letter, the Electronic Tracking Agreement, the Power of Attorney, the Servicing Agreement, if any, the Servicer Notice, if entered into and, with respect to each Exception Mortgage Loan, a Purchase Confirmation.

“Prohibited Person” has the meaning set forth in Section 13(a)(27) hereof.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Purchase Confirmation” means, with respect to an Exception Mortgage Loan, a confirmation of a Transaction, in the form attached as Exhibit A hereto.

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“Purchase Date” means the date on which Purchased Mortgage Loans are to be transferred by Seller to Buyer.

“Purchase Price” means the price at which each Purchased Mortgage Loan is transferred by Seller to Buyer, which shall equal:

(a) on the Purchase Date, in the case of all Purchased Mortgage Loans, the applicable Purchase Price Percentage multiplied by the lesser of either: (x) the Market Value of such Purchased Mortgage Loan or (y) the outstanding principal amount thereof as set forth on the related Mortgage Loan Schedule;

(b) on any day after the Purchase Date, except where Buyer and the Seller agree otherwise, the amount determined under the immediately preceding clause (a) decreased by the amount of any cash transferred by the Seller to Buyer pursuant to Section 6 hereof or applied to reduce the Seller’s obligations under Section 4(b)(ii) or Section 4(c) hereof.

“Purchase Price Percentage” has the meaning assigned to such term in the Pricing Side Letter.

“Purchased Mortgage Loans” means the collective reference to Mortgage Loans together with the Repurchase Assets related to such Mortgage Loans transferred by Seller to Buyer in a Transaction hereunder, listed on the related Mortgage Loan Schedule attached to the related Transaction Request, which such Mortgage Loans the Custodian has been instructed to hold pursuant to the Custodial Agreement.

“Qualified Insurer” means an insurance company duly authorized and licensed where required by law to transact insurance business and approved as an insurer by Fannie Mae or Freddie Mac.

“Qualified Originator” means an originator of Mortgage Loans which is acceptable under the Underwriting Guidelines.

“Records” means all instruments, agreements and other books, records, and reports and data generated by other media for the storage of information maintained by Seller, Servicer or any other person or entity with respect to a Purchased Mortgage Loan. Records shall include the Mortgage

Notes, any Mortgages, the Mortgage Files, the credit files related to the Purchased Mortgage Loan and any other instruments necessary to document or service a Purchased Mortgage Loan.

“REO Property” means real property acquired by Seller, including a Mortgaged Property acquired through foreclosure of a Mortgage Loan or by deed in lieu of such foreclosure.

“Reporting Date” means the 7th day of each month or, if such day is not a Business Day, the next succeeding Business Day.

“Repurchase Assets” has the meaning assigned thereto in Section 8 hereof.

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“Repurchase Date” means the earlier of (a) the Termination Date, (b) the date set forth in the applicable Purchase Confirmation with respect to an Exception Mortgage Loan, (c) the date determined by application of Section 16 hereof, (d) the date identified to Buyer by Seller as the date that the related Mortgage Loan is to be sold pursuant to a Take-out Commitment or (e) a date no later than sixty (60) days following the Purchase Date.

“Repurchase Price” means the price at which Purchased Mortgage Loans are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the accrued but unpaid Price Differential as of the date of such determination.

“Request for Certification” means a notice sent to the Custodian reflecting the sale of one or more Purchased Mortgage Loans to Buyer hereunder.

“Requirement of Law” means, with respect to any Person, any law, treaty, rule or regulation or determination of an arbitrator, a court or other governmental authority, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” means as to any Person, the president or, with respect to financial matters, the chief operating officer of such Person.

“S&P” means Standard & Poor’s Ratings Services, or any successor thereto.

“SEC” means the Securities and Exchange Commission, or any successor thereto.

“Seller” means Home Loan Center, Inc. d/b/a LendingTree Loans or its permitted successors and assigns.

“Servicer” means Seller or any servicer approved by Buyer in its sole discretion.

“Servicer Notice” means the notice acknowledged by a third party Servicer substantially in the form of Exhibit J hereto.

“Servicing Agreement” means any servicing agreement entered into among Seller and a third party Servicer as the same may be amended from time to time.

“Servicing Rights” means rights of any Person to administer, service or subservice, the Purchased Mortgage Loans or to possess related Records.

“Settlement Agent” means, with respect to any Transaction the subject of which is a Wet-Ink Mortgage Loan, the entity approved by Buyer, in its sole good-faith discretion, which may be a title company, escrow company or attorney in accordance with local law and practice in the jurisdiction where the related Wet-Ink Mortgage Loan is being originated. A Settlement Agent is deemed approved unless Buyer notifies Seller otherwise at any time electronically or in writing.

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“SIPA” means the Securities Investor Protection Act of 1970, as amended from time to time.

“Subordinated Debt” means, Indebtedness of Seller which is (a) unsecured, (b) no part of the principal of such Indebtedness is required to be paid (whether by way of mandatory sinking fund, mandatory redemption, mandatory prepayment or otherwise) prior to the date which is one year following the Termination Date and (c) the payment of the principal of and interest on such Indebtedness and other obligations of Seller in respect of such Indebtedness are subordinated to the prior payment in full of the principal of and interest (including post-petition obligations) on the Transactions and all other obligations and liabilities of Seller to Buyer hereunder on terms and conditions approved in writing by Buyer and all other terms and conditions of which are satisfactory in form and substance to Buyer.

“Subsidiary” means, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Take-out Commitment” means a commitment of Seller to either (a) sell one or more identified Mortgage Loans to a Take-out Investor or (b) (i) swap one or more identified Mortgage Loans with a Take-out Investor that is an Agency for an Agency Security, and (ii) sell the related Agency Security to a Take-out Investor, and in each case, the corresponding Take-out Investor’s commitment back to Seller to effectuate any of the foregoing, as applicable. With respect to any Take-out Commitment with an Agency, the applicable agency documents list Buyer as sole subscriber.

“Take-out Investor” means (a) an Agency or (b) other institution which has made a Take-out Commitment and has been approved by Buyer, such approval to not be unreasonably withheld.

“Termination Date” has the meaning assigned to such term in the Pricing Side Letter.

“Test Period” means any calendar quarter.

“Transaction” has the meaning set forth in Section 1 hereof.

“Transaction Request” means a request via email from Seller to Buyer notifying Buyer that Seller wishes to enter into a Transaction hereunder that indicates that it is a Transaction Request under this Agreement.

“Trust Receipt” means, with respect to any Transaction as of any date, a receipt in the form attached as an exhibit to the Custodial Agreement.

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“Underwriting Guidelines” means the standards, procedures and guidelines of the Seller for underwriting and acquiring Mortgage Loans, which are set forth in the written policies and procedures of the Seller, a copy of which have been provided to Buyer and such other guidelines as are identified and approved in writing by Buyer, such approval to not be unreasonably withheld.

“Uniform Commercial Code” means the Uniform Commercial Code as in effect on the date hereof in the State of New York or the Uniform Commercial Code as in effect in the applicable jurisdiction.

“VA” means the U.S. Department of Veterans Affairs, an agency of the United States of America, or any successor thereto including the Secretary of Veterans Affairs.

“VA Approved Lender” means a lender which is approved by the VA to act as a lender in connection with the origination of VA Loans.

“VA Loan” means a Mortgage Loan which is subject of a VA Loan Guaranty Agreement as evidenced by a loan guaranty certificate, or a Mortgage Loan which is a vender loan sold by the VA.

“VA Loan Guaranty Agreement” means the obligation of the United States to pay a specific percentage of a Mortgage Loan (subject to a maximum amount) upon default of the Mortgagor pursuant to the Servicemen’s Readjustment Act, as amended.

“Violation Deadline” has the meaning assigned thereto in Section 4(c) hereof.

“Wet-Ink Delivery Date” has the meaning assigned to such term in the Pricing Side Letter.

“Wet-Ink Documents” means, with respect to any Wet-Ink Mortgage Loan, the (a) Transaction Request and (b) the Mortgage Loan Schedule.

“Wet-Ink Mortgage Loan” means a Mortgage Loan which Seller is selling to Buyer simultaneously with the origination thereof.

### 3. Program; Initiation of Transactions

a. From time to time, in the sole discretion of Buyer, Buyer may purchase from Seller certain Mortgage Loans that have been originated by Seller. **This Agreement is not a commitment by Buyer to enter into Transactions with Seller but rather sets forth the procedures to be used in connection with periodic requests for Buyer to enter into Transactions with Seller. Seller hereby acknowledges that Buyer is under no obligation to agree to enter into, or to enter into, any Transaction pursuant to this Agreement.** All Purchased Mortgage Loans shall exceed or meet the Underwriting Guidelines, and shall be serviced by Seller or Servicer, as applicable. The aggregate Purchase Price of Purchased Mortgage Loans subject to outstanding Transactions shall not exceed the Maximum Aggregate Purchase Price.

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b. Seller shall request that Buyer enter into a Transaction by delivering (i) to Buyer, a Transaction Request (A) one (1) Business Day prior to the proposed Purchase Date for Mortgage Loans that are not Wet-Ink Mortgage Loans or (B) by 4:00 p.m. (New York City time) on the proposed Purchase Date for Wet-Ink Mortgage Loans and (ii) to Buyer and Custodian a Mortgage Loan Schedule, in accordance with the Custodial Agreement. In the event the Mortgage Loan Schedule provided by Seller contains erroneous computer data, is not formatted properly or the computer fields are otherwise improperly aligned, Buyer shall provide written or electronic notice to Seller describing such error and Seller shall correct the computer data, reformat or properly align the computer fields itself and resubmit the Mortgage Loan Schedule as required herein. All requests to enter into a Transaction shall be provided by Seller to Buyer prior to the first to occur of (i) the Discover Financial Transaction or (ii) the Termination Date.

c. With respect to each Exception Mortgage Loan, upon receipt of the Transaction Request, Buyer shall, consistent with this Agreement, specify the terms for such proposed Transaction, including the Purchase Price, the Pricing Rate, the Market Value and the Repurchase Date in respect of such Transaction. The terms thereof shall be set forth in the Purchase Confirmation to be delivered to Seller on or prior to the Purchase Date.

d. With respect to each Exception Mortgage Loan, the Purchase Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Purchase Confirmation

relates, and Seller's acceptance of the related proceeds shall constitute Seller's agreement to the terms of such Purchase Confirmation. It is the intention of the parties that, with respect to each Exception Mortgage Loan, each Purchase Confirmation shall not be separate from this Agreement but shall be made a part of this Agreement. In the event of any conflict between this Agreement and, with respect to each Exception Mortgage Loan, a Purchase Confirmation, the terms of the Purchase Confirmation shall control with respect to the related Transaction.

e. Upon the satisfaction of the applicable conditions precedent set forth in Section 10 hereof, all of Seller's interest in the Repurchase Assets shall pass to Buyer on the Purchase Date, against the transfer of the Purchase Price to Seller. Upon transfer of the Mortgage Loans to Buyer as set forth in this Section and until termination of any related Transactions as set forth in Sections 4 or 16 of this Agreement, ownership of each Mortgage Loan, including each document in the related Mortgage File and Records, is vested in Buyer; provided that, prior to the recordation by the Custodian as provided for in the Custodial Agreement record title in the name of Seller to each Mortgage shall be retained by Seller in trust, for the benefit of Buyer, for the sole purpose of facilitating the servicing and the supervision of the servicing of the Mortgage Loans.

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f. With respect to each Wet-Ink Mortgage Loan, by no later than the Wet-Ink Delivery Date, Seller shall cause the related Settlement Agent to deliver to the Custodian the remaining documents in the Mortgage File, as more particularly set forth in the Custodial Agreement.

#### 4. Repurchase

a. Seller shall repurchase the related Purchased Mortgage Loans from Buyer on each related Repurchase Date. Such obligation to repurchase exists without regard to any prior or intervening liquidation or foreclosure with respect to any Purchased Mortgage Loan (but liquidation or foreclosure proceeds received by Buyer shall be applied to reduce the Repurchase Price for such Purchased Mortgage Loan on each Price Differential Payment Date except as otherwise provided herein). Seller is obligated to repurchase and take physical possession of the Purchased Mortgage Loans from Buyer or its designee (including the Custodian) at Seller's expense on the related Repurchase Date.

b. Provided that no Default shall have occurred and is continuing, and Buyer has received the related Repurchase Price upon repurchase of the Purchased Mortgage Loans, Buyer agrees to release its ownership interest hereunder in the Purchased Mortgage Loans (including the Repurchase Assets related thereto) at the request of Seller. The Purchased Mortgage Loans (including the Repurchase Assets related thereto) shall be delivered to Seller free and clear of any lien, encumbrance or claim not permitted under paragraph (j) of Schedule 1 hereto. With respect to payments in full by the related Mortgagor of a Purchased Mortgage Loan, Seller agrees to immediately remit (or cause to be remitted) to Buyer the Repurchase Price with respect to such Purchased Mortgage Loan. Buyer agrees to release its ownership interest in Purchased Mortgage Loans which have been prepaid in full after receipt of evidence of compliance with the immediately preceding sentence.

c. In the event that at any time any Purchased Mortgage Loan violates the applicable sublimit set forth in the definition of Market Value, Buyer may, in its sole discretion, redesignate such Mortgage Loan as an Exception Mortgage Loan. If Buyer does not redesignate such Mortgage Loan as an Exception Mortgage Loan, and if Seller fails to notify Buyer within five (5) Business Days following notice or knowledge of such violation that Seller does not want to receive a bid for such Mortgage Loan as described below, Buyer or an Affiliate of Buyer may offer to terminate Seller's right and obligation to repurchase such Mortgage Loan by paying Seller a price to be set by Buyer in its sole discretion (a "Bid"). Seller, within five (5) Business Days of receipt of Buyer's bid (the "Violation Deadline") may, in its sole discretion, either (i) accept Buyer's bid, terminating Seller's right and obligation to repurchase such Mortgage Loan under this Agreement or (ii) immediately repurchase the Mortgage Loan at the Repurchase Price in accordance with this Section 4. Seller shall pay Buyer a bid fee equal to \$250 (the "Bid Fee") with respect to

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each Mortgage Loan on which Buyer or its Affiliate makes a Bid, regardless of whether the Bid is accepted and such Bid Fee shall be due and payable to Buyer on or before the Violation Deadline. Any amount paid by Buyer or its Affiliate to terminate Seller's right and obligation to repurchase a Purchased Mortgage Loan if a Bid is accepted pursuant to this Section shall be applied by Buyer toward the outstanding Repurchase Price for the applicable Transaction.

#### 5. Price Differential.

a. On each Business Day that a Transaction is outstanding, the Pricing Rate shall be reset and, unless otherwise agreed, the accrued and unpaid Price Differential shall be settled in cash on each related Price Differential Payment Date. Two Business Days prior to the Price Differential Payment Date, Buyer shall give Seller written or electronic notice of the amount of the Price Differential due on such Price Differential Payment Date. On the Price Differential Payment Date, Seller shall pay to Buyer the Price Differential for such Price Differential Payment Date (along with any other amounts to be paid pursuant to Sections 7, 34 and 35 hereof), by wire transfer in immediately available funds.

b. If Seller fails to pay all or part of the Price Differential by 4:00 p.m. (New York City time) on the related Price Differential Payment Date, with respect to any Purchased Mortgage Loan, Seller shall be obligated to pay to Buyer (in addition to, and together with, the amount of such Price Differential) interest on the unpaid Repurchase Price at a rate per annum equal to the Post Default Rate until the Price Differential is received in full by Buyer.

c. Seller may remit to Buyer funds in an amount up to the outstanding Purchase Price of the Purchased Mortgage Loans, to be held as unsegregated cash margin and collateral for all Obligations under this Agreement (such amount, to the extent not applied to Obligations under this Agreement, the "Buydown Amount"). The Buydown Amount shall be used by Buyer in order to calculate the aggregate

Price Differential, which will accrue on the aggregate Purchase Price then outstanding minus the Buydown Amount, applied to Transactions involving the lowest Pricing Rate. Any such reduction shall be reflected as a Price Differential rebate on Seller's monthly invoice. Without limiting the generality of the foregoing, in the event that a Margin Call or other Default exists, the Buyer shall be entitled to use any or all of the Buydown Amount to cure such circumstance or otherwise exercise remedies available to the Buyer without prior notice to, or consent from, the Seller. Provided no Margin Call or other Default exists (a) upon receipt of written request from Seller prior to 12:00 p.m. (New York City time) on a Business Day, Buyer shall remit any portion of such Buydown Amount back to Seller on the date such request is received and (b) upon receipt of written request from Seller at or following 12:00 p.m. (New York City time) on a

Business Day, Buyer shall remit any portion of such Buydown Amount back to Seller on the Business Day following the date such request is received.

**6. Margin Maintenance**

- a. If at any time the Market Value of any Purchased Mortgage Loan subject to a Transaction is less than Buyer's Margin Amount for such Transaction (a "Margin Deficit"), then Buyer may by notice to Seller require Seller to transfer to Buyer cash in an amount at least equal to the Margin Deficit (such requirement, a "Margin Call").
- b. Notice delivered pursuant to Section 6(a) above may be given by any written or electronic means. Any notice given before 10:00 a.m. (New York City time) on a Business Day shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. (New York City time) on such Business Day; notice given after 10:00 a.m. (New York City time) on a Business Day shall be met, and the related Margin Call satisfied, no later than 5:00 p.m. (New York City time) on the following Business Day (the foregoing time requirements for satisfaction of a Margin Call are referred to as the "Margin Deadlines"). The failure of Buyer, on any one or more occasions, to exercise its rights hereunder, shall not change or alter the terms and conditions to which this Agreement is subject or limit the right of Buyer to do so at a later date. Seller and Buyer each agree that a failure or delay by Buyer to exercise its rights hereunder shall not limit or waive Buyer's rights under this Agreement or otherwise existing by law or in any way create additional rights for Seller.
- c. In the event that a Margin Deficit exists with respect to any Purchased Mortgage Loan, Buyer may retain any funds received by it to which the Seller would otherwise be entitled hereunder, which funds (i) shall be held by Buyer against the related Margin Deficit and (ii) may be applied by Buyer against the Repurchase Price of any Purchased Mortgage Loan for which the related Margin Deficit remains otherwise unsatisfied. Notwithstanding the foregoing, the Buyer retains the right, in its sole discretion, to make a Margin Call in accordance with the provisions of this Section 6.

**7. Income Payments**

- a. If Income is paid in respect of any Purchased Mortgage Loan during the term of a Transaction, such Income shall be the property of Buyer. Upon an Event of Default, Seller shall and shall cause Servicer to deposit all Income to the account set forth in Section 9, upon receipt thereof, in accordance with Section 12(c) hereof.
- b. Provided no Event of Default has occurred and is continuing, on each Price Differential Payment Date, Seller shall remit to Buyer an amount equal to the Price Differential out of the interest portion of the Income paid in

respect to the Purchased Mortgage Loans for the preceding month in accordance with Section 5 of this Agreement. Upon termination of any Transaction, to the extent that there is any excess Income after repayment of all amounts to be transferred to Buyer by Seller, Buyer, in its sole option, may apply the excess income to reduce the Repurchase Price due upon termination of any other outstanding Transactions.

- c. Notwithstanding any provision to the contrary in this Section 7, immediately upon receipt by Seller of any prepayment of principal in full, with respect to a Purchased Mortgage Loan, Seller shall remit such amount to Buyer and Buyer shall immediately apply any such amount received by Buyer to reduce the amount of the Repurchase Price due upon termination of the related Transaction.

**8. Security Interest**

- a. On each Purchase Date by delivery of the Transaction Request and Mortgage Loan Schedule and payment of the Purchase Price by Buyer, Seller thereby sells, assigns and conveys to Buyer all rights and interests in the Purchased Mortgage Loans identified on the related Mortgage Loan Schedule and the Repurchase Assets. Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, and in any event, Seller hereby pledges to Buyer as security for the performance by Seller of its Obligations and hereby grants, assigns and pledges to Buyer a fully perfected first priority security interest in the Purchased Mortgage Loans, any Agency Security or right to receive such Agency Security when issued to the extent backed by any of the Purchased Mortgage Loans, the Records, and all related Servicing Rights, the Program Agreements (to the extent such Program Agreements and Seller's right thereunder relate to the Purchased Mortgage Loans), any related Take-out Commitments, any Property relating to the Purchased Mortgage Loans, all insurance policies and insurance proceeds relating to any Purchased Mortgage Loan or the related Mortgaged Property, including, but not limited to, any payments or proceeds under any related primary insurance, hazard insurance and FHA Mortgage Insurance Contracts and VA Loan Guaranty Agreements (if any), Income, the Buydown Amount and any account to which such amount is deposited, Interest Rate Protection Agreements, accounts (including any interest of Seller in escrow accounts) and any other contract rights, instruments, accounts, payments, rights to payment (including payments of interest or finance charges), general intangibles and other assets relating to the Purchased Mortgage Loans (including, without limitation, any other accounts) or any interest in the Purchased Mortgage Loans, and any proceeds (including the related



securitization proceeds) and distributions with respect to any of the foregoing and any other property, rights, title or interests as are specified on a Transaction Request and/or Trust Receipt, in all instances, whether now owned or hereafter acquired, now existing or hereafter created (collectively, the “Repurchase Assets”).

b. The Seller acknowledges that it has no rights to service the Purchased Mortgage Loans. Without limiting the generality of the foregoing and in the event that the Seller is deemed to retain any residual Servicing Rights, and for the avoidance of doubt, Seller grants, assigns and pledges to Buyer a security interest in the Servicing Rights and proceeds related thereto and in all instances, whether now owned or hereafter acquired, now existing or hereafter created. The foregoing provision is intended to constitute a security agreement or other arrangement or other credit enhancement related to this Agreement and Transactions hereunder as defined under Sections 101(47)(A)(v) and 741(7)(A)(xi) of the Bankruptcy Code.

c. Seller agrees to execute, deliver and/or file such documents and perform such acts as may be reasonably necessary to fully perfect Buyer’s security interest created hereby. Furthermore, the Seller hereby authorizes the Buyer to file financing statements relating to the Repurchase Assets, as the Buyer, at its option, may deem appropriate. The Seller shall pay the filing costs for any financing statement or statements prepared pursuant to this Section 8.

## 9. Payment and Transfer

Unless otherwise mutually agreed in writing, all transfers of funds to be made by Seller hereunder shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Buyer at the following account maintained by Buyer: Account No. \_\_\_\_\_, for the account of CSFB Buyer/Home Loan Center, Inc. d/b/a LendingTree Loans-Inbound Account, Citibank, ABA No. \_\_\_\_\_ or such other account as Buyer shall specify to Seller in writing. Seller acknowledges that it has no rights of withdrawal from the foregoing account. All Purchased Mortgage Loans transferred by one party hereto to the other party shall be in the case of a purchase by Buyer in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as Buyer may reasonably request. All Purchased Mortgage Loans shall be evidenced by a Trust Receipt. Any Repurchase Price received by Buyer after 2:00 p.m. (New York City time) shall be deemed received on the next succeeding Business Day.

## 10. Conditions Precedent

a. Initial Transaction. As conditions precedent to the initial Transaction, Buyer shall have received on or before the day of such initial Transaction the following, in form and substance satisfactory to Buyer and duly executed by Seller, each Guarantor (as to items (1), (3) — (5) below) and each other party thereto:

(1) Program Agreements. The Program Agreements duly executed and delivered by the parties thereto and being in full force and effect, free of any modification, breach or waiver.

(2) Security Interest. Evidence that all other actions necessary or, in the opinion of Buyer, desirable to perfect and protect Buyer’s

interest in the Purchased Mortgage Loans and other Repurchase Assets have been taken, including, without limitation, duly authorized and filed Uniform Commercial Code financing statements on Form UCC-1.

(3) Organizational Documents. A certificate of the corporate secretary of Seller and each Guarantor in form and substance acceptable to Buyer, attaching certified copies of Seller’s certificate of incorporation and bylaws, Tree.com, Inc.’s certificate of incorporation and bylaws, LendingTree, LLC’s operating agreement and LendingTree Holdings Corp.’s certificate of incorporation and bylaws, and with respect to Seller, resolutions approving the Program Agreements and transactions thereunder (either specifically or by general resolution) and all documents evidencing other necessary corporate action or governmental approvals as may be required in connection with the Program Agreements.

(4) Good Standing Certificate. A certified copy of a good standing certificate from the jurisdiction of organization of Seller and each Guarantor, dated as of no earlier than the date ten (10) Business Days prior to the Purchase Date with respect to the initial Transaction hereunder.

(5) Incumbency Certificate. An incumbency certificate of the corporate secretary of Seller and each Guarantor, certifying the names, true signatures and titles of the representatives duly authorized to request transactions hereunder and to execute the Program Agreements.

(6) Opinion of Counsel. An opinion of Seller’s counsel, in form and substance substantially as set forth in Exhibit E attached hereto.

(7) Underwriting Guidelines. A true and correct copy of the Underwriting Guidelines certified by an officer of the Seller.

(8) Fees. Payment of any fees due to Buyer hereunder.

(9) Insurance. Evidence that Seller has added Buyer as an additional loss payee under the Seller’s Fidelity Insurance.

b. All Transactions. The obligation of Buyer to enter into each Transaction pursuant to this Agreement is subject to the following conditions precedent:

(1) Due Diligence Review. Without limiting the generality of Section 36 hereof, Buyer shall have completed, to its satisfaction, its due diligence review of the related Mortgage Loans, the Seller and the Servicer.

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(2) Required Documents.

(a) With respect to each Purchased Mortgage Loan which is not a Wet-Ink Mortgage Loan, the Mortgage File has been delivered to the Custodian in accordance with the Custodial Agreement;

(b) With respect to each Wet-Ink Mortgage Loan, the Wet-Ink Documents have been delivered to Buyer or Custodian, as the case may be, in accordance with the Custodial Agreement.

(3) Transaction Documents. Buyer or its designee shall have received on or before the day of such Transaction (unless otherwise specified in this Agreement) the following, in form and substance satisfactory to Buyer and (if applicable) duly executed:

(a) A Transaction Request and Mortgage Loan Schedule delivered by Seller pursuant to Section 3(b) or 3(c) hereof and a Purchase Confirmation with respect to an Exception Mortgage Loan.

(b) The Request for Certification and the related Mortgage Loan Schedule delivered by Seller, and the Trust Receipt and Custodial Mortgage Loan Schedule delivered by Custodian.

(c) Such certificates, opinions of counsel or other documents as Buyer may reasonably request.

(4) No Default. No Default or Event of Default shall have occurred and be continuing;

(5) Requirements of Law. Buyer shall not have determined that the introduction of or a change in any Requirement of Law or in the interpretation or administration of any Requirement of Law applicable to Buyer has made it unlawful, and no Governmental Authority shall have asserted that it is unlawful, for Buyer to enter into Transactions with a Pricing Rate based on CSCOF.

(6) Representations and Warranties. Both immediately prior to the related Transaction and also after giving effect thereto and to the intended use thereof, the representations and warranties made by Seller in each Program Agreement shall be true, correct and complete on and as of such Purchase Date in all material respects with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date).

(7) Electronic Tracking Agreement. To the extent Seller is selling Mortgage Loans which are registered on the MERS® System, an Electronic Tracking Agreement entered into, duly executed and delivered by the parties thereto and being in full force and effect, free of any modification, breach or waiver.

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(8) Termination. Neither the closing of the Discover Financial Transaction nor the Termination Date shall have occurred.

(9) Material Adverse Change. None of the following shall have occurred and/or be continuing:

(a) Credit Suisse AG, New York Branch's corporate bond rating as calculated by S&P or Moody's has been lowered or downgraded to a rating below investment grade by S&P or Moody's;

(b) an event or events shall have occurred in the good faith determination of Buyer resulting in the effective absence of a "repo market" or comparable "lending market" for financing debt obligations secured by mortgage loans or securities or an event or events shall have occurred resulting in Buyer not being able to finance Purchased Mortgage Loans through the "repo market" or "lending market" with traditional counterparties at rates which would have been reasonable prior to the occurrence of such event or events; or

(c) an event or events shall have occurred resulting in the effective absence of a "securities market" for securities backed by mortgage loans or an event or events shall have occurred resulting in Buyer not being able to sell securities backed by mortgage loans at prices which would have been reasonable prior to such event or events; or

(d) there shall have occurred a material adverse change in the financial condition of Buyer which affects (or can reasonably be expected to affect) materially and adversely the ability of Buyer to fund its obligations under this Agreement.

## 11. Program; Costs

a. Seller shall reimburse Buyer for any of Buyer's reasonable out-of-pocket costs, including due diligence review costs and reasonable attorney's fees, incurred by Buyer in determining the acceptability to Buyer of any Mortgage Loans. Seller shall also pay,

or reimburse Buyer if Buyer shall pay, any termination fee, which may be due any Servicer. Seller shall pay the fees and expenses of Buyer's counsel in connection with the Program Agreements. Legal fees for any subsequent amendments to this Agreement or related documents shall be borne by Seller. Seller shall pay ongoing custodial fees and expenses as set forth in the Custodial Agreement, and any other ongoing fees and expenses under any other Program Agreement.

b. If Buyer determines that, due to the introduction of, any change in, or the compliance by Buyer with (i) any eurocurrency reserve requirement or (ii) the interpretation of any law, regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be an increase in the cost to Buyer in engaging in the

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present or any future Transactions, then Seller agrees to pay to Buyer, from time to time, upon demand by Buyer (with a copy to Custodian) the actual cost of additional amounts as specified by Buyer to compensate Buyer for such increased costs.

c. With respect to any Transaction, Buyer may conclusively rely upon, and shall incur no liability to Seller in acting upon, any request or other communication that Buyer reasonably believes to have been given or made by a person authorized to enter into a Transaction on Seller's behalf, whether or not such person is listed on the certificate delivered pursuant to Section 10(a)(5) hereof. In each such case, Seller hereby waives the right to dispute Buyer's record of the terms of the Purchase Confirmation, request or other communication absent manifest error.

d. Notwithstanding the assignment of the Program Agreements with respect to each Purchased Mortgage Loan to Buyer, Seller agrees and covenants with Buyer to enforce diligently Seller's rights and remedies set forth in the Program Agreements.

e. Any payments made by Seller to Buyer shall be free and clear of, and without deduction or withholding for, any taxes; provided, however, that if Seller shall be required by law to deduct or withhold any taxes from any sums payable to Buyer, then Seller shall (A) make such deductions or withholdings and pay such amounts to the relevant authority in accordance with applicable law, (B) pay to Buyer the sum that would have been payable had such deduction or withholding not been made, and (C) at the time Price Differential is paid, pay to Buyer all additional amounts as specified by Buyer to preserve the after-tax yield Buyer would have received if such tax had not been imposed, and otherwise indemnify Buyer for any such taxes imposed.

## 12. Servicing

a. Seller, on Buyer's behalf, shall contract with Servicer to, or if Seller is the Servicer, Seller shall, service the Mortgage Loans consistent with the degree of skill and care that Seller customarily requires with respect to similar Mortgage Loans owned or managed by it and in accordance with Accepted Servicing Practices. The Seller and Servicer shall (i) comply with all applicable Federal, State and local laws and regulations, (ii) maintain all state and federal licenses necessary for it to perform its servicing responsibilities hereunder and (iii) not impair the rights of Buyer in any Mortgage Loans or any payment thereunder. Buyer may terminate the servicing of any Mortgage Loan with the then-existing servicer in accordance with Section 12(e) hereof.

b. Seller shall and shall cause the Servicer to hold or cause to be held all escrow funds collected by Seller and Servicer with respect to any Purchased Mortgage Loans in trust accounts and shall apply the same for the purposes for which such funds were collected.

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c. Seller shall and shall cause the Servicer to deposit all collections received by Servicer on the Purchased Mortgage Loans in the the account set forth in Section 9 upon an Event of Default.

d. In the event there is a third party Servicer and upon Buyer's request, Seller shall provide promptly to Buyer a Servicer Notice addressed to and agreed to by the Servicer of the related Purchased Mortgage Loans, advising such Servicer of such matters as Buyer may reasonably request, including, without limitation, recognition by the Servicer of Buyer's interest in such Purchased Mortgage Loans and the Servicer's agreement that upon receipt of notice of an Event of Default from Buyer, it will follow the instructions of Buyer with respect to the Purchased Mortgage Loans and any related Income with respect thereto.

e. Upon written notice, Buyer shall have the right to immediately terminate the Servicer's right to service the Purchased Mortgage Loans without payment of any penalty or termination fee. Seller and the Servicer shall cooperate in transferring the servicing of the Purchased Mortgage Loans to a successor servicer appointed by Buyer in its sole discretion.

f. If Seller should discover that, for any reason whatsoever, Seller or any entity responsible to Seller for managing or servicing any such Purchased Mortgage Loan has failed to perform fully Seller's obligations under the Program Agreements or any of the obligations of such entities with respect to the Purchased Mortgage Loans, Seller shall promptly notify Buyer.

g. For the avoidance of doubt, the Seller retains no economic rights to the servicing of the Purchased Mortgage Loans; provided that the Seller shall and shall cause the Servicer to continue to service the Purchased Mortgage Loans hereunder as part of its Obligations hereunder. As such, the Seller expressly acknowledges that the Purchased Mortgage Loans are sold to Buyer on a "servicing released" basis.

## 13. Representations and Warranties

a. Seller represents and warrants to Buyer as of the date hereof and as of each Purchase Date for any Transaction that:

(1) Seller Existence. Seller has been duly organized and is validly existing as a corporation in good standing under the laws of the State of California.

(2) Licenses. Seller is duly licensed or is otherwise qualified in each jurisdiction in which it transacts business for the business which it conducts and is not in default of any applicable federal, state or local laws, rules and regulations unless, in either instance, the failure to take such action is not reasonably likely (either individually or in the aggregate) to cause a Material Adverse Effect and is not in default of such state's applicable laws,

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rules and regulations. Seller has the requisite power and authority and legal right to originate and purchase Mortgage Loans (as applicable) and to own, sell and grant a lien on all of its right, title and interest in and to the Mortgage Loans, and to execute and deliver, engage in the transactions contemplated by, and perform and observe the terms and conditions of, each Program Agreement and any Transaction Request. Seller is an FHA Approved Mortgagee and in the event that Seller is so approved after the date hereof, a VA Approved Lender.

(3) Power. Seller has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect.

(4) Due Authorization. Seller has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Program Agreements, as applicable. Each Program Agreement has been (or, in the case of Program Agreements not yet executed, will be) duly authorized, executed and delivered by Seller, all requisite or other corporate action having been taken, and each is valid, binding and enforceable against Seller in accordance with its terms except as such enforcement may be affected by bankruptcy, by other insolvency laws, or by general principles of equity.

(5) Financial Statements. Seller has heretofore furnished to Buyer a copy of (a) its consolidated balance sheet and the consolidated balance sheets of its consolidated Subsidiaries for the fiscal year ended December 31, 2010 and the related consolidated statements of income and retained earnings and of cash flows for it and its consolidated Subsidiaries for such fiscal year, setting forth in each case in comparative form the figures for the previous year, with the opinion thereon of Deloitte and Touche LLP and (b) its consolidated balance sheet and the consolidated balance sheets of its consolidated Subsidiaries for the quarterly fiscal periods ended March 31, 2011, June 30, 2011 and September 30, 2011 and the related consolidated statements of income and retained earnings and of cash flows for it and its consolidated Subsidiaries for such quarterly fiscal periods, setting forth in each case in comparative form the figures for the previous year. All such financial statements are complete and correct and fairly present, in all material respects, the consolidated financial condition of Seller and its consolidated Subsidiaries and the consolidated results of their operations as at such dates and for such fiscal periods, all in accordance with GAAP (other than monthly financial statements solely with respect to footnotes, year-end adjustments and cash flow statements) applied on a consistent basis. Since December 30, 2010, there has been no material adverse change in the consolidated business, operations or financial condition of Seller and its consolidated Subsidiaries

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taken as a whole from that set forth in said financial statements nor is Seller aware of any state of facts which (with notice or the lapse of time) would or could result in any such material adverse change. Seller has, on the date of the statements delivered pursuant to this Section (the "Statement Date") no liabilities, direct or indirect, fixed or contingent, matured or unmatured, known or unknown, or liabilities for taxes, long-term leases or unusual forward or long-term commitments not disclosed by, or reserved against in, said balance sheet and related statements, and at the present time there are no material unrealized or anticipated losses from any loans, advances or other commitments of Seller except as heretofore disclosed to Buyer in writing.

(6) Event of Default. There exists no Event of Default under Section 15(b) hereof, which default gives rise to a right to accelerate indebtedness as referenced in Section 15(b) hereof, under any mortgage, borrowing agreement or other instrument or agreement pertaining to indebtedness for borrowed money or to the repurchase of mortgage loans or securities.

(7) Solvency. Seller is solvent and will not be rendered insolvent by any Transaction and, after giving effect to such Transaction, will not be left with an unreasonably small amount of capital with which to engage in its business. Seller does not intend to incur and does not believe that it has incurred, debts beyond its ability to pay such debts as they mature and is not contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of such entity or any of its assets. The amount of consideration being received by Seller upon the sale of the Purchased Mortgage Loans to Buyer constitutes reasonably equivalent value and fair consideration for such Purchased Mortgage Loans. Seller is not transferring any Purchased Mortgage Loans with any intent to hinder, delay or defraud any of its creditors.

(8) No Conflicts. The execution, delivery and performance by Seller of each Program Agreement do not conflict with any term or provision of the formation documents or by-laws of Seller or any law, rule, regulation, order, judgment, writ, injunction or decree applicable to Seller of any court, regulatory body, administrative agency or governmental body having jurisdiction over Seller, which conflict would have a Material Adverse Effect and will not result in any violation of any such mortgage, instrument, agreement or obligation to which Seller is a party.

(9) True and Complete Disclosure. All information, reports, exhibits, schedules, financial statements or certificates of Seller, or any Affiliate thereof or any of their officers furnished or to be furnished to Buyer in connection with the initial or any ongoing due diligence of Seller, or any Affiliate or officer thereof, negotiation, preparation, or delivery of the Program Agreements are true and complete and do not omit to disclose any

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material facts necessary to make the statements herein or therein, in light of the circumstances in which they are made, not misleading. All financial statements have been prepared in accordance with GAAP (other than monthly financial statements solely with respect to footnotes, year-end adjustments and cash flow statements).

(10) Approvals. No consent, approval, authorization or order of, registration or filing with, or notice to any governmental authority or court is required under applicable law in connection with the execution, delivery and performance by Seller of each Program Agreement.

(11) Litigation. There is no action, proceeding or investigation pending with respect to which Seller has received service of process or, to the best of Seller's knowledge threatened against it before any court, administrative agency or other tribunal (A) asserting the invalidity of any Program Agreement, (B) seeking to prevent the consummation of any of the transactions contemplated any Program Agreement, (C) making a claim individually in an amount greater than \$1,000,000 or in an aggregate amount greater than \$3,000,000, (D) which requires filing with the Securities and Exchange Commission in accordance with the 1934 Act or any rules thereunder or (E) which might materially and adversely affect the validity of the Mortgage Loans or the performance by it of its obligations under, or the validity or enforceability of any Program Agreement.

(12) Material Adverse Change. There has been no material adverse change in the business, operations, financial condition, properties or prospects of Seller, or any of its Affiliates since the date set forth in the most recent financial statements supplied to Buyer as determined by Buyer in its sole discretion.

(13) Ownership. Upon payment of the Purchase Price and the filing of the financing statement and delivery of the Mortgage Files to the Custodian and the Custodian's receipt of the related Request for Certification, Buyer shall become the sole owner of the Purchased Mortgage Loans and related Repurchase Assets, free and clear of any liens and encumbrances not permitted under paragraph (j) of Schedule 1 hereto.

(14) Underwriting Guidelines. The Underwriting Guidelines provided to Buyer are the true and correct Underwriting Guidelines of the Seller.

(15) Taxes. Seller and its Subsidiaries have timely filed all tax returns that are required to be filed by them and have paid all taxes, except for any such taxes as are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided. The charges, accruals and reserves on

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the books of Seller and its Subsidiaries in respect of taxes and other governmental charges are, in the opinion of Seller, adequate.

(16) Investment Company. Neither Seller, nor any of its Subsidiaries is an "investment company", or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

(17) Chief Executive Office; Jurisdiction of Organization. On the Effective Date, Seller's chief executive office, is, and has been, located at 163 Technology Drive, Irvine, California 92618. On the Effective Date, Seller's jurisdiction of organization is California. Seller shall provide Buyer with thirty days advance notice of any change in Seller's principal office or place of business or jurisdiction. Seller has no trade names other than those listed on Exhibit B hereto. During the preceding five years, Seller has not been known by or done business under any other name, corporate or fictitious, and has not filed or had filed against it any bankruptcy receivership or similar petitions nor has it made any assignments for the benefit of creditors.

(18) Location of Books and Records. The location where Seller keeps its books and records, including all computer tapes and records relating to the Purchased Mortgage Loans and the related Repurchase Assets is its chief executive office.

(19) Adjusted Net Worth. On the Effective Date, Seller's Adjusted Net Worth is not less than the amount set forth in Section 2.1 of the Pricing Side Letter.

(20) ERISA. Each Plan to which Seller or its Subsidiaries make direct contributions, and, to the knowledge of Seller, each other Plan and each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and any other Federal or State law.

(21) Adverse Selection. Seller has not selected the Purchased Mortgage Loans in a manner so as to adversely affect Buyer's interests.

(22) Agreements. Neither Seller nor any Subsidiary thereof is a party to any agreement, instrument, or indenture or subject to any restriction materially and adversely affecting its business, operations, assets or financial condition, except as disclosed in the financial statements described in Section 13(a)(5) hereof. Neither Seller nor any Subsidiary of Seller is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement, instrument, or indenture which default could have a material adverse effect on the business, operations, properties, or financial condition of Seller. No holder of any indebtedness of Seller or of any Subsidiaries thereof has given notice of any asserted default thereunder.

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(23) Other Indebtedness. All Indebtedness (other than Indebtedness evidenced by this Agreement) of Seller existing on the date hereof is listed on Exhibit H hereto (the "Existing Indebtedness").

(24) Agency Approvals. With respect to each Agency Security and to the extent necessary, Seller is an FHA Approved Mortgagee, and in the event that Seller is so approved after the date hereof, a VA Approved Lender and a GNMA Approved Lender. Seller is also approved by Fannie Mae as an approved lender (though Seller has agreed not to participate in bifurcation programs or conduct servicing activity for Fannie Mae) and Freddie Mac as an approved seller, and, to the extent necessary, approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act. In each such case, Seller is in good standing, with no event having occurred or Seller having any reason whatsoever to believe or suspect will occur prior to the issuance of the Agency Security or the consummation of the Take-out Commitment, as the case may be, including, without limitation, a change in insurance coverage which would either make Seller unable to comply with the eligibility requirements for maintaining all such applicable approvals or require notification to the relevant Agency or to the Department of Housing and Urban Development, FHA or, in the event that Seller is approved after the date hereof, VA. Should Seller for any reason cease to possess all such applicable approvals, or should notification to the relevant Agency or to the Department of Housing and Urban Development, FHA or, in the event that Seller is so approved after the date hereof, VA, be required, Seller shall so notify Buyer immediately in writing.

(25) No Reliance. Seller has made its own independent decisions to enter into the Program Agreements and each Transaction and as to whether such Transaction is appropriate and proper for it based upon its own judgment and upon advice from such advisors (including without limitation, legal counsel and accountants) as it has deemed necessary. Seller is not relying upon any advice from Buyer as to any aspect of the Transactions, including without limitation, the legal, accounting or tax treatment of such Transactions.

(26) Plan Assets. Seller is not an employee benefit plan as defined in Section 3 of Title I of ERISA, or a plan described in Section 4975(e)(1) of the Code, and the Purchased Mortgage Loans are not "plan assets" within the meaning of 29 CFR §2510.3 101 as amended by Section 3(42) of ERISA, in the Seller's hands, and transactions by or with Seller or are not subject to any state or local statute regulating investments or fiduciary obligations with respect to governmental plans within the meaning of Section 3(32) of ERISA.

(27) No Prohibited Persons. Neither the Seller nor any of its Affiliates, officers, directors, partners or members, is an entity or person (or to the Seller's knowledge, owned or controlled by an entity or person): (i) that is

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listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports "terrorism", as that term is defined in EO13224; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i) through (iv) above are herein referred to as a "Prohibited Person").

(28) Servicing. Seller has adequate financial standing, servicing facilities, procedures and experienced personnel necessary for the sound servicing of mortgage loans of the same types as may from time to time constitute Purchased Mortgage Loans and in accordance with Accepted Servicing Practices.

b. With respect to every Purchased Mortgage Loan, Seller represents and warrants to Buyer as of the applicable Purchase Date for any Transaction and each date thereafter that each representation and warranty set forth on Schedule 1 is true and correct.

The representations and warranties set forth in this Agreement shall survive transfer of the Purchased Mortgage Loans to Buyer and shall continue for so long as the Purchased Mortgage Loans are subject to this Agreement. Upon discovery by Seller, Servicer or Buyer of any breach of any of the representations or warranties set forth in this Agreement, the party discovering such breach shall promptly give notice of such discovery to the others. Buyer has the right to require, in its unreviewable discretion, Seller to repurchase within 1 Business Day after receipt of notice from Buyer any Purchased Mortgage Loan (i) for which a breach of one or more of the representations and warranties referenced in Section 13(b) exists and which breach has a material adverse effect on the value of such Mortgage Loan or the interests of Buyer or (ii) which is determined by Buyer, in its good faith discretion, to be unacceptable for inclusion in a securitization.

#### 14. Covenants

Seller covenants with Buyer that, during the term of this facility:

a. Litigation. Seller, will promptly, and in any event within ten (10) days after service of process on any of the following, give to Buyer notice of all litigation, actions, suits, arbitrations, investigations (including, without limitation, any of the foregoing which are threatened or pending) or other legal or arbitrable proceedings affecting Seller, or any of its Subsidiaries or affecting any of the Property of any of them before any Governmental

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Authority that (i) questions or challenges the validity or enforceability of any of the Program Agreements or any action to be taken in connection with the transactions contemplated hereby, (ii) makes a claim individually in an amount greater than \$1,000,000 or in an aggregate amount greater than \$3,000,000, or (iii) which, individually or in the aggregate, if adversely determined, could be reasonably

likely to have a Material Adverse Effect. Seller will promptly provide notice of any judgment, which with the passage of time, could reasonably be expected to cause an Event of Default hereunder.

- b. Prohibition of Fundamental Changes. Seller shall not enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all or substantially all of its assets; provided, that (I) Seller may consummate the Discover Financial Transaction without violating this covenant, and (II) Seller may merge or consolidate with (a) any wholly owned subsidiary of Seller, or (b) any other Person if Seller is the surviving corporation; and provided further, that if after giving effect thereto, no Default would exist hereunder.
- c. Servicing. Seller shall not cause the Mortgage Loans to be serviced by any Servicer other than a Servicer expressly approved in writing by Buyer, which approval shall be deemed granted by Buyer with respect to Seller with the execution of this Agreement.
- d. Insurance. The Seller shall continue to maintain, for Seller and its Subsidiaries, Fidelity Insurance in an aggregate amount at least equal to \$1,000,000. The Seller shall maintain, for Seller and its Subsidiaries, Fidelity Insurance in respect of its officers, employees and agents, with respect to any claims made in connection with all or any portion of the Repurchase Assets. The Seller shall notify the Buyer of any material change in the terms of any such Fidelity Insurance.
- e. No Adverse Claims. Seller warrants and will defend, and shall cause any Servicer to defend, the right, title and interest of Buyer in and to all Purchased Mortgage Loans and the related Repurchase Assets against all adverse claims and demands.
- f. Assignment. Except as permitted herein, neither Seller nor any Servicer shall sell, assign, transfer or otherwise dispose of, or grant any option with respect to, or pledge, hypothecate or grant a security interest in or lien on or otherwise encumber (except pursuant to the Program Agreements), any of the Purchased Mortgage Loans or any interest therein, provided that this Section shall not prevent any transfer of Purchased Mortgage Loans in accordance with the Program Agreements.
- g. Security Interest. Seller shall do all things necessary to preserve the Purchased Mortgage Loans and the related Repurchase Assets so that they

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remain subject to a first priority perfected security interest hereunder. Without limiting the foregoing, Seller will comply with all rules, regulations and other laws of any Governmental Authority and cause the Purchased Mortgage Loans or the related Repurchase Assets to comply with all applicable rules, regulations and other laws. Seller will not allow any default for which Seller is responsible to occur under any Purchased Mortgage Loans or the related Repurchase Assets or any Program Agreement and Seller shall fully perform or cause to be performed when due all of its obligations under any Purchased Mortgage Loans or the related Repurchase Assets and any Program Agreement.

h. Records.

(1) Seller shall collect and maintain or cause to be collected and maintained all Records relating to the Purchased Mortgage Loans in accordance with industry custom and practice for assets similar to the Purchased Mortgage Loans, including those maintained pursuant to the preceding subparagraph, and all such Records shall be in Custodian's possession unless Buyer otherwise approves. Except in accordance with the Custodial Agreement, Seller will not allow any such papers, records or files that are an original or an only copy to leave Custodian's possession, except for individual items removed in connection with servicing a specific Mortgage Loan, in which event Seller will obtain or cause to be obtained a receipt from a financially responsible person for any such paper, record or file. Seller or the Servicer of the Purchased Mortgage Loans will maintain all such Records not in the possession of Custodian in good and complete condition in accordance with industry practices for assets similar to the Purchased Mortgage Loans and preserve them against loss.

(2) For so long as Buyer has an interest in or lien on any Purchased Mortgage Loan, Seller will hold or cause to be held all related Records in trust for Buyer. Seller shall notify, or cause to be notified, every other party holding any such Records of the interests and liens in favor of Buyer granted hereby.

(3) Upon reasonable advance notice from Custodian or Buyer, Seller shall (x) make any and all such Records available to Custodian or Buyer to examine any such Records, either by its own officers or employees, or by agents or contractors, or both, and make copies of all or any portion thereof, and (y) permit Buyer or its authorized agents to discuss the affairs, finances and accounts of Seller with its chief operating officer and chief financial officer and to discuss the affairs, finances and accounts of Seller with its independent certified public accountants.

i. Books. Seller shall keep or cause to be kept in reasonable detail books and records of account of its assets and business and shall clearly reflect therein the transfer of Purchased Mortgage Loans to Buyer.

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j. Approvals. Seller shall maintain all licenses, permits or other approvals necessary for Seller to conduct its business and to perform its obligations under the Program Agreements, and Seller shall conduct its business strictly in accordance with applicable law.

k. Material Change in Business. Seller shall not make any material change in the nature of its business as carried on at the date hereof other than the consummation of the Discover Financial Transaction.

l. Underwriting Guidelines. Without the prior written consent of Buyer, Seller shall not amend or otherwise modify the Underwriting Guidelines such that (i) any new mortgage loan products (including, without limitation, manufactured housing) or material changes to existing mortgage loan products are permitted without the prior written consent of Buyer or (ii) a Mortgage Loan

would not be acceptable to at least two (2) Take-out Investors (other than with respect to DU Refi Plus Mortgage Loans, Open Access Mortgage Loans and FHA Streamline Mortgage Loans). Without limiting the foregoing, in the event that Seller makes any amendment or modification to the Underwriting Guidelines, Seller shall promptly deliver to Buyer a complete copy of the amended or modified Underwriting Guidelines.

m. Distributions. If an Event of Default has occurred and is continuing, Seller shall not pay any dividends with respect to any capital stock or other equity interests in such entity, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Seller.

n. Applicable Law. Seller shall comply with the requirements of all applicable laws, rules, regulations and orders of any Governmental Authority.

o. Existence. Seller shall preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises.

p. Chief Executive Office; Jurisdiction of Organization. Seller shall not move its chief executive office from the address referred to in Section 13(a)(17) or change its jurisdiction of organization from the jurisdiction referred to in Section 13(a)(17) unless it shall have provided Buyer 30 days' prior written notice of such change.

q. Taxes. Seller shall timely file all tax returns that are required to be filed by it and shall timely pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained.

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r. Transactions with Affiliates. Seller will not enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate unless such transaction is (a) in the ordinary course of Seller's business and (b) upon fair and reasonable terms no less favorable to Seller than it would obtain in a comparable arm's length transaction with a Person which is not an Affiliate, or make a payment that is not otherwise permitted by this Section to any Affiliate.

s. Guarantees. Seller shall not create, incur, assume or suffer to exist any Guarantees, except (i) to the extent reflected in Seller's financial statements or notes thereto and (ii) to the extent the aggregate Guarantees of Seller do not exceed \$100,000.

t. Indebtedness. Except as set forth in the ensuing sentence, Seller shall not incur any additional material Indebtedness (other than (i) the Existing Indebtedness in amounts not to exceed the amounts specified on Exhibit H hereto and (ii) usual and customary accounts payable for a mortgage company) without the prior written consent of Buyer, which shall not be unreasonably withheld. If Seller intends to enter into any financing or lending arrangements, including, without limitation, warehouse lines of credit or repurchase arrangements, Seller shall notify Buyer not fewer than fifteen (15) Business Days prior to the execution of such arrangement.

u. Hedging. Seller has entered into Interest Rate Protection Agreements with respect to the Purchased Mortgage Loans, having terms with respect to protection against fluctuations in interest rates acceptable to Buyer in its sole discretion.

v. True and Correct Information. All information, reports, exhibits, schedules, financial statements or certificates of Seller, any Affiliate thereof or any of their officers furnished to Buyer hereunder and during Buyer's diligence of Seller are and will be true and complete in all material respects and do not omit to disclose any material facts necessary to make the statements herein or therein, in light of the circumstances in which they are made, not misleading. All required financial statements, information and reports delivered by Seller to Buyer pursuant to this Agreement shall be prepared in accordance with U.S. GAAP, or, if applicable, to SEC filings, the appropriate SEC accounting regulations.

w. Agency Approvals. Seller shall maintain its status with Fannie Mae as an approved lender (though Seller has agreed not to participate in bifurcation programs or conduct any servicing activity for Fannie Mae) and Freddie Mac as an approved seller, in each case in good standing ("Agency Approvals"). Seller shall service all Purchased Mortgage Loans which are Committed Mortgage Loans in accordance with the applicable agency guide. Should Seller, for any reason, cease to possess all such applicable Agency Approvals,

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or should notification to the relevant Agency or to the Department of Housing and Urban Development, FHA or, in the event that Seller is so approved after the date hereof, VA be required, such Seller shall so notify Buyer immediately in writing. Notwithstanding the preceding sentence, Seller shall take all necessary action to maintain all of its applicable Agency Approvals at all times during the term of this Agreement and each outstanding Transaction.

x. Take-out Payments. With respect to each Committed Mortgage Loan, Seller shall arrange that all payments under the related Take-out Commitment shall be paid directly to Buyer at the account set forth in Section 9 hereof, or to an account approved by Buyer in writing prior to such payment. With respect to any Agency Take-out Commitment, if applicable, (1) with respect to the wire transfer instructions as set forth in Freddie Mac Form 987 (Wire Transfer Authorization for a Cash Warehouse Delivery) such wire transfer instructions are identical to Buyer's wire instructions or Buyer has approved such wire transfer instructions in writing in its sole discretion, or (2) the Payee Number set forth on Fannie Mae Form 1068 (Fixed-Rate, Graduated-Payment, or Growing-Equity Mortgage Loan Schedule) or Fannie Mae Form 1069 (Adjustable-Rate Mortgage Loan Schedule), as applicable, shall be identical to the Payee Number that has been identified by Buyer in writing as Buyer's Payee Number or Buyer shall have previously approved the related Payee Number in writing in its sole good faith discretion; with respect to any Take-out Commitment with an Agency, the



applicable agency documents shall list Buyer as sole subscriber, unless otherwise agreed to in writing by Buyer, in Buyer's sole discretion.

y. [Reserved]

z. Plan Assets. Seller shall not be an employee benefit plan as defined in Section 3 of Title I of ERISA, or a plan described in Section 4975(e)(1) of the Code and the Seller shall not use "plan assets" within the meaning of 29 CFR §2510.3 101, as amended by Section 3(42) of ERISA to engage in this Agreement or any Transaction hereunder. Transactions by or with Seller shall not be subject to any state or local statute regulating investments of or fiduciary obligations with respect to governmental plans within the meaning of Section 3(32) of ERISA.

aa. Sharing of Information. The Seller shall allow the Buyer to exchange information related to the Seller and the Transaction hereunder with third party lenders and the Seller shall permit each third party lender to share such information with the Buyer.

bb. DE Compare Ratio. Seller's DE Compare Ratio with respect to each of its DE Compare Report shall not (i) increase by more than 75% from its applicable DE Compare Ratio as of the date hereof or (ii) exceed 150%.

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cc. Lender Insurance Authority. In the event that Seller has on the date hereof or subsequently receives Lender Insurance Authority, (i) such authority shall not be revoked or suspended.

dd. Quality Control. Seller shall maintain an internal quality control program that verifies, on a regular basis, the existence and accuracy of all legal documents, credit documents, property appraisals, and underwriting decisions related to Mortgage Loans and shall provide a report on the results of such quality control program in the Officer's Compliance Certificate provided pursuant to Section 17(b)(3). Such program shall be capable of evaluating and monitoring the overall quality of Seller's loan production and servicing activities. Such program shall (i) ensure that the Mortgage Loans are originated and serviced in accordance with prudent mortgage banking practices and accounting principles; (ii) guard against dishonest, fraudulent, or negligent acts; and (iii) guard against errors and omissions by officers, employees, or other authorized persons.

ee. Financial Covenants. Seller shall at all times comply with all financial covenants and/or financial ratios set forth in Section 2 of the Pricing Side Letter.

## 15. Events of Default

Each of the following shall constitute an "Event of Default" hereunder:

a. Payment Failure. Failure of Seller to (i) make any payment of Price Differential or Repurchase Price or any other sum which has become due, on a Price Differential Payment Date or a Repurchase Date or otherwise, whether by acceleration or otherwise, under the terms of this Agreement, any other warehouse and security agreement or any other document evidencing or securing Indebtedness of Seller to Buyer or to any Affiliate of Buyer, or (ii) cure any Margin Deficit when due pursuant to Section 6 hereof.

b. Cross Default. (i) Seller or any Affiliates thereof shall be in default under any Indebtedness, in the aggregate, in excess of the lesser of (a) \$3,000,000, or (b) 50% of the Adjusted Net Worth of Seller or any Affiliate thereof which default (1) involves the failure to pay a matured obligation, or (2) permits the acceleration of the maturity of obligations by any other party to or beneficiary with respect to such Indebtedness; (ii) any Guarantor or any Affiliates thereof shall be in default under any Indebtedness, in the aggregate, in excess of \$3,000,000 which default (1) involves the failure to pay a matured obligation, or (2) permits the acceleration of the maturity of obligations by any other party to or beneficiary with respect to such Indebtedness; (iii) Seller or any Affiliates thereof shall be in default under (a) any other contract or contracts, in the aggregate in excess of the lesser of \$3,000,000 or (b) 50% of the Adjusted Net Worth of Seller or any Affiliate thereof to which Seller or any Affiliate thereof is a party which default (1) involves the failure to pay a

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matured obligation, or (2) permits the acceleration of the maturity of obligations by any other party to or beneficiary of such contract or (iv) any Guarantor or any Affiliates thereof shall be in default under any other contract or contracts, in the aggregate in excess of \$3,000,000 to which any Guarantor or any Affiliate thereof is a party which default (1) involves the failure to pay a matured obligation, or (2) permits the acceleration of the maturity of obligations by any other party to or beneficiary of such contract .

c. Assignment. Assignment or attempted assignment by Seller of this Agreement or any rights hereunder without first obtaining the specific written consent of Buyer, or the granting by Seller of any security interest, lien or other encumbrances on any Purchased Mortgage Loans to any person other than Buyer.

d. Insolvency. An Act of Insolvency shall have occurred with respect to Seller, any Guarantor or any Affiliate.

e. Material Adverse Effect. A Material Adverse Effect shall have occurred.

f. Breach of Financial Representation or Covenant or Obligation. A breach by (i) Seller of any of the representations, warranties or covenants or obligations set forth in Sections 13(a)(1), 13(a)(7), 13(a)(12), 13(a)(19), 13(a)(23), 14(b), 14(m), 14(o), 14(s), 14(t), 14(x), 14(z) or 14(ee) of this Agreement or (ii) any Guarantor of any of the representations, warranties or covenants or obligations set forth in Sections 9(a), 9(e), 10(b), 10(d), 10(g) or 10(i) of the Guaranty.

g. Breach of Non-Financial Representation or Covenant. A breach by Seller or any Guarantor of any other material representation, warranty or covenant set forth in this Agreement or the Guaranty, as applicable (and not otherwise specified in Section 15(f) above), if such breach is not cured within five (5) Business Days of Seller's or any Guarantor's knowledge thereof (other than the representations and warranties set forth in Schedule 1, which shall be considered solely for the purpose of determining the Market Value, the existence of a Margin Deficit and the obligation to repurchase such Mortgage Loan) unless (i) such party shall have made any such representations and warranties with knowledge that they were materially false or misleading at the time made, (ii) any such representations and warranties have been determined by Buyer in its sole good faith discretion to be materially false or misleading on a regular basis, or (iii) Buyer, in its sole good faith discretion, determines that such breach of a material representation, warranty or covenant materially and adversely affects (A) the condition (financial or otherwise) of such party, its Subsidiaries or Affiliates; or (B) Buyer's determination to enter into this Agreement or Transactions with such party, then such breach shall constitute an immediate Event of Default and Seller shall have no cure right hereunder).

h. Change of Control. The occurrence of a Change in Control.

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i. Failure to Transfer. Seller fails to transfer the Purchased Mortgage Loans to Buyer on the applicable Purchase Date (provided Buyer has tendered the related Purchase Price).

j. Judgment. A final judgment or judgments for the payment of money in excess of the lesser of (a) \$3,000,000 or (b) 50% of the Adjusted Net Worth of Seller or any Guarantor in the aggregate shall be rendered against the Seller or any Guarantor or any Affiliate thereof by one or more courts, administrative tribunals or other bodies having jurisdiction and the same shall not be satisfied, discharged (or provision shall not be made for such discharge) or bonded, or a stay of execution thereof shall not be procured, within 30 days from the date of entry thereof.

k. Government Action. Any Governmental Authority or any person, agency or entity acting or purporting to act under governmental authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of, all or any substantial part of the Property of Seller, any Guarantor or any Affiliate thereof, or shall have taken any action to displace the management of Seller, any Guarantor or any Affiliate thereof, or to materially curtail its authority in the conduct of the business of Seller, any Guarantor or any Affiliate thereof, or takes any action in the nature of enforcement to remove, limit or restrict the approval of Seller or Affiliate as an issuer, buyer or a seller/servicer of Mortgage Loans or securities backed thereby, and such action provided for in this Section 15(k) (i) is to be determined by Buyer in its sole good faith discretion to be materially adverse to Buyer, Seller, any Guarantor, the Repurchase Assets or Seller's or any Guarantor's ability to perform under the Program Agreements and (ii) shall not have been discontinued or stayed within 30 days.

l. Inability to Perform. An officer of Seller or any Guarantor shall admit its inability to, or its intention not to, perform any of Seller's Obligations hereunder or any Guarantor's obligations hereunder or under the Guaranty.

m. Security Interest. This Agreement shall for any reason cease to create a valid, first priority security interest in any material portion of the Purchased Mortgage Loans or other Repurchase Assets purported to be covered hereby.

n. Financial Statements. Seller's audited annual financial statements or the notes thereto or other opinions or conclusions stated therein shall be qualified or limited by reference to the status of Seller as a "going concern" or a reference of similar import.

o. Guarantor Breach. Any "event of default" by any Guarantor under the Guaranty, any repudiation of the Guaranty by any Guarantor, or if the Guaranty is not enforceable against any Guarantor.

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An Event of Default shall be deemed to be continuing unless expressly waived by Buyer in writing.

## 16. Remedies Upon Default

In the event that an Event of Default shall have occurred:

a. Buyer may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency of Seller or any Affiliate), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). Buyer shall (except upon the occurrence of an Act of Insolvency) give notice to Seller and Guarantors of the exercise of such option as promptly as practicable.

b. If Buyer exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Section, (i) Seller's obligations in such Transactions to repurchase all Purchased Mortgage Loans, at the Repurchase Price therefor on the Repurchase Date determined in accordance with subparagraph (a) of this Section, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by Buyer and applied, in Buyer's sole discretion, to the aggregate unpaid Repurchase Prices for all outstanding Transactions and any other amounts owing by Seller to Buyer hereunder, and (iii) Seller shall immediately deliver to Buyer the Mortgage Files relating to any Purchased Mortgage Loans subject to such Transactions then in Seller's possession or control.

c. Buyer also shall have the right to obtain physical possession, and to commence an action to obtain physical possession, of all Records and files of Seller relating to the Purchased Mortgage Loans and all documents relating to the Purchased Mortgage Loans

(including, without limitation, any legal, credit or servicing files with respect to the Purchased Mortgage Loans) which are then or may thereafter come in to the possession of Seller or any third party acting for Seller. To obtain physical possession of any Purchased Mortgage Loans held by Custodian, Buyer shall present to Custodian a Trust Receipt. Without limiting the rights of Buyer hereto to pursue all other legal and equitable rights available to Buyer for Seller's failure to perform its obligations under this Agreement, Seller acknowledges and agrees that the remedy at law for any failure to perform obligations hereunder would be inadequate and Buyer shall be entitled to specific performance, injunctive relief, or other equitable remedies in the event of any such failure. The availability of these remedies shall not prohibit Buyer from pursuing any other remedies for such breach, including the recovery of monetary damages.

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d. Buyer shall have the right to direct all servicers then servicing any Purchased Mortgage Loans to remit all collections thereon to Buyer, and if any such payments are received by Seller, Seller shall not commingle the amounts received with other funds of Seller and shall promptly pay them over to Buyer. Buyer shall also have the right to terminate any one or all of the servicers then servicing any Purchased Mortgage Loans with or without cause. In addition, Buyer shall have the right to immediately sell the Purchased Mortgage Loans and liquidate all Repurchase Assets. Such disposition of Purchased Mortgage Loans may be, at Buyer's option, on either a servicing-released or a servicing-retained basis. Buyer shall not be required to give any warranties as to the Purchased Mortgage Loans with respect to any such disposition thereof. Buyer may specifically disclaim or modify any warranties of title or the like relating to the Purchased Mortgage Loans. The foregoing procedure for disposition of the Purchased Mortgage Loans and liquidation of the Repurchase Assets shall not be considered to adversely affect the commercial reasonableness of any sale thereof. Seller agrees that it would not be commercially unreasonable for Buyer to dispose of the Purchased Mortgage Loans or the Repurchase Assets or any portion thereof by using Internet sites that provide for the auction of assets similar to the Purchased Mortgage Loans or the Repurchase Assets, or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Buyer shall be entitled to place the Purchased Mortgage Loans in a pool for issuance of mortgage-backed securities at the then-prevailing price for such securities and to sell such securities for such prevailing price in the open market. Buyer shall also be entitled to sell any or all of such Mortgage Loans individually for the prevailing price. Buyer shall also be entitled, in its sole discretion to elect, in lieu of selling all or a portion of such Purchased Mortgage Loans, to give the Seller credit for such Purchased Mortgage Loans and the Repurchase Assets in an amount equal to the Market Value of the Purchased Mortgage Loans against the aggregate unpaid Repurchase Price and any other amounts owing by the Seller hereunder.

e. Upon the happening of one or more Events of Default, Buyer may apply any proceeds from the liquidation of the Purchased Mortgage Loans and Repurchase Assets to the Repurchase Prices hereunder and all other Obligations in the manner Buyer deems appropriate in its sole discretion.

f. Seller shall be liable to Buyer for (i) the amount of all reasonable legal or other expenses (including, without limitation, all costs and expenses of Buyer in connection with the enforcement of this Agreement or any other agreement evidencing a Transaction, whether in action, suit or litigation or bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally, further including, without limitation, the reasonable fees and expenses of counsel (including the costs of internal counsel of Buyer) incurred in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge

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transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.

g. To the extent permitted by applicable law, Seller shall be liable to Buyer for interest on any amounts owing by Seller hereunder, from the date Seller becomes liable for such amounts hereunder until such amounts are (i) paid in full by Seller or (ii) satisfied in full by the exercise of Buyer's rights hereunder. Interest on any sum payable by Seller under this Section 16(g) shall accrue at a rate equal to the Post-Default Rate.

h. Buyer shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

i. Buyer may exercise one or more of the remedies available to Buyer immediately upon the occurrence of an Event of Default and, except to the extent provided in subsections (a) and (d) of this Section, at any time thereafter without notice to Seller. All rights and remedies arising under this Agreement as amended from time to time hereunder are cumulative and not exclusive of any other rights or remedies which Buyer may have.

j. Buyer may enforce its rights and remedies hereunder without prior judicial process or hearing, and Seller hereby expressly waives any defenses Seller might otherwise have to require Buyer to enforce its rights by judicial process. Seller also waives any defense (other than a defense of payment or performance) Seller might otherwise have arising from the use of nonjudicial process, enforcement and sale of all or any portion of the Repurchase Assets, or from any other election of remedies. Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.

k. Buyer shall have the right to perform reasonable due diligence with respect to Seller and the Mortgage Loans, which review shall be at the expense of Seller.

a. Default Notices. Seller shall furnish to Buyer (i) promptly, copies of any material and adverse notices (including, without limitation, notices of defaults, breaches, potential defaults or potential breaches) and any material financial information that is not otherwise required to be provided by Seller hereunder which is given to Seller's lenders and (ii) immediately, notice of the occurrence of any (A) Event of Default hereunder, (B) default or breach by Seller or Servicer of any obligation under any Program Agreement or any material contract or agreement of Seller or Servicer or (C) event or circumstance that such party reasonably expects has resulted in, or will, with

the passage of time, result in, a Material Adverse Effect or an Event of Default or such a default or breach by such party.

b. Financial Notices. Seller shall furnish to Buyer:

(1) as soon as available and in any event within thirty (30) calendar days after the end of each calendar month, the unaudited consolidated balance sheets of Seller and its consolidated Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for the Seller and its consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, accompanied by a certificate of a Responsible Officer of Seller, which certificate shall state that said consolidated financial statements fairly present in all material respects the consolidated financial condition and results of operations of Seller and its consolidated Subsidiaries in accordance with GAAP (other than solely with respect to footnotes, year-end adjustments and cash flow statements) consistently applied, as at the end of, and for, such period;

(2) as soon as available and in any event within ninety (90) days after the end of each fiscal year of Seller, the consolidated balance sheets of Seller and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for the Seller and its consolidated Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion and the scope of audit shall be acceptable to Buyer in its sole discretion, shall have no "going concern" qualification and shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of Seller and its respective consolidated Subsidiaries as at the end of, and for, such fiscal year in accordance with GAAP;

(3) at the time the Seller furnishes each set of financial statements pursuant to Section 17(b)(1) or (2) above, an Officer's Compliance Certificate of a Responsible Officer of Seller in the form attached as Exhibit A to the Pricing Side Letter.

(4) [Reserved]

(5) as soon as available and in any event within thirty (30) days of receipt thereof;

(a) if applicable, copies of any 10-Ks, 10-Qs, registration statements and other "corporate finance" SEC filings (other than 8-Ks) by Seller, within 5 Business Days of their filing with the SEC; provided, that, Seller or any Affiliate thereof will provide Buyer with a copy of the annual 10-K filed with

the SEC by Seller or any Affiliate thereof, no later than 90 days after the end of the year;

(b) copies of relevant portions of all final written Agency, FHA, VA, Governmental Authority and investor audits, examinations, evaluations, monitoring reviews and reports of its operations (including those prepared on a contract basis) which provide for or relate to (i) material corrective action required, (ii) material sanctions proposed, imposed or required, including without limitation notices of defaults, notices of termination of approved status, notices of imposition of supervisory agreements or interim servicing agreements, and notices of probation, suspension, or non-renewal, or (iii) "report cards," "grades" or other classifications of the quality of Seller's operations;

(c) such other information regarding the financial condition, operations, or business of the Seller as Buyer may reasonably request; and

(d) the particulars of any Event of Termination in reasonable detail.

c. Notices of Certain Events. As soon as possible and in any event within five (5) Business Days of knowledge thereof, Seller shall furnish to Buyer notice of the following events:

(1) a change in the insurance coverage required of Seller, Servicer or any other Person pursuant to any Program Agreement, with a copy of evidence of same attached;

(2) any material dispute, litigation, investigation, proceeding or suspension between Seller or Servicer, on the one hand, and any Governmental Authority or any Person;

(3) any material change in accounting policies or financial reporting practices of Seller or Servicer;

(4) with respect to any Purchased Mortgage Loan, that the underlying Mortgaged Property has been materially damaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty, or otherwise damaged so as to affect adversely the value of such Mortgaged Loan;

(5) any material issues raised upon examination of Seller or Seller's facilities by any Governmental Authority;

(6) any material change in the Indebtedness of the Seller, including, without limitation, any default, renewal, non-renewal, termination, increase in available amount or decrease in available amount related thereto;

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(7) any default related to any Repurchase Asset or any lien or security interest (other than security interests created hereby or by the other Program Agreements) on, or claim asserted against, any of the Purchased Mortgage Loans;

(8) any other event, circumstance or condition that has resulted, or could reasonably be expected to result, in a Material Adverse Effect with respect to Seller or Servicer; and

(9) the occurrence of any material employment dispute and a description of the strategy for resolving it that could reasonably be expected to result in a Material Adverse Effect.

d. **Portfolio Performance Data.** On the Reporting Date of each calendar month, Seller will furnish to Buyer (i) in the event the Mortgage Loans are serviced on a “retained” basis, an electronic Mortgage Loan performance data, including, without limitation, delinquency reports and volume information, broken down by product (i.e., delinquency, foreclosure and net charge-off reports) and (ii) electronically, in a format mutually acceptable to Buyer and Seller, servicing information, including, without limitation, those fields reasonably requested by Buyer from time to time, on a loan-by-loan basis and in the aggregate, with respect to the Purchased Mortgage Loans serviced by Seller or any Servicer for the month (or any portion thereof) prior to the Reporting Date. In addition to the foregoing information on each Reporting Date, Seller will furnish to Buyer such information upon (i) the occurrence and continuation of an Event of Default and (ii) upon any Purchased Mortgage Loan becoming an Aged Loan.

e. **Other Reports.** Seller shall deliver to Buyer any other reports or information reasonably requested by Buyer or as otherwise required pursuant to this Agreement.

## 18. Repurchase Transactions

Buyer may, in its sole election, engage in repurchase transactions with the Purchased Mortgage Loans or otherwise pledge, hypothecate, assign, transfer or otherwise convey the Purchased Mortgage Loans with a counterparty of Buyer’s choice. Unless an Event of Default shall have occurred, no such transaction shall relieve Buyer of its obligations to transfer Purchased Mortgage Loans to Seller pursuant to Section 4 hereof, or of Buyer’s obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Section 7 hereof. In the event Buyer engages in a repurchase transaction with any of the Purchased Mortgage Loans or otherwise pledges or hypothecates any of the Purchased Mortgage Loans, Buyer shall have the right to assign to Buyer’s counterparty any of the applicable representations or warranties herein and the remedies for breach thereof, as they relate to the Purchased Mortgage Loans that are subject to such repurchase transaction.

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## 19. Single Agreement

Buyer and Seller acknowledge they have and will enter into each Transaction hereunder, in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set-off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

## 20. Notices and Other Communications

Any and all notices (with the exception of Transaction Requests or Purchase Confirmations, which shall be delivered via facsimile only), statements, demands or other communications hereunder may be given by a party to the other by mail, email, facsimile, messenger or otherwise to the address specified below, or so sent to such party at any other place specified in a notice of change of address hereafter received by the other. All notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence. In all cases, to the extent that the related individual set forth in the respective “Attention” line is no longer employed by the respective Person, such notice may be given to the attention of a Responsible Officer of the respective Person or to the attention of such individual or individuals as subsequently notified in writing by a Responsible Officer of the respective Person.

If to Seller:

Home Loan Center, Inc. d/b/a LendingTree Loans  
163 Technology Drive  
Irvine, CA 92618  
Attention: Rian Furey, Chief Operating Officer  
Phone Number: 949-579-8362  
Fax Number: 949-579-8462  
Email: Rian.Furey@lendingtree.com

with a copy to:

Home Loan Center, Inc. d/b/a LendingTree Loans  
163 Technology Drive  
Irvine, CA 92618  
Attention: Ken Block, General Counsel  
Phone Number: 949-255-7513  
Fax Number: 949-255-7613

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Email: Ken.Block@lendingtree.com

If to Tree.com, Inc.:

Tree.com, Inc.  
11115 Rushmore Drive  
Charlotte, NC 28277  
Attention: Douglas Lebda, Chief Executive Officer  
Phone Number: 704-944-8501  
Fax Number: 949-255-5155

If to LendingTree, LLC:

LendingTree, LLC  
11115 Rushmore Drive  
Charlotte, NC 28277  
Attention: Douglas Lebda, Chief Executive Officer  
Phone Number: 704-944-8501  
Fax Number: 949-255-5155

If to LendingTree Holdings Corp.:

LendingTree Holdings Corp.  
11115 Rushmore Drive  
Charlotte, NC 28277  
Attention: Douglas Lebda, Chief Executive Officer  
Phone Number: 704-944-8501  
Fax Number: 949-255-5155

If to Buyer:

For Transaction Requests and Purchase Confirmations:

CSFBMC LLC  
c/o Credit Suisse Securities (USA) LLC  
One Madison Avenue, 2nd floor  
New York, New York 10010  
Attention: Christopher Bergs, Resi Mortgage Warehouse Ops  
Phone: 212-538-5087  
E-mail: christopher.bergs@credit-suisse.com

with a copy to:

Credit Suisse First Boston Mortgage Capital LLC  
c/o Credit Suisse Securities (USA) LLC

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Eleven Madison Avenue, 4th Floor  
New York, NY 10010  
Attention: Bruce Kaiserman  
E-mail: bruce.kaiserman@credit-suisse.com

For all other Notices:

Credit Suisse First Boston Mortgage Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
Eleven Madison Avenue, 4th Floor  
Attention: Margaret Dellafera  
New York, New York 10010  
Phone Number: 212-325-6471  
Fax Number: 212-743-4810  
E-mail: margaret.dellafera@credit-suisse.com

with a copy to:

Credit Suisse First Boston Mortgage Capital LLC  
c/o Credit Suisse Securities (USA) LLC  
One Madison Avenue, 9th Floor  
New York, NY 10010  
Attention: Legal Department—RMBS Warehouse Lending  
Fax Number: (212) 322-2376

**21. Entire Agreement; Severability**

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

**22. Non assignability**

The Program Agreements are not assignable by Seller. Buyer may from time to time assign all or a portion of its rights and obligations under this Agreement and the Program Agreements; provided, however that Buyer shall maintain as agent of Seller, for review by Seller upon written request, a register of assignees and a copy of an executed assignment and acceptance by Buyer and assignee ("Assignment and Acceptance"), specifying the percentage or portion of such rights and obligations assigned. Upon such assignment, (a) such assignee shall be a party hereto and to each Program Agreement to the extent of the percentage or portion set forth in the Assignment and Acceptance, and shall succeed to the applicable rights and obligations of Buyer hereunder, and (b) Buyer shall, to the extent that such rights and obligations have been so assigned by it to either (i) an Affiliate of Buyer which assumes the obligations of Buyer or (ii) another Person approved by Seller (such approval not to be unreasonably withheld) which assumes the obligations of Buyer, be released from its obligations hereunder and under the

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Program Agreements. Unless otherwise stated in the Assignment and Acceptance, Seller shall continue to take directions solely from Buyer unless otherwise notified by Buyer in writing. Buyer may distribute to any prospective assignee any document or other information delivered to Buyer by Seller.

**23. Set-off**

In addition to any rights and remedies of the Buyer hereunder and by law, upon the occurrence and continuation of an Event of Default the Buyer shall have the right, without prior notice to the Seller, any such notice being expressly waived by the Seller to the extent permitted by applicable law to set-off and appropriate and apply against any Obligation from Seller or any Affiliate thereof to Buyer or any of its Affiliates any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other obligation (including to return excess margin), credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by or due from the Buyer or any Affiliate thereof to or for the credit or the account of the Seller or any Affiliate thereof. The Buyer agrees promptly to notify the Seller after any such set off and application made by the Buyer; provided that the failure to give such notice shall not affect the validity of such set off and application.

**24. Binding Effect; Governing Law; Jurisdiction**

a. This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Seller acknowledges that the obligations of Buyer hereunder or otherwise are not the subject of any guaranty by, or recourse to, any direct or indirect parent or other Affiliate of Buyer. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.

b. SELLER HEREBY WAIVES TRIAL BY JURY. SELLER HEREBY IRREVOCABLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY COURT OF THE STATE OF NEW YORK, OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, ARISING OUT OF OR RELATING TO THE PROGRAM AGREEMENTS IN ANY ACTION OR PROCEEDING. SELLER HEREBY SUBMITS TO, AND WAIVES ANY OBJECTION IT MAY HAVE TO, EXCLUSIVE PERSONAL JURISDICTION AND VENUE IN THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, WITH RESPECT TO ANY DISPUTES ARISING OUT OF OR RELATING TO THE PROGRAM AGREEMENTS.

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**25. No Waivers, Etc.**

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Section 6(a), 16(a) or otherwise, will not constitute a waiver of any right to do so at a later date.

**26. Intent**

a. The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code,

as amended and that all payments hereunder are deemed “margin payments” or “settlement payments” as defined in Title 11 of the United States Code.

b. It is understood that either party’s right to liquidate Purchased Mortgage Loans delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Section 16 hereof is a contractual right to liquidate such Transaction as described in Sections 555 and 559 of Title 11 of the United States Code, as amended.

c. The parties agree and acknowledge that if a party hereto is an “insured depository institution,” as such term is defined in the Federal Deposit Insurance Act, as amended (“FDIA”), then each Transaction hereunder is a “qualified financial contract,” as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

d. It is understood that this Agreement constitutes a “netting contract” as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”) and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a “covered contractual payment entitlement” or “covered contractual payment obligation”, respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a “financial institution” as that term is defined in FDICIA).

e. This Agreement is intended to be a “repurchase agreement” and a “securities contract,” within the meaning of Section 555 and Section 559 under the Bankruptcy Code.

f. Each party agrees that this Agreement is intended to create mutuality of obligations among the parties, and as such, the Agreement constitutes a

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contract which (i) is between all of the parties and (ii) places each party in the same right and capacity.

## **27. Disclosure Relating to Certain Federal Protections**

The parties acknowledge that they have been advised that:

a. in the case of Transactions in which one of the parties is a broker or dealer registered with the SEC under Section 15 of the 1934 Act, the Securities Investor Protection Corporation has taken the position that the provisions of the SIPA do not protect the other party with respect to any Transaction hereunder;

b. in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

c. in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

## **28. Power of Attorney**

Seller hereby authorizes Buyer to file such financing statement or statements relating to the Repurchase Assets without Seller’s signature thereon as Buyer, at its option, may deem appropriate. Seller hereby appoints Buyer as Seller’s agent and attorney-in-fact to execute any such financing statement or statements in Seller’s name and to perform all other acts which Buyer deems appropriate to perfect and continue its ownership interest in and/or the security interest granted hereby, if applicable, and to protect, preserve and realize upon the Repurchase Assets, including, but not limited to, the right to endorse notes, complete blanks in documents, transfer servicing, and sign assignments on behalf of Seller as its agent and attorney-in-fact. This agency and power of attorney is coupled with an interest and is irrevocable without Buyer’s consent. Notwithstanding the foregoing, the power of attorney hereby granted may be exercised only during the occurrence and continuance of any Default hereunder. Seller shall pay the filing costs for any financing statement or statements prepared pursuant to this Section 28. In addition the foregoing, the Seller agrees to execute a Power of Attorney, in the form of Exhibit D hereto, to be delivered on the date hereof.

## **29. Buyer May Act Through Affiliates**

Buyer may, from time to time, designate one or more Affiliates for the purpose of performing any action hereunder.

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## **30. Indemnification; Obligations**

a. Seller agrees to hold Buyer and each of its respective Affiliates and their officers, directors, employees, agents and advisors (each, an “Indemnified Party”) harmless from and indemnify each Indemnified Party (and will reimburse each Indemnified Party as the same is incurred) against all liabilities, losses, damages, judgments, costs and expenses (including, without limitation, reasonable fees and expenses of counsel) of any kind which may be imposed on, incurred by, or asserted against any Indemnified Party relating to or arising out of this Agreement, any Transaction Request, Purchase Confirmation, any Program Agreement or any transaction contemplated hereby or thereby resulting from anything other than the Indemnified Party’s gross negligence or willful misconduct. Seller also agrees to reimburse each Indemnified Party for all reasonable expenses in connection with the enforcement of this Agreement and the exercise of any right or remedy provided for herein, any Transaction Request, Purchase Confirmation and any Program Agreement, including,



without limitation, the reasonable fees and disbursements of counsel. Seller's agreements in this Section 30 shall survive the payment in full of the Repurchase Price and the expiration or termination of this Agreement. Seller hereby acknowledges that its obligations hereunder are recourse obligations of Seller and are not limited to recoveries each Indemnified Party may have with respect to the Purchased Mortgage Loans. Seller also agrees not to assert any claim against Buyer or any of its Affiliates, or any of their respective officers, directors, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the facility established hereunder, the actual or proposed use of the proceeds of the Transactions, this Agreement or any of the transactions contemplated thereby. THE FOREGOING INDEMNITY AND AGREEMENT NOT TO ASSERT CLAIMS EXPRESSLY APPLIES, WITHOUT LIMITATION, TO THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PARTIES.

b. Without limitation to the provisions of Section 4, if any payment of the Repurchase Price of any Transaction is made by Seller other than on the then scheduled Repurchase Date thereto as a result of an acceleration of the Repurchase Date pursuant to Section 16 or for any other reason, Seller shall, upon demand by Buyer, pay to Buyer an amount sufficient to compensate Buyer for any losses, costs or expenses that it may reasonably incur as of a result of such payment.

c. Without limiting the provisions of Section 30(a) hereof, if Seller fails to pay when due any costs, expenses or other amounts payable by it under this Agreement, including, without limitation, fees and expenses of counsel and indemnities, such amount may be paid on behalf of Seller by Buyer, in its sole discretion.

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### 31. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same instrument.

### 32. Confidentiality

a. This Agreement and its terms, provisions, supplements and amendments, and notices hereunder, are proprietary to Buyer and shall be held by Seller in strict confidence and shall not be disclosed to any third party without the written consent of Buyer except for (i) disclosure to Seller's direct and indirect Affiliates and Subsidiaries, attorneys or accountants, but only to the extent such disclosure is necessary and such parties agree to hold all information in strict confidence, or (ii) disclosure required by law, rule, regulation or order of a court or other regulatory body. Notwithstanding the foregoing or anything to the contrary contained herein or in any other Program Agreement, the parties hereto may disclose to any and all Persons, without limitation of any kind, the federal, state and local tax treatment of the Transactions, any fact relevant to understanding the federal, state and local tax treatment of the Transactions, and all materials of any kind (including opinions or other tax analyses) relating to such federal, state and local tax treatment and that may be relevant to understanding such tax treatment; provided that Seller may not disclose the name of or identifying information with respect to Buyer or any pricing terms (including, without limitation, the Pricing Rate, Non-Utilization Fee, Purchase Price Percentage and Purchase Price) or other nonpublic business or financial information (including any sublimits and financial covenants) that is unrelated to the federal, state and local tax treatment of the Transactions and is not relevant to understanding the federal, state and local tax treatment of the Transactions, without the prior written consent of the Buyer.

b. Notwithstanding anything in this Agreement to the contrary, the Seller and the Buyer shall comply with all applicable local, state and federal laws, including, without limitation, all privacy and data protection law, rules and regulations that are applicable to the Purchased Mortgage Loans and/or any applicable terms of this Agreement (the "Confidential Information"). The Seller and the Buyer understand that the Confidential Information may contain "nonpublic personal information", as that term is defined in Section 509(4) of the Gramm-Leach-Bliley Act (the "Act"), and the Seller and the Buyer agree to maintain such nonpublic personal information that it receives hereunder in accordance with the Act and other applicable federal and state privacy laws. The Seller shall implement such physical and other security measures as shall be necessary to (a) ensure the security and confidentiality of the "nonpublic personal information" of the "customers" and "consumers" (as those terms are defined in the Act) of Buyer or any Affiliate of Buyer which the Seller holds, (b) protect against any threats or hazards to the security and integrity of such

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nonpublic personal information, and (c) protect against any unauthorized access to or use of such nonpublic personal information. The Seller represents and warrants that it has implemented appropriate measures to meet the objectives of Section 501(b) of the Act and of the applicable standards adopted pursuant thereto, as now or hereafter in effect. Upon request, the Seller will provide evidence reasonably satisfactory to allow Buyer to confirm that the providing party has satisfied its obligations as required under this Section. Without limitation, this may include Buyer's review of audits, summaries of test results, and other equivalent evaluations of the Seller. The Seller shall notify Buyer immediately following discovery of any breach or compromise of the security, confidentiality, or integrity of nonpublic personal information of the customers and consumers of Buyer or any Affiliate of Buyer provided directly to the Seller by Buyer or such Affiliate. The Seller shall provide such notice to Buyer by personal delivery, by facsimile with confirmation of receipt, or by overnight courier with confirmation of receipt to the applicable requesting individual.

### 33. Recording of Communications

Buyer and Seller shall have the right (but not the obligation) from time to time to make or cause to be made tape recordings of communications between its employees and those of the other party with respect to Transactions. Buyer and Seller consent to the admissibility of such tape recordings in any court, arbitration, or other proceedings. The parties agree that a duly authenticated transcript of such a tape recording shall be deemed to be a writing conclusively evidencing the parties' agreement.

### 34. [Reserved]

**35. Non-Utilization Fee**

Seller shall pay to Buyer in immediately available funds, no later than the Price Differential Payment Date following the end of each calendar quarter, a non-refundable Non-Utilization Fee. All payments of the Non-Utilization Fee shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Buyer at such account designated by Buyer.

**36. Periodic Due Diligence Review**

Seller acknowledges that Buyer has the right to perform continuing due diligence reviews with respect to the Seller and the Mortgage Loans, for purposes of verifying compliance with the representations, warranties and specifications made hereunder, for the purpose of performing quality control review of the Mortgage Loans or otherwise, and Seller agrees that upon reasonable (but no less than one (1) Business Day's) prior notice unless an Event of Default shall have occurred, in which case no notice is required, to Seller, Buyer or its authorized representatives will be permitted during normal business hours to examine, inspect, and make copies and extracts of, the Mortgage Files and any and all documents, data, records, agreements, instruments or information relating to such Mortgage Loans (including, without

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limitation, quality control review) in the possession or under the control of Seller and/or the Custodian. Seller also shall make available to Buyer a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Mortgage Files and the Mortgage Loans. Without limiting the generality of the foregoing, Seller acknowledges that Buyer may purchase Mortgage Loans from Seller based solely upon the information provided by Seller to Buyer in the Mortgage Loan Schedule and the representations, warranties and covenants contained herein, and that Buyer, at its option, has the right at any time to conduct a partial or complete due diligence review on some or all of the Mortgage Loans purchased in a Transaction, including, without limitation, ordering Broker's price opinions, new credit reports and new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Mortgage Loan. Buyer may underwrite such Mortgage Loans itself or engage a mutually agreed upon third party underwriter to perform such underwriting. Seller agrees to cooperate with Buyer and any third party underwriter in connection with such underwriting, including, but not limited to, providing Buyer and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Mortgage Loans in the possession, or under the control, of Seller. Seller further agrees that Seller shall pay all out-of-pocket costs and expenses incurred by Buyer in connection with Buyer's activities pursuant to this Section 36 in an amount not to exceed the Due Diligence Cap; provided that the Due Diligence Cap shall not apply upon the occurrence of an Event of Default.

**37. Authorizations**

Any of the persons whose signatures and titles appear on Schedule 2 are authorized, acting singly, to act for Seller or Buyer, as the case may be, under this Agreement.

**38. Acknowledgement Of Anti-Predatory Lending Policies**

Buyer has in place internal policies and procedures that expressly prohibit its purchase of any High Cost Mortgage Loan.

**39. Documents Mutually Drafted**

The Seller and the Buyer agree that this Agreement and each other Program Agreement prepared in connection with the Transactions set forth herein have been mutually drafted and negotiated by each party, and consequently such documents shall not be construed against either party as the drafter thereof.

**40. 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 GAAP;

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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. a 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;

f. the term "include" or "including" shall mean without limitation by reason of enumeration;

g. all times specified herein or in any other Program Agreement (unless expressly specified otherwise) are local times in New York, New York unless otherwise stated; and

h. all references herein or in any Program Agreement to "good faith" means good faith as defined in Section 1-201(19) of the UCC as in effect in the State of New York.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date first above written.

Credit Suisse First Boston Mortgage Capital LLC, as Buyer

By:

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

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

Home Loan Center, Inc. d/b/a LendingTree Loans, as Seller

By:

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

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

Signature Page to the Master Repurchase Agreement

**SCHEDULE 1**

**REPRESENTATIONS AND WARRANTIES WITH RESPECT TO PURCHASED MORTGAGE LOANS**

(a) Payments Current. All payments required to be made up to the Purchase Date for the Mortgage Loan under the terms of the Mortgage Note have been made and credited. No payment required under the Mortgage Loan is delinquent nor has any payment under the Mortgage Loan been delinquent at any time since the origination of the Mortgage Loan. The first Monthly Payment shall be made, or shall have been made, with respect to the Mortgage Loan on its Due Date or within the grace period, all in accordance with the terms of the related Mortgage Note.

(b) No Outstanding Charges. All taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments or ground rents which previously became due and owing have been paid, or an escrow of funds has been established in an amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable. Neither Seller nor the Qualified Originator from which Seller acquired the Mortgage Loan has advanced funds, or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required under the Mortgage Loan, except for interest accruing from the date of the Mortgage Note or date of disbursement of the proceeds of the Mortgage Loan, whichever is earlier, to the day which precedes by one month the Due Date of the first installment of principal and/or interest thereunder.

(c) Original Terms Unmodified. The terms of the Mortgage Note and Mortgage have not been impaired, waived, altered or modified in any respect, from the date of origination; except by a written instrument which has been recorded, if necessary to protect the interests of Buyer, and which has been delivered to the Custodian and the terms of which are reflected in the Custodial Mortgage Loan Schedule. The substance of any such waiver, alteration or modification has been approved by the title insurer, to the extent required, and its terms are reflected on the Custodial Mortgage Loan Schedule. No Mortgagor in respect of the Mortgage Loan has been released, in whole or in part, except in connection with an assumption agreement approved by the title insurer, to the extent required by such policy, and which assumption agreement is part of the Mortgage File delivered to the Custodian and the terms of which are reflected in the Custodial Mortgage Loan Schedule.

(d) No Defenses. The Mortgage Loan is not subject to any right of rescission, set-off, counterclaim or defense, including, without limitation, the defense of usury, nor will the operation of any of the terms of the Mortgage Note or the Mortgage,

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or the exercise of any right thereunder, render either the Mortgage Note or the Mortgage unenforceable, in whole or in part and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto, and no Mortgagor in respect of the Mortgage Loan was a debtor in any state or Federal bankruptcy or insolvency proceeding at the time the Mortgage Loan was originated. Mortgagor did not have a prior bankruptcy, except as permitted under the Underwriting Guidelines. Mortgagor did not previously own property that was the subject of a foreclosure during the time the Mortgagor was the owner of record, except as permitted under the Underwriting Guidelines. Seller has no knowledge nor has it received any notice that any Mortgagor in respect of the Mortgage Loan is a debtor in any state or federal bankruptcy or insolvency proceeding. Seller has no knowledge of any circumstances or condition with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that could reasonably be expected to cause investors to regard the Mortgage Loan as an unacceptable investment, cause the Mortgage Loan to become delinquent or materially adversely affect the value or marketability of the Mortgage Loan.

(e) Hazard Insurance. The Mortgaged Property is insured by a fire and extended perils insurance policy, issued by a Qualified Insurer, and such other hazards as are customary in the area where the Mortgaged Property is located, and to the extent required by Seller as of the date of origination

consistent with the Underwriting Guidelines, against earthquake and other risks insured against by Persons operating like properties in the locality of the Mortgaged Property, in an amount not less than the greatest of (i) 100% of the replacement cost of all improvements to the Mortgaged Property, (ii) the outstanding principal balance of the Mortgage Loan, or (iii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property, and consistent with the amount that would have been required as of the date of origination in accordance with the Underwriting Guidelines. If any portion of the Mortgaged Property is in an area identified by any federal Governmental Authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current guidelines of the Federal Emergency Management Agency is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Mortgage Loan (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1974. All such insurance policies (collectively, the "hazard insurance policy") contain a standard mortgagee clause naming Seller, its successors and assigns (including, without limitation, subsequent owners of the Mortgage Loan), as mortgagee, and may not be reduced, terminated or canceled without 30 days' prior written notice to the mortgagee. No such notice has been received by Seller. All premiums on such insurance policy have been paid. The related Mortgage obligates the Mortgagor to maintain all such insurance and, at such Mortgagor's failure to do so, authorizes the mortgagee to maintain such insurance at the Mortgagor's cost and expense and to seek reimbursement therefor from such Mortgagor. Where required by state law or regulation, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a "master" or "blanket" hazard insurance policy covering a condominium, or any hazard insurance policy covering the

Schedule 1-2

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common facilities of a planned unit development. The hazard insurance policy is the valid and binding obligation of the insurer and is in full force and effect. Seller has not engaged in, and has no knowledge of the Mortgagor's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by Seller.

(f) Environmental Compliance. There does not exist on the Mortgaged Property any hazardous substances, hazardous wastes or solid wastes, as such terms are defined in the Comprehensive Environmental Response Compensation and Liability Act, the Resource Conservation and Recovery Act of 1976, or other applicable federal, state or local environmental laws including, without limitation, asbestos, in each case in excess of the permitted limits and allowances set forth in such environmental laws to the extent such laws are applicable to the Mortgaged Property. There is no pending action or proceeding directly involving the Mortgaged Property in which compliance with any environmental law, rule or regulation is an issue; there is no violation of any applicable environmental law (including, without limitation, asbestos), rule or regulation with respect to the Mortgaged Property; and nothing further remains to be done to satisfy in full all requirements of each such law, rule or regulation constituting a prerequisite to use and enjoyment of said property.

(g) Compliance with Applicable Laws. Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the Mortgage Loan have been complied with, the consummation of the transactions contemplated hereby will not involve the violation of any such laws or regulations, and Seller shall maintain or shall cause its agent to maintain in its possession, available for the inspection of Buyer, and shall deliver to Buyer, upon demand, evidence of compliance with all such requirements.

(h) No Satisfaction of Mortgage. The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission. Seller has not waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Mortgage Loan to be in default, nor has Seller waived any default resulting from any action or inaction by the Mortgagor.

(i) Location and Type of Mortgaged Property. The Mortgaged Property is located in an Acceptable State as identified in the Custodial Mortgage Loan

Schedule 1-3

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Schedule and consists of a single parcel of real property with a detached single family residence erected thereon, or a two- to four-family dwelling, or an individual condominium unit in a low-rise condominium project, or an individual unit in a planned unit development or a de minimis planned unit development; provided, however, that any condominium unit or planned unit development shall conform with the applicable Fannie Mae and Freddie Mac requirements regarding such dwellings or shall conform to underwriting guidelines acceptable to Buyer in its sole discretion and that no residence or dwelling is a mobile home. No portion of the Mortgaged Property is used for commercial purposes; provided, that, the Mortgaged Property may be a mixed use property if such Mortgaged Property conforms to underwriting guidelines acceptable to Buyer in its sole discretion.

(j) Valid First Lien. The Mortgage is a valid, subsisting, enforceable and perfected with respect to each first lien Mortgage Loan, first priority lien and first priority security interest on the real property included in the Mortgaged Property, including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing. The lien of the Mortgage is subject only to:

- a. the lien of current real property taxes and assessments not yet due and payable;
- b. covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in Buyer's title insurance policy delivered to the originator of the Mortgage Loan and, in the event an appraisal was conducted with respect to the Mortgaged Property, (a) referred to or otherwise considered in the appraisal made for the originator of the Mortgage Loan or (b) which do not materially impair the Appraised Value of the Mortgaged Property set forth in such appraisal;
- c. other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid, subsisting and enforceable first lien and first priority security interest on the property described therein and Seller has full right to pledge and assign the same to Buyer. The Mortgaged Property was not, as of the date of origination of the Mortgage Loan, subject

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to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage.

(k) Validity of Mortgage Documents. The Mortgage Note and the Mortgage and any other agreement executed and delivered by a Mortgagor or guarantor, if applicable, in connection with a 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 Note, the Mortgage and any other such related agreement had legal capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Note, the Mortgage and any such agreement, and the Mortgage Note, the Mortgage and any other such related agreement have been duly and properly executed by such related parties. No fraud, error, omission, misrepresentation, negligence or similar occurrence with respect to a Mortgage Loan has taken place on the part of any Person, including, without limitation, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan. Seller has reviewed all of the documents constituting the Mortgage File and has made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein. To the best of Seller's knowledge, except as disclosed to Buyer in writing, all tax identifications and property descriptions are legally sufficient; and tax segregation, where required, has been completed.

(l) Full Disbursement of Proceeds. There is no further requirement for future advances under the Mortgage Loan, 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 Note or Mortgage. All broker fees have been properly assessed to the Mortgagor and no claims will arise as to broker fees that are double charged and for which the Mortgagor would be entitled to reimbursement.

(m) Ownership. Seller has full right to sell the Mortgage Loan to Buyer free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest not permitted under paragraph (j) above, and has full right and authority subject to no interest or participation of, or agreement with, any other party, to sell each Mortgage Loan pursuant to this Agreement and following the sale of each Mortgage Loan, Buyer will own such Mortgage Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest not permitted under paragraph (j) above except any such security interest created pursuant to the terms of this Agreement.

(n) Doing Business. All parties which have had any interest in the Mortgage Loan, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) (i) in compliance with any

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and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located, and (ii) either (A) organized under the laws of such state, (B) qualified to do business in such state, (C) a federal savings and loan association, a savings bank or a national bank having a principal office in such state, or (D) not doing business in such state.

(o) Title Insurance. The Mortgage Loan is covered by either (i) an attorney's opinion of title and abstract of title, the form and substance of which is acceptable to prudent mortgage lending institutions making mortgage loans in the area wherein the Mortgaged Property is located or (ii) an ALTA lender's title insurance policy or other generally acceptable form of policy or insurance acceptable to Fannie Mae or Freddie Mac and each such title insurance policy is issued by a title insurer acceptable to Fannie Mae or Freddie Mac and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring Seller, its successors and assigns, as to the first priority lien of the Mortgage, as applicable, in the original principal amount of the Mortgage Loan, with respect to a Mortgage Loan (or to the extent a Mortgage Note provides for negative amortization, the maximum amount of negative amortization in accordance with the Mortgage), subject only to the exceptions contained in clauses (a), (b) and (c) of paragraph (i) of this Schedule 1, and in the case of adjustable rate Mortgage Loans, against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment to the Mortgage Interest Rate and Monthly Payment. 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. Seller, its successors and assigns, are the sole insureds of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder or servicer of the related Mortgage, including Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by Seller.

(p) No Defaults. There is no default, breach, violation or event of acceleration existing under the Mortgage or the Mortgage Note and no event has occurred which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither Seller nor its predecessors have waived any default, breach, violation or event of acceleration.

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(q) No Mechanics' Liens. There are no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such liens) affecting the Mortgaged Property which are or may be liens prior to, or equal or coordinate with, the lien of the Mortgage.

(r) Location of Improvements; No Encroachments. All improvements which were considered in determining the Appraised Value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning and building law, ordinance or regulation. All seller and/or builder concessions have been subtracted from the Appraised Value of the Mortgage Property for purposes of determining the LTV, except as permitted under the Underwriting Guidelines.

(s) Origination; Payment Terms. The Mortgage Loan was originated by or in conjunction with a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act, a savings and loan association, a savings bank, a commercial bank, credit union, insurance company or similar banking institution which is supervised and examined by a federal or state authority. Principal and/or interest payments on the Mortgage Loan commenced no more than 60 days after funds were disbursed in connection with the Mortgage Loan. No Mortgage Loan has a balloon payment feature. The Mortgagor contributed at least five percent (5%) (or three and one-half percent (3.5%) for FHA Loans) of the purchase price for the Mortgaged Property from their own funds. Interest on the Mortgage Loan is calculated on the basis of a 360-day year consisting of twelve 30-day months. With respect to adjustable rate Mortgage Loans, the Mortgage Interest Rate is adjusted on each Interest Rate Adjustment Date to equal the Index plus the Gross Margin (rounded up or down to the nearest .125%), subject to the Mortgage Interest Rate Cap. The Mortgage Note is payable on the first day of each month in equal monthly installments of principal and/or interest (subject to an "interest only" period in the case of Interest Only Loans), which installments of interest (a) with respect to adjustable rate Mortgage Loans are subject to change on the Interest Rate Adjustment Date due to adjustments to the Mortgage Interest Rate on each Interest Rate Adjustment Date and (b) with respect to Interest Only Loans are subject to change on the Interest Only Adjustment Date due to adjustments to the Mortgage Interest Rate on each Interest Only Adjustment Date, in both cases with interest calculated and payable in arrears, sufficient to amortize the Mortgage Loan fully by the stated maturity date, over an original term of not more than 30 years from commencement of amortization.

(t) Customary Provisions. The Mortgage Note has a stated maturity. The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a

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Schedule 1-7

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 or other right available to the Mortgagor or any other person, or restriction on the Seller or any other person, including without limitation, any federal, state or local, law, ordinance, decree, regulation, guidance, attorney general action, or other pronouncement, whether temporary or permanent in nature, that would interfere with, restrict or delay, either (y) the ability of the Seller, Buyer or any servicer or any successor servicer to sell the related Mortgaged Property at a trustee's sale or otherwise, or (z) the ability of the Seller, Buyer or any servicer or any successor servicer to foreclose on the related Mortgage. The Mortgage Note and Mortgage are on forms acceptable to Freddie Mac or Fannie Mae.

(u) Occupancy of the Mortgaged Property. As of the Purchase Date the Mortgaged Property is lawfully occupied under applicable law. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. Seller has not received notification from any Governmental Authority that the Mortgaged Property is in material non-compliance with such laws or regulations, is being used, operated or occupied unlawfully or has failed to have or obtain such inspection, licenses or certificates, as the case may be. Seller has not received notice of any violation or failure to conform with any such law, ordinance, regulation, standard, license or certificate. With respect to any Mortgage Loan originated with an "owner-occupied" Mortgaged Property, the Mortgagor represented at the time of origination of the Mortgage Loan that the Mortgagor would occupy the Mortgaged Property as the Mortgagor's primary residence.

(v) No Additional Collateral. The Mortgage Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable security agreement or chattel mortgage referred to in clause (i) above.

(w) Deeds of Trust. In the event the Mortgage constitutes a deed of trust, a trustee, authorized and duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Custodian or Buyer to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

(x) Transfer of Mortgage Loans. Except with respect to Mortgage Loans intended for purchase by GNMA and for Mortgage Loans registered with MERS,

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Schedule 1-8

the Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located.

(y) Due-On-Sale. Except with respect to Mortgage Loans intended for purchase by GNMA, the Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee thereunder.

(z) No Buydown Provisions; No Graduated Payments or Contingent Interests. Except with respect to Agency Mortgage Loans, the Mortgage Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by Seller, the Mortgagor, or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions which may constitute a "buydown" provision. The Mortgage Loan is not a graduated payment mortgage loan and the Mortgage Loan does not have a shared appreciation or other contingent interest feature.

(aa) Consolidation of Future Advances. Any future advances made to the Mortgagor prior to the Purchase Date have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single

repayment term. The lien of the Mortgage securing the consolidated principal amount is expressly insured as having first lien priority by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable to Fannie Mae and Freddie Mac. The consolidated principal amount does not exceed the original principal amount of the Mortgage Loan.

(bb) No Condemnation Proceeding. There have not been any condemnation proceedings with respect to the Mortgaged Property and Seller has no knowledge of any such proceedings.

(cc) Collection Practices; Escrow Deposits; Interest Rate Adjustments. The origination and collection practices used by the originator, each servicer of the Mortgage Loan and Seller with respect to the Mortgage Loan have been in all respects in compliance with Accepted Servicing Practices, applicable laws and regulations, and have been in all respects legal and proper. With respect to escrow deposits and Escrow Payments, all such payments are in the possession of, or under the control of, Seller and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All Escrow Payments have been collected in full compliance with state and federal law. An escrow of funds is not prohibited by applicable law and has been established in an amount sufficient to pay for every item that remains unpaid and has been assessed but is not yet due and payable. No escrow deposits

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Schedule 1-9

or Escrow Payments or other charges or payments due Seller have been capitalized under the Mortgage or the Mortgage Note. All Mortgage Interest Rate adjustments have been made in strict compliance with state and federal law and the terms of the related Mortgage Note. Any interest required to be paid pursuant to state, federal and local law has been properly paid and credited.

(dd) Conversion to Fixed Interest Rate. Except as allowed by Fannie Mae or Freddie Mac or otherwise as expressly approved in writing by Buyer, with respect to adjustable rate Mortgage Loans, the Mortgage Loan is not convertible to a fixed interest rate Mortgage Loan.

(ee) Other Insurance Policies. No action, inaction or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable special hazard insurance policy, PMI Policy or bankruptcy bond, irrespective of the cause of such failure of coverage. In connection with the placement of any such insurance, no commission, fee, or other compensation has been or will be received by Seller or by any officer, director, or employee of Seller or any designee of Seller or any corporation in which Seller or any officer, director, or employee had a financial interest at the time of placement of such insurance.

(ff) Servicemembers Civil Relief Act. The Mortgagor has not notified Seller, and Seller has no knowledge, of any relief requested or allowed to the Mortgagor under the Servicemembers Civil Relief Act of 2003.

(gg) Appraisal. Except with respect to DU Refi Plus Mortgage Loans, FHA Streamline Mortgage Loans, Open Access Mortgage Loans, or refinancings underwritten with the use of the Fannie Mae direct underwriting system, where a property inspection waiver has been issued or a 2075 exterior only property inspection has been approved, the Mortgage File contains an appraisal of the related Mortgaged Property signed prior to the funding of the Mortgage Loan by a qualified appraiser, duly appointed by Seller, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan, and the appraisal and appraiser both satisfy the requirements of Fannie Mae or Freddie Mac and Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 as amended and the regulations promulgated thereunder, all as in effect on the date the Mortgage Loan was originated. As of the funding date, no appraisal is more than one hundred and twenty (120) days old.

(hh) Disclosure Materials. The Mortgagor has executed a statement to the effect that the Mortgagor has received all disclosure materials required by applicable law with respect to the making of adjustable rate mortgage loans, and Seller maintains such statement in the Mortgage File.

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Schedule 1-10

(ii) Construction or Rehabilitation of Mortgaged Property. No Mortgage Loan was made in connection with the construction or rehabilitation of a Mortgaged Property or facilitating the trade-in or exchange of a Mortgaged Property.

(jj) No Defense to Insurance Coverage. No action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed on or prior to the Purchase Date (whether or not known to Seller on or prior to such date) which has resulted or will result in an exclusion from, denial of, or defense to coverage under any private mortgage insurance (including, without limitation, any exclusions, denials or defenses which would limit or reduce the availability of the timely payment of the full amount of the loss otherwise due thereunder to the insured) whether arising out of actions, representations, errors, omissions, negligence, or fraud of Seller, the related Mortgagor or any party involved in the application for such coverage, including the appraisal, plans and specifications and other exhibits or documents submitted therewith to the insurer under such insurance policy, or for any other reason under such coverage, but not including the failure of such insurer to pay by reason of such insurer's breach of such insurance policy or such insurer's financial inability to pay.

(kk) Capitalization of Interest. The Mortgage Note does not by its terms provide for the capitalization or forbearance of interest.

(ll) No Equity Participation. No document relating to the Mortgage Loan provides for any contingent or additional interest in the form of participation in the cash flow of the Mortgaged Property or a sharing in the appreciation of the value of the Mortgaged Property. The indebtedness evidenced by the Mortgage Note is not convertible to an ownership interest in the Mortgaged Property or the Mortgagor and Seller has not financed nor does it own directly or indirectly, any equity of any form in the Mortgaged Property or the Mortgagor.

(mm) Proceeds of Mortgage Loan. The proceeds of the Mortgage Loan have not been and shall not be used to satisfy, in whole or in part, any debt owed or owing by the Mortgagor to Seller or any Affiliate or correspondent of Seller, except in connection with a refinanced Mortgage Loan; provided, however, no such refinanced Mortgage Loan shall have been originated pursuant to a streamlined mortgage loan refinancing program, except for DU Refi Plus Mortgage Loans, FHA Streamline Mortgage Loans and Open Access Mortgage Loans.

(nn) Origination Date. The Purchase Date is no more than thirty (30) days following the funding date.

(oo) No Exception. The Custodian has not noted any material exceptions on a Custodial Mortgage Loan Schedule with respect to the Mortgage Loan

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Schedule 1-11

which would materially adversely affect the Mortgage Loan or Buyer's interest in the Mortgage Loan.

(pp) Mortgage Submitted for Recordation. The Mortgage either has been or will promptly be submitted for recordation in the appropriate governmental recording office of the jurisdiction where the Mortgaged Property is located.

(qq) Documents Genuine. Such Purchased Mortgage Loan and all accompanying collateral documents are complete and authentic and all signatures thereon are genuine. Such Purchased Mortgage Loan is a "closed" loan fully funded by Seller and held in Seller's name.

(rr) Bona Fide Loan. Such Purchased Mortgage Loan arose from a bona fide loan, complying with all applicable State and Federal laws and regulations, to persons having legal capacity to contract and is not subject to any defense, set-off or counterclaim.

(ss) Other Encumbrances. To the best of Seller's knowledge, any property subject to any security interest given in connection with such Purchased Mortgage Loan is not subject to any other encumbrances other than a stated first mortgage, if applicable, and encumbrances which may be allowed under the Underwriting Guidelines.

(tt) Description. Each Purchased Mortgage Loan conforms to the description thereof as set forth on the related Custodial Mortgage Loan Schedule delivered to the Custodian and Buyer.

(uu) Located in U.S. No collateral (including, without limitation, the related real property and the dwellings thereon and otherwise) relating to a Purchased Mortgage Loan is located in any jurisdiction other than in one of the fifty (50) states of the United States of America or the District of Columbia.

(vv) Underwriting Guidelines. Each Purchased Mortgage Loan has been originated in accordance with the Underwriting Guidelines (including all supplements or amendments thereto) previously provided to Buyer.

(ww) Aging. Such Purchased Mortgage Loan has not been subject to a Transaction hereunder for more than the applicable Aging Limit.

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Schedule 1-12

(xx) Committed Mortgage Loans. Each Committed Mortgage Loan is covered by a Take-out Commitment, does not exceed the availability under such Take-out Commitment (taking into consideration mortgage loans which have been purchased by the respective Take-out Investor under the Take-out Commitment and mortgage loan which Seller has identified to Buyer as covered by such Take-out Commitment) and conforms to the requirements and the specifications set forth in such Take-out Commitment and the related regulations, rules, requirements and/or handbooks of the applicable Take-out Investor and is eligible for sale to and insurance or guaranty by, respectively the applicable Take-out Investor and applicable insurer. Each Take-out Commitment is a legal, valid and binding obligation of Seller enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(yy) Primary Mortgage Guaranty Insurance. Each Mortgage Loan that has a Loan to Value Ratio in excess of 80% and is not an FHA Loan, a DU Refi Plus Mortgage Loan or an Open Access Mortgage Loan is insured as to payment defaults by a policy of primary mortgage guaranty insurance in the amount required where applicable, and by an insurer approved, by the applicable Take-out Investor, if applicable, and all provisions of such primary mortgage guaranty insurance have been and are being complied with, such policy is in full force and effect, and all premiums due thereunder have been paid. Each Mortgage Loan which is represented to Buyer to have, or to be eligible for, FHA insurance is insured, or eligible to be insured, pursuant to the National Housing Act. Each Mortgage Loan which is represented by Seller to be guaranteed, or to be eligible for guaranty, by the VA is guaranteed, or eligible to be guaranteed, under the provisions of Chapter 37 of Title 38 of the United States Code. As to each FHA insurance certificate or each VA guaranty certificate, Seller has complied with applicable provisions of the insurance for guaranty contract and federal statutes and regulations, all premiums or other charges due in connection with such insurance or guarantee have been paid, there has been no act or omission which would or may invalidate any such insurance or guaranty, and the insurance or guaranty is, or when issued, will be, in full force and effect with respect to each Mortgage Loan. There are no defenses, counterclaims, or rights of setoff affecting the Mortgage Loans or affecting the validity or enforceability of any private mortgage insurance or FHA insurance applicable to the Mortgage Loans or any VA guaranty with respect to the Mortgage Loans.

(zz) [Reserved].

(aaa) Predatory Lending Regulations; High Cost Loans. No Mortgage Loan (i) is classified as High Cost Mortgage Loans (ii) is subject to any law, regulation or rule that (A) imposes liability on a mortgagee or a lender to a mortgagee for upkeep to a Mortgaged Property prior to completion of foreclosure thereon, or (B) imposes liability

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Schedule 1-13

on a lender to a mortgagee for acts or omissions of the mortgagee or otherwise defines a mortgagee in a manner that would include a lender to a mortgagee.

(bbb) Credit Score and Reporting. As of the Purchase Date, the Mortgagor's credit score as listed on the Mortgage Loan Schedule is no more than ninety (90) days old. Full, complete and accurate information with respect to the Mortgagor's credit file was furnished to Equifax, Experian and



(ccc) Wet-Ink Mortgage Loans. With respect to each Mortgage Loan that is a Wet-Ink Mortgage Loan, the Settlement Agent has been instructed in writing by Seller to hold the related Mortgage Loan Documents as agent and bailee for Seller or Seller's agent and to promptly forward such Mortgage Loan Documents to Seller. Upon receipt, Seller shall forward such Mortgage Loan Documentation in accordance with the provisions of the Custodial Agreement.

(ddd) FHA Mortgage Insurance; VA Loan Guaranty. With respect to the FHA Loans, the FHA Loan is insurable, all necessary documents for the procurement of the FHA Mortgage Insurance Contract have been submitted to the FHA and there exists no impairment to full recovery without indemnity to the Department of Housing and Urban Development or the FHA under FHA Mortgage Insurance. With respect to the VA Loans, the VA Loan Guaranty Agreement is in full force and effect to the maximum extent stated therein. All necessary steps have been taken to keep such guaranty or insurance valid, binding and enforceable and each of such is the binding, valid and enforceable obligation of the FHA and the VA, respectively, to the full extent thereof, without surcharge, set-off or defense. Each FHA Loan and VA Loan was originated in accordance with the criteria of an Agency for purchase of such Mortgage Loans.

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SCHEDULE 2  
AUTHORIZED REPRESENTATIVES

SELLER AUTHORIZATIONS

Any of the persons whose signatures and titles appear below are authorized, acting singly, to act for Seller under this Agreement:

Name	Title	Signature

Signature Page to the Master Repurchase Agreement

BUYER NOTICES

Name: Margaret Dellafera	Address: Credit Suisse First Boston Mortgage Capital LLC 11 Madison Avenue New York, NY 10010
Telephone: (212) 325-6471	
Facsimile: (212) 732-4810	
Email: margaret.dellafera@credit-suisse.com	

BUYER AUTHORIZATIONS

Any of the persons whose signatures and titles appear below, including any other authorized officers, are authorized, acting singly, to act for Buyer under this Agreement:

Name	Title	Signature
Bruce Kaiserman		
Margaret Dellafera		
Adam Loskove		

Signature Page to the Master Repurchase Agreement

EXHIBIT A

**FORM OF PURCHASE CONFIRMATION**

[Date]

[Name]

Attention:

Credit Suisse First Boston Mortgage Capital LLC ("CSFBMCL") is pleased to confirm your sale and our purchase of the Mortgage Loans described below and on the attached Custodial Mortgage Loan Schedule pursuant to the Master Repurchase Agreement dated as of January 6, 2012 (as amended from time to time, the "Master Repurchase Agreement") between Home Loan Center, Inc. d/b/a LendingTree Loans and Credit Suisse First Boston Mortgage Capital LLC under the following terms and conditions:

Market Value:	\$
Current Principal Amount of Mortgage Loans:	\$
Aggregate Purchase Price:	\$
Purchase Date:	
Repurchase Date:	
Pricing Rate:	
<b>ADDITIONAL INFORMATION:</b>	
Aggregate Purchase Price (date):	\$
Less Previous Aggregate Purchase Price:	\$
Less Price Differential due on (date):	\$
Net funds due [CSFB]/[Name] on (date):	\$

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The Master Repurchase Agreement is incorporated by reference into this Transaction Confirmation, is made a part hereof as if it were fully set forth herein and is extended hereby until all amounts due in connection with this Transaction are paid in full.

All capitalized terms used herein but not defined herein shall have the meanings specified in the Master Repurchase Agreement.

CREDIT SUISSE FIRST BOSTON MORTGAGE CAPITAL LLC

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

[Name]

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

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EXHIBIT B

**SELLER'S TRADE NAMES**

<u>Trade Name</u>	<u>Jurisdiction</u>
LendingTree Loans	Alabama, Alaska, Arizona, California-DOC, Colorado, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana-DFI, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina-BFI, South Dakota, Tennessee, Utah-DRE, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming
LT Loans	Connecticut, Nevada
HomeLoanCenter.com	Arkansas, New Hampshire
Home Loan Center USA, Inc.	Florida, Minnesota, Ohio, Rhode Island, Wyoming
Loan Center	Washington

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EXHIBIT C

**RESERVED**

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EXHIBIT D

**FORM OF POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS, that Home Loan Center, Inc. d/b/a LendingTree Loans ("Seller") hereby irrevocably constitutes and appoints Credit Suisse First Boston Mortgage Capital LLC ("Buyer") and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Seller and in the name of Seller or in its own name, from time to time in Buyer's discretion:

(a) in the name of Seller, or in its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due with respect to any assets purchased by Buyer under the Master Repurchase Agreement (as amended, restated or modified) dated January 6, 2012 (the "Assets") and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Buyer for the purpose of collecting any and all such moneys due with respect to any other assets whenever payable;

(b) to pay or discharge taxes and liens levied or placed on or threatened against the Assets;

(c) (i) to direct any party liable for any payment under any Assets to make payment of any and all moneys due or to become due thereunder directly to Buyer or as Buyer shall direct; (ii) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Assets; (iii) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any Assets; (iv) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Assets or any proceeds thereof and to enforce any other right in respect of any Assets; (v) to defend any suit, action or proceeding brought against Seller with respect to any Assets; (vi) to settle, compromise or adjust any suit, action or proceeding described in clause (vii) above and, in connection therewith, to give such discharges or releases as Buyer may deem appropriate; and (viii) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Assets as fully and completely as though Buyer were the absolute owner thereof for all purposes, and to do, at Buyer's option and Seller's expense, at any time, and from time to time, all acts and things which Buyer deems necessary to protect, preserve or realize upon the Assets and Buyer's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as Seller might do;

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(d) for the purpose of carrying out the transfer of servicing with respect to the Assets from Seller to a successor servicer appointed by Buyer in its sole discretion and to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish such transfer of servicing, and, without limiting the generality of the foregoing, Seller hereby gives Buyer the power and right, on behalf of Seller, without assent by Seller, to, in the name of Seller or its own name, or otherwise, prepare and send or cause to be sent "good-bye" letters to all mortgagors under the Assets, transferring the servicing of the Assets to a successor servicer appointed by Buyer in its sole discretion;

(e) for the purpose of delivering any notices of sale to mortgagors or other third parties, including without limitation, those required by law.

Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

Seller also authorizes Buyer, from time to time, to execute, in connection with any sale, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Assets.

The powers conferred on Buyer hereunder are solely to protect Buyer's interests in the Assets and shall not impose any duty upon it to exercise any such powers. Buyer shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Seller for any act or failure to act hereunder, except for its or their own gross negligence or willful misconduct.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, SELLER HEREBY AGREES THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND BUYER ON ITS OWN BEHALF AND ON BEHALF OF BUYER'S ASSIGNS, HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

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[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURES FOLLOW.]

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IN WITNESS WHEREOF Seller has caused this Power of Attorney to be executed and Seller's seal to be affixed this      day of [      ], 201[      ].

Home Loan Center, Inc. d/b/a LendingTree Loans

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

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

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

STATE OF [ ] )
)
COUNTY OF [ ] ) ss.:

On the day of [ ], 201[ ] before me, a Notary Public in and for said State, personally appeared , known to me to be [ ] of Home Loan Center, Inc. d/b/a LendingTree Loans, the institution that executed the within instrument and also known to me to be the person who executed it on behalf of said corporation, and acknowledged to me that such corporation executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my office seal the day and year in this certificate first above written.

Notary Public

My Commission expires

EXHIBIT E

FORM OF OPINION OF SELLER'S COUNSEL

Credit Suisse First Boston Mortgage Capital LLC
Eleven Madison Avenue
New York, New York 10010

Ladies and Gentlemen:

We have acted as counsel to Home Loan Center, Inc. d/b/a LendingTree Loans ("Seller") in connection with the sale and repurchase by Seller of certain loans (the "Mortgage Loans") purchased from time to time (each such date, a "Purchase Date") by Credit Suisse First Boston Mortgage Capital LLC ("Buyer") pursuant to a Master Repurchase Agreement, dated as of January 6, 2012, between Seller and Buyer (the "Master Repurchase Agreement"). Capitalized terms used but not defined herein shall have the meanings set forth in the Master Repurchase Agreement.

We have acted as counsel to Seller in connection with the preparation, execution and delivery of, and the initial purchase of Mortgage Loans made under, the Master Repurchase Agreement.

In connection with rendering this opinion, we have examined such documents as we have deemed necessary or advisable, including the following documents:

- a. The Program Agreements;
b. The organizational documents of Seller;
c. The certified Consents of the Officer of Seller relating to the transactions provided for in the Program Agreements;
d. A copy of a UCC-1 financing statement describing the Repurchase Assets naming Seller as debtor and Buyer as secured party, which will be filed under the Uniform Commercial Code as in effect in the State of with the office of the

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[Secretary of the State] of (the "Filing Office") on or about , 20 (the "Financing Statement");

- e. The reports attached hereto as Exhibit A (the "Search Reports"), which set forth the results of an examination conducted by [Federal Research Corporation] of all currently indexed UCC-1 financing statements naming Seller as debtor that are on file in the Filing Office;
f. Good standing certificates, as of a recent date, for Seller from each of the States listed on Schedule 1 attached hereto; and
g. The certificates, letters and opinions required to be furnished by Seller and others in connection with the execution of the Program Agreements, and the additional certificates, letter and documents delivered by or on behalf of such parties concurrently herewith.

For purposes of the opinions expressed below, we have assumed the authenticity of all documents submitted to us as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all documents.

Based solely upon the foregoing, we are of the opinion that:

1. Seller is a [[ ]], duly organized, validly existing and in good standing under the laws of the State of [[ ]], and has the corporate power and authority to own its properties and transact the business in which it is engaged. Seller is duly qualified as a foreign [[ ]] to transact business in, and is in good standing under, the laws of each state in which a mortgaged property is located or is otherwise exempt under applicable law from such qualification. The principal place of business of Seller is located at .
3. Seller has the power to engage in the transactions contemplated by the Program Agreements, and has all requisite power, authority and legal right to execute and deliver the Program Agreements, to transfer and deliver the Repurchase Assets and to perform and observe the terms and conditions of the Program Agreements.
4. The Program Agreements have been duly and validly authorized, executed and delivered by Seller, and are valid, legal and binding agreements, enforceable against Seller in accordance with their respective terms, subject to the effect of bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors' rights generally, none of which will materially interfere with

the realization of the benefits provided thereunder or with Buyer's ownership of the Mortgage Loans.

5. No consent, approval, authorization or order of, or notice, filing or registration with, any court or governmental agency or body is required for the execution, delivery and performance by Seller of, or compliance by such entity with, the Program Agreements, or the transfer of the Repurchase Assets or the consummation of the transactions contemplated by the Program Agreements.
6. Neither the transfer or delivery of the Mortgage Loans, nor the consummation of any other of the transactions contemplated in the Program Agreements, nor the fulfillment of the terms of the Program Agreements will result in a breach of or constitutes or will constitute a default under (a) the charter or by-laws of Seller, or the terms of any material indenture or other agreement or instrument to which Seller is a party or by which it is bound or to which it is subject, (b) any contractual or legal restriction contained in any indenture, mortgage, deed of trust, agreement, instrument or other similar document to which Seller is a party or by which it is bound or to which it is subject, or (c) any statute or order, rule, regulation, writ, injunction or decree of any court, governmental authority or regulatory body to which Seller or any of its properties is subject or by which it is bound.
7. There are no actions, suits, proceedings or investigations pending or, to the best of our knowledge, threatened against Seller that, in our judgment, either in any one instance or in the aggregate, may result in any material adverse change in the business, operations, financial condition, properties or assets of Seller or in any material impairment of the right or ability of Seller to carry on its business substantially as now conducted or in any material liability on the part of Seller that would draw into question the validity of the Program Agreements, or of any action taken or to be taken in connection with the transactions contemplated thereby, or that would be likely to impair materially the ability of Seller to perform under the terms of, the Program Agreements.
8. The Repurchase Agreement is effective to create, in favor of the Buyer, a valid "security interest" as defined in Section 1-201(37) of the Uniform Commercial Code in all of the right, title and interest of the Seller in, to and under the Repurchase Assets, except that (a) such security interests will continue in Repurchase Assets after its sale, exchange or other disposition only to the extent provided in Section 9-315 of the Uniform Commercial Code, (b) the security interests in Repurchase Assets in which the Seller acquires rights after the commencement of a case under the Bankruptcy Code in respect of the Seller may be limited by Section 552 of the Bankruptcy Code.
9. When the Mortgage Notes are delivered to the Custodian, endorsed in blank by a duly authorized officer of Seller, the security interest referred to in Section 8 above in the

Mortgage Notes will constitute a fully perfected first-priority security interest in all right, title and interest of Seller therein.

10. (a) Upon the filing of Financing Statements with the Filing Office, the security interests referred to in Section 8 above will constitute a fully perfected security interest under the Uniform Commercial Code in all right, title and interest of Seller in, to and under such Repurchase Assets, to the extent that a security interest therein can be perfected by filing under the Uniform Commercial Code.  
  
(b) The UCC Search Report sets forth the proper filing offices and the proper debtors necessary to identify those Persons who have on file in the jurisdictions listed on Schedule 1 financing statements covering the Repurchase Assets as of the dates and times specified on Schedule 2. The UCC Search Report identifies no Person who has filed in any Filing Office a financing statement describing the Repurchase Assets prior to the effective dates of the UCC Search Report.
12. Seller is not an "investment company", or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

Very truly yours,

## SELLER'S AND GUARANTORS' TAX IDENTIFICATION NUMBERS

Home Loan Center, Inc.:	33-0970598
LendingTree, LLC:	25-1795344
LendingTree Holdings Corp.:	20-2467684
Tree.com, Inc.:	26-2414818

## EXISTING INDEBTEDNESS

**Home Loan Center, Inc.**  
**Debt Schedule**  
**12/31/2011**

Warehouse Payable - JPMorgan Chase	\$	112,270,638
Warehouse Payable-Citi	\$	85,387,999
Total	\$	197,658,636

FORM OF SERVICER NOTICE

[Date]

[ ], as Servicer

[ADDRESS]

Attention:

Re: Master Repurchase Agreement, dated as of January 6, 2012 (the "Repurchase Agreement"), between Home Loan Center, Inc. d/b/a LendingTree Loans (the "Seller") and Credit Suisse First Boston Mortgage Capital LLC (the "Buyer").

Ladies and Gentlemen:

[ ] (the "Servicer") is servicing certain mortgage loans for Seller pursuant to that certain Servicing Agreement between the Servicer and Seller. Pursuant to the Repurchase Agreement between Buyer and Seller, the Servicer is hereby notified that Seller has pledged to Buyer certain mortgage loans which are serviced by Servicer which are subject to a security interest in favor of Buyer.

Upon receipt of a Notice of Event of Default from Buyer ("Notice of Event of Default") in which Buyer shall identify the mortgage loans which are then pledged to Buyer under the Repurchase Agreement (the "Mortgage Loans"), the Servicer shall segregate all amounts collected on account of such Mortgage Loans, hold them in trust for the sole and exclusive benefit of Buyer, and remit such collections in accordance with Buyer's written instructions. Following such Notice of Event of Default, Servicer shall follow the instructions of Buyer with respect to the Mortgage Loans, and shall deliver to Buyer any information with respect to the Mortgage Loans reasonably requested by Buyer.

Notwithstanding any contrary information which may be delivered to the Servicer by Seller, the Servicer may conclusively rely on any information or Notice of Event of Default delivered by Buyer, and Seller shall indemnify and hold the Servicer harmless for any and all claims asserted against it for any actions taken in good faith by the Servicer in connection with the delivery of such information or Notice of Event of Default.

Please acknowledge receipt of this instruction letter by signing in the signature block below and forwarding an executed copy to Buyer promptly upon receipt. Any notices to Buyer should be delivered to the following addresses: Eleven Madison Avenue, New York, New York 10010; Attention: Margaret Dellafera; Telephone: 212-325-6471.

Very truly yours,

[ \_\_\_\_\_ ]

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

ACKNOWLEDGED:

[ \_\_\_\_\_ ]  
as Servicer

By: \_\_\_\_\_  
Title:  
Telephone:  
Facsimile:

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AMENDMENT NUMBER TWO  
to the  
MASTER REPURCHASE AGREEMENT  
Dated as of October 13, 2011,  
between  
HOME LOAN CENTER, INC.  
and  
CITIBANK, N.A.

This AMENDMENT NUMBER TWO (this "Amendment Number Two") is made this 20<sup>th</sup> day of January, 2012, between HOME LOAN CENTER, INC. ("Seller") and CITIBANK, N.A. ("Buyer"), to the Master Repurchase Agreement, dated as of October 13, 2011, between Seller and Buyer, as such agreement may be amended from time to time (the "Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

RECITALS

WHEREAS, Seller and Buyer have agreed to amend the agreement to extend the Termination Date and to make certain other changes, each as more specifically set forth herein; and

WHEREAS, as of the date hereof, Seller represents to Buyer that Seller is in full compliance with all of the terms and conditions of the Agreement and each other Program Document and no Default or Event of Default has occurred and is continuing under the Agreement or any other Program Document.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. Amendments. Effective as of January 20, 2012:

(a) Section 1 of the Agreement is hereby amended by deleting the definition of "Termination Date" and replacing it with the following:

"Termination Date" shall mean January 31, 2012, or such earlier date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of law.

(b) Section 1 of the Agreement is further amended by adding the following definition immediately before the definition of "Jumbo Loan":

"January 31 Extension Commitment Fee" shall have the meaning assigned thereto in the Pricing Side Letter.

(c) Section 4(c) of the Agreement is hereby amended by adding the following language at the end of such section:

In connection with the extension of the Termination Date from January 20, 2012 to January 31, 2012, Seller agrees to pay to Buyer an additional commitment fee equal to the January 31 Extension Commitment Fee, such payment to be made in Dollars, in immediately available funds, without deduction, set off or counterclaim on or prior to January 20, 2012. Buyer may, in its sole discretion, net the January 31 Extension Commitment Fee from the proceeds of any Purchase Price paid to Seller. The January 31 Extension Commitment Fee is and shall be deemed to be fully earned as of the date hereof and shall be non-refundable when paid.

SECTION 2. Fees and Expenses. Seller agrees to pay to Buyer all reasonable out of pocket costs and expenses incurred by Buyer in connection with this Amendment Number Two (including all reasonable fees and out of pocket costs and expenses of the Buyer's legal counsel) in accordance with Sections 23 and 25 of the Agreement.

SECTION 3. Representations. Seller hereby represents to Buyer that as of the date hereof, Seller is in full compliance with all of the terms and conditions of the Agreement and each other Program Document and no Default or Event of Default has occurred and is continuing under the Agreement or any other Program Document.

SECTION 4. Binding Effect; Governing Law. This Amendment Number Two shall be binding and inure to the benefit of the parties hereto and their respective successors and permitted assigns. THIS AMENDMENT NUMBER TWO SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

SECTION 5. Counterparts. This Amendment Number Two may be executed by each of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SECTION 6. Limited Effect. Except as amended hereby, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment Number Two need not be made in the Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to, or with respect to, the Agreement, any reference in any of such items to the Agreement being sufficient to refer to the Agreement as amended hereby.



IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment Number Two to be executed and delivered by their duly authorized officers as of the day and year first above written.

HOME LOAN CENTER, INC.  
(Seller)

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

CITIBANK, N.A.  
(Buyer)

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

Amendment Number Two to Master Repurchase Agreement

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AMENDMENT NUMBER THREE  
to the  
MASTER REPURCHASE AGREEMENT  
Dated as of October 13, 2011,  
between  
HOME LOAN CENTER, INC.  
and  
CITIBANK, N.A.

This AMENDMENT NUMBER THREE (this "Amendment Number Three") is made this 31<sup>st</sup> day of January, 2012, between HOME LOAN CENTER, INC. ("Seller") and CITIBANK, N.A. ("Buyer"), to the Master Repurchase Agreement, dated as of October 13, 2011, between Seller and Buyer, as such agreement may be amended from time to time (the "Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

RECITALS

WHEREAS, Seller and Buyer have agreed to amend the agreement to extend the Termination Date and to make certain other changes, each as more specifically set forth herein; and

WHEREAS, as of the date hereof, Seller represents to Buyer that Seller is in full compliance with all of the terms and conditions of the Agreement and each other Program Document and no Default or Event of Default has occurred and is continuing under the Agreement or any other Program Document.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and for the mutual covenants herein contained, the parties hereto hereby agree as follows:

SECTION 1. Amendments. Effective as of January 31, 2012:

(a) Section 1 of the Agreement is hereby amended by deleting the definition of "Termination Date" and replacing it with the following:

"Termination Date" shall mean February 17, 2012, or such earlier date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of law.

(b) Section 1 of the Agreement is further amended by adding the following definition immediately before the definition of "FHA":

"February Extension Commitment Fee" shall have the meaning assigned thereto in the Pricing Side Letter.

(c) Section 4(c) of the Agreement is hereby amended by adding the following language at the end of such section:

In connection with the extension of the Termination Date from January 31, 2012 to February 17, 2012, Seller agrees to pay to Buyer an additional commitment fee equal to the February Extension Commitment Fee, such payment to be made in Dollars, in immediately available funds, without deduction, set off or counterclaim on or prior to January 31, 2012. Buyer may, in its sole discretion, net the February Extension Commitment Fee from the proceeds of any Purchase Price paid to Seller. The February Extension Commitment Fee is and shall be deemed to be fully earned as of the date hereof and shall be non-refundable when paid.

SECTION 2. Fees and Expenses. Seller agrees to pay to Buyer all reasonable out of pocket costs and expenses incurred by Buyer in connection with this Amendment Number Three (including all reasonable fees and out of pocket costs and expenses of the Buyer's legal counsel) in accordance with Sections 23 and 25 of the Agreement.

SECTION 3. Representations. Seller hereby represents to Buyer that as of the date hereof, Seller is in full compliance with all of the terms and conditions of the Agreement and each other Program Document and no Default or Event of Default has occurred and is continuing under the Agreement or any other Program Document.

SECTION 4. Binding Effect; Governing Law. This Amendment Number Three shall be binding and inure to the benefit of the parties hereto and their respective successors and permitted assigns. THIS AMENDMENT NUMBER THREE SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

SECTION 5. Counterparts. This Amendment Number Three may be executed by each of the parties hereto on any number of separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

SECTION 6. Limited Effect. Except as amended hereby, the Agreement shall continue in full force and effect in accordance with its terms. Reference to this Amendment Number Three need not be made in the Agreement or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to, or with respect to, the Agreement, any reference in any of such items to the Agreement being sufficient to refer to the Agreement as amended hereby.

IN WITNESS WHEREOF, Seller and Buyer have caused this Amendment Number Three to be executed and delivered by their duly authorized officers as of the day and year first above written.

HOME LOAN CENTER, INC.  
(Seller)

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

CITIBANK, N.A.  
(Buyer)

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

Amendment Number Three to Master Repurchase Agreement

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between David Norris ("Executive") and Tree.com, Inc., a corporation (the "Company"), and is effective as of February 7, 2012 (the "Effective Date").

WHEREAS, Executive is employed by the Company at will, and he was previously employed pursuant to the terms of that certain Employment Agreement, dated as of June 30, 2008, between Executive and the Company, as subsequently amended by Amendment No. 1, dated December 3, 2009, and Amendment No. 2 dated May 10, 2010 (collectively, the "Prior Agreement"), which expired by its terms on June 30, 2011; and

WHEREAS, the Company desires to establish its right to the services of Executive, in the capacity described below, on the terms and conditions hereinafter set forth, and Executive is willing to accept such employment on such terms and conditions;

WHEREAS, the Company is party to an Asset Purchase Agreement by and among the Company, Home Loan Center, Inc. ("HLC"), Lending Tree, LLC and HLC Escrow, Inc. and Discover Bank ("Discover") dated May 12, 2011, as amended February 7, 2012 and as may be further amended from time to time (the "APA"), pursuant to which the operational assets of LendingTree Loans will be sold to Discover or an affiliate of Discover (collectively, "DFS");

WHEREAS, Executive has, with permission of the Company, accepted an at will offer of employment with DFS as of the date hereof (the "DFS Offer Letter") for employment commencing upon the closing date of the transactions contemplated by the APA ("Closing"); and

WHEREAS, this Agreement has been approved by the Compensation Committee of the Board of Directors of the Company.

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, Executive and the Company have agreed and do hereby agree as follows:

1. EMPLOYMENT. During the Term (as defined below), the Company shall employ Executive, and Executive shall be employed, as President, Home Loan Center. During Executive's employment with the Company, Executive shall do and perform all services and acts necessary or advisable to fulfill the duties and responsibilities as are commensurate and consistent with Executive's position and shall render such services on the terms set forth herein. During Executive's employment with the Company, Executive shall report directly to the Chief Executive Officer of the Company or any officer designated by him (hereinafter referred to as the "Reporting Officer"). Executive shall have such powers and duties with respect to the Company or its affiliates as may reasonably be assigned to Executive by the Reporting Officer, to the extent consistent with Executive's position. Executive agrees to devote all of Executive's working time, attention and efforts to the Company and to perform the duties of Executive's position in accordance with Company policies applicable to all employees of the Company and its subsidiaries and/or affiliates, as well as Company policies (or the policies of such other businesses for which Executive has direct or indirect responsibility under this Agreement) as in effect from time to time. Executive's principal place of employment shall be the principal offices of Home Loan Center, Inc., located in Irvine, California; provided, however, that travel to the

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Company's other offices in Charlotte or Irvine may occasionally be required. Executive acknowledges that the Company may, in its sole discretion from time to time, change the Executive's responsibilities or his or her direct / indirect reports without any effect hereunder.

2. TERM. The term of this Agreement, which shall commence on the Effective Date, shall continue until and including the earlier to occur of (a) July 31, 2012 and (b) the Closing (the "Term"), unless terminated earlier as set forth in the Standard Terms and Conditions; provided, that certain provisions herein may specify a greater period of effectiveness.

3. COMPENSATION.

(a) BASE SALARY. During the period that Executive is employed with the Company hereunder, the Company shall pay Executive an annual base salary of \$400,000 (the "Base Salary"), payable in equal biweekly installments (or, if different, in accordance with the Company's payroll practice as in effect from time to time), or such higher salary as shall be agreed to in writing by Executive and the Company from time to time. For all purposes under this Agreement, the term "Base Salary" shall refer to the Base Salary as in effect from time to time.

(b) EQUITY INCENTIVES. During the period that Executive is employed with the Company hereunder, Executive shall be eligible to receive a discretionary equity incentives, including but not limited to restricted stock unit awards and/or stock options, which incentives shall be granted to Executive at the time the Company normally grants such incentives generally and otherwise in accordance with applicable policies, practices, terms, and conditions (including but not limited to vesting requirements), and provided further, that Executive is employed by the Company on the date such incentives are awarded. Notwithstanding the foregoing and anything to the contrary in this Agreement or any other agreement pursuant to which Executive has received or shall receive in the future awards of equity from the Company, Executive shall become immediately 100% vested in such equity awards upon the occurrence of a "Change in Control" (as such term is defined below).

(c) DISCRETIONARY BONUS. During the period that Executive is employed with the Company hereunder, Executive shall be eligible to receive a discretionary annual bonus in an amount determined by the Reporting Officer, which bonus shall be payable to Executive at the time the Company pays year-end bonuses generally and otherwise in accordance with applicable policies and practices, provided, that Executive is employed by Company on the date such bonuses are paid.

(d) BENEFITS. From the Effective Date through the date of termination of Executive's employment with the Company for any reason, Executive shall be entitled to participate in any welfare, health and life insurance and pension benefit programs as may be adopted from time to time by the Company on the same basis as that provided to similarly situated employees of the Company. Without limiting the generality of the foregoing, Executive shall be entitled to the following benefits:

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(i) Reimbursement for Business Expenses. During the period that Executive is employed with the Company hereunder, the Company shall reimburse Executive for all reasonable, necessary and documented expenses incurred by Executive in performing Executive's duties for the Company, on the same basis as similarly situated employees and in accordance with applicable policies as in effect from time to time.

(ii) Vacation and other Paid Time Off. During the period that Executive is employed with the Company hereunder, Executive shall be entitled to paid vacation and other paid time off each year, in accordance with applicable plans, policies, programs and practices applicable to similarly situated employees generally.

4. NOTICES. All notices and other communications under this Agreement shall be in writing and shall be given by first-class mail, certified or registered with return receipt requested, or by hand delivery, or by overnight delivery by a nationally recognized carrier, in each case to the applicable address set forth below, and any such notice is deemed effectively given when received by the recipient (of if receipt is refused by the recipient, when so refused):

If to the Company: Tree.com, Inc.  
11115 Rushmore Drive  
Charlotte, NC 28277  
Attention: Senior Vice President, Human Resources

If to Executive: At the most recent address for Executive on file at the Company.

Either party may change such party's address for notices by notice duly given pursuant hereto.

5. GOVERNING LAW; JURISDICTION. This Agreement and the legal relations thus created between the parties hereto (including, without limitation, any dispute arising out of or related to this Agreement) shall be governed by and construed under and in accordance with the internal laws of the State of California without reference to its principles of conflicts of laws. Any such dispute will be heard exclusively and determined before an appropriate federal court located in the State of California in the Central District, Southern Division, or, if not maintainable therein, then in an appropriate state court located in Orange County, California, and each party hereto submits itself and its property to the exclusive jurisdiction of the foregoing courts with respect to such disputes. Each party hereto (i) agrees that service of process may be made by mailing a copy of any relevant document to the address of the party set forth above, (ii) waives to the fullest extent permitted by law any objection which it may now or hereafter have to the courts referred to above on the grounds of inconvenient forum or otherwise as regards any dispute between the parties hereto arising out of or related to this Agreement, (iii) waives to the fullest extent permitted by law any objection which it may now or hereafter have to the laying of venue in the courts referred to above as regards any dispute between the parties hereto arising out of or related to this Agreement and (iv) agrees that a judgment or order of any court referred to above in connection with any dispute between the parties hereto arising out of or related to this Agreement is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

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6. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

7. STANDARD TERMS AND CONDITIONS. Executive expressly understands and acknowledges that the Executive Standard Terms and Conditions attached hereto are incorporated herein by reference, deemed a part of this Agreement and are binding and enforceable provisions of this Agreement. References to "this Agreement" or the use of the term "hereof" shall refer to this Agreement and the Executive Standard Terms and Conditions attached hereto, taken as a whole.

8. SECTION 409A OF THE INTERNAL REVENUE CODE. It is intended that this Agreement comply with Section 409A of the Internal Revenue Code of 1986, as amended, and the rules and regulations issued thereunder ("Section 409A") and shall be interpreted and operated consistently with that intent. Notwithstanding the foregoing, if this Agreement or any benefit paid to Executive hereunder is subject to Section 409A and if the Executive is a "Specified Employee" (as defined under Section 409A) as of the date of Executive's termination of employment hereunder, then the payment of benefits, if any, scheduled to be paid by the Company to Executive hereunder during the first six (6) month period beginning on the date of a termination of employment hereunder shall be delayed during such six (6) month period and shall commence immediately following the end of such six (6) month period (and, if applicable, the period in which such payments were scheduled to be made if not for such delay shall be extended accordingly). In no event shall the Company be required to pay Executive any "gross-up" or other payment with respect to any taxes or penalties imposed under Section 409A with respect to any benefit paid to Executive hereunder. For purposes of this Agreement, the terms "termination," "termination of employment" and "resignation" (and variations thereof) shall mean Executive's "separation from service" within the meaning of Section 1.409A-1(h) of the Treasury Regulations promulgated under Section 409A, applying the default terms thereof.

9. This Agreement supersedes all prior agreements, whether written or oral, of the Executive and the Company (and its subsidiaries) with respect to the subject matter contained herein or therein, including without limitation the Prior Agreement and the Preliminary Terms of the Separation Agreement Between Dave Norris and Tree.com of July 21, 2011.

[Signature Page follows]

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IN WITNESS WHEREOF, the Company has caused this Agreement to be executed and delivered by its duly authorized officer and Executive has executed and delivered this Agreement as of the date first set forth above.

Company:

By:  
Title:

Executive:

By: David Norris

Signature Page to Norris Employment Agreement

EXECUTIVE STANDARD TERMS AND CONDITIONS

1A. TERMINATION OF EXECUTIVE'S EMPLOYMENT.

(a) DEATH. In the event Executive's employment hereunder is terminated by reason of Executive's death, the Company shall pay Executive's designated beneficiary or beneficiaries, within thirty (30) days of Executive's death in a lump sum in cash, (i) Executive's Base Salary through the end of the month in which death occurs and (ii) any Other Accrued Obligations (as defined in Section 1A(e) below).

(b) DISABILITY. If, as a result of Executive's incapacity due to physical or mental illness ("Disability"), Executive shall have been absent from the full-time performance of Executive's duties with the Company for a period of four (4) consecutive months and, within thirty (30) days after written notice is provided to Executive by the Company (in accordance with Section 4 of the Employment Agreement), Executive shall not have returned to the full-time performance of Executive's duties, Executive's employment under this Agreement may be terminated by the Company for Disability. During any period prior to such termination during which Executive is absent from the full-time performance of Executive's duties with the Company due to Disability, the Company shall continue to pay Executive's Base Salary at the rate in effect at the commencement of such period of Disability, offset by any amounts payable to Executive under any disability insurance plan or policy provided by the Company. Upon termination of Executive's employment due to Disability, the Company shall pay Executive within thirty (30) days of such termination (i) Executive's Base Salary through the end of the month in which termination occurs in a lump sum in cash, offset by any amounts payable to Executive under any disability insurance plan or policy provided by the Company; and (ii) any Other Accrued Obligations (as defined in Section 1(e) below).

(c) TERMINATION FOR CAUSE. Upon the termination of Executive's employment by the Company for Cause (as defined below), the Company shall have no further obligation hereunder, except for the payment of any Other Accrued Obligations (as defined in Section 1(e) below). As used herein, "Cause" shall mean: (i) the Executive's plea of guilty or nolo contendere to, or conviction for, the commission of (A) a felony offense, or (B) a misdemeanor offense involving any breach of trust or fiduciary duty by Executive or involving any moral turpitude; provided, however, that after indictment, the Company may suspend Executive from the rendition of services, but without limiting or modifying in any other way the Company's obligations under this Agreement; (ii) a material breach by Executive of a fiduciary duty owed to the Company; (iii) a material breach by Executive of any of the covenants made by Executive in Section 2A hereof; (iv) the willful or gross neglect by Executive of the material duties required by this Agreement; or (v) a material violation by Executive of any Company policy pertaining to ethics, wrongdoing or conflicts of interest.

(d) TERMINATION OR BREACH BY THE COMPANY OTHER THAN FOR DEATH, DISABILITY OR CAUSE; RESIGNATION BY EXECUTIVE FOR GOOD REASON. Upon (i) termination of Executive's employment with the Company prior to the expiration of the Term by the Company without Cause (other than for death or Disability) or (ii) upon Executive's resignation prior to the expiration of the Term for "Good Reason" (as defined

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herein) (either such termination or resignation, a "Qualifying Termination"), the Company shall pay Executive the amounts described in subsections (i) and (ii) below.

(i) An amount equal to all Other Accrued Obligations within thirty (30) days following Executive's Qualifying Termination.

(ii) An amount equal to Executive's then-current Base Salary, payable as set forth below (the "Salary Continuation Payments"); provided that, payment of the Salary Continuation Payments shall be conditioned on Executive's execution and non-revocation before the Payment Date of a general release of the Company and its affiliates in a form substantially similar to that used for similarly situated executives of the Company and its affiliates (a "Release of Claims"), and Executive's compliance with the restrictive covenants set forth in Section 2A of these Executive Terms and Conditions. Subject to satisfaction of these conditions, the Salary Continuation Payments shall be made in installments on the Company's regularly scheduled paydays over the one (1) year period following the date of Executive's Qualifying Termination; provided that the first payment shall be made on the 60th day following the date of Executive's Qualifying Termination and shall include the amount of all payments that would have been made up to and including such 60th day but for this proviso.

Notwithstanding the foregoing, if Executive obtains other employment or is otherwise compensated for services during the period in which he is receiving Salary Continuation Payments (the "Severance Period"), the Company's obligation to make future payments to Executive under subsection (ii) above shall be offset against any compensation earned by Executive as a result of employment with or services provided to a third party. Executive agrees to inform the Company promptly of his employment status and any amounts so earned during the Severance Period. Executive acknowledges and agrees that the payments described in subsection (ii) above constitute good and valuable consideration for such Release of Claims.

For purposes of this Agreement, "Good Reason" shall be deemed to exist if (A) any Good Reason Event occurs without the Executive's approval, (B) the Executive delivers written notice thereof to the Board within ninety (90) days following the occurrence thereof, which notice describes the grounds constituting Good Reason with reasonable particularity and states that unless cured in accordance with clause (C), the Executive intends to resign for Good Reason, (C) the Company fails to cure the same in all material respects within thirty (30) days following the Board's receipt of such notice; and (D) Executive resigns within one (1) year following the occurrence of the Good Reason Event. "Good Reason Event" shall mean (i) a material breach by the Company of this Agreement prior to the expiration of the Term or (ii) the purchase of a mortgage company and placement by the Company of a person other than Executive in charge of the combined mortgage company.

(e) OTHER ACCRUED OBLIGATIONS. As used in this Agreement, "Other Accrued Obligations" shall mean the sum of (i) any portion of Executive's accrued but unpaid Base Salary or Bonus through the date of death or termination of employment for any reason, as the case may be; (ii) any compensation previously earned but deferred by Executive (together with any interest or earnings thereon) that has not yet been paid and that is not otherwise to be paid at a later date pursuant to the executive deferred compensation plan of the Company, if any,

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and (iii) any reimbursements that Executive is entitled to receive under Section 3(d) of the Agreement.

(f) QUALIFYING TERMINATION WITHIN ONE YEAR FOLLOWING CHANGE IN CONTROL. If Executive experiences a Qualifying Termination within the one-year period following a Change in Control, the Company shall pay Executive the amounts described in subsections (i) and (ii) below.

(i) An amount equal to all Other Accrued Obligations within thirty (30) days following Executive's Qualifying Termination.

(ii) An amount equal to the Salary Continuation Payments; provided that, payment of the Salary Continuation Payments shall be conditioned on Executive's execution and non-revocation before the Payment Date of a Release of Claims and Executive's compliance with the restrictive covenants set forth in Section 2A of these Executive Terms and Conditions. Subject to satisfaction of these conditions, the Salary Continuation Payments shall be made in installments on the Company's regularly scheduled paydays over the one (1) year period following the date of Executive's Qualifying Termination; provided that the first payment shall be made on the 60th day following the date of Executive's Qualifying Termination and shall include the amount of all payments that would have been made up to and including such 60<sup>th</sup> day but for this proviso.

No amounts payable to Executive pursuant to this subsection (f) shall be subject to the mitigation or offset provisions described in Section 1A(d) of these Executive Terms and Conditions.

(g) TERMINATION OF EXECUTIVE'S EMPLOYMENT UPON CLOSING. Executive's employment by the Company will terminate at Closing. Subject to the conditions set forth herein, Executive will receive the following benefits as a result of Closing:

(i) Closing Bonus. At Closing, Executive shall receive \$800,000. Executive understands that Section 1A(d) of these Executive Standard Terms and Conditions provides that this payment, which is contingent upon and earned by Executive as a result of employment with or services to DFS, will fully offset the Salary Continuation Payments described in Section 1A(d) of these Executive Standard Terms and Conditions.

(ii) Restricted Stock Units. All of Executive's then unvested restricted stock unit awards will be canceled. Notwithstanding anything in the Agreement, any restricted stock unit award or any compensation plan of the Company to the contrary, vesting will not accelerate for any such restricted stock unit awards.

(iii) 2012 Bonus. Executive will receive any unpaid bonus he is entitled to for any completed quarter prior to Closing and a prorated portion of any bonus he would be entitled to for the quarter during which Closing occurs, based on performance through Closing. All such bonus payments shall be determined by the Compensation Committee of the Board of Directors and paid within ten (10) business days following Closing.

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(iv) Further Payments.

A. Executive shall receive \$150,000 within five (5) business days following the satisfaction of each of the following conditions (for the avoidance of doubt, up to \$300,000 in the aggregate, with \$150,000 paid for each condition, regardless of satisfaction of the other condition):

(1) (i) All of HLC's warehouse lines are paid off in full within ninety (90) days following Closing, (ii) if, within ninety (90) days after Closing, HLC makes a cash dividend to Tree.com, Inc. of \$20 million or more, or (iii) within ninety (90) days following Closing, HLC is permitted to make cash dividends to Tree.com, Inc. without restriction from HLC's warehouse lenders.

(2) HLC has received proceeds from the sale of loans recorded on the Company's balance sheet as held for sale (other than impaired loans) at Closing ("Loans Held for Sale"), which proceeds shall cause a Premium Discount Percent (as hereafter defined) of 0.0% or greater. The Premium Discount Percent shall be equal to a fraction, the numerator of which is the sum of (a) the Servicing Release Premium, plus (b) Premium/Discount on Loans, plus (c) Discount/Premium Points achieved on the sale of the Loans Held for Sale, minus the principal value of any Loans Held for Sale not sold, and the denominator of which is the principal balance of all Loans Held for Sale at Closing.

B. Executive shall receive an amount equal to \$100,000 multiplied by a fraction, (x) the numerator of which is the Premium Discount Percent achieved on the Loans Held for Sale, or if the Premium Discount Percent is negative, zero, and (y) the denominator of which is HLC's weighted average Premium Discount Percent achieved for all loans sold during the six calendar months through the end of the calendar month that precedes Closing; provided that the amount payable under this subclause B shall not exceed \$100,000. Payment under this subclause B shall be made within thirty (30) days after the first date (the "Trigger Date") when both (x) the aggregate unpaid balance of all remaining Loans Held for Sale by HLC is reduced below five percent (5%) of the aggregate outstanding loan balance under HLC's warehouse lines as of Closing and (y) the carrying value of all remaining Loans Held for

Sale, giving effect to the HLC's "mark to market" adjustments, is at least seventy seven and one-half percent (77.5%) of the carrying value of such remaining Loans Held for Sale as of Closing. No further payments shall be due under this subclause B with respect to sales of Loans Held for Sale that occur following the Trigger Date.

C. If conditions (1) through (3) stated below are satisfied, then Executive shall receive, in lieu of the payment under subclause B above, a fixed payment of \$200,000, payable within thirty (30) days following the Trigger Date:

(1) An amount of Loans Held for Sale as of Closing are sold within five (5) business days following Closing, or delivered for review pursuant to a committed for sale within five (5) business days following Closing and subsequently accepted for sale and sold pursuant to such commitment within ninety (90) days following Closing, such that the Trigger Date conditions are satisfied;

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(2) all derivative hedging positions associated with the Loans Held for Sale that are so sold are either transferred with such Loans Held for Sale or settled without continuing liability to HLC or any affiliate; and

(3) the aggregate proceeds from such sales of Loans Held for Sale and settlements of derivative positions (taking into account both in-the-money and out-of-the money settlements) equals or exceeds the aggregate "par" value of the Loans Held for Sale that are so sold.

D. Executive shall receive \$125,000 within five (5) business days following the first anniversary of Closing, provided he has been continuously employed by DFS through the first anniversary of Closing, or, if his employment has theretofore been terminated for any reason, he has at all time through the first anniversary of Closing been in compliance with the Non-solicitation Agreement.

E. For the avoidance of doubt, and based upon the current provisions of the APA that provide for an outside Closing Date of July 6, 2012, the parties intend that the calculation and payment of amounts set forth in Sections 1A(g)(iv)(A)- 1A(g)(iv)(C) will be made and completed on or prior to December 31, 2012.

F. No payments set forth in this 1A(g) shall be made if Closing does not occur or if Executive's employment with the Company is terminated prior to Closing. In either such case, the provisions of the Agreement (exclusive of this Section 1A(g)) shall instead be operative.

G. No payments set forth in this Section 1A(g)(iv) shall be made if Executive has not, for any reason, satisfied DFS's standard preconditions of employment and commenced such employment immediately following Closing. If both those conditions are not satisfied, and so long as Executive remains employed by the Company at Closing and does not become employed by DFS immediately following Closing, Executive shall instead receive payment of any Other Accrued Obligations as of Closing and no further amounts under the Agreement or otherwise.

H. It is anticipated that Executive will not commit any material time or assistance in connection with the sale of HLC loans following Closing.

I. Each payment herein is conditioned on Executive's execution and non-revocation of a Release of Claims, and Executive's compliance with the restrictive covenants set forth in Section 2A of these Standard Terms and Conditions at the time such payment is due. Executive acknowledges and agrees that the payments described in Section 1A(g) above constitute good and valuable consideration for such releases.

(v) Provided Closing occurs on or before July 6, 2012, Executive agrees (A) not to revoke his acceptance of the DFS Offer Letter prior to Closing, and (B) to commence employment with DFS upon Closing, unless Executive is prevented from doing so by death or disability or is not permitted by DFS to commence employment for any reason or no reason (it being understood that under the APA, Closing is deemed to occur at 11:59 p.m. Los Angeles

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time on the date of Closing, so Executive would be expected to first perform services for DFS on the day following Closing).

(vi) HLC shall reimburse Executive for \$25,000 in legal fees and other expenses incurred in connection with this Agreement.

(h) NON-GOOD REASON RESIGNATION FOLLOWING CHANGE IN CONTROL. Notwithstanding anything to the contrary in this Agreement, if Executive resigns his employment within ninety (90) days following the consummation of any "Hostile Change in Control" (as such term is defined below), then the Company shall pay Executive the following amounts:

(i) An amount equal to the Other Accrued Obligations within thirty (30) days following such resignation.

(ii) An amount equal to the Salary Continuation Payments; provided that, payment of the Salary Continuation Payments shall be conditioned on Executive's execution and non-revocation before the Payment Date of a Release of Claims and Executive's compliance with the restrictive covenants set forth in Section 2A of these Executive Terms and Conditions. Subject to satisfaction of these conditions, the Salary Continuation Payments shall be made in installments on the Company's regularly scheduled paydays over the one (1) year period following the date of Executive's Qualifying Termination; provided that the first payment shall be made on the 60th day following the date of Executive's Qualifying Termination and shall include the amount of all payments that would have been made up to and including such 60<sup>th</sup> day but for this proviso.

(iii) For the purposes of this Amendment, a "Hostile Change of Control" means a transaction or series of transactions that results in any Person acquiring beneficial ownership of more than fifty percent (50%) of the combined voting power of the Company's then Outstanding Voting Securities without the approval of the Company's Board of Directors.

The transactions contemplated by the APA shall not be deemed a Change in Control or a Hostile Change in Control.

2A. CONFIDENTIAL INFORMATION; NON-COMPETITION; NON-SOLICITATION; AND PROPRIETARY RIGHTS.



(a) CONFIDENTIALITY. Executive acknowledges that, while employed by the Company, Executive will occupy a position of trust and confidence. The Company, its subsidiaries and/or affiliates shall provide Executive with “Confidential Information” as referred to below. Executive shall not, except as may be required to perform Executive’s duties hereunder or as required by applicable law, without limitation in time, communicate, divulge, disseminate, disclose to others or otherwise use, whether directly or indirectly, any Confidential Information regarding the Company and/or any of its subsidiaries and/or affiliates.

“Confidential Information” shall mean information about the Company or any of its subsidiaries or affiliates, and their respective businesses, employees, consultants, contractors, clients and customers that is not disclosed by the Company or any of its subsidiaries or affiliates

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for financial reporting purposes or otherwise generally made available to the public (other than by Executive’s breach of the terms hereof) and that was learned or developed by Executive in the course of employment by the Company or any of its subsidiaries or affiliates, including (without limitation) any proprietary knowledge, trade secrets, data, formulae, information and client and customer lists and all papers, resumes, and records (including computer records) of the documents containing such Confidential Information. Executive acknowledges that such Confidential Information is specialized, unique in nature and of great value to the Company and its subsidiaries or affiliates, and that such information gives the Company and its subsidiaries or affiliates a competitive advantage. Executive agrees to deliver or return to the Company, at the Company’s request at any time or upon termination or expiration of Executive’s employment or as soon thereafter as possible, all documents, computer tapes and disks, records, lists, data, drawings, prints, notes and written information (and all copies thereof) furnished by the Company and its subsidiaries or affiliates or prepared by Executive in the course of Executive’s employment by the Company and its subsidiaries or affiliates. As used in this Agreement, “subsidiaries” and “affiliates” shall mean any company controlled by, controlling or under common control with the Company. For purposes of this Agreement, “Confidential Information” shall not include any information that is now or hereafter becomes known to the public or otherwise is in the public domain other than through Executive’s fault, breach, disclosure, or other act of Executive.

This Section 2A(a) shall not apply to disclosures of Confidential Information properly made by Executive in the course of his employment with DFS.

(b) NON-COMPETITION. In consideration of this Agreement, and other good and valuable consideration provided hereunder, the receipt and sufficiency of which are hereby acknowledged by Executive, Executive hereby agrees and covenants that, during Executive’s employment hereunder (the “Restricted Period”), Executive shall not, without the prior written consent of the Company, directly or indirectly, engage in or become associated with a Competitive Activity.

For purposes of this Section 2A(b), (i) a “Competitive Activity” means any business or other endeavor involving Similar Products if such business or endeavor is in a country (including the United States) in which the Company (or any of its businesses) provides or planned to provide during Executive’s employment hereunder such Similar Products; (ii) “Similar Products” means any products or services that are the same (or substantially the same) as any of the (A) types of products or services that the online loan origination, online loan brokerage, or online real estate brokerage businesses of Home Loan Center, Inc., LendingTree and/or the Company or (B) significant types of products or services that any other business for which Executive has direct or indirect responsibility hereunder, in each case, provides, has provided or planned to provide during Executive’s employment hereunder; and (iii) Executive shall be considered to have become “associated with a Competitive Activity” if Executive becomes directly or indirectly involved as an owner, principal, employee, officer, director, independent contractor, representative, stockholder, financial backer, agent, partner, member, advisor, lender, consultant or in any other individual or representative capacity with any individual, partnership, corporation or other organization that is engaged in a Competitive Activity.

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Notwithstanding the foregoing, Executive may make and retain investments during the Restricted Period, for investment purposes only, in less than one percent (5%) of the outstanding capital stock of any publicly-traded corporation engaged in a Competitive Activity if the stock of such corporation is either listed on a national stock exchange or on the NASDAQ National Market System if Executive is not otherwise affiliated with such corporation. Executive acknowledges that Executive’s covenants under this Section 2A(b) are a material inducement to the Company’s entering into this Agreement.

(c) NON-SOLICITATION OF EMPLOYEES. Concurrently with the execution of this Agreement, Executive shall execute the form of non-solicitation agreement attached hereto as Exhibit A (the “Non-solicitation Agreement”). The Non-solicitation Agreement will be assigned to Discover or an affiliate of Discover (collectively, “DFS”) at Closing and Executive will no longer have any obligations thereunder to the Company (except as set forth in Section 1A(g)(iv)(d)).

(d) NON-SOLICITATION OF CUSTOMERS. During Executive’s employment hereunder and for a period of twelve (12) months thereafter, Executive shall not solicit any Customers of the Company or encourage (regardless of who initiates the contact) any such Customers to use the facilities or services of any competitor of the Company, using Trade Secrets of the Company. For the purposes of this subsection, “Customers” means any persons or entities that purchased products or services from the Company, that were identified as active leads or that had submitted a loan application within twelve (12) calendar months of the termination of Executive’s employment. For the purposes of this subsection, “Trade Secrets” means the Company’s lists of Customers, the Company’s price quotations and proprietary pricing formulas, and any other formula, pattern, compilation, program, device, method, technique or process that: (i) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

This Section 2A(d) shall not apply to solicitations of Customers properly made by Executive in the course of his employment with DFS.

(e) PROPRIETARY RIGHTS; ASSIGNMENT. All Employee Developments (defined below) shall be considered works made for hire by Executive for the Company or, as applicable, its subsidiaries or affiliates, and Executive agrees that all rights of any kind in any Employee Developments belong exclusively to the Company. In order to permit the Company to exploit such Employee Developments, Executive shall promptly and fully report all such Employee Developments to the Company. Except in furtherance of his or her obligations as an employee of the Company, Executive shall not use or reproduce any portion of any record associated with any Employee Development without prior written consent of the Company or, as applicable, its subsidiaries or affiliates. Executive agrees that in the event actions of Executive are required to ensure that such rights belong to the Company under

applicable laws, Executive will cooperate and take whatever such actions are reasonably requested by the Company, whether during or after the Term, and without the need for separate or additional compensation. "Employee Developments" means any idea, know-how, discovery, invention, design, method, technique, improvement, enhancement, development, computer program, machine, algorithm or other work of authorship, whether developed, conceived or reduced to practice during or

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following the period of employment, that (i) concerns or relates to the actual or anticipated business, research or development activities, or operations of the Company (or any other Company business for which Executive has direct or indirect responsibility during his or her employment hereunder), or (ii) results from or is suggested by any undertaking assigned to Executive or work performed by Executive for or on behalf of the Company or any of its subsidiaries or affiliates, whether created alone or with others, during or after working hours, or (iii) uses, incorporates or is based on Company equipment, supplies, facilities, trade secrets or inventions of any form or type. All Confidential Information and all Employee Developments are and shall remain the sole property of the Company or any of its subsidiaries or affiliates. Executive shall acquire no proprietary interest in any Confidential Information or Employee Developments developed or acquired during the Term. To the extent Executive may, by operation of law or otherwise, acquire any right, title or interest in or to any Confidential Information or Employee Development, Executive hereby assigns and covenants to assign to the Company all such proprietary rights without the need for a separate writing or additional compensation. Executive shall, both during and after the Term, upon the Company's request, promptly execute, acknowledge, and deliver to the Company all such assignments, confirmations of assignment, certificates, and instruments, and shall promptly perform such other acts, as the Company may from time to time in its discretion deem necessary or desirable to evidence, establish, maintain, perfect, enforce or defend the Company's rights in Confidential Information and Employee Developments.

(f) COMPLIANCE WITH POLICIES AND PROCEDURES. During the period that Executive is employed with the Company hereunder, Executive shall adhere to the policies and standards of professionalism set forth in the Company's Policies and Procedures applicable to all employees of the Company and its subsidiaries and/or affiliates, as well as Company policies (or the policies of such other businesses for which Executive has direct or indirect responsibility under this Agreement) as they may exist from time to time.

(g) SURVIVAL OF PROVISIONS. The obligations contained in this Section 2A shall, to the extent provided in this Section 2A, survive the termination or expiration of Executive's employment with the Company and, as applicable, shall be fully enforceable thereafter in accordance with the terms of this Agreement. If it is determined by a court of competent jurisdiction that any restriction in this Section 2A is excessive in duration or scope or is unreasonable or unenforceable under applicable law, it is the intention of the parties that such restriction may be modified or amended by the court to render it enforceable to the maximum extent permitted by applicable law. Section 2A(g) of the Agreement shall be waived in case of a change in control of Company that results in the dismissal of Executive without cause. For purposes of this Amendment, a "Change in Control" means

(i) the acquisition, by any means, by any individual entity or group, within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (a "Person"), directly or indirectly, of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of equity securities of Tree.com representing more than 50% of the voting power of the then outstanding equity securities of Tree.com entitled to vote generally in the election of directors or managing members (as applicable) of the entity ("Outstanding Voting Securities"); provided, however, that for purposes of this subsection (i), the following acquisitions shall not constitute a Change in Control: (1) any

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acquisition by any employee benefit plan (or trust related to such employee benefit plan) sponsored or maintained by Tree.com or any corporation controlled by Tree.com or (2) any acquisition by any Person pursuant to a transaction which complies with clauses (A) and (B) of subsection (ii) of this definition; or

(ii) the consummation of a reorganization, merger or consolidation or sale or other disposition, directly or indirectly or all or substantially all of the assets of Tree.com or the purchase of assets or stock or another entity (a "Business Combination") in each case, unless immediately following such Business Combination, (A) all or substantially all of the individuals and entities who were the beneficial owners of the Outstanding Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then outstanding combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, managing members or other required persons (as applicable) of the entity resulting from such Business Combination (including, without limitation, an entity which as a result of such transaction owns Tree.com or all or substantially all of the assets of Tree.com either directly or through one or more subsidiaries) in substantially the same proportion as their ownership immediately prior to such Business Combination of the outstanding voting securities, and (B) no Person, any employee benefit plan (or related trust) of Tree.com or such entity resulting from such Business Combination beneficially owns, directly or indirectly, more than a majority of the combined voting power of the then Outstanding Voting Securities of such entity except to the extent that such ownership of Tree.com existed prior to the Business Combination; or

(iii) the approval by the members, stockholders or other required persons (as applicable) of Tree.com or a complete liquidation or dissolution of Tree.com.

3A. TERMINATION OF PRIOR AGREEMENTS. This Agreement constitutes the entire agreement between the parties and, as of the Effective Date, terminates and supersedes any and all prior agreements and understandings (whether written or oral) between the parties with respect to the subject matter of this Agreement. Executive acknowledges and agrees that neither the Company nor anyone acting on its behalf has made, and is not making, and in executing this Agreement, Executive has not relied upon, any representations, promises or inducements except to the extent the same is expressly set forth in this Agreement. Executive hereby represents and warrants that by entering into this Agreement, Executive will not rescind or otherwise breach an employment agreement or other agreement with Executive's current employer prior to the natural expiration date of such agreement.

4A. ASSIGNMENT; SUCCESSORS. Without limiting the provisions of Section 2A(d) of this Agreement, the parties agree that this Agreement is personal in its nature and that none of the parties hereto shall, without the consent of the others, assign or transfer this Agreement or any rights or obligations hereunder; provided, that the Company may assign this Agreement to, or allow any of its obligations to be fulfilled by, or take actions through, any affiliate of the Company and, in the event of the merger, consolidation, transfer, or sale of all or substantially all of the assets of the Company (a "Transaction") with or to any other individual or entity, this Agreement shall, subject to the provisions hereof, be binding upon and inure to the benefit of such successor and such successor shall discharge and perform all the promises, covenants, duties, and obligations of the Company hereunder, and in the event of any such assignment or

Transaction, all references herein to the “Company” shall refer to the Company’s assignee or successor hereunder.

5A. **WITHHOLDING.** The Company shall make such deductions and withhold such amounts from each payment and benefit made or provided to Executive hereunder, as may be required from time to time by applicable law, governmental regulation or order.

6A. **HEADING REFERENCES.** Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. References to “this Agreement” or the use of the term “hereof” shall refer to these Standard Terms and Conditions and the Employment Agreement attached hereto, taken as a whole.

7A. **REMEDIES FOR BREACH.** Executive expressly agrees and understands that Executive will notify the Company in writing of any alleged breach of this Agreement by the Company, and the Company will have thirty (30) days from receipt of Executive’s notice to cure any such breach. Executive expressly agrees and understands that in the event of any termination of Executive’s employment by the Company during the Term, the Company’s contractual obligations to Executive shall be fulfilled through compliance with its obligations under Section 1A of the Standard Terms and Conditions.

Executive expressly agrees and understands that the remedy at law for any breach by Executive of Section 2A of the Standard Terms and Conditions will be inadequate and that damages flowing from such breach are not usually susceptible to being measured in monetary terms. Accordingly, it is acknowledged that, upon Executive’s violation of any provision of such Section 2A, the Company shall be entitled to obtain from any court of competent jurisdiction immediate injunctive relief and obtain a temporary order restraining any threatened or further breach as well as an equitable accounting of all profits or benefits arising out of such violation. Nothing shall be deemed to limit the Company’s remedies at law or in equity for any breach by Executive of any of the provisions of this Agreement, including Section 2A, which may be pursued by or available to the Company.

8A. **WAIVER; MODIFICATION.** Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof shall not be deemed a waiver of such term, covenant, or condition, nor shall any waiver or relinquishment of, or failure to insist upon strict compliance with, any right or power hereunder at any one or more times be deemed a waiver or relinquishment of such right or power at any other time or times. This Agreement shall not be modified in any respect except by a writing executed by each party hereto.

9A. **SEVERABILITY.** In the event that a court of competent jurisdiction determines that any portion of this Agreement is in violation of any law or public policy, only the portions of this Agreement that violate such law or public policy shall be stricken. All portions of this Agreement that do not violate any statute or public policy shall continue in full force and effect. Further, any court order striking any portion of this Agreement shall modify the stricken terms as narrowly as possible to give as much effect as possible to the intentions of the parties under this Agreement.

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10A. **INDEMNIFICATION.** The Company shall indemnify and hold Executive harmless for acts and omissions in Executive’s capacity as an officer, director or employee of the Company to the maximum extent permitted under applicable law; provided, however, that neither the Company, nor any of its subsidiaries or affiliates shall indemnify Executive for any losses incurred by Executive as a result of acts described in Section 1A(c) of this Standard Terms and Conditions.

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## EXHIBIT A

### NON-SOLICITATION AGREEMENT

THIS NON-SOLICITATION AGREEMENT (this “Agreement”) is entered into on February 7, 2012 by and between Tree.com, Inc. (the “Company”), on the one hand, and David Norris, (“Executive”), an individual, on the other hand, with reference to the following:

WHEREAS, in consideration of the Company’s entry into Executive’s Employment Agreement dated as of even date herewith, and as a condition thereof, Executive is entering into this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Non-Solicitation.** Executive agrees that while employed by the Company, and as a result of Executive’s position with the Company, Executive has acquired and will continue to acquire specialized knowledge regarding the Company’s employees. Therefore, Executive agrees that during Executive’s employment with the Company and for a period of one (1) year after Executive’s separation of employment from the Company, Executive will not, directly or indirectly, solicit any person who is engaged as an employee, agent, or independent contractor by the Company (or its affiliates) to terminate his or her employment or engagement with the Company for any reason.

2. **Authorization to Notify New Employers.** Executive hereby authorizes the Company to notify any of Executive’s actual or prospective future employers about Executive’s rights and obligations under this Agreement.

3. **General.**

3.1 **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered (a) when delivered personally, against written receipt, (b) when received by facsimile transmission, and (c) when delivered by a nationally

recognized overnight courier service, prepaid, and shall be addressed as indicated below or to such other address as such party may indicate by a written notice delivered to the other party:

If to the Company:

Tree.com, Inc.  
11115 Rushmore Drive  
Charlotte, NC 28277  
Attention: Senior Vice President, Human Resources

If to Executive:

Fax:

3.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Executive shall not assign its rights or delegate its obligations under this Agreement. The Company may assign this Agreement to Discover Financial Services or an affiliate thereof.

3.3 Entire Agreement; Amendments; Waivers. This Agreement contains the entire understanding of the parties with regard to the subject matter contained herein, and supersedes all other prior agreements, understandings, term sheets, or letters of intent between or among them. Any term or provision of this Agreement may be amended only by a written instrument signed by all the parties. No failure or delay by the Company to exercise any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies available at law or in equity.

3.4 Governing Law; Disputes. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without regard to conflict of law principles that would result in the application of the laws of any other state. Each party hereby irrevocably and unconditionally agrees to the exclusive jurisdiction of any state or federal court located in Los Angeles, California for any actions, suits or proceedings arising out of or relating to this Agreement, and hereby waives in advance any objection or defense to any such jurisdiction, including any defense based on lack of personal jurisdiction or *forum non conveniens*. Executive agrees that any breach of Section 1 of this Agreement by Executive will cause irreparable and immediate damage to the Company and that, in the event of such breach, the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent such breach, and without proving the inadequacy of money damages to the extent permitted by the applicable rules of civil procedure. In the event that a court issues a temporary restraining order, preliminary injunction, permanent injunction, or issues any other similar order enjoining Executive from breaching this Agreement, or awards the Company any damages due to Executive's breach of this Agreement, Executive agrees that as part of that relief Executive shall be responsible to reimburse the Company for all reasonable attorneys' fees incurred by the Company in connection with obtaining such equitable relief or damages.

3.5 Construction; Severability. In case any one or more of the provisions contained herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability, without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. This Agreement shall be construed without regard to any

presumption or rule requiring construction or interpretation against the party drafting or causing any instrument to be drafted. The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

3.6 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart of the signature page to this Agreement by facsimile or e-mail with scan attachment shall be as effective as delivery of a manually executed counterpart of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Tree.com, Inc.

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

Name:

Title:

EXECUTIVE

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



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**AMENDED AND RESTATED MASTER REPURCHASE AGREEMENT**

**Dated as of February 17, 2012**

**Between:**

**CITIBANK, N.A., as Buyer,**

**and**

**HOME LOAN CENTER, INC., as Seller**

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ANNEX I

SCHEDULES

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EXHIBITS

EXHIBIT A	Form of Monthly and Quarterly Certification
EXHIBIT B	Form of Opinion of Counsel to Seller
EXHIBIT C	Form of Confidentiality Agreement
EXHIBIT D	Form of Instruction Letter
EXHIBIT E	Form of Security Release Certification

**EXECUTION**

AMENDED AND RESTATED MASTER REPURCHASE AGREEMENT, dated as of February 17, 2012, between HOME LOAN CENTER, INC., a California corporation as seller (“Seller”) and CITIBANK, N.A., a national banking association as buyer (“Buyer”, which term shall include any “Principal” as defined and provided for in Annex I), or as agent pursuant hereto (“Agent”).

**1. APPLICABILITY**

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

**2. DEFINITIONS AND ACCOUNTING MATTERS**

(a) Defined Terms. As used herein, the following terms have the following meanings (all terms defined in this Section 2 or in other provisions of this Agreement in the singular to have the same meanings when used in the plural and vice versa):

“Accepted Servicing Practices” shall mean with respect to any Loan, those accepted and prudent mortgage servicing practices (including collection procedures) of prudent mortgage lending institutions that service mortgage loans of the same type as the Loans in the jurisdiction where the related Mortgaged Property is located, and which are in accordance with FHA Regulations, Ginnie Mae, Freddie Mac and Fannie Mae servicing practices and procedures for MBS pool mortgages, as defined in the FHA, Ginnie Mae, Freddie Mac and Fannie Mae servicing guides including future updates, and in a manner at least equal in quality to the servicing Seller or Seller’s designee provides to mortgage loans which it owns in its own portfolio.

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

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

“Affiliate” shall mean, with respect to any Person other than Seller, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” (together with the correlative meanings of “controlled by” and “under common control with”) means possession, directly or indirectly, of the power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the directors or managing general partners (or their equivalent) of such Person, or (b) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise. With respect to Seller, “Affiliate” shall mean Seller’s Subsidiaries and Guarantor.

“Agency” means FHA, Freddie Mac, Fannie Mae or Ginnie Mae, as applicable.

“Agent” shall have the meaning set forth in the preamble to this Agreement.

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

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“ALTA” shall mean the American Land Title Association.

“AM Funded Wet Loan” shall mean a Wet Loan to be funded in the morning on any Business Day.

“Applicable Margin” shall have the meaning set forth in the Pricing Side Letter.

“Applicable Percentage” shall have the meaning set forth in the Pricing Side Letter.

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

“Appraised Value Alternative” means with respect to: (i) refinanced Loans underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, (ii) DU Refinance Loans and (iii) Open Access Mortgage Loans, the value entered by the Seller into Fannie Mae’s Desktop Underwriter or Freddie Mac’s Loan Prospector system, as applicable. In the case of FHA Streamlined Loans, the Appraised Value Alternative shall mean the appraised value reported in the FHA Connection system for the Mortgagor’s previous loan which is being refinanced by the subject Loan.

“Approved Title Insurance Company” shall mean a title insurance company as to which Buyer has not otherwise provided written notice to Seller that such title insurance company is not reasonably satisfactory to Buyer, provided, however, that Seller shall provide a list of Approved Title Insurance Companies at the reasonable request of Buyer; provided, further, however, that Real Estate Title Services, LLC and HLC Settlement Services, Inc. is deemed to be an Approved Title Insurance Company hereunder unless Buyer otherwise notifies Seller that either entity is not approved.

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

“Attorney Bailee Letter” shall have the meaning assigned to such term in the Custodial Agreement.

“Back-End DTI Ratio” shall mean with respect to a Loan, the ratio of (i) the Mortgagor’s monthly debt payments, including housing and other debt, to (ii) the Mortgagor’s gross monthly income, determined in accordance with the Underwriting Guidelines.

“Bankruptcy Code” shall mean the United States Bankruptcy Code of 1978, as amended from time to time.

“Best’s” shall mean Best’s Key Rating Guide, as the same shall be amended from time to time.

“Binding Jumbo Takeout Commitment” shall mean with respect to a Jumbo Loan, an irrevocable commitment acceptable to Buyer in its sole discretion, issued by a Takeout Investor in favor of Seller pursuant to which such Takeout Investor pre-approves such Jumbo Loan and agrees to purchase such Jumbo Loan at a specific price on a forward delivery basis.

“Business Day” shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which the New York Stock Exchange, the Federal Reserve Bank of New York, banking and savings and loan institutions in the States of New York, the City of New York or the city or state in which Custodian’s

offices are located are closed, or (iii) a day on which trading in securities on the New York Stock Exchange or any other major securities exchange in the United States is not conducted.

“Capital Lease Obligations” shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Cash Equivalents” shall mean (a) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) certificates of deposit and eurodollar time deposits with maturities of 90 days or less from the date of acquisition and overnight bank deposits of any commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven days with respect to securities issued or fully guaranteed or insured by the United States Government, (d) commercial paper of a domestic issuer rated at least A-1 or the equivalent thereof by Standard and Poor’s Ratings Group (“S&P”) or P-1 or the equivalent thereof by Moody’s Investors Service, Inc. (“Moody’s”) and in either case maturing within 90 days after the day of acquisition, (e) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody’s, (f) securities with maturities of 90 days or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (b) of this definition, or (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“Change of Control” shall mean, (a) with respect to Seller, the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended) of outstanding shares of voting stock of Seller if after giving effect to such acquisition such Person or Persons owns twenty percent (20%) or more of such



outstanding shares of voting stock; or (b) except for a sale of all of the assets of Seller (other than Purchased Items, which are the property of Buyer subject to Seller's absolute obligation to repurchase them pursuant to the terms of this Agreement) to Discover Bank pursuant solely to the Discover Financial Transaction, Seller is no longer wholly owned, directly or indirectly, by LendingTree, LLC and Tree.com, Inc.

“CMI” shall mean CitiMortgage, Inc.

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

“Collection Account” shall mean the account identified in the Collection Account Control Agreement.

“Collection Account Control Agreement” shall mean the collection account control agreement to be entered into by Buyer, Seller and Citibank, N.A. in form and substance acceptable to Buyer to be entered into with respect to the Collection Account within ten (10) days after the initial Purchase Date.

“Combined Loan-to-Value Ratio” or “CLTV” shall mean with respect to any Loan other than a refinanced Loan underwritten with the use of the Fannie Mae direct underwriting system where a property

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inspection waiver has been issued, a DU Refinance Loan, an FHA Streamlined Loan or an Open Access Mortgage Loan, the ratio of (i) the original outstanding principal amount of the Loan and any other loan which is secured by a lien on the related Mortgaged Property to (ii) the lesser of (a) (1) the Appraised Value of the Mortgaged Property at the origination of such Loan, or (2) if available, a more recently obtained Appraised Value, or (b) if the Mortgaged Property was purchased by the Mortgagor within twelve (12) months of the origination of the Loan, the purchase price of the Mortgaged Property. With respect to refinanced Loans underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, DU Refinance Loans, FHA Streamlined Loans and Open Access Mortgage Loans, the “Combined Loan-to-Value Ratio” or “CLTV” shall mean shall mean the ratio of (i) the original outstanding principal amount of the Loan and any other loan which is secured by a lien on the related Mortgaged Property to (ii) the Appraised Value Alternative.

“Commitment Fee” shall have the meaning assigned to it in the Pricing Side Letter.

“Committed Amount” shall have the meaning assigned to it in the Pricing Side Letter.

“Contractual Obligation” shall mean as to any Person, any material provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound or any material provision of any security issued by such Person.

“Cooperative Corporation” shall mean with respect to any Cooperative Loan, the cooperative apartment corporation that holds legal title to the related Cooperative Project and grants occupancy rights to units therein to stockholders through Proprietary Leases or similar arrangements.

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

“Cooperative Project” shall mean, with respect to any Cooperative Loan, all real property and improvements thereto and rights therein and thereto owned by a Cooperative Corporation including without limitation the land, separate dwelling units and all common elements.

“Cooperative Shares” shall mean, with respect to any Cooperative Loan, the shares of stock issued by a Cooperative Corporation and allocated to a Cooperative Unit and represented by a stock certificate.

“Cooperative Unit” shall mean, with respect to a Cooperative Loan, a specific unit in a Cooperative Project.

“Custodial Agreement” shall mean the Custodial and Disbursement Agreement, dated as of the date hereof, among Seller, Buyer, Custodian and Disbursement Agent as the same may be amended, modified and supplemented and in effect from time to time.

“Custodian” shall mean Deutsche Bank National Trust Company, or such other entity agreed upon by Buyer and Seller from time to time, or its successors and permitted assigns.

“Custodian Loan Transmission” shall have the meaning assigned thereto in the Custodial Agreement.

“Default” shall mean an Event of Default or any event that, with the giving of notice or the passage of time or both, could become an Event of Default.

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“Disbursement Account” shall mean the account established by Buyer pursuant to the Custodial Agreement for the purpose of funding any Loan.

“Disbursement Agent” shall mean Deutsche Bank National Trust Company, or such other entity appointed by Buyer to act as disbursement agent from time to time, or its successors and permitted assigns.

“Discover Financial Transaction” means the sale by Seller of substantially all of the operating and related assets of Seller (other than Purchased Items, which are the property of Buyer subject to Seller's absolute obligation to repurchase them pursuant to the terms of this Agreement) to Discover Bank (or one of its Affiliates) on substantially the same terms as set forth in that certain Asset Purchase Agreement by and among Tree.com, Inc., Home Loan Center, Inc., LendingTree, LLC, HLC Escrow, Inc. and Discover Bank dated May 12, 2011 (as last presented to Buyer prior to the date of this Agreement).

“Dollars” or “\$” shall mean lawful money of the United States of America.

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

“DU Refinance Loan” shall mean a Loan acceptable for purchase by an Agency and originated by Seller in accordance with Fannie Mae’s “DU Refinance Plus” program.

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

“Due Diligence Review” shall mean the performance by Buyer of any or all of the reviews permitted under Section 44 hereof with respect to any or all of the Loans or Seller or related parties, as desired by Buyer from time to time.

“Effective Date” shall mean the date upon which the conditions precedent set forth in Section 9(a) have been satisfied.

“Electronic Tracking Agreement” shall mean the electronic tracking agreement among Buyer, Seller, MERSCORP, Inc. and MERS, dated as of the date hereof.

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

“Eligible Loan” shall have the meaning assigned thereto in the Pricing Side Letter.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” shall mean any entity, whether or not incorporated, that is a member of any group of organizations described in Section 414(b), (c), (m) or (o) of the Code of which Seller is a member.

“Escrow Letter” shall mean, with respect to any Wet Loan that becomes subject to a Transaction before the end of the applicable rescission period, an escrow agreement or letter, which is fully assignable

to Buyer, stating that in the event of a Rescission or if for any other reason the Loan fails to fund on a given day, the party conducting the closing is holding all funds which would have been disbursed on behalf of the Mortgagor as agent for and for the benefit of Buyer and such funds shall be returned to Seller not later than one Business Day after the date of Rescission or other failure of the Loan to fund on a given day.

“Escrow Payments” shall mean, with respect to any Loan, the amounts constituting ground rents, taxes, assessments, water charges, sewer rents, municipal charges, mortgage insurance premiums, fire and hazard insurance premiums, condominium charges, and any other payments required to be escrowed by the Mortgagor with the Mortgagee pursuant to the terms of any Note or Mortgage or any other document.

“Event of Default” shall have the meaning provided in Section 18 hereof.

“Exception” shall have the meaning assigned thereto in the Custodial Agreement.

“Exception Report” shall mean the exception report prepared by Custodian pursuant to the Custodial Agreement.

“Fannie Mae” shall mean Fannie Mae, or any successor thereto.

“Fannie Mae Guides” shall mean the Fannie Mae Seller’s Guide, the Fannie Mae Servicing Guide and all amendments and additions thereto.

“FHA” shall mean the Federal Housing Administration, an agency within the United States Department of Housing and Urban Development, or any successor thereto and including the Federal Housing Commissioner and the Secretary of Housing and Urban Development where appropriate under the FHA Regulations.

“FHA Approved Mortgagee” shall mean an institution which is approved by FHA to act as servicer and mortgagee of record pursuant to FHA Regulations.

“FHA Insurance Contract” shall mean the contractual obligation of FHA respecting the insurance of an FHA Loan pursuant to the National Housing Act, as amended.

“FHA Loan” shall mean a Loan that is the subject of an FHA Insurance Contract as evidenced by a Mortgage Insurance Certificate.

“FHA Regulations” shall mean the regulations promulgated by HUD under the National Housing Act, codified in 24 Code of Federal Regulations, and other HUD issuances relating to FHA Loans, including the related handbooks, Circulars, Notices and Mortgagee Letters.

“FHA Streamlined Loan” shall mean an FHA Loan originated by Seller in accordance with the FHA’s requirements under its “streamlined” mortgage loan program.

“Freddie Mac” shall mean Freddie Mac, or any successor thereto.

“Freddie Mac Guides” shall mean the Freddie Mac Seller/Servicer Guide, and all amendments and additions thereto.

“Front-End DTI Ratio” shall mean with respect to a Loan, the ratio of (i) the Mortgagor’s monthly housing-related debt payments, to (ii) the Mortgagor’s gross monthly income, determined in accordance with the Underwriting Guidelines.

“Funding Notice” shall mean Buyer’s agreement to enter into a Transaction requested by Seller pursuant to a Transaction Notice. Such Funding Notice shall specify the Loans that Buyer has agreed to purchase from Seller in such Transaction, the related Purchase Date and Repurchase Date, the related Purchase Price for such Transaction, the fields set forth on Annex 1 to the Custodial Agreement and any other terms of such Transaction agreed upon between Seller and Buyer.

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

“Ginnie Mae” shall mean the Government National Mortgage Association, or any successor thereto.

“Ginnie Mae Guides” shall mean the Ginnie Mae Handbook 5500.3 and all amendments and additions thereto.

“Governmental Authority” shall mean with respect to any Person, any nation or government, any state or other political subdivision, agency or instrumentality thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its properties.

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

“Guarantee” shall mean, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term “Guarantee” shall not include (i) endorsements for collection or deposit in the ordinary course of business, or (ii) obligations to make servicing advances for delinquent taxes and insurance, or other obligations in respect of a Mortgaged Property, to the extent required by Buyer. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The terms “Guarantee” and “Guaranteed” used as verbs shall have correlative meanings.

“Guarantor” shall mean each of LendingTree, LLC and Tree.com, Inc., in either case in its capacity as Guarantor under a Guaranty.

“Guaranty” shall mean each Guaranty Agreement, dated as of the date hereof, by a Guarantor in favor of Buyer, in each case as such agreement may be amended, modified or supplemented from time to time in accordance with its terms.

“Guidelines” shall mean the Freddie Mac Guides, the Fannie Mae Guides or the Ginnie Mae Guides, as applicable, as such guides have been amended from time to time with respect to Seller.

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“Income” shall mean, with respect to any Purchased Loan at any time, any principal and/or interest thereon and all dividends, sale proceeds (including, without limitation, any proceeds from the liquidation or securitization of such Purchased Loan or other disposition thereof), rent and other collections and distributions thereon (including, without limitation, any proceeds received in respect of mortgage insurance), but not including any commitment fees, origination fees and/or servicing fees accrued in respect of periods on or after the initial Purchase Date with respect to such Purchased Loan.

“Indebtedness” shall mean, for any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within 90 days of the date the respective goods are delivered or the respective services are rendered; (c) indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for the account of such Person; (e) Capital Lease Obligations of such Person; (f) obligations of such Person under repurchase agreements or like arrangements; (g) indebtedness of others Guaranteed by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) indebtedness of general partnerships of which such Person is a general partner; and (j) any other indebtedness of such Person by a note, bond, debenture or similar instrument.

“Index” shall mean with respect to each Adjustable Rate Loan, the index identified on the related Loan Schedule and set forth in the related Note for the purpose of calculating the interest rate thereon.

“Instruction Letter” shall mean a letter agreement between Seller and each Subservicer substantially in the form of Exhibit D attached hereto, in which such Persons acknowledge Buyer’s ownership interest in the Purchased Loans, and agree to remit any collections with respect to the Purchased Loans as Buyer may so direct from time to time, which Instruction Letter may be delivered by Buyer to such Subservicer in its sole discretion.

“Insurance Proceeds” shall mean with respect to each Purchased Loan, proceeds of insurance policies insuring such Purchased Loan or the related Mortgaged Property.

“Insured Closing Letter” shall mean, with respect to any Wet Loan that becomes subject to a Transaction before the end of the applicable rescission period, a letter of indemnification from an Approved Title Insurance Company, in any jurisdiction where insured closing letters are permitted under applicable law and regulation, addressed to Seller, which is fully assignable to Buyer, with coverage that is customarily acceptable to Persons engaged in the origination of mortgage loans, identifying the Settlement Agent covered thereby, which may be in the form of a blanket letter.

“Interest Period” shall mean, with respect to any Transaction, the period commencing on the Purchase Date with respect to such Transaction and ending on the calendar day prior to the related Repurchase Date.

“Interest Rate Adjustment Date” means with respect to each Adjustable Rate Loan, the date, specified in the related Note and the Loan Schedule, on which the Mortgage Interest Rate is adjusted.

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“Interest Rate Protection Agreement” shall mean with respect to any or all of the Purchased Loans, any interest rate swap, cap or collar agreement or any other applicable hedging arrangements providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case that are reasonably acceptable to Buyer.

“Investment Company Act” shall mean the Investment Company Act of 1940, as amended, including all rules and regulations promulgated thereunder.

“Jumbo Loan” shall mean a first lien mortgage loan which conforms with all current requirements, other than balance limitations therein, of Fannie Mae, Freddie Mac and FHA, in effect as of the date of this Agreement, as the same may be amended, supplemented or otherwise modified from time to time in accordance with terms of this Agreement.

“LIBO Base Rate” means the rate determined daily by Buyer on the basis of the offered rate for one-month U.S. dollar deposits, as such rate appears on Reuters Screen LIBOR01 Page as of 11:00 a.m. (London time) on such date (rounded up to the nearest whole multiple of 1/16%); provided that if such rate does not appear on Reuters Screen LIBOR01 Page, the rate for such date will be the rate determined by reference to such other comparable publicly available service publishing such rates as may be selected by Buyer in its sole but reasonable discretion and communicated to Seller. Notwithstanding anything to the contrary herein, Buyer shall have the sole discretion to re-set the LIBO Base Rate on a daily basis.

“LIBO Rate” shall mean with respect to each Interest Period pertaining to a Transaction, a rate per annum determined by Buyer in its sole discretion in accordance with the following formula (rounded upwards to the nearest 1/100th of one percent), which rate as determined by Buyer shall be conclusive absent manifest error by Buyer:

$$\frac{\text{LIBO Base Rate}}{1.00 - \text{LIBO Reserve Requirements}}$$

The LIBO Rate shall be calculated on each Purchase Date and Repurchase Date commencing with the first Purchase Date.

“LIBO Reserve Requirements” shall mean for any Interest Period for any Transaction, the aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements applicable to Buyer in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other Governmental Authority having jurisdiction with respect thereto), dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of such Board) maintained by a member bank of such Governmental Authority. As of the Effective Date, the LIBO Reserve Requirements shall be deemed to be zero.

“Lien” shall mean any mortgage, lien, pledge, charge, security interest or similar encumbrance.

“Liquidity” means with respect to any Person, the sum of (i) its unrestricted cash, plus (ii) its unrestricted Cash Equivalents, plus (iii) the aggregate amount of unused capacity available to such Person (taking into account applicable haircuts) under committed mortgage loan warehouse and servicer advance facilities for which such Person has unencumbered eligible collateral to pledge thereunder.

“Loan” shall mean a first lien mortgage loan or Cooperative Loan, which Custodian has been instructed to hold for Buyer pursuant to the Custodial Agreement, and which Loan includes, without

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limitation, (i) a Note, the related Mortgage and all other Loan Documents, (ii) all right, title and interest of Seller in and to the Mortgaged Property covered by such Mortgage and (iii) the related Servicing Rights.

“Loan Data Transmission” shall mean a computer tape or other electronic medium generated by or on behalf of Seller and delivered or transmitted to Buyer and Custodian which provides information relating to the Loans, including the information set forth in the related Loan Schedule, in a format reasonably acceptable to Buyer.

“Loan Documents” shall mean, with respect to a Loan, the documents comprising the Mortgage File for such Loan.

“Loan Guaranty Certificate” shall mean the certificate evidencing a VA Loan Guaranty Agreement.

“Loan Loss Reserves” shall mean funds held by Seller to cover potential losses in connection with the mortgage loans owned in Seller’s portfolio, including without limitation any amounts required to be maintained and held as a loan loss reserve in accordance with GAAP and any other regulatory requirement applicable to Seller.

“Loan Schedule” shall mean a hard copy or electronic format incorporating the fields reasonably required by Buyer and agreed upon by Seller, which shall include with respect to each Loan to be included in a Transaction without limitation: (i) the Loan number, (ii) the Mortgagor’s name, (iii) the original principal amount of the Loan, (iv) the current principal balance of the Loan and (v) any other information required by Buyer and any other additional information to be provided pursuant to the Custodial Agreement.

“Loan-to-Value Ratio” or “LTV” shall mean with respect to any Loan other than a refinanced Loan underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, a DU Refinance Loan, an FHA Streamlined Loan or an Open Access Mortgage Loan, the ratio of the outstanding principal amount of such Loan at the time of origination to the lesser of (a) (1) the Appraised Value of the Mortgaged Property at the origination of such Mortgage Loan or (2) if available, a more recently obtained Appraised Value of the Mortgaged Property, and (b) if the Mortgaged Property was purchased within twelve (12) months of the origination of the Loan, the purchase price of the related Mortgaged Property. With respect to refinanced Loans underwritten with the use of the Fannie Mae direct underwriting system where a property inspection waiver has been issued, DU Refinance Loans, FHA Streamlined Loans and Open Access Mortgage Loans, Loan-to-Value Ratio or LTV means the ratio of the original outstanding principal amount of such Mortgage Loan to the Appraised Value Alternative of the Mortgaged Property at origination.

“Margin Call” shall have the meaning assigned thereto in Section 6(a) hereof.

“Margin Deficit” shall have the meaning assigned thereto in Section 6(a) hereof.

“Market Value” shall mean the value, determined by Buyer in its sole discretion, of the Loans (including the related Servicing Rights) if sold in their entirety to a single third-party purchaser taking into account the fact that the Loans may be sold under circumstances in which Seller, as originator or servicer of the Loans is in default under this Agreement. Buyer’s determination of Market Value shall be conclusive upon the parties, absent manifest error on the part of Buyer. Buyer shall have the right to mark to market the Loans on a daily basis which Market Value with respect to one or more of the Loans may be determined to be zero. Seller acknowledges that Buyer’s determination of Market Value is for the limited purpose of determining the value of Purchased Loans which are subject to Transactions hereunder

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without the ability to perform customary purchaser’s due diligence and is not necessarily equivalent to a determination of the fair market value of the Loans achieved by obtaining competing bids in an orderly market in which the originator/servicer is not in default under a revolving debt facility and the bidders have adequate opportunity to perform customary loan and servicing due diligence. The Market Value shall be deemed to be zero with respect to each Loan for which such valuation is not provided. The Market Value shall be deemed to be zero with respect to each Loan that is not an Eligible Loan.

“Master Netting Agreement” shall mean that certain Collateral Security, Setoff and Netting Agreement dated as of the date hereof, among Buyer, Seller and certain Affiliates and Subsidiaries of Buyer and/or Seller, as such agreement may be amended from time to time.

“Material Adverse Effect” shall mean a material adverse effect on (a) the property, business, operations, financial condition or prospects of Seller, (b) the ability of Seller to perform its obligations under any of the Program Documents to which it is a party, (c) the validity or enforceability of any of the Program Documents, (d) the rights and remedies of Buyer under any of the Program Documents, (e) the Purchased Items, taken as a whole, or (f) the timely repurchase of the Purchased Loans or payment of other amounts payable in connection therewith.

“Maximum Aggregate Purchase Price” shall mean \$100,000,000.

“Maximum Mortgage Interest Rate” shall mean with respect to each Adjustable Rate Loan, a rate that is set forth on the related Loan Schedule and in the related Note and is the maximum interest rate to which the Mortgage Interest Rate on such Loan may be increased on any Adjustment Date.

“MERS” shall mean Mortgage Electronic Registration Systems, Inc., a Delaware corporation, or any successor in interest thereto.

“MERS Identification Number” shall mean the eighteen digit number permanently assigned to each MERS Loan.

“MERS Loan” shall mean any Loan as to which the related Mortgage or Assignment of Mortgage has been recorded in the name of MERS, as agent for the holder from time to time of the Note, and which is identified as a MERS Loan on the related Loan Schedule.

“Monthly Payment” shall mean the scheduled monthly payment of principal and interest on a Loan as adjusted in accordance with changes in the Mortgage Interest Rate pursuant to the provisions of the Note for an Adjustable Rate Loan.

“Mortgage” shall mean with respect to a Loan, the mortgage, deed of trust or other instrument, which creates a first lien on either (i) with respect to a Loan other than a Cooperative Loan, the fee simple or leasehold estate in such real property or (ii) with respect to a Cooperative Loan, the Proprietary Lease and related Cooperative Shares, which in either case secures the Note.

“Mortgage File” shall have the meaning assigned thereto in the Custodial Agreement.

“Mortgage Insurance Certificate” shall mean the certificate evidencing a FHA Insurance Contract.

“Mortgage Interest Rate” means the annual rate of interest borne on a Note, which shall be adjusted from time to time with respect to Adjustable Rate Loans.

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“Mortgaged Property” shall mean the real property (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by a Note.

“Mortgagee” shall mean the record holder of a Note secured by a Mortgage.

“Mortgagor” shall mean the obligor or obligors on a Note, including any person who has assumed or guaranteed the obligations of the obligor thereunder.

“Multiemployer Plan” shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been or are required to be made by Seller or any ERISA Affiliate or as to which Seller or any ERISA Affiliate has any actual or potential liability or obligation and that is covered by Title IV of ERISA.

“MV Margin Amount” means, with respect to any Transaction, as of any date of determination, the amount obtained by application of the MV Margin Percentage to the Repurchase Price for such Transaction as of such date.

“MV Margin Percentage” shall have the meaning assigned thereto in the Pricing Side Letter.

“Net Income” shall mean, for any period, the net income of any Person for such period as determined in accordance with GAAP.

“Net Worth” shall mean, with respect to any Person, the excess of total assets of such Person, over total liabilities of such Person, determined in accordance with GAAP.

“Nonbinding Jumbo Takeout Agreement” shall mean a flow loan purchase and sale arrangement with a takeout investor acceptable to Buyer in its sole discretion, pursuant to which such Takeout Investor may purchase such Jumbo Loan on a forward delivery basis.

“Note” shall mean, with respect to any Loan, the related promissory note together with all riders thereto and amendments thereof or other evidence of indebtedness of the related Mortgagor.

“Obligations” shall mean (a) all of Seller’s obligation to pay the Repurchase Price on the Repurchase Date and other obligations and liabilities (including without limitation the Commitment Fee) of Seller to Buyer, its Affiliates, Custodian or any other Person arising under, or in connection with, the Program Documents or directly related to the Purchased Loans, whether now existing or hereafter arising; (b) any and all sums paid by Buyer or on behalf of Buyer pursuant to the Program Documents in order to preserve any Purchased Loan or its interest therein; (c) in the event of any proceeding for the collection or enforcement of any of Seller’s indebtedness, obligations or liabilities referred to in clause (a), the reasonable expenses of retaking, holding, collecting, preparing for sale, selling or otherwise disposing of or realizing on any Purchased Loan, or of any exercise by Buyer or any Affiliate of Buyer of its rights under the Program Documents, including without limitation, reasonable attorneys’ fees and disbursements and court costs; and (d) all of Seller’s indemnity obligations to Buyer pursuant to the Program Documents.

“Open Access Mortgage Loan” means a Loan eligible for purchase by Freddie Mac and either owned or securitized by Freddie Mac that is refinanced using Freddie Mac’s “Relief Refinance Mortgage — Open Access” program.

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“Par Margin Amount” means, with respect to any Transaction, as of any date of determination, the amount obtained by application of the Par Margin Percentage to the Repurchase Price for such Transaction as of such date.

“Par Margin Percentage” shall have the meaning assigned thereto in the Pricing Side Letter.

“Participants” shall have the meaning assigned thereto in Section 39 hereof.

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

“Permitted Exceptions” shall mean the following exceptions to lien priority: (i) the lien of current real property taxes and assessments not yet due and payable; (ii) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to mortgage lending institutions generally and specifically referred to in the lender’s title insurance policy delivered to the originator of the Loan and (A) referred to or otherwise considered in the appraisal (if any) made for the originator of the Loan or (B) which do not adversely affect the appraised value of the Mortgaged Property set forth in such appraisal; and (iii) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

“Person” shall mean any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

“Plan” shall mean an employee benefit or other plan established or maintained by Seller or, in the case of a Plan subject to Title IV of ERISA, any ERISA Affiliate and that is covered by Title IV of ERISA, other than a Multiemployer Plan.

“PM Funded Wet Loan” shall mean a Wet Loan to be funded in the afternoon on any Business Day.

“PMI Policy” or “Primary Insurance Policy” shall mean a policy of primary mortgage guaranty insurance issued by a Qualified Insurer.

“Post-Default Rate” shall mean, in respect of the Repurchase Price for any Transaction or any other amount under this Agreement, or any other Program Document that is not paid when due to Buyer (whether at stated maturity, by acceleration or mandatory prepayment or otherwise), a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to 5.00% per annum, plus (a) the Pricing Rate otherwise applicable to such Loan or other amount (which amount shall include the Applicable Margin), or (b) if no Pricing Rate is otherwise applicable, (i) the LIBO Rate plus (ii) the highest amount specified under the definition of Applicable Margin.

“Price Differential” shall mean, with respect to each Transaction as of any date of determination, the aggregate amount obtained by daily application of the Pricing Rate (or during the continuation of an Event of Default, by daily application of the Post-Default Rate) for such Transaction to the Purchase Price for such Transaction on a 360-day-per-year basis for the actual number of days elapsed during the period commencing on (and including) the Purchase Date and ending on (but excluding) the date of

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determination (reduced by any amount of such Price Differential in respect of such period previously paid by Seller to Buyer with respect to such Transaction).

“Pricing Rate” shall mean the per annum percentage rate for determination of the Price Differential as set forth in the Pricing Side Letter.

“Pricing Side Letter” shall mean that amended and restated pricing side letter, dated as of the date hereof, among Seller and Buyer, as the same may be amended, supplemented or modified from time to time.

“Principal” shall have the meaning assigned thereto in Annex I.

“Program Documents” shall mean this Agreement, the Custodial Agreement, any Servicing Agreement, the Electronic Tracking Agreement, the Master Netting Agreement, each Guaranty, the Pricing Side Letter, the Instruction Letters, if any, the Collection Account Control Agreement, any assignment of an Interest Rate Protection Agreement and any other agreement entered into by Seller, on the one hand, and Buyer and/or any of its Affiliates or Subsidiaries (or Custodian on its behalf) on the other, in connection herewith or therewith.

“Proprietary Lease” shall mean the lease on a Cooperative Unit evidencing the possessory interest of the owner of the Cooperative Shares in such Cooperative Unit.

“Property” shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Purchase Date” shall mean, with respect to each Transaction, the date on which Purchased Loans are sold by Seller to Buyer hereunder.

“Purchase Price” shall have the meaning assigned thereto in the Pricing Side Letter.

“Purchased Items” shall have the meaning assigned thereto in Section 8 hereof.

“Purchased Loans” shall mean any Loans sold by Seller to Buyer in a Transaction, together with the related Records, the related Servicing Rights (which, for the avoidance of doubt, were sold by Seller and purchased by Buyer on the related Purchase Date), the related Takeout Commitment, if any, and with respect to each Loan, any related FHA Insurance Contract, Seller’s rights under any related Escrow Letter and/or Insured Closing Letter, Seller’s rights under any takeout commitment related to the Loans and other Purchased Items with respect to the Loans, such other property, rights, titles or interest as are specified on a Funding Notice, and all instruments, chattel paper, and general intangibles comprising or relating to all of the foregoing.

“Qualified Insurer” shall mean an insurance company duly qualified as such under the laws of each state in which any Mortgaged Property is located, duly authorized and licensed in each such state to transact the applicable insurance business and to write the insurance provided, and approved as an insurer by Fannie Mae and Freddie Mac and whose claims paying ability is rated in the two highest rating categories by any of the rating agencies with respect to primary mortgage insurance and in the two highest rating categories by Best’s with respect to hazard and flood insurance.

“Qualified Originator” shall mean Seller.

“Records” shall mean, with respect to any Purchased Loan, the Loan Documents and the Servicing Records.

“Related Credit Enhancement” shall have the meaning assigned to such term in Section 8(a).

“Reportable Event” shall mean any of the events set forth in Section 4043(b) of ERISA, other than those events as to which the thirty day notice period is waived under subsections .21, .22, .23, .24, .28, .29, .31, or .32 of PBGC Reg. § 4043 (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Sections 302 or 303 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 430(j) of the Code or Section 303(j) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code).

“Repurchase Date” shall mean the date occurring on (i) the 12th day of each month following the related Purchase Date (or if such date is not a Business Day, the following Business Day), (ii) any other Business Day set forth in the related Funding Notice, (iii) the date determined by application of Section 19, as applicable, or (iv) the Termination Date. In no event shall the Repurchase Date for any Transaction occur after the Termination Date.

“Repurchase Price” shall mean the price at which Purchased Loans are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the outstanding Purchase Price for such Purchased Loans and the Price Differential as of the date of such determination.

“Requirement of Law” shall mean as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Rescission” shall mean the right of a Mortgagor to rescind the related Note and related documents pursuant to applicable law.

“Responsible Officer” shall mean, as to any Person, the chief executive officer or, with respect to financial matters, the chief financial officer of such Person; provided, that in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer’s behalf as demonstrated by a certificate of corporate resolution.

“Restricted Payments” shall mean with respect to any Person, collectively, all dividends or other distributions of any nature (cash, securities, assets or otherwise), and all payments, by virtue of redemption or otherwise, on any class of equity securities (including, without limitation, warrants, options or

rights therefor) issued by such Person, whether such securities are now or may hereafter be authorized or outstanding and any distribution in respect of any of the foregoing, whether directly or indirectly.

“Section 404 Notice” shall mean the notice required pursuant to Section 404 of the Helping Families Save Their Homes Act of 2009 (P.L. 111-22), which amends 15 U.S.C. Section 1641 et seq., to be delivered by a creditor that is an owner or an assignee of a mortgage loan to the related Mortgagor within thirty (30) days after the date on which such mortgage loan is sold or assigned to such creditor.

“Security Release Certification” shall mean a security release certification in substantially the form set forth in Exhibit E hereto.

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“Servicer” shall mean Seller in its capacity as servicer of the Loans, or another servicer of the Loans approved by Buyer.

“Servicing Agreement” shall have the meaning provided in Section 43(c) hereof.

“Servicing Delivery Requirement” shall have the meaning assigned thereto in Section 13(hh).

“Servicing File” shall mean with respect to each Loan, the file retained by Seller (in its capacity as Servicer) consisting of all documents that a prudent originator and servicer would have, including copies of the Loan Documents, all documents necessary to document and service the Loans, including FHA approval and any and all documents required to be delivered pursuant to any of the Program Documents.

“Servicing Records” shall have the meaning assigned thereto in Section 43(b) hereof.

“Servicing Rights” shall mean contractual, possessory or other rights of Seller or any other Person to service a Loan, whether arising under the Servicing Agreement, the Custodial Agreement or otherwise, to administer or service a Purchased Loan or to possess related Servicing Records.

“Servicing Transmission” shall mean a computer-readable magnetic or other electronic format acceptable to the parties.

“Settlement Agent” shall have the meaning assigned thereto in the Custodial Agreement.

“Subservicer” shall have the meaning provided in Section 43(c) hereof.

“Subsidiary” shall mean, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Takeout Commitment” shall mean, (i) with respect to any Loan other than a Jumbo Loan, an irrevocable commitment issued by a Takeout Investor in favor of the Seller acceptable to Buyer in its sole discretion, pursuant to which such Takeout Investor agrees to purchase such Loan at a specific price on a forward delivery basis, and (ii) with respect to any Jumbo Loan, a flow loan purchase and sale arrangement with a Takeout Investor, acceptable to Buyer in its sole discretion, pursuant to which such Takeout Investor may purchase such Jumbo Loan on a forward delivery basis.

“Takeout Investor” shall mean (i) with respect to a Loan other than a Jumbo Loan, Fannie Mae, Freddie Mac, or another third party investor acceptable to Buyer, which has agreed to purchase Loans pursuant to a Takeout Commitment, and (ii) with respect to a Jumbo Loan, a third party investor acceptable to Buyer which has agreed to purchase Jumbo Loans pursuant to a Takeout Commitment.

“Tangible Net Worth” shall mean, with respect to any Person as of any date of determination, the consolidated Net Worth of such Person and its Subsidiaries, less the consolidated net book value of all assets of such Person and its subsidiaries (to the extent reflected as an asset in the balance sheet of such Person or any Subsidiary at such date) which will be treated as intangibles under GAAP, including,

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without limitation, such items as deferred financing expenses, net deferred taxes, net leasehold improvements, good will, trademarks, trade names, service marks, copyrights, patents, licenses and unamortized debt discount and expense; provided, that residual securities issued by such Person or its Subsidiaries shall not be treated as intangibles for purposes of this definition.

“Termination Date” shall mean the first to occur of (i) August 20, 2012, (ii) the first Business Day that is forty-five (45) days after the closing of the Discover Financial Transaction, (iii) the termination of any of the credit facilities Seller has with any Person identified on Schedule 5 attached hereto after the closing of the Discover Financial Transaction, or (iv) such earlier date on which this Agreement shall terminate in accordance with the provisions hereof or by operation of law.

“Total Indebtedness” shall mean with respect to any Person, for any period, the aggregate Indebtedness of such Person and its Subsidiaries during such period, less the amount of any nonspecific consolidated balance sheet reserves maintained in accordance with GAAP and less the amount of any non-recourse debt, including any securitization debt.

“Transaction” has the meaning assigned thereto in Section 1.

“Transaction Notice” shall mean Seller’s request to enter into a Transaction delivered to Buyer pursuant to the terms of this Agreement, specifying the Loans that Seller requests to sell to Buyer in such Transaction, the fields set forth on Annex 1 to the Custodial Agreement and any other loan-level details



as agreed upon between Seller and Buyer. Each Transaction Notice shall be in the form of a Loan Data Transmission, or, if such Transaction Notice is provided in another format, shall have attached thereto a Loan Data Transmission.

“Trust Receipt” shall have the meaning provided in the Custodial Agreement.

“Underwriting Guidelines” shall mean collectively, the underwriting guidelines of Seller, which, other than with respect to any balance limitations applicable to Jumbo Loans, comply with all current requirements of Fannie Mae, Freddie Mac and FHA, in effect as of the date of this Agreement, as the same may be amended, supplemented or otherwise modified from time to time in accordance with terms of this Agreement, and which have been approved in writing by Buyer.

“Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Purchased Items is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

“USC” shall mean the United States Code, as amended.

“VA” shall mean the U.S. Department of Veterans Affairs, an agency of the United States of America, or any successor thereto including the Secretary of Veterans Affairs.

“VA Loan” shall mean a loan which is the subject of a VA Loan Guaranty Agreement as evidenced by a Loan Guaranty Certificate.

“VA Loan Guaranty Agreement” shall mean the obligation of the United States to pay a specific percentage of a loan (subject to a maximum amount) upon default of the Mortgagor pursuant to the Servicemen’s Readjustment Act, as amended.

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“Wet Loan” shall mean a wet-funded first lien Loan which is (i) underwritten in accordance with the Underwriting Guidelines, (ii) purchased by Buyer from Seller by delivering funds to the Disbursement Agent subject to Seller’s obligation to deliver the required Loan Documents within the Wet Loan Maximum Dwell Time and (iii) does not contain all the required Loan Documents in the Mortgage File, which in order to be deemed to an Eligible Loan shall have the following additional characteristics:

- (a) the proceeds thereof have been funded by wire transfer or cashier’s check, cleared check or draft or other form of immediately available funds to the Settlement Agent from Seller for such Wet Loan;
- (b) Seller shall have obtained an Insured Closing Letter and an Escrow Letter with respect to such Wet Loan, and such letters shall be maintained in the possession of Seller and provided to Buyer upon request, if required;
- (c) the proceeds thereof have not been returned to Seller or its agent from the Settlement Agent for such Wet Loan;
- (d) such Wet Loan has been closed and funded to the order of the Mortgagor;
- (e) upon recordation such Loan will constitute a first lien on the premises described therein; and
- (f) all required Loan Documents shall have been delivered to Custodian within seven (7) days of the related Purchase Date.

“Wet Loan Maximum Dwell Time” shall mean, with respect to any Wet Loan, the period commencing on the related Purchase Date and ending on the seventh (7<sup>th</sup>) calendar day thereafter.

(b) Accounting Terms and Determinations. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to Buyer hereunder shall be prepared, in accordance with GAAP.

(c) Interpretation. The following rules of this subsection (c) apply unless the context requires otherwise. A gender includes all genders. Where a word or phrase is defined, its other grammatical forms have a corresponding meaning. A reference to a subsection, Section, Annex or Exhibit is, unless otherwise specified, a reference to a Section of, or annex or exhibit to, this Agreement. A reference to a party to this Agreement or another agreement or document includes the party’s successors and permitted substitutes or assigns. A reference to an agreement or document (including any Program Document) is to the agreement or document as amended, modified, novated, supplemented or replaced, except to the extent prohibited thereby or by any Program Document and in effect from time to time in accordance with the terms thereof. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form. A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing. The words “hereof”, “herein”, “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. The term “including” is not limiting and means “including without limitation”. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”, the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including”.

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Except where otherwise provided in this Agreement, any determination, consent, approval, statement or certificate made or confirmed in writing with notice to Seller by Buyer or an authorized officer of Buyer provided for in this Agreement is conclusive and binds the parties in the absence of manifest error. A reference to an agreement includes a security interest, guarantee, agreement or legally enforceable arrangement whether or not in writing related to such agreement.

A reference to a document includes an agreement (as so defined) in writing or a certificate, notice, instrument or document, or any information recorded in computer disk form. Where Seller is required to provide any document to Buyer under the terms of this Agreement, the relevant document shall be provided in writing or printed form unless Buyer requests otherwise. At the request of Buyer, the document shall be provided in computer disk form or both printed and computer disk form.

This Agreement is the result of negotiations among, and has been reviewed by counsel to, Buyer and Seller, and is the product of all parties. In the interpretation of this Agreement, no rule of construction shall apply to disadvantage one party on the ground that such party proposed or was involved in the preparation of any particular provision of this Agreement or this Agreement itself. Except where otherwise expressly stated, Buyer may give or withhold, or give conditionally, approvals and consents and may form opinions and make determinations at its absolute discretion. Any requirement of good faith, discretion or judgment by Buyer shall not be construed to require Buyer to request or await receipt of information or documentation not immediately available from or with respect to Seller, a servicer of the Purchased Loans, any other Person or the Purchased Loans themselves.

### 3. THE TRANSACTIONS

(a) Subject to the terms and conditions of the Program Documents, Buyer shall from time to time as requested by Seller, enter into Transactions with an aggregate Purchase Price for all Purchased Loans acquired by Buyer not to exceed the Maximum Aggregate Purchase Price. Buyer shall have the obligation, subject to the terms and conditions of the Program Documents, to enter into Transactions up to the Maximum Aggregate Purchase Price. Buyer and Seller agree that the Purchased Loans transferred to Buyer in any Transaction hereunder may include Eligible Loans which are Wet Loans (subject to any applicable sub-limits regarding Wet Loans set forth herein or any Program Document).

(b) Unless otherwise agreed, Seller shall request that Buyer enter into a Transaction by delivering (i) to Buyer, Custodian and Disbursement Agent a Transaction Notice, (ii) to Buyer, Custodian and Disbursement Agent an estimate of the Purchase Price for Eligible Loans to be purchased on the Purchase Date (which estimate may be included in a Transaction Notice) and (iii) to Custodian, the Mortgage Files for each such Eligible Loan proposed to be included in a Transaction by the times set forth in the Custodial Agreement, each in accordance with the times specified in the Custodial Agreement.

Each Transaction Notice shall specify the proposed Purchase Date, Purchase Price, Pricing Rate and Repurchase Date. In addition, each Transaction Notice shall set forth the related Purchase Price allocable to each individual Loan. Each Transaction Notice shall clearly indicate those Loans that are intended to be Wet Loans and Dry Loans and include a Loan Schedule in respect of the Loans that Seller proposes to include in the related Transaction.

Buyer shall notify Seller of its agreement to enter into a Transaction and confirm the terms of such Transaction by delivering to Seller a Funding Notice specifying the Loans Buyer agrees to purchase on the related Purchase Date, and any other terms of the related Transaction. In the event of a conflict between the terms set forth in the Transaction Notice delivered by Seller to Buyer and Custodian and the terms set forth in the related Funding Notice delivered by Buyer to Seller, the terms of the related

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Funding Notice shall control. In the event of a conflict between the terms set forth in this Agreement and the terms set forth in any Funding Notice, the terms of such Funding Notice shall control to the extent that the Funding Notice notes such conflict and specifies that the Funding Notice shall control.

By entering into a Transaction with Buyer, Seller consents to the terms set forth in the related Funding Notice. The Funding Notice, together with this Agreement, shall constitute conclusive evidence of the terms agreed to between Buyer and Seller with respect to the Transaction to which the Funding Notice relates.

Seller agrees to immediately report to Custodian and Buyer by facsimile transmission or such other method acceptable to Custodian and Buyer within one Business Day of discovery that any Wet Loans that were previously subject to a Transaction do not close for any reason and any Loans which are subject to a Rescission.

(c) Pursuant to the Custodial Agreement, Custodian will be required to review any Loan Documents delivered with respect to the Loans prior to 4:30 p.m. (New York City time) on any Business Day on the same day. In accordance with the times specified in the Custodial Agreement, Custodian will be required to deliver to Buyer, via Electronic Transmission acceptable to Buyer, Custodian Loan Transmission and an Exception Report showing the status of all Loans then held by Custodian, including but not limited to the Dry Loans and the Wet Loans which are subject to Exceptions, and the time the related Loan Documents have been released pursuant to Sections 5(a) or 5(b) of the Custodial Agreement. In accordance with the times specified in the Custodial Agreement, Custodian will be required to deliver to Buyer, on each Purchase Date, one or more Trust Receipts (as defined in the Custodial Agreement) relating to either Wet Loans or Dry Loans. The original copies of such Trust Receipts shall be delivered to 333 West 34<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, New York 10001, Attention: Adam Capizzi for the account of Citibank, N.A., telephone number (212) 615-7725, as agent for Buyer by overnight delivery using a nationally recognized insured overnight delivery service.

(d) Upon Seller's request to enter into a Transaction pursuant to Section 3(a), Buyer shall, assuming all conditions precedent set forth in this Section 3 and in Sections 9(a) and (b) have been met, and provided no Default shall have occurred and be continuing, purchase the Eligible Loans included in the related Funding Notice by transferring to the Disbursement Account, via wire transfer in accordance with the terms of Section 11 of the Custodial Agreement (pursuant to written wire transfer instructions provided by Seller on or prior to such Purchase Date), the Purchase Price in immediately available funds on the related Purchase Date and not later than the related time set forth in the Custodial Agreement. Seller acknowledges and agrees that the Purchase Price paid in connection with any Purchased Loan that is purchased in any Transaction includes a mutually negotiated premium allocated to the portion of such Purchased Loans that constitutes the related Servicing Rights.

(e) Anything herein to the contrary notwithstanding, if, on or prior to the determination of any LIBO Base Rate:

(i) Buyer determines, which determination shall be conclusive, that quotations of interest rates for the relevant deposits referred to in the definition of "LIBO Base Rate" in Section 2 are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for Transactions as provided herein;

(ii) Buyer determines, which determination shall be conclusive, that the Applicable Margin plus the relevant rate of interest referred to in the definition of "LIBO Base Rate" in Section 2 upon the basis of which the rate of interest for Transactions is to be determined is not likely to adequately cover the cost to Buyer of purchasing and holding the Loans hereunder; or

- (iii) it becomes unlawful for Buyer to enter into Transactions with a Pricing Rate based on the LIBO Base Rate;

then Buyer shall give Seller prompt notice thereof and, so long as such condition remains in effect, Buyer shall be under no obligation to purchase Loans hereunder, and Seller shall, at its option, either repurchase the Purchased Loans then subject to a Transaction or pay a Pricing Rate at a rate per annum as determined by Buyer taking into account the increased cost to Buyer of purchasing and holding the Loans.

(f) Seller shall repurchase the related Purchased Loans from Buyer on each related Repurchase Date. Each obligation to repurchase exists without regard to any prior or intervening liquidation or foreclosure with respect to any Purchased Loan. Seller is obligated to obtain the related Purchased Loans from Buyer or its designee (including Custodian) at Seller's expense on (or after) the related Repurchase Date.

(g) Provided that the applicable conditions in Sections 9(a) and (b) have been satisfied and provided further no Default shall have occurred and be continuing, unless Buyer is notified to the contrary not later than 11:00 a.m. New York City time at least two (2) Business Days prior to any such Repurchase Date, on each related Repurchase Date each Purchased Loan shall automatically become subject to a new Transaction. In such event, the related Repurchase Date on which such Transaction becomes subject to a new Transaction shall become the "Purchase Date" for such Transaction. Seller shall deliver an updated Transaction Notice with respect to such Purchased Loans. For each new Transaction, unless otherwise agreed, (y) the accrued and unpaid Price Differential shall be settled in cash on each related Repurchase Date, and (z) the Pricing Rate shall be as set forth in the Pricing Side Letter.

(h) If Seller intends to repurchase any Loans on any day which is not a Repurchase Date, Seller shall give prior written notice thereof to Buyer by 2:00 p.m. (New York City time) on the date of repurchase. If such notice is given, the Repurchase Price specified in such notice shall be due and payable on the date specified therein, together with the Price Differential to such date on the amount prepaid.

(i) If any Requirement of Law (other than with respect to any amendment made to Buyer's certificate of incorporation and by-laws or other organizational or governing documents) or any change in the interpretation or application thereof or compliance by Buyer with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject Buyer to any tax of any kind whatsoever with respect to this Agreement or any Loans purchased pursuant to it (excluding net income taxes) or change the basis of taxation of payments to Buyer in respect thereof;

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory advance or similar requirement against assets held by deposits or other liabilities in or for the account of Transactions or extensions of credit by, or any other acquisition of funds by any office of Buyer which is not otherwise included in the determination of the LIBO Base Rate hereunder; or

(iii) shall impose on Buyer any other condition;

and the result of any of the foregoing is to increase the cost to Buyer, by an amount which Buyer deems to be material, of effecting or maintaining purchases hereunder, or to reduce any amount receivable hereunder in respect thereof, then, in any such case, Seller shall promptly pay Buyer such additional

amount or amounts as will compensate Buyer for such increased cost or reduced amount receivable thereafter incurred.

If Buyer shall have determined that the adoption of or any change in any Requirement of Law (other than with respect to any amendment made to Buyer's certificate of incorporation and by-laws or other organizational or governing documents) regarding capital adequacy or in the interpretation or application thereof or compliance by Buyer or any corporation controlling Buyer with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on Buyer's or such corporation's capital as a consequence of its obligations hereunder to a level below that which Buyer or such corporation (taking into consideration Buyer's or such corporation's policies with respect to capital adequacy) by an amount deemed by Buyer to be material, then from time to time, Seller shall promptly pay to Buyer such additional amount or amounts as will thereafter compensate Buyer for such reduction.

If Buyer becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify Seller of the event by reason of which it has become so entitled. A certificate as to any additional amounts payable pursuant to this subsection submitted by Buyer to Seller shall be conclusive in the absence of manifest error. Buyer agrees that Seller shall not be required to compensate Buyer pursuant to the provisions of this Section 3(i) for any increased costs incurred or reductions in Buyer's rate of return suffered more than six (6) months prior to the date that Buyer notifies Seller of the event giving rise to such increased costs or reductions and of Buyer's intention to claim compensation therefor (except that, if the change in law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

(j) Buyer and Seller hereby agree that upon Buyer's completion of its credit and due diligence review of Seller, in the event that Buyer elects to offer a one-year extension of the term of this Agreement to Seller upon terms and conditions substantially similar to those provided herein and in the other Program Documents, Buyer and Seller shall each use commercially reasonable efforts and negotiate in good faith to promptly execute and deliver all required documents to effect such extension.

#### **4. PAYMENTS; COMPUTATION; COMMITMENT FEE**

(a) **Payments.** All payments to be made by Seller under this Agreement shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to Buyer, except to the extent otherwise provided herein, at the following account maintained by Buyer at Citibank, New York, Account Number \_\_\_\_\_, For the A/C of Citibank, N.A., ABA# \_\_\_\_\_, Reference: Home Loan Center, not later than 5:00 p.m., New York City time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Seller acknowledges that it has no rights of withdrawal from the foregoing account.

(b) Computations. The Price Differential shall be computed on the basis of a 360-day year for the actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

(c) Commitment Fee. Seller agrees to pay to Buyer the Commitment Fee such payment to be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to Buyer in seven (7) equal monthly payments which shall each be equal to the Commitment Fee Monthly Installment Amount. The first installment of the Commitment Fee shall be payable on or prior to February 17, 2012,

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and each succeeding monthly installment shall be payable on the 15<sup>th</sup> day of each calendar month (or the next succeeding Business Day if such day is not a Business Day) commencing March 15, 2012. Buyer may, in its sole discretion, net any installment of the Commitment Fee then due and payable from the proceeds of any Purchase Price paid to Seller. In the event that the Termination Date is accelerated to a date which is prior to the payment in full of all installments of the Commitment Fee, the Commitment Fee shall be payable on the Termination Date. Each installment of the Commitment Fee is and shall be deemed to be fully earned as of the date hereof and non-refundable when paid.

## 5. TAXES; TAX TREATMENT

(a) All payments made by Seller under this Agreement shall be made free and clear of, and without deduction or withholding for or on account of, any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities (including penalties, interest and additions to tax) with respect thereto imposed by any Governmental Authority, excluding income taxes, branch profits taxes, franchise taxes or any other tax imposed on the net income by the United States, a state or a foreign jurisdiction under the laws of which Buyer is organized or of its applicable lending office, or any political subdivision thereof (collectively, "Taxes"), all of which shall be paid by Seller for its own account not later than the date when due. If Seller is required by law or regulation to deduct or withhold any Taxes from or in respect of any amount payable hereunder, it shall: (a) make such deduction or withholding; (b) pay the amount so deducted or withheld to the appropriate Governmental Authority not later than the date when due; (c) deliver to Buyer, promptly, original tax receipts and other evidence satisfactory to Buyer of the payment when due of the full amount of such Taxes; and (d) pay to Buyer such additional amounts as may be necessary so that such Buyer receives, free and clear of all Taxes, a net amount equal to the amount it would have received under this Agreement, as if no such deduction or withholding had been made.

(b) In addition, Seller agrees to pay to the relevant Governmental Authority in accordance with applicable law any current or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies (including, without limitation, mortgage recording taxes, transfer taxes and similar fees) imposed by the United States or any taxing authority thereof or therein that arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, this Agreement ("Other Taxes").

(c) Seller agrees to indemnify Buyer for the full amount of Taxes (including additional amounts with respect thereto) and Other Taxes, and the full amount of Taxes of any kind imposed by any jurisdiction on amounts payable under this Section 5, and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, provided that Buyer shall have provided Seller with evidence, reasonably satisfactory to Seller, of payment of Taxes or Other Taxes, as the case may be.

(d) Any Buyer that is not incorporated under the laws of the United States, any State thereof, or the District of Columbia (a "Foreign Buyer") shall provide Seller with properly completed United States Internal Revenue Service ("IRS") Form W-8BEN or W-8ECI or any successor form prescribed by the IRS, certifying that such Foreign Buyer is entitled to benefits under an income tax treaty to which the United States is a party which reduces the rate of withholding tax on payments of interest or certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States on or prior to the date upon which each such Foreign Buyer becomes a Buyer. Each Foreign Buyer will resubmit the appropriate form on the earliest of (A) the third anniversary of the prior submission or (B) on or before the expiration of thirty (30) days after there is a "change in circumstances" with respect to such Foreign Buyer as defined in Treas. Reg. Section 1.1441(e)(4)(ii)(D). For any period with respect to which a Foreign Buyer has failed to provide Seller with the appropriate form or other relevant document pursuant to this Section 5(d) (unless such failure is due to a change in

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treaty, law, or regulation occurring subsequent to the date on which a form originally was required to be provided), such Foreign Buyer shall not be entitled to any "gross-up" of Taxes or indemnification under Section 5(c) with respect to Taxes imposed by the United States; provided, however, that should a Foreign Buyer, which is otherwise exempt from a withholding tax, become subject to Taxes because of its failure to deliver a form required hereunder, Seller shall take such steps as such Foreign Buyer shall reasonably request to assist such Foreign Buyer to recover such Taxes.

(e) Without prejudice to the survival or any other agreement of Seller hereunder, the agreements and obligations of Seller contained in this Section 5 shall survive the termination of this Agreement. Nothing contained in this Section 5 shall require Buyer to make available any of its tax returns or other information that it deems to be confidential or proprietary.

(f) Each party to this Agreement acknowledges that it is its intent for purposes of U.S. federal, state and local income and franchise taxes to treat each Transaction as indebtedness of Seller that is secured by the Purchased Loans and that the Purchased Loans are owned by Seller in the absence of an Event of Default by Seller. All parties to this Agreement agree to such treatment and agree to take no action inconsistent with this treatment, unless required by law.

## 6. MARGIN MAINTENANCE

(a) If at any time either (i) the aggregate Market Value of all Purchased Loans subject to all Transactions is less than the aggregate MV Margin Amount for all such Transactions, or (ii) the aggregate unpaid principal balance of the Purchased Loans subject to all Transactions is less than the aggregate Par Margin Amount for all such Transactions (either such event, a "Margin Deficit"), then Buyer may, by notice to Seller, require Seller in such Transactions to transfer to Buyer cash within the time period specified in clause (b) below, so that both (x) the cash and aggregate Market Value of the Purchased Loans will thereupon equal or exceed such aggregate MV Margin Amount and (y) the cash and unpaid principal balance of such Purchased Loans, will thereupon

equal or exceed such aggregate Par Margin Amount (either such requirement, a "Margin Call"). Buyer shall deposit such cash into a non-interest bearing account until the next succeeding Repurchase Date.

(b) Notice required pursuant to Section 6(a) may be given by any means provided in Section 21 hereof. Any notice given shall be met, and the related Margin Call satisfied, within twenty-four (24) hours. The failure of Buyer, on any one or more occasions, to exercise its rights under this Section 6, shall not change or alter the terms and conditions to which this Agreement is subject or limit the right of Buyer to do so at a later date. Seller and Buyer each agree that a failure or delay by Buyer to exercise its rights hereunder shall not limit or waive Buyer's rights under this Agreement or otherwise existing by law or in any way create additional rights for Seller.

## **7. INCOME PAYMENTS**

Where a particular term of a Transaction extends over the date on which Income is paid in respect of any Purchased Loan subject to that Transaction, such Income shall be the property of Buyer. Notwithstanding the foregoing, and provided no Default has occurred and is continuing, Buyer agrees that Seller shall be entitled to receive an amount equal to all Income received in respect of the Purchased Loans, whether by Buyer, Custodian or any servicer or any other Person, which is not otherwise received by Seller, to the full extent it would be so entitled if the Purchased Loans had not been sold to Buyer; provided that any Income received by Seller while the related Transaction is outstanding shall be deemed to be held by Seller solely in trust for Buyer pending the repurchase on the related Repurchase Date; provided further that upon the occurrence of a default, Seller shall either (i) hold all such Income in the Collection Account or (ii) at the sole option of Buyer, cause all such Income to be remitted directly to the

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account designated by Buyer. Provided no Default has occurred, Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its sole discretion), on the Repurchase Date following the date any Income is received by Buyer (or a servicer on its behalf) either (i) transfer (or permit the servicer to transfer) to Seller such Income with respect to any Purchased Loans subject to such Transaction, or (ii) if a Margin Deficit then exists, apply the Income payment to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentences (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid.

## **8. SECURITY INTEREST; BUYER'S APPOINTMENT AS ATTORNEY-IN-FACT**

(a) Seller and Buyer intend that the Transactions hereunder be sales to Buyer of the Purchased Loans (including, without limitation, the related Servicing Rights) and not loans from Buyer to Seller secured by the Purchased Loans. However, in order to preserve Buyer's rights under this Agreement in the event that a court or other forum recharacterizes the Transactions hereunder as other than sales, and as security for Seller's performance of all of its Obligations, Seller hereby grants Buyer a perfected first priority security interest in all of Seller's rights, title and interest in and to the following property, whether now existing or hereafter acquired: (i) all Purchased Loans identified on a Funding Notice delivered by Buyer to Seller and Custodian from time to time, (ii) all related Loan Documents, including without limitation all promissory notes, (iii) any other collateral pledged or otherwise relating to such Purchased Loans, together with all files, material documents, instruments, surveys (if available), certificates, correspondence, appraisals, computer records, computer storage media, Loan accounting records and other books and records relating thereto, (iv) the Servicing Records, and the related Servicing Rights, (v) all rights of Seller to receive from any third party or to take delivery of any Servicing Records or other documents which constitute a part of the Mortgage File or Servicing File, all rights of Seller to receive from any third party or to take delivery of any Records or other documents which constitute a part of the Mortgage File or Servicing File, (vi) the Collection Account and all Income relating to such Purchased Loans, (vii) all Loan Guaranty Certificates, other mortgage guaranties and insurance (issued by governmental agencies or otherwise) and any Mortgage Insurance Certificate or other document evidencing such mortgage guaranties or insurance relating to any Purchased Loans and all claims and payments thereunder and all rights of Seller to receive from any third party or to take delivery of any of the foregoing, (viii) all interests in real property collateralizing any Purchased Loans, (ix) all other insurance policies and insurance proceeds relating to any Purchased Loans or the related Mortgaged Property and all Insurance Proceeds and all rights of Seller to receive from any third party or to take delivery of any of the foregoing, (x) all Interest Rate Protection Agreements relating to any or all of the Purchased Loans, (xi) any purchase agreements or other agreements, contracts or any related takeout commitments relating to or constituting any or all of the foregoing and in each case related to the Purchased Loans and all rights to receive documentation relating thereto, (xii) all "accounts", "chattel paper", "commercial tort claims", "deposit accounts", "documents," "equipment", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter of credit rights", and "securities' accounts" as each of those terms is defined in the Uniform Commercial Code and all cash and Cash Equivalents and all products and proceeds relating to or constituting any or all of the foregoing and related to the Purchased Loans, and (xiii) any and all replacements, substitutions, distributions on or proceeds of any or all of the foregoing (collectively the "Purchased Items"). Seller acknowledges and agrees that its rights with respect to the Purchased Items (including without limitation, any security interest Seller may have in the Purchased Loans and any other collateral granted by Seller to Buyer pursuant to any other agreement) are and shall continue to be at all times junior and subordinate to the rights of Buyer hereunder.

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Seller acknowledges and agrees that its rights with respect to the Purchased Items (including without limitation, any security interest Seller may have in the Purchased Loans and any other collateral granted by Seller to Buyer pursuant to any other agreement) are and shall continue to be at all times junior and subordinate to the rights of Buyer hereunder. Seller further acknowledges that it has no rights to the Servicing Rights related to the Purchased Loans. Without limiting the generality of the foregoing and for the avoidance of doubt, in the event that Seller is deemed to retain any residual Servicing Rights, Seller grants, assigns and pledges to Buyer a first priority security interest in all of its rights, title and interest in and to the Servicing Rights as indicated hereinabove. In addition, Seller, in its capacity as Servicer, further grants, assigns and pledges to Buyer a first priority security interest in and to all Servicing Records and rights to receive Servicing Records or other documents that constitute a part of the Mortgage File or Servicing File with respect to any Purchased Loan, and all Income related to the Purchased Loans received by Seller, in its capacity as Servicer, and all rights to receive such Income, and all products, proceeds and distributions relating to or constituting any or all of the foregoing (collectively, and together with the pledge of Servicing Rights in the immediately preceding sentence, the "Related Credit Enhancement"). The Related Credit Enhancement is hereby pledged as further security for Seller's Obligations to Buyer hereunder.

(b) At any time and from time to time, upon the written request of Buyer, and at the expense of Seller, Seller will promptly and duly execute and deliver, or will promptly cause to be executed and delivered, such further instruments and documents and take such further action as Buyer may

reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the Purchased Items and the liens created hereby. Seller also hereby authorizes Buyer to file any such financing or continuation statement without the signature of Seller to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Agreement shall be sufficient as a financing statement for filing in any jurisdiction. This Agreement shall constitute a security agreement under applicable law.

(c) Seller shall not (i) change the location of its chief executive office/chief place of business from that specified in Section 12(m) hereof, (ii) change its name, identity or corporate structure (or the equivalent) or change the location where it maintains its records with respect to the Purchased Items, or (iii) reincorporate or reorganize under the laws of another jurisdiction unless it shall have given Buyer at least thirty (30) days prior written notice thereof and shall have delivered to Buyer all Uniform Commercial Code financing statements and amendments thereto as Buyer shall request and taken all other actions deemed reasonably necessary by Buyer to continue its perfected status in the Purchased Items with the same or better priority.

(d) Seller hereby irrevocably constitutes and appoints Buyer and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Seller and in the name of Seller or in its own name, from time to time in Buyer's discretion, for the purpose of carrying out the terms of this Agreement, including without limitation, protecting, preserving and realizing upon the Purchased Items, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, including without limitation, to protect, preserve and realize upon the Purchased Items, to file such financing statement or statements relating to the Purchased Items without Seller's signature thereon as Buyer at its option may deem appropriate, and, without limiting the generality of the foregoing, Seller hereby gives Buyer the power and right, on behalf of Seller, without assent by, but with notice to, Seller, if a Default shall have occurred and be continuing, to do the following:

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(i) in the name of Seller, or in its own name, (i) otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due with respect to any Purchased Items and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Buyer for the purpose of collecting any and all such moneys due with respect to any Purchased Items whenever payable;

(ii) to pay or discharge taxes and Liens levied or placed on or threatened against the Purchased Items;

(iii) (A) to direct any party liable for any payment under any Purchased Items to make payment of any and all moneys due or to become due thereunder directly to Buyer or as Buyer shall direct, including, without limitation, to send "goodbye" letters and Section 404 Notices on behalf of Seller and any applicable Servicer; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Purchased Items; (C) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any Purchased Items; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Purchased Items or any proceeds thereof and to enforce any other right in respect of any Purchased Items; (E) to defend any suit, action or proceeding brought against Seller with respect to any Purchased Items; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as Buyer may deem appropriate; and (G) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any Purchased Items as fully and completely as though Buyer were the absolute owner thereof for all purposes, and to do, at Buyer's option and Seller's expense, at any time, and from time to time, all acts and things which Buyer deems necessary to protect, preserve or realize upon the Purchased Items and Buyer's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as Seller might do.

Seller hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable. This power of attorney shall not revoke any prior powers of attorney granted by Seller.

Seller also authorizes Buyer, if a Default shall have occurred and be continuing, from time to time, to execute, in connection with any sale provided for in Section 19 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Purchased Items.

(e) The powers conferred on Buyer hereunder are solely to protect Buyer's interests in the Purchased Items and shall not impose any duty upon it to exercise any such powers. Buyer shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to Seller for any act or failure to act hereunder, except for its or their own gross negligence or willful misconduct.

(f) If Seller fails to perform or comply with any of its agreements contained in the Program Documents and Buyer performs or complies, or otherwise cause performance or compliance, with such agreement, the reasonable out-of-pocket expenses of Buyer incurred in connection with such performance or compliance, together with interest thereon at a rate per annum equal to the Post-Default Rate, shall be payable by Seller to Buyer on demand and shall constitute Obligations.

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(g) Buyer's duty with respect to the custody, safekeeping and physical preservation of the Purchased Items in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as Buyer deals with similar property for its own account. Neither Buyer nor any of its directors, officers or employees shall be liable for failure to demand, collect or realize upon all or any part of the Purchased Items or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Purchased Items upon the request of Seller or otherwise.

(h) All authorizations and agencies herein contained with respect to the Purchased Items are irrevocable and powers coupled with an interest.

(i) At Buyer's sole option, exercisable prospectively or retrospectively with respect to the Purchased Loans in whole or in part, and without notice to Seller or any other person, (i) the sale of the Purchased Loans to Buyer on each Purchase Date may be deemed a sale of a 100% participation interest, constituting 100% beneficial ownership, of the related Purchased Loans, in lieu of a sale to Buyer of the Purchased Loans themselves, (ii) to such extent Seller is deemed to retain legal title to the Purchased Loans solely to service or supervise the servicing thereof and (iii) this Agreement will be deemed the related participation agreement in such event.

## 9. CONDITIONS PRECEDENT

- (a) As conditions precedent to the initial Transaction, Buyer shall have received on or before the date on which such initial Transaction is consummated the following, in form and substance satisfactory to Buyer and duly executed by each party thereto (as applicable):
- (i) Program Documents. The Program Documents (including all exhibits, annexes and schedules related thereto) duly executed and delivered by Seller (or Guarantor, as applicable) and being in full force and effect, free of any modification, breach or waiver; provided, however, that the Collection Account Control Agreement may be delivered within ten (10) days following the initial Purchase Date.
  - (ii) Organizational Documents. An officer's certificate of Seller, together with a good standing certificate of Seller dated as of a recent date, but in no event more than ten (10) days prior to the date of such initial Transaction, and certified copies of the charter and by-laws (or equivalent documents) of Seller and Servicer, and of all corporate or other authority for Seller with respect to the execution, delivery and performance of the Program Documents and each other document to be delivered by Seller, as applicable, from time to time in connection herewith (and Buyer may conclusively rely on such certificate until it receives notice in writing from Seller to the contrary).
  - (iii) Incumbency Certificate. An incumbency certificate of the secretary of Seller certifying the names, true signatures and titles of such Person's representatives duly authorized to request Transactions hereunder and to execute the Program Documents and the other documents to be delivered thereunder.
  - (iv) Legal Opinion. A legal opinion of counsel to Seller, substantially in the form attached hereto as Exhibit B.
  - (v) Filings, Registrations, Recordings. (i) Any documents (including, without limitation, financing statements) required to be filed, registered or recorded in order to create, in favor of Buyer, a perfected, first-priority security interest in the Purchased Items, subject to no

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Liens other than those created hereunder, shall have been properly prepared and executed for filing (including the applicable county(ies) if Buyer determines such filings are necessary in its reasonable discretion), registration or recording in each office in each jurisdiction in which such filings, registrations and recordations are required to perfect such first-priority security interest; and (ii) UCC lien searches, dated as of a recent date, in no event more than fourteen (14) days prior to the date of such initial Transaction, in such jurisdictions as shall be applicable to Seller and the Purchased Items, the results of which shall be satisfactory to Buyer.

- (vi) Fees and Expenses. Buyer shall have received all fees and expenses (including without limitation, the Commitment Fee) required to be paid by Seller on or prior to the initial Purchase Date, which fees and expenses may be netted out of any purchase proceeds paid by Buyer hereunder.
- (vii) Financial Statements. Buyer shall have received (A) the financial statements referenced in Section 12(b) and (B) the unaudited consolidated balance sheets of Seller as of December 31, 2011.
- (viii) Underwriting Guidelines. Buyer and Seller shall have agreed upon Seller's current Underwriting Guidelines for Loans and Buyer shall have received a copy thereof certified by a Responsible Officer of Seller.
- (ix) Consents, Licenses, Approvals, etc. Buyer shall have received copies certified by Seller of all consents, licenses and approvals, if any, required in connection with the execution, delivery and performance by Seller of, and the validity and enforceability of, the Loan Documents, which consents, licenses and approvals shall be in full force and effect, including but not limited to, evidence of FHA approval as Mortgagee and Servicer of the Loans, as well as FHA approval of any servicer or Subservicer of the Loans.
- (x) Insurance. Buyer shall have received evidence in form and substance satisfactory to Buyer showing compliance by Seller as of such initial Purchase Date with Section 13(v) hereof.
- (xi) Other Documents. Buyer shall have received such other documents as Buyer or its counsel may reasonably request.

(b) The obligation of Buyer to enter into each Transaction pursuant to this Agreement (including the initial Transaction) is subject to the following further conditions precedent, both immediately prior to any Transaction and also after giving effect thereto and to the intended use thereof:

- (i) No Default or Event of Default shall have occurred and be continuing.
- (ii) Both immediately prior to entering into such Transaction and also after giving effect thereto and to the intended use of the proceeds thereof, the representations and warranties made by Seller in Section 12 and Schedule 1 hereof, and in each of the other Program Documents, shall be true and complete on and as of the Purchase Date in all material respects (in the case of the representations and warranties in Section 12(w) and Schedule 1, solely with respect to Loans which have not been repurchased by Seller) with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date). At the request of Buyer, Buyer shall have received an officer's certificate signed by a Responsible Officer of Seller certifying as to the

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truth and accuracy of the above, which certificate shall specifically include a statement that Seller is in compliance with all governmental licenses and authorizations and is qualified to do business and in good standing in all required jurisdictions.

- (iii) The then aggregate outstanding Purchase Price for all Purchased Loans, when added to the Purchase Price for the requested Transaction, shall not exceed the Maximum Aggregate Purchase Price.

(iv) Subject to Buyer's right to perform one or more Due Diligence Reviews pursuant to Section 44 hereof, Buyer shall have completed its Due Diligence Review of the Loan Documents for each Loan subject to such Transaction and such other documents, records, agreements, instruments, Mortgaged Properties or information relating to such Loans as Buyer in its reasonable discretion deems appropriate to review and such review shall be satisfactory to Buyer in its reasonable discretion.

(v) Buyer shall have made a determination in its sole discretion that each Loan or any pool of Loans is (A) eligible for sale in the secondary market taking into consideration the characteristics of such Loan or the aggregate characteristics of such pool of Loans and (B) is eligible for purchase under the terms of this Agreement.

(vi) Buyer or its designee shall have received on or before the day of a Transaction with respect to any Purchased Loans (unless otherwise specified in this Agreement) the following, in form and substance satisfactory to Buyer and (if applicable) duly executed:

(A) the Transaction Notice with respect to such Purchased Loans, delivered pursuant to Section 3(a);

(B) the Trust Receipt with respect to such Purchased Loans, with the Funding Notice attached; and

(C) such certificates, customary opinions of counsel or other documents as Buyer may reasonably request, provided that such opinions of counsel shall not be required routinely in connection with each Transaction but shall only be required from time to time as deemed necessary by Buyer in its commercially reasonable judgment.

(vii) In the event that the Loans to be purchased would cause the aggregate outstanding principal balance of Purchased Loans secured by Mortgaged Property from any state to exceed 10% of the aggregate outstanding principal balance of Loans purchased hereunder, then unless the related Mortgage Loan Documents are on Fannie Mae and Freddie Mac approved forms, Seller shall, upon request by Buyer, deliver an opinion of counsel acceptable to Buyer in such state, substantially in the form of items number 12 and 13 of Exhibit B.

(viii) With respect to any Loan that was funded in the name of an Affiliate of Seller, Buyer may, in its sole discretion, require Seller to provide evidence sufficient to satisfy Buyer that such Loan was acquired in a legal sale, including without limitation, an opinion, in form and substance and from an attorney, in both cases, acceptable to Buyer in its sole discretion, that such Loan was acquired in a legal sale.

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(ix) None of the following shall have occurred and/or be continuing: (i) an event or events resulting in the inability of Buyer to finance its purchases of assets with traditional counterparties at rates which would have been reasonable prior to the occurrence of such event or events or a material adverse change in the financial condition of Buyer that affects (or can reasonably be expected to affect) materially and adversely the ability of Buyer to fund its obligations under or otherwise comply with the terms of this Agreement, or (ii) an event beyond the control of Buyer which Buyer reasonably determines may result in Buyer's inability to perform its obligations under this Agreement including, without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, nationalization, expropriation, currency restrictions, fire, communication line failures, computer viruses, power failures, earthquakes, or other disasters of a similar nature to the foregoing shall have occurred or be continuing.

(x) Each Loan shall conform to Seller's Underwriting Guidelines or Buyer shall have received Underwriting Guidelines for such Loans acceptable to Buyer in its reasonable discretion.

(xi) Buyer shall have received all information requested from Seller relating to Interest Rate Protection Agreements pursuant to Section 13(y), and Buyer shall have determined that such Interest Rate Protection Agreements are acceptable to Buyer in its sole but reasonable discretion.

(xii) If any Purchased Loans are serviced by a Person other than Seller (a "Subservicer"), Buyer shall have received, no later than 10:00 a.m. three (3) days prior to the requested Purchase Date, an Instruction Letter in the form attached hereto as Exhibit D, executed by Seller in blank to the attention of each Subservicer and executed by such Subservicer, with the related Servicing Agreement attached thereto in form and substance acceptable to Buyer.

(xiii) Buyer shall have determined that all actions necessary or, in the reasonable opinion of Buyer, desirable to maintain Buyer's perfected interest in the Purchased Loans and other Purchased Items have been taken, including, without limitation, duly executing and filing Uniform Commercial Code financing statements on Form UCC-1.

(xiv) Seller shall have paid to Buyer all fees and expenses owed to Buyer in accordance with this Agreement and any other Program Document including, without limitation the amount of any Commitment Fees then due and owing, and all of Buyer's attorney fees and expenses and due diligence expenses then due and owing.

(xv) Buyer or its designee shall have received any other documents reasonably requested by Buyer.

(xvi) There is no Margin Deficit at the time immediately prior to entering into a new Transaction.

(xvii) With respect to each Purchased Loan that is subject to a security interest (including any precautionary security interest) immediately prior to the Purchase Date, Buyer shall have received a Security Release Certification for such Purchased Loan that is duly executed by the related secured party and Seller. Such secured party shall have filed Uniform Commercial Code termination statements in respect of any Uniform Commercial Code filings made in respect of such Loan, and each such release and Uniform Commercial Code termination statement has been delivered to Buyer prior to each Transaction and to Custodian as part of the Mortgage File.

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## 10. RELEASE OF PURCHASED LOANS

Upon timely payment in full of the Repurchase Price then owing with respect to a Purchased Loan and the satisfaction of all other Obligations (if any) then outstanding, unless a Default or Event of Default shall have occurred and be continuing, then (a) Buyer shall be deemed to have terminated any security interest that Buyer may have in such Purchased Loan and any Purchased Items solely related to such Purchased Loan and (b) with respect to such Purchased Loan, Buyer shall direct Custodian to release such Purchased Loan and any Purchased Items solely related to such Purchased Loan to Seller unless such release and termination would give rise to or perpetuate a Margin Deficit. Seller shall give at least two (2) Business Days prior written notice to Buyer if such repurchase shall occur on any date other than the Repurchase Date.

If such release and termination gives rise to or perpetuates a Margin Deficit, Buyer shall notify Seller of the amount thereof and prior to such release and termination Seller shall thereupon satisfy the Margin Call in the manner specified in Section 6.

## 11. RELIANCE

With respect to any Transaction, Buyer may conclusively rely upon, and shall incur no liability to Seller in acting upon, any request or other communication that Buyer reasonably believes to have been given or made by a person authorized to enter into a Transaction on Seller's behalf.

## 12. REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that throughout the term of this Agreement:

(a) Existence. Seller (a) is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was formed, (b) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect, and (d) is in compliance in all material respects with all Requirements of Law.

(b) Financial Condition. Seller has heretofore furnished to Buyer a copy of its audited consolidated balance sheets and the audited consolidated balance sheets of its consolidated Subsidiaries, each as at December 31, 2010 with the opinion thereon of Deloitte & Touche LLP, a copy of which has been provided to Buyer. Seller has also heretofore furnished to Buyer the related consolidated statements of income and retained earnings and of cash flows for Seller and its consolidated Subsidiaries for the one year period ending December 31, 2010, setting forth in comparative form the figures for the previous year. All such financial statements are complete and correct in all material respects and fairly present the consolidated financial condition of Seller and its Subsidiaries and the consolidated results of their operations for the fiscal year ended on said date, all in accordance with GAAP applied on a consistent basis. Since December 31, 2010, there has been no development or event nor any prospective development or event which has had or should reasonably be expected to have a Material Adverse Effect.

(c) Litigation. There are no actions, suits, arbitrations, investigations or proceedings pending or, to its knowledge, threatened against Seller or any of its Subsidiaries or Affiliates or affecting any of the property thereof before any Governmental Authority, (i) as to which individually or in the aggregate

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there is a reasonable likelihood of an adverse decision which would be reasonably likely to have a Material Adverse Effect or (ii) which questions the validity or enforceability of any of the Program Documents or any action to be taken in connection with the transactions contemplated thereby and there is a reasonable likelihood of a Material Adverse Effect or adverse decision.

(d) No Breach. Neither (a) the execution and delivery of the Program Documents, nor (b) the consummation of the transactions therein contemplated in compliance with the terms and provisions thereof will conflict with or result in a breach of the charter or by-laws of Seller, or any applicable law, rule or regulation, or any order, writ, injunction or decree of any Governmental Authority, or other material agreement or instrument to which Seller, or any of its Subsidiaries, is a party or by which any of them or any of their property is bound or to which any of them or their property is subject, or constitute a default under any such material agreement or instrument, or (except for the Liens created pursuant to this Agreement) result in the creation or imposition of any Lien upon any property of Seller or any of its Subsidiaries, pursuant to the terms of any such agreement or instrument.

(e) Action. Seller has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Program Documents to which it is a party; the execution, delivery and performance by Seller of each of the Program Documents to which it is a party has been duly authorized by all necessary corporate or other action on its part; and each Program Document has been duly and validly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

(f) Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority, or any other Person, are necessary for the execution, delivery or performance by Seller of the Program Documents to which it is a party or for the legality, validity or enforceability thereof, except for filings and recordings in respect of the Liens created pursuant to this Agreement.

(g) Taxes. Seller and its Subsidiaries have filed all Federal income tax returns and all other material tax returns that are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by any of them, except for any such taxes, if any, that are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided. The charges, accruals and reserves on the books of Seller and its Subsidiaries in respect of taxes and other governmental charges are, in the opinion of Seller, adequate. Any taxes, fees and other governmental charges payable by Seller in connection with a Transaction and the execution and delivery of the Program Documents have been paid.

(h) Investment Company Act. Neither Seller nor any of its Subsidiaries is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Seller is not subject to any Federal or state statute or regulation which limits its ability to incur indebtedness.

(i) No Legal Bar. The execution, delivery and performance of this Agreement, the other Program Documents, the sales hereunder and the use of the proceeds thereof will not violate any Requirement of Law or Contractual Obligation of Seller or of any of its Subsidiaries and will not result in, or require, the creation or imposition of any Lien (other than the Liens created hereunder) on any of its or their respective properties or revenues pursuant to any such Requirement of Law or Contractual Obligation.

(j) Compliance with Law. No practice, procedure or policy employed or proposed to be employed by Seller in the conduct of its business violates any law, regulation, judgment, agreement,

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regulatory consent, order or decree applicable to it which, if enforced, would result in a Material Adverse Effect with respect to Seller.

(k) No Default. Neither Seller nor any of its Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect which should reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(l) Collateral; Collateral Security.

(i) Immediately prior to the sale of any Loan by Seller, Seller was the sole owner of such Loan and had good and marketable title thereto, free and clear of all Liens, in each case except for Liens to be released simultaneously with the sale of the Loans to Buyer hereunder and no Person other than Seller has any Lien on any Loan.

(ii) The provisions of this Agreement are effective to create in favor of Buyer a valid security interest in all right, title and interest of Seller in, to and under the Purchased Items.

(iii) Upon receipt by Custodian of each Note, endorsed in blank by a duly authorized officer of Seller, Buyer shall have a fully perfected first priority security interest therein, in the Loan evidenced thereby and in Seller's interest in the related Mortgaged Property.

(iv) Upon the filing of financing statements on Form UCC-1 naming Buyer as "Secured Party" and Seller as "Debtor", and describing the Purchased Items, in the jurisdictions and recording offices listed on Schedule 2 attached hereto, the security interests granted hereunder in the Purchased Items will constitute fully perfected first priority security interests under the Uniform Commercial Code in all right, title and interest of Seller in, to and under such Purchased Items, which can be perfected by filing under the Uniform Commercial Code.

(m) Chief Executive Office; Chief Operating Office. Seller's chief executive office and chief operating office on the Effective Date is located at 163 Technology Drive, Irvine, California 92618.

(n) Location of Books and Records. The location where Seller keeps its books and records including all computer tapes and records relating to the Purchased Items is its chief executive office or chief operating office or the offices of Custodian.

(o) True and Complete Disclosure. The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of Seller or any of its Subsidiaries to Buyer in connection with the negotiation, preparation or delivery of this Agreement and the other Program Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of Seller or any of its Subsidiaries to Buyer in connection with this Agreement and the other Program Documents and the transactions contemplated hereby and thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to a Responsible Officer that, after due inquiry, could reasonably be expected to have a Material Adverse Effect that has not been disclosed herein, in the

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other Program Documents or in a report, financial statement, exhibit, schedule, disclosure letter or other writing furnished to Buyer for use in connection with the transactions contemplated hereby or thereby.

(p) Leverage Ratio; Liquidity; Tangible Net Worth; Profitability. (A) The ratio of Seller's Total Indebtedness to Tangible Net Worth is not greater than 10:1, (B) Seller has Liquidity in an amount equal to not less than the greater of (1) 3% of Seller's actual total assets (as set forth on Seller's most recent month-end balance sheets), and (2) \$7,000,000, (C) the Tangible Net Worth of Seller exceeds \$25,000,000 and (D) as of the end of the immediately preceding calendar quarter, Seller's consolidated net income for at least one (1) of the previous two (2) consecutive fiscal quarters is equal to or greater than \$1.00.

(q) ERISA. Each Plan which is not a Multiemployer Plan, and, to the knowledge of Seller, each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and any other Federal or State law. No event or condition has occurred and is continuing as to which Seller would be under an obligation to furnish a report to Buyer under Section 13(a)(xi) hereof. The present value of all accumulated benefit obligations under each Plan subject to Title IV of ERISA (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such Plans. Seller and its Subsidiaries do not provide any material medical or health benefits to former employees other than as required by the Consolidated Omnibus Budget Reconciliation Act, as amended, or similar state or local law at no cost to the employer (collectively, "COBRA").

(r) Licenses. Buyer will not be required as a result of purchasing the Loans to be licensed, registered or approved or to obtain permits or otherwise qualify (i) to do business in any state in which it is not currently so required or (ii) under any state or other jurisdiction's consumer lending, fair debt collection or other applicable state or other jurisdiction's statute or regulation.

(s) Filing Jurisdictions/Relevant States. Schedule 2 sets forth all of the jurisdictions and filing offices in which a financing statement should be filed in order for Buyer to perfect its security interest in the Purchased Items that can be perfected by filing. Schedule 4 sets forth all of the states or other jurisdictions in which Seller originates Loans in its own name or through brokers on the date of this Agreement.

(t) Reserved.

(u) No Burdensome Restrictions. No Requirement of Law or Contractual Obligation of Seller or any of its Subsidiaries has a Material Adverse Effect.

(v) Subsidiaries. All of the Subsidiaries of Seller at the date hereof are listed on Schedule 4 to this Agreement.

(w) Origination and Acquisition of Loans. The Loans were originated by Seller, and the origination and collection practices used by Seller or Qualified Originator, as applicable, with respect to the Loans have been, in all material respects legal, proper, prudent and customary in the residential mortgage loan origination and servicing business, and in accordance with FHA standards as applicable, and in accordance with the Underwriting Guidelines. All Loans are in conformity with the Underwriting

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Guidelines. Each of the Loans complies with the representations and warranties listed in Schedule 1 hereto.

(x) No Adverse Selection. Seller used no selection procedures that identified the Eligible Loans, when taken as a whole, as being less desirable or valuable than other comparable Loans owned by Seller.

(y) Seller Solvent; Fraudulent Conveyance. As of the date hereof and immediately after giving effect to each Transaction, the fair value of the assets of Seller is greater than the fair value of the liabilities (including, without limitation, contingent liabilities if and to the extent required to be recorded as a liability on the financial statements of Seller in accordance with GAAP) of Seller and Seller is and will be solvent, is and will be able to pay its debts as they mature and does not and will not have an unreasonably small capital to engage in the business in which it is engaged and proposes to engage. Seller does not intend to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. Seller is not contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of Seller or any of its assets. Seller is not transferring any Loans with any intent to hinder, delay or defraud any of its creditors.

(z) MERS. Seller is a member of MERS in good standing.

(aa) No Broker. Seller has not dealt with any broker, investment banker, agent, or other person, except for Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Loans pursuant to this Agreement; provided, that if Seller has dealt with any broker, investment banker, agent, or other person, except for Buyer, who may be entitled to any commission or compensation in connection with the sale of Purchased Loans pursuant to this Agreement, such commission or compensation shall have been paid in full by Seller.

(bb) FHA. Each of Seller and/or any other Qualified Originator, if applicable, is an FHA Approved Mortgagee, in good standing to service mortgages and has not been suspended as a mortgagee or servicer by the FHA. Seller and the Subservicer are not under review or investigation and do not have knowledge of imminent or future investigation, by the FHA.

(cc) Seller's Internal Mortgage Tracking System. Each printout and paper copy produced by Seller's internal mortgage tracking system and delivered to Buyer is true, complete and accurate in all material respects.

(dd) Servicer Approvals; Compliance with Guidelines. Seller (in its capacity as Servicer) and each subservicer servicing any Purchased Loans hereunder has all consents, licenses and approvals necessary to service loans on behalf of each Agency and has remained at all times in compliance with the Guidelines.

(ee) Insured Closing Letter. As of the date hereof and as of the date of each delivery of a Wet Loan, the Settlement Agent has obtained an Insured Closing Letter, closing protection letter or similar authorization letter from a nationally recognized title insurance company approved by Buyer, copies of which shall be maintained in the possession of Seller and provided to Buyer upon request, if required. Among other things, the Insured Closing Letter covers any losses occurring due to the fraud, dishonesty or mistakes of the closing agent. The Insured Closing Letter inures to the benefit of, and the rights thereunder may be enforced by, the loan originator and its successors and assigns, including Buyer.

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(ff) Escrow Letter. As of the date hereof and as of the date of each delivery of a Wet Loan, the Settlement Agent has executed an escrow agreement or letter, copies of which shall be maintained in the possession of Seller and provided to Buyer upon request, if required, stating that in the event of a Rescission of or if for any reason the Loan fails to fund on a given day, the party conducting the closing is holding all funds which would have been disbursed on behalf of the Mortgagor as agent for the benefit of Buyer and such funds shall be redeposited in the Disbursement Account for the benefit of Buyer not later than one Business Day after the date of Rescission or other failure of the Loan to fund on a given day. Such Escrow Letter inures to the benefit of, and the rights thereunder may be enforced by, the loan originator and its successors and assigns, including Buyer.

(gg) Freddie Mac. Seller and/or any other Qualified Originator, if applicable, is a seller approved by Freddie Mac, in good standing to originate mortgages and has not been suspended as a mortgagee by Freddie Mac. Seller is not under review or investigation or have knowledge of imminent or future investigation, by Freddie Mac.

(hh) Fannie Mae. Seller and/or any other Qualified Originator, if applicable, is a seller approved by Fannie Mae, in good standing to originate mortgages and has not been suspended as a mortgagee by Fannie Mae (though as of October 13, 2011, Seller and Fannie Mae have agreed that Seller shall not participate in bifurcation programs or conduct servicing activity for Fannie Mae). Seller is not under review or investigation or have knowledge of imminent

or future investigation, by Fannie Mae and since October 13, 2011, Seller has not participated in any bifurcation program or conducted any servicing for Fannie Mae.

### 13. COVENANTS OF SELLER

Seller covenants and agrees with Buyer that during the term of this Agreement:

(a) Financial Statements and Other Information; Financial Covenants.

Seller shall deliver to Buyer:

(i) As soon as available and in any event within 30 days after the end of each calendar month, the consolidated balance sheets of Seller and its consolidated Subsidiaries as at the end of such month, the related unaudited consolidated statements of income and retained earnings and of cash flows for Seller and its consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, and consolidated statements of liquidity of Seller and its consolidated Subsidiaries as at the end of such period, setting forth in each case in comparative form the figures for the previous year, accompanied by a certificate of a Responsible Officer of Seller, which certificate shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of Seller and its Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such month (subject to normal year-end audit adjustments);

(ii) As soon as available and in any event within 45 days after the end of each of the first three quarterly fiscal periods of each fiscal year of Seller, the consolidated balance sheets of Seller and its consolidated Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for Seller and its consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, and consolidated statements of liquidity of Seller and its consolidated Subsidiaries as at the end of such period, setting forth in each case in comparative form the figures for the previous year, accompanied by a certificate of a Responsible Officer of Seller, which certificate

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shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of Seller and its Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);

(iii) As soon as available and in any event within 90 days after the end of each fiscal year of Seller, the consolidated balance sheets of Seller and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for Seller and its consolidated Subsidiaries for such year, and consolidated statements of liquidity of Seller and its consolidated Subsidiaries as at the end of such year, setting forth in each case in comparative form the figures for the previous year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be qualified as to scope of audit or going concern and shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of Seller and its consolidated Subsidiaries at the end of, and for, such fiscal year in accordance with GAAP;

(iv) Together with each set of the financial statements delivered pursuant to clauses (i) through (iii) above, a certificate of a Responsible Officer of Seller in the form of Exhibit A attached hereto;

(v) From time to time at the request of Buyer, Seller shall provide Buyer with a paper copy produced by Seller's internal mortgage tracking system reflecting that the Purchased Loans are registered in the name of Buyer within three (3) Business Days of such request;

(vi) From time to time such other information regarding the financial condition, operations, well being or business of Seller as Buyer may reasonably request (including but not limited to any information regarding any repurchase and indemnity requests or demands made upon Seller by any third party investors (including any Agency)), within one (1) Business Day of such request;

(vii) As soon as available, and in any event within five (5) days after the date on which any audit reports with respect to Seller or its subsidiaries are required to be delivered to HUD or any Agency, copies of any such reports, performed and delivered in compliance with all requirements of HUD or such Agency and accompanied by an opinion thereon of an independent certified public accountant;

(viii) (a) As soon as available, and in any event within five (5) days after the date on which any appraisals, evaluations or broker's price opinions are completed with respect to Seller's servicing portfolio, copies of any such appraisals, evaluation reports or broker's price opinions and (b) promptly at the end of each quarterly fiscal period of each fiscal year, any valuation report regarding Seller's servicing portfolio conducted by a nationally recognized valuation provider reasonably acceptable to Buyer;

(ix) Promptly after receipt by Seller of a request from Buyer, any loan level information requested by Buyer with respect to mortgage loans held on the books of Seller (including but not limited to all mortgage loans "held for investment" by Seller);

(x) Promptly after receipt by Seller of a request from Buyer, Seller shall provide copies of its latest Quality Control Program reports and all responses made by the management of

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Seller to address any issues, risks, vulnerabilities or adverse findings contained in such Quality Control Program.

(xi) As soon as reasonably possible, and in any event within fifteen (15) days after a Responsible Officer knows or has reason to believe, that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior financial officer of Seller setting forth details respecting such event or condition and the action, if any, that Seller or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by Seller or an ERISA Affiliate with respect to such event or condition):

- (A) any Reportable Event, or any request for a waiver under Section 412(c) of the Code for any Plan;
- (B) the distribution under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or any action taken by Seller or an ERISA Affiliate to terminate any Plan;
- (C) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by Seller or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;
- (D) the complete or partial withdrawal from a Multiemployer Plan by Seller or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by Seller or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;
- (E) the institution of a proceeding by a fiduciary of any Multiemployer Plan against Seller or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days; and
- (F) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code, would result in the loss of tax-exempt status of the trust of which such Plan is a part if Seller or an ERISA Affiliate fails to timely provide security to such Plan in accordance with the provisions of said Sections.

Seller will furnish to Buyer, at the time it furnishes each set of financial statements pursuant to paragraph (ii) above, a certificate of a Responsible Officer of Seller to the effect that, to the best of such Responsible Officer's knowledge, Seller during such fiscal period or year has observed or performed all of its covenants and other agreements, and satisfied every material condition, contained in this Agreement and the other Program Documents to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate (and, if any Default or Event of Default has occurred and is continuing, describing the same in reasonable detail and describing the action Seller has taken or proposes to take with respect thereto).

(b) Litigation. Seller will promptly, and in any event within three (3) days after service of process on any of the following, give to Buyer notice of all legal or arbitrable proceedings affecting Seller

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or any of its Subsidiaries that (i) questions or challenges the validity or enforceability of any of the Program Documents or (ii) as to which there is a reasonable likelihood that an adverse determination would result in a Material Adverse Effect.

(c) Existence, Etc. Each of Seller and its Subsidiaries will:

- (i) (A) preserve and maintain its legal existence and all of its material rights, privileges, franchises; (B) maintain all licenses, permits or other approvals necessary to conduct its business and to perform its obligations under the Program Documents; and (C) except as would not be reasonably likely to have a Material Adverse Effect or would have a material adverse effect on the Purchased Loans or Buyer's interest therein, remain in good standing under the laws of each state in which it conducts business or any Mortgaged Property is located;
- (ii) comply with the requirements of and conduct its business strictly in accordance with all applicable laws, rules, regulations and orders of Governmental Authorities (including, without limitation, truth in lending, real estate settlement procedures and all environmental laws) if failure to comply with such requirements would be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect;
- (iii) keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied;
- (iv) not move its chief executive office or chief operating office from the addresses referred to in Section 12(m) unless it shall have provided Buyer 30 days prior written notice of such change;
- (v) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained; and
- (vi) permit representatives of Buyer, during normal business hours upon three (3) Business Days' prior written notice at a mutually desirable time or at any time during the continuance of an Event of Default, to examine, copy and make extracts from its books and records, to inspect any of its Properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by Buyer.

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(d) Prohibition of Fundamental Changes. Other than in connection with the Asset Purchase Agreement, dated May 12, 2011, by and among Seller, HLC Escrow, Inc., LendingTree, LLC, Tree.com, Inc. and Discover Bank, Seller shall not at any time, directly or indirectly, (i) enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all

or substantially all of its assets without Buyer's prior consent; or (ii) form or enter into any partnership, joint venture, syndicate or other combination which would have a Material Adverse Effect with respect to Seller.

- (e) Margin Deficit. If at any time there exists a Margin Deficit, Seller shall cure the same in accordance with Section 6 hereof.
- (f) Notices. Seller shall give notice to Buyer promptly in writing of any of the following:
  - (i) upon Seller becoming aware of, and in any event within one (1) Business Day after the occurrence of any Default, Event of Default or any event of default or default under any Program Document, Interest Rate Protection Agreement or other material agreement of Seller;
  - (ii) upon, and in any event within three (3) Business Days after, service of process on Seller or any of its Subsidiaries, or any agent thereof for service of process, in respect of any legal or arbitrable proceedings affecting Seller or any of its Subsidiaries (i) that questions or challenges the validity or enforceability of any of the Program Documents, (ii) in which the amount in controversy exceeds \$1,000,000 or (iii) which there is a reasonable likelihood of an adverse determination which would result in a Material Adverse Effect;
  - (iii) upon Seller becoming aware of any default related to any Purchased Items, any Material Adverse Effect and any event or change in circumstances which should reasonably be expected to have a Material Adverse Effect;
  - (iv) upon Seller determining during the normal course of its business that the Mortgaged Property in respect of any Loan or Loans with an aggregate unpaid principal balance of at least \$1,000,000 has been damaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty, or otherwise damaged so as to materially and adversely affect the Market Value of such Loan;
  - (v) upon the entry of a judgment or decree against Seller or any of its Subsidiaries in an amount in excess of \$1,000,000;
  - (vi) upon, and in any event within five (5) Business Days after, the termination, acceleration, maturity of or reduction in the amount available for borrowing under any repurchase agreement, loan and security agreement or similar credit facility or agreement for borrowed funds entered into by Seller and any third party;
  - (vii) upon Seller becoming aware of, and in any event within one (1) Business Day after the occurrence of any event such that, the aggregate amount of all repurchase and indemnity obligations of Seller to its third party investors (including any Agency) exceeds 30% of Seller's Liquidity;

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- (viii) any material change in the insurance coverage required of Seller or any other Person pursuant to any Program Document, with copy of evidence of same attached;
- (ix) any material dispute, licensing issue, litigation, audit, revocation, sanctions, penalties, investigation, proceeding or suspension between Seller or its Subsidiaries, on the one hand, and any Governmental Authority or any other Person;
- (x) any material change in accounting policies or financial reporting practices of Seller or its Subsidiaries;
- (xi) any material change in the management of Seller;
- (xii) notice of the revocation of any approvals of any Agency or HUD or changes to the approved mortgagee or approved servicer status with respect to the origination or servicing of mortgage loans by Seller or any subservicer;
- (xiii) any notice from CMI that Seller is on "watch"; and
- (xiv) any inspection or investigation of Seller, Seller's files or Seller's facilities by or at the request of, HUD or any Agency.

Each notice pursuant to this Section 13(f) shall be accompanied by a statement of a Responsible Officer of Seller, setting forth details of the occurrence referred to therein and stating what action Seller has taken or proposes to take with respect thereto.

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(g) Servicing. Except as provided in Section 43, Seller shall not permit any Person other than the Servicers to service Loans without the prior written consent of Buyer.

(h) Underwriting Guidelines. Without the prior written consent of Buyer, Seller shall not amend or otherwise modify the Underwriting Guidelines to the extent that such amendments, changes or modifications could (i) materially affect any Purchased Loans or Loans eligible for purchase hereunder or (ii) cause any Purchased Loan or Loan eligible for purchase hereunder to be unacceptable for purchase by at least two (2) Takeout Investors (other than with respect to DU Refinance Loans, Open Access Mortgage Loans and FHA Streamlined Loans). Without limiting the foregoing, in the event that Seller makes any amendment or modification to the Underwriting Guidelines, Seller shall promptly deliver to Buyer a complete copy of the amended or modified Underwriting Guidelines. In no event shall any such modification, change or amendment described in clauses (i) and (ii) above be effective with respect to any Purchased Loan unless Buyer has consented in writing to any such modification, change or amendment.

(i) Lines of Business. Seller shall not engage to any substantial extent in any line or lines of business activity other than the businesses generally carried on by it as of the Effective Date.

(j) Transactions with Affiliates. Seller shall not (1) enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate unless such transaction is (i) in the ordinary course of Seller's business and would not be reasonably likely to impair materially (x) the ability of Seller to perform under the terms of the Program Documents or (y) the Loans, and (ii) upon fair and reasonable terms no less favorable to Seller than it would obtain in a comparable arm's length transaction with a Person which is not an Affiliate or (2) make a payment that is not otherwise permitted by this Section (j) to any Affiliate.

(k) Defense of Title. Seller warrants and will defend the right, title and interest of Buyer in and to all Purchased Items against all adverse claims and demands of all Persons whomsoever.

(l) Preservation of Purchased Items. Seller shall do all things necessary to preserve the Purchased Items so that such Purchased Items remain subject to a first priority perfected security interest hereunder. Without limiting the foregoing, Seller will comply with all applicable laws, rules and regulations of any Governmental Authority applicable to Seller or relating to the Purchased Items and cause the Purchased Items to comply with all applicable laws, rules and regulations of any such Governmental Authority. Seller will not allow any default to occur for which Seller is responsible under any Purchased Items or any Program Documents and Seller shall fully perform or cause to be performed when due all of its obligations under any Purchased Items or the Program Documents.

(m) No Assignment. Seller shall not (i) sell, assign, transfer or otherwise dispose of, or grant any option with respect to, or pledge, hypothecate or grant a security interest in or lien on or otherwise encumber (except pursuant to the Program Documents), any of the Purchased Loans or any interest therein, or (ii) enter into any agreement or undertaking restricting the right or ability of Seller or Buyer to sell, assign or transfer any of the Assets, provided that this Section 13(m) shall not prevent any contribution, assignment, transfer or conveyance of Purchased Assets in accordance with the Program Documents.

(n) Limitation on Sale of Assets. Except in connection with (i) the Program Documents or any securitization transaction or (ii) the Discover Financial Transaction, Seller shall not convey, sell, lease, assign, transfer or otherwise dispose of (collectively, "Transfer"), all or substantially all of its Property, business or assets (including, without limitation, receivables and leasehold interests) whether now owned or hereafter acquired or allow any Subsidiary to Transfer substantially all of its assets to any

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Person; provided, that Seller may after prior written notice to Buyer allow such action with respect to any Subsidiary which is not a material part of Seller's overall business operations.

(o) Limitation on Distributions. Without Buyer's consent, Seller shall not make any payment on account of, or set apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any stock or senior or subordinate debt of Seller, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of Seller; provided that so long as no Default has occurred hereunder or under any other Program Document, Seller may make payments necessary in the ordinary course of Seller's business provided that no such payments shall exceed \$2,500,000 individually, and \$5,000,000 in the aggregate, in each case without Buyer's consent.

(p) Financial Covenants. Seller shall comply with the following financial covenants: (A) the ratio of Seller's Total Indebtedness, to Tangible Net Worth shall not at any time be greater than 10:1, (B) Seller shall maintain minimum Liquidity at all times in an amount of not less than the greater of (1) 3% of Seller's 3% of Seller's actual total assets (as set forth on Seller's most recent month-end balance sheets), and (2) \$7,000,000, (C) the Tangible Net Worth of Seller shall at all times be greater than \$25,000,000, (D) the ratio of (i) the book value assigned to Seller's servicing portfolio to (ii) Seller's Tangible Net Worth is less than 1.5:1 and (E) Seller's consolidated net income shall be equal to or greater than \$1.00 for at least one (1) of the previous two (2) consecutive fiscal quarters, as of the end of each fiscal quarter.

(q) Servicing Portfolio. The book value of Seller's servicing portfolio, determined in accordance with GAAP, shall not exceed the product of (i) 4.0, multiplied by (ii) the weighted average servicing fee for all mortgage loans serviced by Seller.

(r) Power of Attorney. Seller shall, from time to time at the request of Buyer, deliver to Buyer any powers of attorney or other documentation required by Buyer to ensure the enforceability under applicable law of any rights and/or powers granted to Buyer in Section 8 of this Agreement.

(s) Restricted Payments. Seller shall not make any Restricted Payments following an Event of Default.

(t) Servicing Transmission. Seller shall provide to Buyer on a monthly basis no later than 11:00 a.m. New York City time two (2) Business Days prior to each Repurchase Date (or such other day requested by Buyer) (i) the Servicing Transmission, on an asset-by-asset basis and in the aggregate, with respect to the Loans serviced hereunder by Seller which were funded prior to the first day of the current month, summarizing (A) Seller delinquency and loss experience with respect to Loans serviced by Seller (including, in the case of the Loans, the following categories: current, 30-59, 60-89 and 90+) and (B) any Mortgagor that is in bankruptcy, and (ii) any other information reasonably requested by Buyer with respect to the Purchased Loans. Each monthly servicing report described above shall separately identify Purchased Loans subject to outstanding Transactions hereunder and the related Purchase Date therefor.

(u) Amendment or Compromise. In the event that Seller or anyone acting on Seller's behalf amends, modifies or waives any term or condition of, or settles or compromises any claim in respect of, or extends the scheduled maturity date or modifies the interest rate of any item of the Purchased Loans, any such amendment, modification, waiver, settlement, compromise, extension, cancellation or discharge shall be flagged to Buyer on the Transaction Notice. Seller shall promptly provide or shall cause to be provided to Buyer, any information requested by Buyer with respect to any action taken pursuant to this paragraph. Seller shall not cancel or discharge any of the outstanding principal balance of any Purchased Loan.

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(v) Maintenance of Property; Insurance. Seller shall keep all property useful and necessary in its business in good working order and condition. Seller shall maintain errors and omissions insurance and/or mortgage impairment insurance and blanket bond coverage in such amounts as are in effect on the Effective Date and are customarily required by Fannie Mae and Freddie Mac (as disclosed to Buyer in writing) and shall not reduce such coverage without the written consent of Buyer, and shall also maintain such other insurance with financially sound and reputable insurance companies, and with respect to property and risks of a character usually maintained by entities engaged in the same or similar business similarly situated, against loss, damage and liability of the kinds and in the amounts customarily maintained by such entities.

(w) Further Identification of Purchased Items. Seller will furnish to Buyer from time to time statements and schedules further identifying and describing the Purchased Items and such other reports in connection with the Purchased Items as Buyer may reasonably request, all in reasonable detail.

(x) Loans Determined to be Defective. Upon discovery by Seller of any breach of any representation or warranty listed on Schedule 1 hereto applicable to any Loan, Seller shall promptly give notice of such discovery to Buyer.

(y) Interest Rate Protection Agreements. Upon Buyer's request, Seller shall deliver to Buyer any and all information relating to Interest Rate Protection Agreements.

(z) Certificate of a Responsible Officer of Seller. At the time that Seller delivers financial statements to Buyer in accordance with Section 13(a) hereof, Seller shall forward to Buyer a certificate of a Responsible Officer of Seller which demonstrates that Seller is in compliance with the covenants set forth in Sections 13(p), and (aa).

(aa) Additional Committed Repurchase or Warehouse Facility. Seller shall maintain throughout the term of this Agreement, with a nationally recognized and established counterparty (other than Buyer) one or more committed loan repurchase or warehouse facilities for wet and dry mortgage loans of a credit quality similar to the Loans to be purchased hereunder, originated or acquired by Seller, in an aggregate amount not less than \$50,000,000, which facility or facilities shall have terms and conditions comparable to those provided under this Agreement, including as to the financial condition of Seller.

(bb) Business Operations. Seller shall not, without the prior written consent of Buyer, directly or indirectly alter, modify or otherwise change: (i) its current business operations; and (ii) its current mortgage loan origination platform (including but not limited to its process of mortgage loan acquisitions).

(cc) Maintenance of Papers, Records and Files.

- (i) Seller shall acquire, and Seller shall build, maintain and have available, a complete file in accordance with lending industry custom and practice for each Purchased Loan. Seller will maintain all such Records not in the possession of Custodian or Buyer in good and complete condition in accordance with industry practices and preserve them against loss or destruction.
- (ii) Seller shall collect and maintain or cause to be collected and maintained all Records relating to the Purchased Loans in accordance with industry custom and practice, including those maintained pursuant to subsection (i), and all such Records shall be in Custodian's possession unless Buyer otherwise approves.

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Seller shall deliver to Buyer or its designee updates of such Servicing Records at least monthly. Seller will not cause or authorize any such papers, records or files that are an original or an only copy to leave Custodian's possession, except for individual items removed in connection with servicing a specific Loan, in which event Seller will obtain or cause to be obtained a receipt from Custodian for any such paper, record or file.

- (iii) For so long as Buyer has an interest in or lien on any Purchased Loan, Seller will hold or cause to be held all related Records in trust for Buyer. Seller shall notify, or cause to be notified, every other party holding any such Records of the interests and liens granted hereby.
- (iv) Upon reasonable advance notice from Custodian or Buyer, Seller shall (x) make any and all such Records available to Custodian or Buyer to examine any such Records, either by its own officers or employees, or by agents or contractors, or both, and make copies of all or any portion thereof, (y) permit Buyer or its authorized agents to discuss the affairs, finances and accounts of Seller with its respective chief operating officer and chief financial officer and to discuss the affairs, finances and accounts of Seller with its independent certified public accountants.

(dd) Maintenance of Licenses. Seller shall (i) maintain all licenses, permits or other approvals necessary for Seller to conduct its business and to perform its obligations under the Program Documents, including but not limited to, any FHA licenses or approvals, (ii) remain in good standing under the laws of each state in which it conducts business or any Mortgaged Property is located, and (iii) shall conduct its business strictly in accordance with applicable law.

(ee) Taxes, Etc. Seller shall pay and discharge or cause to be paid and discharged, when due, all taxes, assessments and governmental charges or levies imposed upon Seller or upon its income and profits or upon any of its property, real, personal or mixed (including without limitation, the Purchased Loans) or upon any part thereof, as well as any other lawful claims which, if unpaid, might become a Lien upon such properties or any part thereof, except for any such taxes, assessments and governmental charges, levies or claims as are appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves are provided. Seller shall file on a timely basis all federal, state and local tax and information returns, reports and any other information statements or schedules required to be filed by or in respect of it.

(ff) Use of Custodian. Without the prior written consent of Buyer, Seller shall use no third party custodian as document custodian other than Custodian with respect to the Purchased Loans.

(gg) Change of Fiscal Year. Seller will not at any time, directly or indirectly, except upon ninety (90) days' prior written notice to Buyer, change the date on which Seller's fiscal year begins from Seller's current fiscal year beginning date.



(hh) Delivery of Servicing Rights and Servicing Records. With respect to the Servicing Rights appurtenant to each Purchased Loan, Buyer shall own, and Seller shall deliver, such Servicing Rights to Buyer on the related Purchase Date. Seller shall deliver (or cause the related Subservicer to deliver) the Servicing Records (including any FHA required records, if any) and the physical and contractual servicing of each Purchased Loan, to Buyer or its designee upon the termination of Seller or Subservicer as the servicer or subservicer, respectively, pursuant to Section 43(d). In addition, with respect to the Servicing Records for each Purchased Loan and the physical and contractual servicing of

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each Purchased Loan, the related Seller shall deliver (or cause the related Subservicer to deliver) such Servicing Records and, to the extent applicable, the servicing to Buyer or its designee within thirty (30) days of the earlier of (i) the termination of Seller or Subservicer as the servicer or subservicer, respectively, of the Purchased Loans and (ii) the related Purchase Date for each such Purchased Loan (the "Servicing Delivery Requirement"). Notwithstanding the foregoing, such Servicing Delivery Requirement will be deemed restated for each such Purchased Loan on each Repurchase Date on which such Purchased Loan is repurchased by Seller and becomes subject to a new Transaction (and the immediately preceding delivery requirement will be deemed to be rescinded), and a new 30 day Servicing Delivery Requirement will be deemed to commence for such Purchased Loans as of such Repurchase Date in the absence of directions to the contrary from Buyer. Further, the Servicing Delivery Requirement will no longer apply to any Purchased Loan that is repurchased in full by the related Seller in accordance with the provisions of this Agreement and is no longer subject to a Transaction. Seller's transfer of the Servicing Rights, Servicing Records and the physical and contractual servicing under this Section shall be in accordance with customary standards in the industry and such transfer shall include the transfer of the gross amount of all escrows held for the related mortgagors (without reduction for unreimbursed advances or "negative escrows").

(ii) Establishment of Collection Account. Within ten (10) days following the date hereof, Seller shall establish the Collection Account for the sole and exclusive benefit of Buyer. Upon the direction of the Buyer and at all times thereafter, Seller shall segregate all amounts collected on account of the Purchased Loans, to be held in trust for the benefit of Buyer, and shall remit such collections in accordance with Buyer's written instructions. No amounts deposited into such account shall be removed without Buyer's prior written consent. Seller shall follow the instructions of Buyer with respect to the Purchased Loans and deliver to Buyer any information with respect to the Purchased Loans reasonably requested by Buyer. Upon and after the occurrence of a Default, Seller shall deposit or credit to the Collection Account all items to be deposited or credited thereto irrespective of any right of setoff or counterclaim arising in favor of it (or any third party claiming through it) under any other agreement or arrangement.

(jj) MERS. Seller and the Servicer are members of MERS in good standing and current in the payment of all fees and assessments imposed by MERS, and shall comply with all rules and procedures of MERS in connection with the servicing of MERS Loans for as long as such Purchased Loans are registered with MERS. Seller shall, or shall cause the Servicer to follow all instructions provided by Buyer with respect to any MERS Loans that are Purchased Loans, including without limitation, the removal of Purchased Loans from MERS and assignment out of MERS within two (2) Business Days of receipt of instructions from Buyer.

(kk) FHA. Seller shall make all advances and other payments and provide all such reports and notices as are required under the FHA Regulations, as applicable, and otherwise take all actions necessary to maintain and keep in full force and effect, during the term of this Agreement, the FHA Insurance Contract, including providing any notices required to be delivered to the FHA, by Seller in connection with the servicing of the Loans pursuant hereto.

(ll) Agency Approvals. Should Seller, for any reason, cease to possess any applicable Agency approval, or should notification to the relevant Agency or to the Department of Housing and Urban Development or FHA be required, Seller shall so notify Buyer immediately in writing. Notwithstanding the preceding sentence, Seller shall take all necessary action to maintain all of its applicable Agency approvals at all times during the term of this Agreement and each outstanding Transaction.

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(mm) Loan Purchase Agreements. Seller shall maintain, and shall not be in default under, at least one whole loan purchase agreement with at least one third party purchaser or Agency, pursuant to which such third party purchaser or Agency has agreed to purchase Eligible Loans from Seller. Seller shall ensure that each Loan sold to Buyer in a Transaction hereunder is eligible for sale to such third party purchaser or Agency pursuant to such purchase agreement.

(nn) Fannie Mae Bifurcation Programs and Servicing. From and after October 13, 2011, Seller shall not participate in any bifurcation program or conduct any servicing for Fannie Mae.

(oo) Quality Control. Seller shall maintain an internal quality control program that evaluates and monitors, on a regular basis, the overall quality of its servicing activities and that: ensures that the Mortgage Loans are serviced in accordance with Accepted Servicing Practices; guards against dishonest, fraudulent, or negligent acts; and guards against errors and omissions by officers, employees, or other authorized persons (the "Quality Control Program").

#### **14. REPURCHASE DATE PAYMENTS**

On each Repurchase Date, Seller shall remit or shall cause to be remitted to Buyer the Repurchase Price together with any other Obligations then due and payable.

#### **15. REPURCHASE OF PURCHASED LOANS**

Upon discovery by Seller of a breach of any of the representations and warranties set forth on Schedule 1 to this Agreement, Seller shall give prompt written notice thereof to Buyer. It is understood and agreed that the representations and warranties set forth in Schedule 1 with respect to the Purchased Loans shall survive delivery of the respective Mortgage Files to Custodian and shall inure to the benefit of Buyer. The fact that Buyer has conducted or has failed to conduct any partial or complete due diligence investigation in connection with its purchase of any Purchased Loan shall not affect Buyer's right to demand repurchase as provided under this Agreement. Seller shall, upon the earlier of Seller's discovery or Seller receiving notice with respect to any Purchased Loan of (i) any breach of a representation or warranty contained in Schedule 1, or (ii) any failure to deliver any of the items required to be delivered as part of the Mortgage File within the time period required for delivery pursuant to the Custodial Agreement, promptly cure such breach or delivery failure in all material respects. If on the Business Day after the earlier of Seller's discovery of such breach or delivery failure or Seller receiving notice thereof that such

breach or delivery failure has not been remedied by Seller and such breach or delivery failure would cause Buyer to require the repurchase of such Purchased Loan, Seller shall promptly upon receipt of written instructions from Buyer repurchase such Purchased Loan at a purchase price equal to the Repurchase Price with respect to such Purchased Loan by wire transfer to the account designated by Buyer.

**16. RESERVED**

**17. RESERVED**

**18. EVENTS OF DEFAULT**

Each of the following events shall constitute an Event of Default (an "Event of Default") hereunder:

(a) Seller fails to transfer the related Purchased Loans to Buyer on the applicable Purchase Date (provided Buyer has tendered the related Purchase Price); or

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(b) Seller fails to repurchase the Purchased Loans on the applicable Repurchase Date or fails to perform its obligations under Section 6; or

(c) Seller or any Guarantor shall default in the payment of any other amount payable by it hereunder or under any other Program Document after notification by Buyer of such default, and such default shall have continued unremedied for three Business Days; or

(d) Any representation, warranty or certification made or deemed made herein or in any other Program Document by Seller or any Guarantor or any certificate furnished to Buyer pursuant to the provisions thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished (other than the representations and warranties set forth in Schedule 1 which shall be considered solely for the purpose of determining the Market Value of the Loans; unless (i) Seller shall have made any such representations and warranties with knowledge that they were materially false or misleading at the time made or (ii) any such representations and warranties have been determined by Buyer in its sole discretion to be materially false or misleading on a regular basis); or

(e) Seller shall fail to comply with the requirements of Section 13(c)(i)(A), Section 13(d), Section 13(f)(i), Section 13(m), Section 13(n), Section 13(o), Section 13(p), Section 13(dd) or Section 13(jj) hereof, and such default shall continue unremedied for a period of one (1) Business Day; or Seller or any Guarantor shall otherwise fail to observe or perform any other obligation, representation or covenant contained in this Agreement or any other Program Document and such failure to observe or perform shall continue unremedied for a period of five (5) Business Days; or

(f) Any final judgment or judgments or order or orders for the payment of money in excess of \$2,000,000 in the aggregate (to the extent that it is, in the reasonable determination of Buyer, uninsured and provided that any insurance or other credit posted in connection with an appeal shall not be deemed insurance for these purposes) shall be rendered against Seller, any Guarantor or any their Subsidiaries by one or more courts, administrative tribunals or other bodies having jurisdiction over them and the same shall not be discharged (or provisions shall not be made for such discharge) or bonded, or a stay of execution thereof shall not be procured, within sixty (60) days from the date of entry thereof and Seller, such Guarantor or any such Subsidiary shall not, within said period of sixty (60) days, or such longer period during which execution of the same shall have been stayed or bonded, appeal therefrom and cause the execution thereof to be stayed during such appeal; or

(g) Seller or any Guarantor shall admit in writing its inability to, or intention not to, perform any of their Obligations, or Buyer shall have determined in good faith that Seller or any Guarantor is unable to meet its commitments; or

(h) Seller, any Guarantor or any of their Affiliates files a voluntary petition in bankruptcy, seeks relief under any provision of any bankruptcy, reorganization, moratorium, delinquency, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, conservator, trustee, liquidator, sequestrator or similar official for Seller, any Guarantor or any of their Affiliates, or of all or any part of Seller's, Guarantors' or their Affiliates' Property; or makes an assignment for the benefit of Seller's, any Guarantor's or their Affiliates' creditors; or

(i) A custodian, receiver, conservator, liquidator, trustee, sequestrator or similar official for Seller, any Guarantor or any of their Affiliates, or of any of Seller's, any Guarantor's or any of their Affiliates' respective Property (as a debtor or creditor protection procedure), is appointed or takes possession of such Property; or Seller, any Guarantor or any of their Affiliates generally fails to pay

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Seller's, such Guarantor's or any of their Affiliates' debts as they become due; or Seller, any Guarantor or any of their Affiliates is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code, or any successor or similar applicable statute, or any administrative insolvency scheme, against Seller, any Guarantor or any of their Affiliates; or any of Seller's, any Guarantor's or their Affiliates' Property is sequestered by court or administrative order; or a petition is filed against Seller, any Guarantor, or any of their Affiliates under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, moratorium, delinquency or liquidation law of any jurisdiction, whether now or subsequently in effect; or

(j) Any Governmental Authority or any person, agency or entity acting or purporting to act under governmental authority shall have taken any action to condemn, seize or appropriate, or to assume custody or control of, all or any substantial part of the Property of Seller, any Guarantor or any of their Affiliates, or shall have taken any action to displace the management of Seller, any Guarantor or any of their Affiliates or to curtail its authority in the conduct of the business of Seller, any Guarantor or any of their Affiliates, or takes any action in the nature of enforcement to remove, limit or restrict the approval of Seller, any Guarantor or any of their Affiliates' as an issuer, buyer or seller/servicer of loans or securities backed thereby, and such action provided for in this subsection (j) shall not have been discontinued or stayed within thirty (30) days; or

(k) (i) Any Program Document shall for whatever reason (including an event of default thereunder) be terminated (other than as agreed upon by Buyer and Seller), or (ii) this Agreement shall for any reason cease to create a valid, first priority security interest or ownership interest upon transfer in any of

the Purchased Loans or Purchased Items purported to be covered hereby or any of Seller's material obligations (including the Obligations hereunder) shall cease to be in full force and effect, or the enforceability thereof shall be contested by Seller; or

(l) Any Material Adverse Effect shall have occurred as determined by Buyer in its reasonable discretion; or

(m) (i) Seller, any Guarantor or any ERISA Affiliate shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) a determination that a Plan is "at risk" (within the meaning of Section 302 of ERISA) or any Lien in favor of the PBGC or a Plan shall arise on the assets of Seller, any Guarantor or any ERISA Affiliate, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of Buyer, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Plan shall terminate for purposes of Title IV of ERISA, (v) Seller, any Guarantor or any ERISA Affiliate shall, or in the reasonable opinion of Buyer is likely to, incur any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan, (vi) Seller, any Guarantor or any ERISA Affiliate shall file an application for a minimum funding waiver under Section 302 of ERISA or Section 412 of the Code with respect to any Plan, (vii) any obligation for post-retirement medical costs (other than as required by COBRA) exists, or (viii) any other event or condition shall occur or exist with respect to a Plan and in each case in clauses (i) through (vii) above, such event or condition, together with all other such events or conditions, if any, is likely to subject Seller, any Guarantor or any of their Affiliates to any tax, penalty or other liabilities in the aggregate material in relation to the business, operations, property or financial or other condition of Seller or any of its Affiliates or could reasonably be expected to have a Material Adverse Effect; or

(n) A Change of Control of Seller shall have occurred without the prior consent of Buyer; or

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(o) Seller shall grant, or suffer to exist, any Lien on any Purchased Items except the Liens contemplated hereby; or the Liens contemplated hereby shall cease to be first priority perfected Liens on the Purchased Items in favor of Buyer or shall be Liens in favor of any Person other than Buyer; or

(p) Buyer shall reasonably request, specifying the reasons for such request, reasonable information, and/or written responses to such requests, regarding the financial well-being of Seller or any Guarantor (including but not limited to any information regarding any repurchase and indemnity requests or demands made upon Seller by any third party investors (including any Agency)) and such reasonable information and/or responses shall not have been provided within three (3) Business Days of such request; or

(q) Seller, any Guarantor or any of their Affiliates shall default under, or fail to perform as required under, or shall otherwise breach the terms of any instrument, agreement or contract between Seller, such Guarantor or such other entity, on the one hand, and Buyer or any of Buyer's Affiliates on the other; or Seller, any Guarantor or any Affiliate of Seller or Guarantor shall default under, or fail to perform as required under, the terms of any repurchase agreement, loan and security agreement or similar credit facility or agreement for borrowed funds entered into by Seller or such other entity and any third party, which default or failure entitles any party to cause acceleration or require prepayment of any indebtedness thereunder; or

(r) Seller's membership in MERS is terminated for any reason; or

(s) The aggregate amount of all repurchase and indemnity obligations of Seller to its third party investors (including any Agency) exceeds 50% of Seller's Liquidity; or

(t) Seller receives a notice of denial from any Agency or any Agency terminates, revokes or suspends Seller's approval to sell and service loans to such Agency (including but not limited to its approval to use DU or LP to underwrite mortgage loans); provided, however, that Buyer acknowledges that Seller's agreement not to participate in bifurcation programs or conduct servicing activity for Fannie Mae as of October 13, 2011 is not an Event of Default hereunder; provided that Seller has not participated in any bifurcation program or conducted any servicing for Fannie Mae since October 13, 2011; or

(u) Seller shall cease to be approved by or its approval shall be revoked, suspended, rescinded, halted, eliminated, withdrawn, annulled, repealed, voided or terminated by (i) HUD, pursuant to Sections 203 and 211 of the National Housing Act, (ii) the FHA, as an FHA Approved Mortgagee or servicer, or (iii) Fannie Mae or Freddie Mac as an approved seller/servicer or lender provided, however, that Buyer acknowledges that Seller's agreement not to participate in bifurcation programs or conduct servicing activity for Fannie Mae as of October 13, 2011 is not an Event of Default hereunder; provided that Seller has not participated in any bifurcation program or conducted any servicing for Fannie Mae since October 13, 2011; or

(v) Any Agency shall at any time cease to accept delivery of any loan or loans from Seller under any program or notifies Seller that any such Agency shall cease accepting loan deliveries from Seller; provided, however, that Buyer acknowledges that Seller's agreement not to participate in bifurcation programs or conduct servicing activity for Fannie Mae as of October 13, 2011 is not an Event of Default hereunder; provided that Seller has not participated in any bifurcation program or conducted any servicing for Fannie Mae since October 13, 2011; or

(w) All or a portion of Seller's or any Guarantor's servicing portfolio consisting of Fannie Mae or Freddie Mac loans is seized or the servicing of all or a portion of such loans is otherwise transferred away from Seller or any Guarantor; or

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(x) Seller or any Guarantor becomes subject to any litigation, proceeding or dispute with CMI other than repurchase claims in the ordinary course of business, which litigation, proceeding or dispute is deemed material by Buyer; or

(y) Seller fails to pay any portion of the Commitment Fee when due hereunder; or

(z) Servicer's or Subservicer's FHA servicing eligibility is suspended, revoked or becomes subject to an investigation by the FHA; or

(aa) Seller's status as an FHA Approved Mortgagee is suspended, revoked or becomes subject to an investigation by the FHA; or

(bb) [reserved]; or

(cc) The 6-month rolling average rate of rejection by the FHA of insurance claims by Seller and/or any Subsidiary or Affiliate of Seller exceeds 5% (by number of loans or unpaid principal balance) of claims submitted by Seller and/or any Subsidiary or Affiliate of Seller; or

(dd) The 6-month rolling average ratio of reimbursement by the FHA to claims submitted by Seller and/or any Subsidiary or Affiliate of Seller is less than 90%; or

(ee) The 6-month rolling average rate of rejection by Fannie Mae or Freddie Mac of sales by Seller and/or any Subsidiary or Affiliate of Seller exceeds 5% (by number of loans or unpaid principal balance) of proposed sales by Seller and/or any Subsidiary or Affiliate of Seller;

(ff) The 6-month rolling average ratio of sales by Seller and/or any Subsidiary of Seller to Fannie Mae or Freddie Mac to proposed sales by Seller and/or any Subsidiary or Affiliate of Seller to Fannie Mae or Freddie Mac is less than 90%;

(gg) The “compare ratio” assigned to Seller by FHA under its 2-Year FHA “Neighborhood Watch” program with respect to the following Lender ID: Home Loan Center Inc. - 18569, is greater than 100%; provided, however, that Buyer may, by providing prior written notice to Seller in Buyer’s sole but reasonable discretion, adopt a different threshold for such ratio or other statistic, and in such event, there shall be an Event of Default hereunder if the “compare ratio” or such other statistic assigned to Seller by FHA is less favorable than such threshold adopted by Buyer; or

(hh) To the extent Seller has “delegated lender insurance authority” from HUD as of the date hereof, such authority shall be revoked or suspended at any time by HUD.

## 19. REMEDIES

Upon the occurrence of an Event of Default, Buyer, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Event of Default pursuant to Section 18(g), (h), (i) or (j) hereof), shall have the right to exercise any or all of the following rights and remedies:

(a)(i) The Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (provided that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). Seller’s obligations hereunder to repurchase all Purchased Loans at the Repurchase Price therefor on the Repurchase Date in such Transactions shall thereupon become immediately due and payable; all Income then on deposit in

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the Collection Account and all Income paid after such exercise or deemed exercise shall be remitted to and retained by Buyer and applied to the aggregate Repurchase Price and any other amounts owing by Seller hereunder; Seller shall immediately deliver to Buyer or its designee any and all original papers, Records and files relating to the Purchased Loans subject to such Transaction then in Seller’s possession and/or control; and all right, title and interest in and entitlement to such Purchased Loans and Servicing Rights thereon shall be deemed transferred to Buyer or its designee.

(ii) Buyer shall have the right to (A) sell, on or following the Business Day following the date on which the Repurchase Price became due and payable pursuant to Section 19(a)(i) without notice or demand of any kind, at a public or private sale and at such price or prices as Buyer may deem commercially reasonable any or all Purchased Loans and/or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Loans, to give Seller credit for such Purchased Loans in an amount equal to the Market Value of the Purchased Loans against the aggregate unpaid Repurchase Price and any other amounts owing by Seller hereunder, provided, however, with respect to Purchased Loans with a Market Value of zero, Buyer shall in its sole discretion either sell such Purchased Loans in accordance with clause (A) of this Section 19(a)(ii) or release such Purchased Loans to Seller. Seller shall remain liable to Buyer for any amounts that remain owing to Buyer following a sale and/or credit under the preceding sentence. The proceeds of any disposition of Purchased Loans shall be applied first to the reasonable costs and expenses incurred by Buyer in connection with or as a result of an Event of Default; second, costs of cover and/or related hedging transactions; third to the aggregate Repurchase Prices; and fourth to all other Obligations.

(iii) Buyer shall have the right to terminate this Agreement and declare all obligations of Seller to be immediately due and payable, by a notice in accordance with Section 21 hereof provided no such notice shall be required for an Event of Default pursuant to Section 18(g), (h), (i) or (j).

(iv) The parties recognize that it may not be possible to purchase or sell all of the Purchased Loans on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such Purchased Loans may not be liquid. In view of the nature of the Purchased Loans, the parties agree that liquidation of a Transaction or the underlying Purchased Loans does not require a public purchase or sale and that a good faith private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, Buyer may elect the time and manner of liquidating any Purchased Loans and nothing contained herein shall obligate Buyer to liquidate any Purchased Loans on the occurrence of an Event of Default or to liquidate all Purchased Loans in the same manner or on the same Business Day or constitute a waiver of any right or remedy of Buyer. Notwithstanding the foregoing, the parties to this Agreement agree that the Transactions have been entered into in consideration of and in reliance upon the fact that all Transactions hereunder constitute a single business and contractual obligation and that each Transaction has been entered into in consideration of the other Transactions.

(vi) To the extent permitted by applicable law, Seller waives all claims, damages and demands it may acquire against Buyer arising out of the exercise by Buyer of any of its rights hereunder, other than those claims, damages and demands arising from the gross negligence or willful misconduct of Buyer. If any notice of a proposed sale or other disposition of Purchased Items shall be required by law, such notice shall be deemed reasonable and proper if given at least 2 days before such sale or other disposition.

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(b) Seller hereby acknowledges, admits and agrees that Seller's obligations under this Agreement are recourse obligations of Seller to which Seller pledges its full faith and credit. In addition to its rights hereunder, Buyer shall have the right to proceed against any of Seller's assets which may be in the possession of Buyer, any of Buyer's Affiliates or their respective designees (including Custodian), including the right to liquidate such assets and to set-off the proceeds against monies owed by Seller to Buyer pursuant to this Agreement. Buyer may set off cash, the proceeds of the liquidation of the Purchased Loans and Additional Purchased Loans, any other Purchased Items and their proceeds and all other sums or obligations owed by Buyer, or any of Buyer's Affiliates, to Seller against all of Seller's obligations to Buyer, whether under this Agreement, under a Transaction, or under any other agreement among the parties, or otherwise, whether or not such obligations are then due, without prejudice to Buyer's right to recover any deficiency.

(c) Buyer shall have the right to obtain physical possession of the Servicing Records and all other files of Seller relating to the Purchased Loans (to the extent not repurchased) and all documents relating to the Purchased Loans (to the extent not repurchased) which are then or may thereafter come into the possession of Seller or any third party acting for Seller and Seller shall deliver to Buyer such assignments as Buyer shall request.

(d) Buyer shall have the right to direct all Persons servicing the Purchased Loans to take such action with respect to the Purchased Loans as Buyer determines appropriate.

(e) Buyer shall, without regard to the adequacy of the security for the Obligations, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of and protect, collect, manage, liquidate, and sell the Purchased Loans and any other Purchased Items or any portion thereof, collect the payments due with respect to the Purchased Loans and any other Purchased Items or any portion thereof, and do anything that Buyer is authorized hereunder or by law to do. Seller shall pay all costs and expenses incurred by Buyer in connection with the appointment and activities of such receiver.

(f) Buyer may, at its option, enter into one or more Interest Rate Protection Agreements covering all or a portion of the Purchased Loans, and Seller shall be responsible for all damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against Buyer relating to or arising out of such Interest Rate Protection Agreements for a period of thirty (30) days following the occurrence of an Event of Default; including without limitation any losses resulting from such Interest Rate Protection Agreements; provided that Buyer shall not have the right to enter into any such Interest Rate Protection Agreement if Seller assigns to buyer an Interest Rate Protection Agreement acceptable to Buyer.

(g) In addition to all the rights and remedies specifically provided herein, Buyer shall have all other rights and remedies provided by applicable federal, state, foreign, and local laws, whether existing at law, in equity or by statute, including, without limitation, all rights and remedies available to a purchaser or a secured party, as applicable, under the Uniform Commercial Code.

Except as otherwise expressly provided in this Agreement, Buyer shall have the right to exercise any of its rights and/or remedies without presentment, demand, protest or further notice of any kind other than as expressly set forth herein, all of which are hereby expressly waived by Seller.

Buyer may enforce its rights and remedies hereunder without prior judicial process or hearing, and Seller hereby expressly waives, to the extent permitted by law, any right Seller might otherwise have to require Buyer to enforce its rights by judicial process. Seller also waives, to the extent permitted by law, any defense Seller might otherwise have to the Obligations, arising from use of nonjudicial process,

enforcement and sale of all or any portion of the Purchased Loans and any other Purchased Items or from any other election of remedies. Seller recognizes that nonjudicial remedies are consistent with the usages of the trade, are responsive to commercial necessity and are the result of a bargain at arm's length.

Seller shall cause all sums received by it with respect to the Purchased Loans to be deposited with such Person as Buyer may direct after receipt thereof. Seller shall be liable to Buyer for the amount of all expenses (plus interest thereon at a rate equal to the Post-Default Rate).

## **20. DELAY NOT WAIVER; REMEDIES ARE CUMULATIVE**

No failure on the part of Buyer to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All rights and remedies of Buyer provided for herein are cumulative and in addition to any and all other rights and remedies provided by law, the Program Documents and the other instruments and agreements contemplated hereby and thereby, and are not conditional or contingent on any attempt by Buyer to exercise any of its rights under any other related document. Buyer may exercise at any time after the occurrence of an Event of Default one or more remedies, as they so desire, and may thereafter at any time and from time to time exercise any other remedy or remedies.

## **21. NOTICES AND OTHER COMMUNICATIONS**

Except as otherwise expressly permitted by this Agreement, all notices, requests and other communications provided for herein and under the Custodial Agreement (including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including, without limitation, by telex or telecopy or Electronic Transmission) delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof); or, as to any party, at such other address as shall be designated by such party in a written notice to each other party. Except as otherwise provided in this Agreement and except for notices given by Seller under Section 3(b) (which shall be effective only on receipt), all such communications shall be deemed to have been duly given when transmitted (i) by Electronic Transmission and followed by written notice via overnight courier or (ii) by telex or telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

## **22. USE OF EMPLOYEE PLAN ASSETS**

No assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") shall be used by either party hereto in a Transaction.

## **23. INDEMNIFICATION AND EXPENSES**

(a) Seller agrees to hold Buyer, its Affiliates and each of their officers, directors, employees, agents and advisors (each an "Indemnified Party") harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such Indemnified Party (collectively, the "Costs") relating to or arising out of this Agreement, any other Program Document or any transaction contemplated hereby or thereby, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, any other Program Document or any transaction contemplated hereby or thereby, that, in each case, results from anything other than any Indemnified Party's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Seller agrees to hold any Indemnified Party harmless

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from and indemnify such Indemnified Party against all Costs with respect to all Loans relating to or arising out of any violation or alleged violation of any environmental law, rule or regulation or any consumer credit laws, including without limitation laws with respect to unfair or deceptive lending practices and predatory lending practices, the Truth in Lending Act and/or the Real Estate Settlement Procedures Act, that, in each case, results from anything other than such Indemnified Party's gross negligence or willful misconduct. In any suit, proceeding or action brought by an Indemnified Party in connection with any Loan for any sum owing thereunder, or to enforce any provisions of any Loan, Seller will save, indemnify and hold such Indemnified Party harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim, recoupment or reduction of liability whatsoever of the account debtor or obligor thereunder, arising out of a breach by Seller of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from Seller. Seller also agrees to reimburse any Indemnified Party as and when billed by such Indemnified Party for all such Indemnified Party's costs and expenses incurred in connection with the enforcement or the preservation of such Indemnified Party's rights under this Agreement, any other Program Document or any transaction contemplated hereby or thereby, including without limitation the reasonable fees and disbursements of its counsel. Seller hereby acknowledges that the obligations of Seller under this Agreement are recourse obligations of Seller.

(b) Seller agrees to pay as and when billed by Buyer all of the out-of-pocket costs and expenses incurred by Buyer in connection with the development, preparation, negotiation, administration, enforcement and execution of, and any amendment, waiver, supplement or modification to, this Agreement, any other Program Document or any other documents prepared in connection herewith or therewith. Seller agrees to pay as and when billed by Buyer all of the reasonable out-of-pocket costs and expenses incurred in connection with the consummation and administration of the transactions contemplated hereby and thereby including, without limitation, (i) all the reasonable fees, disbursements and expenses of counsel to Buyer, and (ii) all the due diligence, inspection, testing and review (including but not limited to any loan level file review of any Loans and all on-going due diligence costs) and expenses incurred by Buyer with respect to Purchased Items under this Agreement, including, but not limited to, those costs and expenses incurred by Buyer pursuant to Sections 23, 39 and 44 hereof. Seller also agrees not to assert any claim against Buyer or any of its Affiliates, or any of their respective officers, directors, employees, attorneys and agents, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Program Documents, the actual or proposed use of the proceeds of the Transactions, this Agreement or any of the transactions contemplated hereby or thereby. **THE FOREGOING INDEMNITY AND AGREEMENT NOT TO ASSERT CLAIMS EXPRESSLY APPLIES, WITHOUT LIMITATION, TO THE NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE INDEMNIFIED PARTIES.**

(c) If Seller fails to pay when due any costs, expenses or other amounts payable by it under this Agreement, including, without limitation, reasonable fees and expenses of counsel and indemnities, such amount may be paid on behalf of Seller by Buyer, in its sole discretion and Seller shall remain liable for any such payments by Buyer. No such payment by Buyer shall be deemed a waiver of any of Buyer's rights under the Program Documents.

(d) Without prejudice to the survival of any other agreement of Seller hereunder, the covenants and obligations of Seller contained in this Section 23 shall survive the termination of this Agreement, the payment in full of the Repurchase Price and all other amounts payable hereunder and delivery of the Purchased Loans by Buyer against full payment therefor.

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## **24. WAIVER OF REDEMPTION AND DEFICIENCY RIGHTS**

Seller hereby expressly waives, to the fullest extent permitted by law, every statute of limitation on a deficiency judgment, any reduction in the proceeds of any Purchased Items as a result of restrictions upon Buyer or Custodian contained in the Program Documents or any other instrument delivered in connection therewith, and any right that it may have to direct the order in which any of the Purchased Items shall be disposed of in the event of any disposition pursuant hereto.

## **25. REIMBURSEMENT**

All sums reasonably expended by Buyer in connection with the exercise of any right or remedy provided for herein shall be and remain Seller's obligation (unless and to the extent that Seller is the prevailing party in any dispute, claim or action relating thereto). Seller agrees to pay, with interest at the Post-Default Rate to the extent that an Event of Default has occurred, the reasonable out-of-pocket expenses and reasonable attorneys' fees incurred by Buyer and/or Custodian in connection with the preparation, negotiation, enforcement (including any waivers), administration and amendment of the Program Documents (regardless of whether a Transaction is entered into hereunder), the taking of any action, including legal action, required or permitted to be taken by Buyer and/or Custodian pursuant thereto, any "due diligence" or loan agent reviews conducted by Buyer or on its behalf or by refinancing or restructuring in the nature of a "workout."

## **26. FURTHER ASSURANCES**

Seller agrees to do such further acts and things and to execute and deliver to Buyer such additional assignments, acknowledgments, agreements, powers and instruments as are reasonably required by Buyer to carry into effect the intent and purposes of this Agreement and the other Program Documents, to perfect the interests of Buyer in the Purchased Items or to better assure and confirm unto Buyer its rights, powers and remedies hereunder and thereunder.

## **27. TERMINATION**

This Agreement shall remain in effect until the Termination Date. However, no such termination shall affect Seller's outstanding obligations to Buyer at the time of such termination. Seller's obligations under Section 3(i), Section 5, Section 12, Section 13, Section 23 and Section 25 and any other reimbursement or indemnity obligation of Seller to Buyer pursuant to this Agreement or any other Program Documents shall survive the termination hereof.

**28. SEVERABILITY**

If any provision of any Program Document is declared invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of the Program Documents, and each Program Document shall be enforced to the fullest extent permitted by law.

**29. BINDING EFFECT; GOVERNING LAW**

This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors and permitted assigns. THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

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**30. AMENDMENTS**

Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by Seller and Buyer and any provision of this Agreement may be waived by Buyer.

**31. RESERVED**

**32. SURVIVAL**

The obligations of Seller under Sections 3(i), 5, 12, 13, 23 and 25 hereof and any other reimbursement or indemnity obligation of Seller to Buyer pursuant to this Agreement or any other Program Document shall survive the repurchase of the Loans hereunder, the purchase of any Loans pursuant to a takeout commitment and the termination of this Agreement. In addition, each representation and warranty made, or deemed to be made by a request for a purchase, herein or pursuant hereto shall survive the making of such representation and warranty, and Buyer shall not be deemed to have waived, by reason of purchasing any Loan, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that Buyer may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such purchase was made.

**33. CAPTIONS**

The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

**34. COUNTERPARTS; ELECTRONIC SIGNATURES**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. The parties agree that this Agreement, any documents to be delivered pursuant to this Agreement and any notices hereunder may be transmitted between them by e-mail and/or by facsimile. The parties intend that faxed signatures and electronically imaged signatures such as .pdf files shall constitute original signatures and are binding on all parties.

**35. SUBMISSION TO JURISDICTION; WAIVERS**

**EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY:**

**(A) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND/OR ANY OTHER PROGRAM DOCUMENT, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;**

**(B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY**

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**SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;**

**(C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH UNDER ITS SIGNATURE BELOW OR AT SUCH OTHER ADDRESS OF WHICH BUYER SHALL HAVE BEEN NOTIFIED; AND**

**(D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.**

**36. WAIVER OF JURY TRIAL**

EACH OF SELLER AND BUYER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER PROGRAM DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

**37. ACKNOWLEDGEMENTS**

Seller hereby acknowledges that:

- (a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Program Documents to which it is a party;
- (b) Buyer has no fiduciary relationship to Seller; and
- (c) no joint venture exists among or between Buyer and Seller.

**38. HYPOTHECATION OR PLEDGE OF PURCHASED ITEMS**

Buyer shall have free and unrestricted use of all Purchased Loans and Purchased Items and nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Loans and Purchased Items or otherwise selling, pledging, repledging, transferring, assigning, hypothecating, rehypothecating or otherwise conveying the Purchased Loans and Purchased Items. Nothing contained in this Agreement shall obligate Buyer to segregate any Purchased Loans or Purchased Items delivered to Buyer by Seller.

**39. ASSIGNMENTS; PARTICIPATIONS**

(a) Seller may assign any of its rights or obligations hereunder only with the prior written consent of Buyer. Buyer may assign or transfer to any bank or other financial institution that makes or invests in repurchase agreements or loans or any Affiliate of Buyer all or any of its rights and obligations under this Agreement and the other Program Documents.

(b) Buyer may, in accordance with applicable law, at any time sell to one or more entities (“Participants”) participating interests in this Agreement, its agreement to purchase Loans, or any other

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interest of Buyer hereunder and under the other Program Documents. In the event of any such sale by Buyer of participating interests to a Participant, Buyer’s obligations under this Agreement to Seller shall remain unchanged, Buyer shall remain solely responsible for the performance thereof and Seller shall continue to deal solely and directly with Buyer in connection with Buyer’s rights and obligations under this Agreement and the other Program Documents. Seller agrees that if amounts outstanding under this Agreement are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Buyer under this Agreement; provided, that such Participant shall only be entitled to such right of set-off if it shall have agreed in the agreement pursuant to which it shall have acquired its participating interest to share with Buyer the proceeds thereof. Buyer also agrees that each Participant shall be entitled to the benefits of Sections 3(h), 3(i) and 23 with respect to its participation in the Loans and Purchased Items outstanding from time to time; provided, that Buyer and all Participants shall be entitled to receive no greater amount in the aggregate pursuant to such Sections than Buyer would have been entitled to receive had no such transfer occurred.

(c) Buyer may furnish any information concerning Seller or any of its Subsidiaries in the possession of Buyer from time to time to assignees and Participants (including prospective assignees and Participants) only after notifying Seller in writing and securing signed confidentiality statements (a form of which is attached hereto as Exhibit C) and only for the sole purpose of evaluating assignments or participations and for no other purpose.

(d) Seller agrees to cooperate with Buyer in connection with any such assignment and/or participation, to execute and deliver replacement notes, and to enter into such restatements of, and amendments, supplements and other modifications to, this Agreement and the other Program Documents in order to give effect to such assignment and/or participation. Seller further agrees to furnish to any Participant identified by Buyer to Seller copies of all reports and certificates to be delivered by Seller to Buyer hereunder, as and when delivered to Buyer.

**40. SINGLE AGREEMENT**

Seller and Buyer acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, Seller and Buyer each agree (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, and (ii) that payments, deliveries and other transfers made by any of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transaction hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

**41. INTENT**

Seller and Buyer recognize that each Transaction is a “repurchase agreement” as that term is defined in Section 101(47)(A)(i) of Title 11 of the USC, a “securities contract” as that term is defined in Section 741(7)(A)(i) of Title 11 of the USC, and a “master netting agreement” as that term is defined in Section 101(38A)(A) of Title 11 of the USC, and that the pledge of the Related Credit Enhancement in Section 8(a) hereof is intended to constitute “a security agreement or arrangement or other credit enhancement” that is “related to” the Agreement and Transactions hereunder within the meaning of Sections 101(38A)(A), 101(47)(a)(v) and 741(7)(A)(x).

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It is understood that Buyer's right to liquidate the Purchased Loans delivered to it in connection with the Transactions hereunder or to accelerate or terminate this Agreement or otherwise exercise any other remedies pursuant to Section 19 hereof is a contractual right to liquidate, accelerate or terminate such Transaction as described in Sections 555, 559 and 561 of Title 11 of the USC.

#### **42. CONFIDENTIALITY**

The Program Documents and their respective terms, provisions, supplements and amendments, and transactions and notices thereunder, are proprietary to Buyer and shall be held by Seller in strict confidence and shall not be disclosed to any third party without the consent of Buyer except for (i) disclosure to Seller's Affiliates, directors, attorneys, agents or accountants, provided that such attorneys or accountants likewise agree to be bound by this covenant of confidentiality, or are otherwise subject to confidentiality restrictions or (ii) upon prior written notice to Buyer, disclosure required by law, rule, regulation or order of a court or other regulatory body or (iii) upon prior written notice to Buyer, disclosure to any approved hedge counterparty to the extent necessary to obtain any Interest Rate Protection Agreement hereunder or (iv) when circumstances reasonably permit, any disclosures or filing required under Securities and Exchange Commission ("SEC") or state securities' laws; provided that in the case of disclosure by any party pursuant to the foregoing clauses (ii), (iii) and (iv), Seller shall take reasonable actions to provide Buyer with prior written notice; provided further that in the case of (iv), Seller shall not file any of the Program Documents other than the Agreement with the SEC or state securities office unless Seller shall have provided at least thirty (30) days (or such lesser time as may be demanded by the SEC or state securities office) prior written notice of such filing to Buyer. Notwithstanding anything herein to the contrary, each party (and each employee, representative, or other agent of each party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure. For this purpose, tax treatment and tax structure shall not include (i) the identity of any existing or future party (or any Affiliate of such party) to this Agreement or (ii) any specific pricing information or other commercial terms, including the amount of any fees, expenses, rates or payments arising in connection with the transactions contemplated by this Agreement.

#### **43. SERVICING**

(a) Seller covenants to maintain or cause the servicing of the Purchased Loans to be maintained in conformity with Accepted Servicing Practices and pursuant to the related underlying Servicing Agreement. In the event that the preceding language is interpreted as constituting one or more servicing contracts, each such servicing contract shall terminate automatically upon the earliest of (i) the termination thereof by Buyer pursuant to subsection (d) below, (ii) thirty (30) days after the last Purchase Date of such Purchased Loan, (iii) a Default or an Event of Default, (iv) the date on which all the Obligations have been paid in full, or (v) the transfer of servicing to any entity approved by Buyer and the assumption thereof by such entity. Upon any such termination, Seller shall comply with the requirements set forth in Section 13(hh) as to the delivery of the Servicing Records and the physical servicing of each Purchased Loan.

(b) During the period Seller is servicing the Purchased Loans, (i) Seller agrees that Buyer is the owner of the Servicing Rights and all servicing records, including but not limited to any and all servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of such Loans (the "Servicing Records"), and (ii) Seller grants Buyer a security interest in all servicing fees and rights relating to the Purchased Loans and all Servicing Records to secure the obligation of Seller or its designee to service in

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conformity with this Section 43 and any other obligation of Seller to Buyer. At all times during the term of this Agreement, Seller covenants to hold such Servicing Records in trust for Buyer and to safeguard, or cause each Subservicer to safeguard, such Servicing Records and to deliver them, or cause any such Subservicer to deliver them to the extent permitted under the related Servicing Agreement promptly to Buyer or its designee (including Custodian) at Buyer's request or otherwise as required by operation of Section 13(hh) hereof. It is understood and agreed by the parties that prior to an Event of Default, Seller, as servicer shall retain the servicing fees with respect to the Purchased Loans.

(c) If any Loan that is proposed to be sold on a Purchase Date is serviced by a servicer other than Seller (a "Subservicer"), or if the servicing of any Purchased Loan is to be transferred to a Subservicer, Seller shall provide a copy of the related servicing agreement and an Instruction Letter executed by such Subservicer (collectively, the "Servicing Agreement") to Buyer at least three (3) Business Days prior to such Purchase Date or transfer date, as applicable, which Servicing Agreement shall be in form and substance acceptable to Buyer. In addition, Seller shall have obtained the prior written consent of Buyer for such Subservicer to subservice the Loans.

(d) In addition to the rights provided in Section 43(a), Buyer shall have the right, exercisable at any time in its sole discretion, upon written notice, to terminate Seller or any Subservicers as servicer or subservicer, respectively, and any related Servicing Agreement. Upon any such termination, Seller shall transfer or shall cause Subservicer to transfer such servicing with respect to such Purchased Loans to Buyer or its designee, at no cost or expense to Buyer. Seller agrees to cooperate with Buyer in connection with the transfer of servicing.

(e) After the Purchase Date, until the Repurchase Date, Seller will have no right to modify or alter the terms of the Loan or consent to the modification or alteration of the terms of any Loan, and Seller will have no obligation or right to repossess any Loan or substitute another Loan, except as provided in any Custodial Agreement.

(f) Buyer shall have the right in its sole discretion to appoint a third party to perform due diligence with respect to Seller's servicing facilities at any time. Seller shall cooperate with Buyer and/or its designees to provide access to Seller's servicing facilities including without limitation its books and records with respect to Seller's servicing portfolio and the Purchased Loans. In addition to the foregoing, Seller shall permit Buyer to inspect upon reasonable prior written notice at a mutually convenient time, Seller's or its Affiliate's servicing facilities, as the case may be, for the purpose of satisfying Buyer that Seller or its Affiliate, as the case may be, has the ability to service the Loans as provided in this Agreement. In addition, with respect to any Subservicer which is not an Affiliate of Seller, Seller shall use its best efforts to enable Buyer to inspect the servicing facilities of such Subservicer and to cause such Subservicer to cooperate with Buyer and/or its designees in connection with any due diligence performed by Buyer and/or such designees in accordance with this Section 43(f). Seller and Buyer further agree that all reasonable out-of-pocket costs and expenses incurred by Buyer in connection with any due diligence or inspection performed pursuant to this Section 43(f) shall be paid by Buyer.

#### **44. PERIODIC DUE DILIGENCE REVIEW**

Seller acknowledges that Buyer has the right to perform continuing due diligence reviews with respect to the Loans, for purposes of verifying compliance with the representations, warranties, covenants and specifications made hereunder or under any other Program Document, or otherwise, and Seller agrees that upon reasonable (but no less than one (1) Business Day's) prior notice to Seller (provided that upon the occurrence of a Default or an Event of Default, no such prior notice shall be required), Buyer or its authorized representatives will be permitted during normal business hours to examine, inspect, make copies of, and make extracts of, the Mortgage Files, the Servicing Records and any and all documents,

records, agreements, instruments or information relating to such Loans in the possession, or under the control, of Seller and/or Custodian. Seller also shall make available to Buyer a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Mortgage Files and the Loans. Without limiting the generality of the foregoing, Seller acknowledges that Buyer shall purchase Loans from Seller based solely upon the information provided by Seller to Buyer in the Loan Schedule and the representations, warranties and covenants contained herein, and that Buyer, at its option, has the right, at any time to conduct a partial or complete due diligence review on some or all of the Purchased Loans, including, without limitation, ordering new credit reports, new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Loan. Buyer may underwrite such Loans itself or engage a third party underwriter to perform such underwriting. Seller agrees to cooperate with Buyer and any third party underwriter in connection with such underwriting, including, but not limited to, providing Buyer and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Loans in the possession, or under the control, of Seller. In addition, Buyer has the right to perform continuing Due Diligence Reviews (including, without limitation, operational, legal, corporate and background due diligence) of Seller and its Affiliates, directors, and their respective Subsidiaries and the officers, employees and significant shareholders thereof. Seller and Buyer further agree that all reasonable out-of-pocket costs and expenses incurred by Buyer in connection with Buyer's activities pursuant to this Section 44 shall be paid by Seller.

**45. SET-OFF**

In addition to any rights and remedies of Buyer provided by this Agreement and by law, Buyer shall have the right, without prior notice to Seller, any such notice being expressly waived by Seller to the extent permitted by applicable law, upon any amount becoming due and payable by Seller hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all Property and deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Buyer or any Affiliate thereof to or for the credit or the account of Seller. Buyer may set-off cash, the proceeds of the liquidation of any Purchased Items and all other sums or obligations owed by Buyer or its Affiliates to Seller against all of Seller's obligations to Buyer or its Affiliates, whether under this Agreement or under any other agreement between the parties or between Seller and any Affiliate of Buyer, or otherwise, whether or not such obligations are then due, without prejudice to Buyer's or its Affiliate's right to recover any deficiency. Buyer agrees promptly to notify Seller after any such set-off and application made by Buyer; provided that the failure to give such notice shall not affect the validity of such set-off and application.

**46. ENTIRE AGREEMENT**

This Agreement and the other Program Documents embody the entire agreement and understanding of the parties hereto and thereto and supersede any and all prior agreements, arrangements and understandings relating to the matters provided for herein and therein. No alteration, waiver, amendments, or change or supplement hereto shall be binding or effective unless the same is set forth in writing by a duly authorized representative of each party hereto.

**47. AMENDMENT AND RESTATEMENT**

Buyer and Seller entered into the Original Agreement. Buyer and Seller desire to enter into this Agreement in order to amend and restate the Original Agreement in its entirety. Effective as of the date hereof, the terms and provisions of that certain Mater Repurchase Agreement, dated as of October 13,

2011, by and between Buyer and Seller (the "Original Agreement") shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement. For the avoidance of doubt, this Agreement is not intended to, and shall not, effect a novation of any of the obligations of the parties to the Original Agreement, but is merely an amendment and restatement of the terms governing such obligations.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

**HOME LOAN CENTER, INC.**, a California corporation,  
as Seller

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

Address for Notices:  
163 Technology Drive  
Irvine, California 92618  
Attention: Rian Furey, Chief Operating Officer  
Telephone No.: (949) 579-8362  
Fax No.: (949) 579-8462

With a copy to:

Address for Notices:  
163 Technology Drive  
Irvine, California 92618  
Attention: Ken Block, Chief Compliance Officer  
Telephone No.: (949) 255-7513  
Fax No.: (949) 255-7613

**CITIBANK, N.A.** as Buyer and Agent, as applicable

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

Address for Notices:  
390 Greenwich Street, 5<sup>th</sup> Floor  
New York, New York 10013  
Attention: Bobbie Theivakumaran  
Telephone No.: (212) 723-6753  
Fax No.: (646) 291-3799

[Signature Page to Master Repurchase Agreement]

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**ANNEX I**

**BUYER ACTING AS AGENT**

This Annex I forms a part of the Amended and Restated Master Repurchase Agreement dated as of February 17, 2012, (the "Agreement") between Home Loan Center, Inc. and Citibank, N.A. This Annex I sets forth the terms and conditions governing all transactions in which Buyer selling assets or buying assets, as the case may be ("Agent"), in a Transaction is acting as agent for one or more third parties (each, a "Principal"). Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement.

1. Additional Representations. Agent hereby makes the following representations, which shall continue during the term of any Transaction: Principal has duly authorized Agent to execute and deliver the Agreement and the other Program Documents on its behalf, has the power to so authorize Agent and to enter into the Transactions contemplated by the Agreement and the other Program Documents and to perform the obligations of Buyer under such Transactions, and has taken all necessary action to authorize such execution and delivery by Agent and such performance by it.
2. Identification of Principals. Agent agrees (a) to provide the other party, prior to the date on which the parties agree to enter into any Transaction under the Agreement, with a written list of Principals for which it intends to act as Agent (which list may be amended in writing from time to time with the consent of the other party) and (b) to provide the other party, before the close of business on the next business day after orally agreeing to enter into a Transaction, with notice of the specific Principal or Principals for whom it is acting in connection with such Transaction. If (i) Agent fails to identify such Principal or Principals prior to the close of business on such next business day or (ii) the other party shall determine in its sole discretion any Principal or Principals identified by Agent are not acceptable to it, the other party may reject and rescind any Transaction with such Principal or Principals, return to Agent any Purchased Loans or portion of the Purchase Price, as the case may be, previously transferred to the other party and refuse any further performance under such Transaction, and Agent shall immediately return to the other party any portion of the Purchase Price or Purchased Loans, as the case may be, previously transferred to Agent in connection with such Transaction; provided, however, that (A) the other party shall promptly (and in any event within one business day) notify Agent of its determination to reject and rescind such Transaction and (B) to the extent that any performance was rendered by any party under any Transaction rejected by the other party, and such party shall remain entitled to any Price Differential or other amounts that would have been payable to it with respect to such performance if such Transaction had not been rejected. The other party acknowledges that Agent shall not have any obligation to provide it with confidential information regarding the financial status of its Principals; Agent agrees, however, that it will assist the other party in obtaining from Agent's Principals such Information regarding the financial status of such Principals as the other party may reasonably request.
3. Limitation of Agent's Liability. The parties expressly acknowledge that if the representations of Agent under the Agreement, including this Annex I, are true and correct in all material respects during the term of any Transaction and Agent otherwise complies with the provisions of this Annex I, then (a) Agent's obligations under the Agreement shall not include a guarantee of performance by its Principal or Principals; provided that Agent shall remain liable for performance pursuant to Section 10 of the Agreement, and (b) the other party's remedies shall not include a right of setoff in respect of rights or obligations, if any, of Agent arising in other transactions in which Agent is acting as principal.

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4. Multiple Principals.

- (a) In the event that Agent proposes to act for more than one Principal hereunder, Agent and the other party shall elect whether (i) to treat Transactions under the Agreement as transactions entered into on behalf of separate Principals or (ii) to aggregate such Transactions as if they were transactions by a single Principal. Failure to make such an election in writing shall be deemed an election to treat Transactions under the Agreement as transactions on behalf of a single Principal.
- (b) In the event that Agent and the other party elect (or are deemed to elect) to treat Transactions under the Agreement as transactions on behalf of separate Principals, the parties agree that (i) Agent will provide the other party, together with the notice described in Section 2(b) of this Annex I, notice specifying the portion of each Transaction allocable to the account of each of the Principals for which it is acting (to the extent that any such Transaction is allocable to the account of more than one Principal); (ii) the portion of any individual Transaction allocable to each Principal shall be deemed a separate Transaction under the Agreement; (iii) the margin maintenance obligations of Seller under Section 6(a) of the Agreement shall be determined on a Transaction-by-Transaction basis (unless the parties agree to determine such obligations on a Principal-by-Principal basis); and (iv) Buyer's remedies under the Agreement upon the occurrence of an Event of Default shall be determined as if Agent had entered into a separate Agreement with the other party on behalf of each of its Principals.
- (c) In the event that Agent and the other party elect to treat Transactions under the Agreement as if they were transactions by a single Principal, the parties agree that (i) Agent's notice under Section 2(b) of this Annex I need only identify the names of its Principals but not the portion of each Transaction allocable to each Principal's account; (ii) the margin maintenance obligations of Seller under Section 6(a) of the Agreement shall, subject to any greater requirement imposed by applicable law, be determined on an aggregate basis for all Transactions entered into by Agent on behalf of any Principal; and (iii) Buyer's remedies upon the occurrence of an Event of Default shall be determined as if all Principals were a single Buyer.
- (d) Notwithstanding any other provision of the Agreement (including, without limitation, this Annex I), the parties agree that any Transactions by Agent on behalf of an employee benefit plan under ERISA shall be treated as Transactions on behalf of separate Principals in accordance with Section 4(b) of this Annex I (and all margin maintenance obligations of the parties shall be determined on a Transaction-by-Transaction basis).

5. **Interpretation of Terms.** All references to "Buyer" in the Agreement shall, subject to the provisions of this Annex I (including, among other provisions, the limitations on Agent's liability in Section 3 of this Annex I), be construed to reflect that (i) each Principal shall have, in connection with any Transaction or Transactions entered into by Agent on its behalf, the rights, responsibilities, privileges and obligations of a "Buyer", directly entering into such Transaction or Transactions with the other party under the Agreement, and (ii) Agent's Principal or Principals have designated Agent as their sole agent for performance of Buyer's obligations to Seller and for receipt of performance by Seller of its obligations to Buyer in connection with any Transaction or Transactions under the Agreement (including, among other things, as Agent for each Principal in connection with transfers of Loans, securities, cash or other property and as agent for giving and receiving all notices under the Agreement). Both Agent and its Principal or Principals shall be

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Annex 1-2

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deemed "parties" to the Agreement and all references to a "party" or "either party" in the Agreement shall be deemed revised accordingly.

Annex 1-3

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**Schedule 1**

**REPRESENTATIONS AND WARRANTIES RE: LOANS**

**Eligible Loans**

As to each Loan that is subject to a Transaction hereunder (and the related Mortgage, Note, Assignment of Mortgage and Mortgaged Property), Seller shall be deemed to make the following representations and warranties to Buyer as of the Purchase Date and as of each date such Loan is subject to a Transaction:

- (a) **Loans as Described.** The information set forth in the Loan Schedule with respect to the Loan is complete, true and correct in all material respects.
- (b) **Payments Current.** The first Monthly Payment shall have been made prior to the second scheduled Monthly Payment becoming due.
- (c) **No Outstanding Charges.** There are no defaults in complying with the terms of the Mortgage securing the Loan, and all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments or ground rents which previously became due and owing have been paid, or will be paid prior to any economic loss or forfeiture of the related Mortgaged Property or an escrow of funds has been established in an amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable. Seller has not advanced funds, or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required under the Loan, except for interest accruing from the date of the Note or date of disbursement of the proceeds of the Loan, whichever is more recent, to the day which precedes by one month the Due Date of the first installment of principal and interest thereunder.
- (d) **Original Terms Unmodified.** The terms of the Note and Mortgage have not been impaired, waived, altered or modified in any respect, from the date of origination; except by a written instrument which has been recorded (or promptly will be recorded, in the case of any of the foregoing that occurs after the related Purchase Date), if necessary to protect the interests of Buyer, and which has been delivered to Custodian and the terms of which are reflected in the Loan Schedule. The substance of any such waiver, alteration or modification has been approved by the title insurer, to the extent required by the title insurance policy, and its terms are reflected on the Loan Schedule. No Mortgagor in respect of the Loan has been released, in whole or in part, except in connection with an assumption agreement approved by the title insurer, to the extent required by such policy, and which assumption agreement is part of the Mortgage File delivered to Custodian and the terms of which are reflected in the Loan Schedule.

(e) FHA Approval. All parties which have had any interest in the Mortgage, whether as mortgagee or assignee, are (or, during the period in which they held and disposed of such interest, were) an FHA Approved Mortgagee.

(f) FHA Insurance. With respect to the FHA Loans, each such FHA Loan is eligible for insurance under an FHA Insurance Contract and there exists no impairment to full recovery without indemnity to the Department of Housing and Urban Development or the FHA under FHA Mortgage Insurance. All necessary steps have been taken to keep such insurance valid, binding and enforceable and each of such is the binding, valid and enforceable obligation of the FHA, to the full extent thereof, without surcharge, set-off or defense. Each FHA Loan was originated in accordance with the criteria of an Agency for purchase of such Loans.

Schedule 1-1

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(g) No Defenses. The Loan is not subject to any right of rescission, setoff, counterclaim or defense, including without limitation the defense of usury, nor will the operation of any of the terms of the Note or the Mortgage, or the exercise of any right thereunder, render either the Note or the Mortgage unenforceable, in whole or in part and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto, and no Mortgagor in respect of the Loan was a debtor in any state or Federal bankruptcy or insolvency proceeding at the time the Loan was originated by Seller.

(h) Hazard Insurance. The Mortgaged Property is insured by a fire and extended perils insurance policy, issued by a Qualified Insurer, and such other hazards as are customary in the area where the Mortgaged Property is located, and to the extent required by Seller as of the date of origination consistent with the Underwriting Guidelines, against risks insured against by Persons operating like properties in the locality of the Mortgaged Property, in an amount not less than the greatest of (i) 100% of the replacement cost of all improvements to the Mortgaged Property, (ii) the outstanding principal balance of the Loan with respect to each Loan, (iii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property, and consistent with the amount that would have been required as of the date of origination in accordance with the Underwriting Guidelines or (iv) the amount necessary to fully compensate for any damage or loss to the improvements that are a part of such property on a replacement cost basis. If any portion of the Mortgaged Property is in an area identified by any federal Governmental Authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current guidelines of the Federal Insurance Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Loan, (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973, as amended. All such insurance policies (collectively, the "hazard insurance policy") contain a standard mortgagee clause naming Seller, its successors and assigns (including without limitation, subsequent owners of the Loan), as mortgagee, and may not be reduced, terminated or canceled without 30 days' prior written notice to the mortgagee. No such notice has been received by Seller. All premiums due and owing on such insurance policy have been paid. The related Mortgage obligates the Mortgagor to maintain all such insurance and, at such Mortgagor's failure to do so, authorizes the mortgagee to maintain such insurance at the Mortgagor's cost and expense and to seek reimbursement therefor from such Mortgagor. Where required by state law or regulation, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a "master" or "blanket" hazard insurance policy covering a condominium, or any hazard insurance policy covering the common facilities of a planned unit development. The hazard insurance policy is the valid and binding obligation of the insurer and is in full force and effect. Seller has not engaged in, and has no knowledge of the Mortgagor's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by Seller.

(i) Compliance with Applicable Laws. Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, all applicable predatory and abusive lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the origination and servicing of such Loan have been complied with (including without limitation the federal Mortgage Disclosure Improvement Act of 2008 and its promulgating regulations under 12 C.F.R. Part 226, as amended by the Emergency Economic Stabilization Act of 2008), the consummation of the transactions contemplated hereby will not involve the violation of any such laws or regulations, and Seller shall maintain or shall cause its agent to maintain in its possession, available for the inspection of Buyer, and shall deliver to Buyer, upon two Business Days' request, evidence of compliance with all such requirements.

Schedule 1-2

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(j) No Satisfaction of Mortgage. The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission except (i) in connection with an assumption agreement which has been approved by the FHA, to the extent required by the applicable FHA Insurance Contract, (ii) in the case of a release of a portion of the land comprising a Mortgaged Property or (iii) a release of a blanket Mortgage which release will not cause the Loan to fail to satisfy the Underwriting Guidelines. Seller has not waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Loan to be in default, nor has Seller waived any default resulting from any action or inaction by the Mortgagor.

(k) Location and Type of Mortgaged Property. The Mortgaged Property is located in the state identified in the Loan Schedule and consists of a single parcel of real property with a detached single family residence erected thereon, or a two- to four-family dwelling, or an individual condominium unit in a condominium project, or an individual unit in a planned unit development or a de minimis planned unit development, provided, however, that any condominium unit or planned unit development shall conform with the applicable Fannie Mae and Freddie Mac requirements regarding such dwellings, and that no residence or dwelling is a mobile home or a manufactured dwelling. No portion of the Mortgaged Property is used for commercial purposes.

(l) Valid Lien. The Mortgage is a valid, subsisting, enforceable and perfected first lien and first priority security interest with respect to each Loan, on the real property included in the Mortgaged Property, including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing and with respect to Cooperative Loans, including the Proprietary Lease and the Cooperative Shares. The lien of the Mortgage is subject only to:

- (1) the lien of current real property taxes and assessments not yet due and payable;

(2) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Loan and in the event an appraisal was conducted with respect to the Mortgaged Property: (a) referred to or otherwise considered in the appraisal made for the originator of the Loan, or (b) which do not adversely affect the Appraised Value of the related Mortgaged Property set forth in such appraisal; and

(3) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Loan establishes and creates a valid, subsisting and enforceable first lien and first priority security interest with respect to each Loan, on the property described therein and Seller has full right to pledge and assign the same to Buyer. The Mortgaged Property was not, as of the date of origination of the Loan, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage.

(m) Validity of Mortgage Documents. The Note and the Mortgage and any other agreement executed and delivered by a Mortgagor or guarantor, if applicable, in connection with a Loan are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its

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Schedule 1-3

terms. All parties to the Note, the Mortgage and any other such related agreement had legal capacity to enter into the Loan and to execute and deliver the Note, the Mortgage and any such agreement, and the Note, the Mortgage and any other such related agreement have been duly and properly executed by such related parties. No fraud, error, negligence, omission, misrepresentation or similar occurrence with respect to a Loan has taken place on the part of any Person, including, without limitation, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Loan or in the application of any insurance in relation to such Loan. Seller has reviewed all of the documents constituting the Servicing File and has made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein.

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

(o) Ownership. Seller is the sole owner and holder of the Loan. No Loan was acquired by Seller from a third party. In connection with such sale, such third party received reasonably equivalent value and fair consideration and, in accordance with GAAP and for federal income tax purposes, reported the sale of such Loan to Seller as a sale of its interests in such Loan. The Loan is not assigned or pledged, and Seller has good, indefeasible and marketable title thereto, and has full right to transfer, pledge and assign the Loan to Buyer free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest, and has full right and authority subject to no interest or participation of, or agreement with, any other party, to assign, transfer and pledge each Loan pursuant to this Agreement and following the pledge of each Loan, Buyer will hold such Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest except any such security interest created pursuant to the terms of this Agreement.

(p) Doing Business. All parties which have had any interest in the Loan, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) (i) in compliance with any and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located, and (ii) either (A) organized under the laws of such state, (B) qualified to do business in such state, (C) a federal savings and loan association, a savings bank or a national bank having a principal office in such state or (D) not doing business in such state.

(q) LTV. As of the date of origination of the Loan, the LTV and CLTV (if applicable) are as identified on the Loan Schedule. No Loan other than a DU Refinance Loan or Open Access Mortgage Loan shall have an LTV or CLTV greater than 100%. No Jumbo Loan shall have an LTV or CLTV greater than 80%. No DU Refinance Loan or Open Access Mortgage Loan shall have an LTV greater than 105%.

(r) Title Insurance. The Loan is covered by either (i) an attorney's opinion of title and abstract of title, the form and substance of which is acceptable to prudent mortgage lending institutions making mortgage loans in the area wherein the Mortgaged Property is located or (ii) an ALTA lender's title insurance policy or other generally acceptable form of policy or insurance acceptable to the FHA, Fannie Mae or Freddie Mac and each such title insurance policy is issued by a title insurer acceptable to the FHA, Fannie Mae or Freddie Mac and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring Seller, its successors and assigns, as to the first priority lien of the Mortgage in the original principal amount of the Loan, subject only to the exceptions contained in clauses (1), (2) and (3) of paragraph (j) of this Part I of Schedule 1, with respect to each Loan, and in the case of

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Schedule 1-4

Adjustable Rate Loans, against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment to the Mortgage Interest Rate and Monthly Payment. 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. Seller, its successors and assigns, are the sole insureds of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Agreement. No claims have been made under such lender's title insurance policy, and no prior holder or servicer of the related Mortgage, including Seller, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by Seller.

(s) No Defaults. There is no default, breach, violation or event of acceleration existing under the Mortgage or the Note and no event has occurred which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of

acceleration, and neither Seller nor its predecessors have waived any default, breach, violation or event of acceleration.

(t) No Mechanics' Liens. At origination, there were no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such liens) affecting the Mortgaged Property which are or may be liens prior to, or equal or coordinate with the lien of the Mortgage.

(u) Location of Improvements; No Encroachments. All improvements which were considered in determining the Appraised Value or Appraised Value Alternative (as applicable) of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning and building law, ordinance or regulation.

(v) Origination; Payment Terms. The Loan was originated by or in conjunction with a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act, a savings and loan association, a savings bank, a commercial bank, credit union, insurance company or similar banking institution which is supervised and examined by a federal or state authority. Monthly Payments on the Loan commenced no more than sixty (60) days after funds were disbursed in connection with the Loan. The Mortgage Interest Rate is adjusted, with respect to Adjustable Rate Loans, on each Interest Rate Adjustment Date to equal the Index plus the Gross Margin (rounded up or down to the nearest .125%), subject to the Mortgage Interest Rate Cap. With respect to each Loan, the Mortgage Note is payable on the first day of each month in equal monthly installments of principal and interest, which installments of interest, with respect to an Adjustable Rate Loan, are subject to change due to the adjustments to the Mortgage Interest Rate on each Adjustment Date, with interest calculated and payable in arrears, sufficient to amortize the Loan fully by the stated maturity date, over an original term of not more than 30 years from commencement of amortization. No Loan has a balloon payment feature.

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Schedule 1-5

(w) Customary Provisions. The Note has a stated maturity which shall not exceed 360 months from the date of the Loan's origination. The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to a Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage.

(x) Conformance with Underwriting Guidelines and Agency Standards. The Loan was underwritten in accordance with the applicable Underwriting Guidelines. The Note and Mortgage are on forms similar to those used by Freddie Mac or Fannie Mae and Seller has not made any representations to a Mortgagor that are inconsistent with the mortgage instruments used.

(y) Occupancy of the Mortgaged Property. As of the Purchase Date the Mortgaged Property is either vacant or lawfully occupied under applicable law. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. Seller has not received written notification from any governmental authority that the Mortgaged Property is in material non-compliance with such laws or regulations, is being used, operated or occupied unlawfully or has failed to have or obtain such inspection, licenses or certificates, as the case may be. Seller has not received notice of any violation or failure to conform with any such law, ordinance, regulation, standard, license or certificate. Except as otherwise set forth in the Loan Schedule, the Mortgagor represented at the time of origination of the Loan that the Mortgagor would occupy the Mortgaged Property as the Mortgagor's primary residence.

(z) No Additional Collateral. The Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable security agreement or chattel mortgage referred to in clause (j) above.

(aa) Deeds of Trust. In the event the Mortgage constitutes a deed of trust, a trustee, authorized and duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by Custodian or Buyer to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

(bb) Delivery of Mortgage Documents. If the Loan is a Dry Loan, the Note, the Mortgage, the Assignment of Mortgage (other than for a MERS Loan) and any other documents required to be delivered under the Custodial Agreement for each Loan have been delivered to Custodian. Seller or its agent is in possession of a complete, true and materially accurate Mortgage File in compliance with the Custodial Agreement, except for such documents the originals of which have been delivered to Custodian.

(cc) Transfer of Loans. The Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located.

(dd) Due-On-Sale. The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee thereunder.

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Schedule 1-6

(ee) No Buydown Provisions; No Graduated Payments or Contingent Interests. The Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by Seller, the Mortgagor, or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions which may constitute a "buydown" provision. The Loan is not a graduated payment mortgage loan and the Loan does not have a shared appreciation or other contingent interest feature.

(ff) Consolidation of Future Advances. Any future advances made to the Mortgagor prior to the origination of the Loan have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term. The lien of the Mortgage securing the consolidated principal amount is expressly insured as having first lien priority with respect to each

Loan, by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable to the FHA, Fannie Mae and Freddie Mac. The consolidated principal amount does not exceed the original principal amount of the Loan.

(gg) Mortgaged Property Undamaged. The Mortgaged Property (and with respect to any Cooperative Loan, the Cooperative Unit) is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty so as to affect the value of the Mortgaged Property as security for the Loan or the use for which the premises were intended and each Mortgaged Property is in good repair. There have not been any condemnation proceedings with respect to the Mortgaged Property and Seller has no knowledge of any such proceedings.

(hh) Collection Practices; Escrow Deposits; Interest Rate Adjustments. The origination and collection practices used by the originator, each servicer of the Loan and Seller with respect to the Loan have been in all material respects in compliance with Accepted Servicing Practices, applicable laws and regulations, and have been in all respects legal and proper. With respect to escrow deposits and Escrow Payments, all such payments are in the possession of, or under the control of, Seller and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All Escrow Payments have been collected in full compliance with state and federal law. An escrow of funds is not prohibited by applicable law and has been established in an amount sufficient to pay for every item that remains unpaid and has been assessed but is not yet due and payable. No escrow deposits or Escrow Payments or other charges or payments due Seller have been capitalized under the Mortgage or the Note. All Mortgage Interest Rate adjustments have been made in strict compliance with state and federal law and the terms of the related Note. Any interest required to be paid pursuant to state, federal and local law has been properly paid and credited.

(ii) Conversion to Fixed Interest Rate. With respect to Adjustable Rate Loans, the Loan is not convertible to a fixed interest rate Loan.

(jj) Other Insurance Policies. No action, inaction or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable special hazard insurance policy, PMI Policy or bankruptcy bond, irrespective of the cause of such failure of coverage. In connection with the placement of any such insurance, no commission, fee, or other compensation has been or will be received by Seller or by any officer, director, or employee of Seller or any designee of Seller or any corporation in which Seller or any officer, director, or employee had a financial interest at the time of placement of such insurance.

(kk) Servicepersons' Civil Relief Act. The Mortgagor has not notified Seller, and Seller has no knowledge, of any relief requested or allowed to the Mortgagor under the Servicepersons' Civil Relief Act.

Schedule 1-7

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(ll) Appraisal. Except with respect to FHA Streamlined Loans, DU Refinance Loans, Open Access Mortgage Loans, or refinanced Loans unwritten with the use of the Fannie Mae direct underwriting system, where a property inspection waiver has been issued or a 2075 exterior only property inspection has been approved, the Mortgage File contains either (A) an appraisal of the related Mortgaged Property signed prior to the approval of the Loan application by a qualified appraiser, duly appointed by Seller or the related Qualified Originator, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Loan, and the appraisal and appraiser both satisfy the requirements of Fannie Mae, Freddie Mac, the FHA and Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 as amended and the regulations promulgated thereunder, all as in effect on the date the Loan was originated or (B) another valuation model acceptable to Buyer in its sole discretion.

(mm) Disclosure Materials. The Mortgagor has executed a statement to the effect that the Mortgagor has received all disclosure materials required by applicable law with respect to the making of adjustable rate mortgage loans, and Seller maintains such statement in the Mortgage File.

(nn) Construction or Rehabilitation of Mortgaged Property. No Loan was made in connection with the construction or rehabilitation of a Mortgaged Property or facilitating the trade-in or exchange of a Mortgaged Property.

(oo) No Defense to Insurance Coverage. No action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed on or prior to the Purchase Date (whether or not known to Seller on or prior to such date) which has resulted or will result in an exclusion from, denial of, or defense to coverage under any private mortgage insurance (including, without limitation, any exclusions, denials or defenses which would limit or reduce the availability of the timely payment of the full amount of the loss otherwise due thereunder to the insured) whether arising out of actions, representations, errors, omissions, negligence, or fraud of Seller, the related Mortgagor or any party involved in the application for such coverage, including the appraisal, plans and specifications and other exhibits or documents submitted therewith to the insurer under such insurance policy, or for any other reason under such coverage, but not including the failure of such insurer to pay by reason of such insurer's breach of such insurance policy or such insurer's financial inability to pay.

(pp) Capitalization of Interest. The Note does not by its terms provide for the capitalization or forbearance of interest.

(qq) No Equity Participation. No document relating to the Loan provides for any contingent or additional interest in the form of participation in the cash flow of the Mortgaged Property or a sharing in the appreciation of the value of the Mortgaged Property. The indebtedness evidenced by the Note is not convertible to an ownership interest in the Mortgaged Property or the Mortgagor and Seller has not financed nor does it own directly or indirectly, any equity of any form in the Mortgaged Property or the Mortgagor.

(rr) Withdrawn Loans. If the Loan has been released to Seller pursuant to a Request for Release as permitted under Section 5 of the Custodial Agreement, then the promissory note relating to the Loan was returned to Custodian within 10 days (or if such tenth day was not a Business Day, the next succeeding Business Day).

(ss) No Exception. Other than as noted by Custodian on the Exception Report, no Exception exists (as defined in the Custodial Agreement) with respect to the Loan which would materially adversely affect the Loan or Buyer's security interest, granted by Seller, in the Loan as determined by Buyer in its sole discretion.

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(tt) Origination. The Loan has been originated by Seller.

(uu) Mortgage Submitted for Recordation. The Mortgage (other than for a MERS Loan) has been submitted for recordation in the appropriate governmental recording office of the jurisdiction where the Mortgaged Property is located.

(vv) Acceptable Investment. No specific circumstances or conditions exist with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that should reasonably be expected to (i) cause private institutional investors which invest in Loans similar to the Loan to regard the Loan as an unacceptable investment, (ii) cause the Loan to be more likely to become past due in comparison to similar Loans, or (iii) adversely affect the value or marketability of the Loan in comparison to similar Loans.

(ww) Environmental Matters. The Mortgaged Property is free from any and all toxic or hazardous substances and there exists no violation of any local, state or federal environmental law, rule or regulation.

(xx) Ground Leases. With respect to each ground lease to which the Mortgaged Property is subject (a "Ground Lease"): (i) the Mortgagor is the owner of a valid and subsisting interest as tenant under the Ground Lease; (ii) the Ground Lease is in full force and effect, unmodified and not supplemented by any writing or otherwise; (iii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof; (iv) the Mortgagor enjoys the quiet and peaceful possession of the estate demised thereby, subject to any sublease; (v) the Mortgagor is not in default under any of the terms thereof and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; (vi) the lessor under the Ground Lease is not in default under any of the terms or provisions thereof on the part of the lessor to be observed or performed; (vii) the lessor under the Ground Lease has satisfied all of its repair or construction obligations, if any, to date pursuant to the terms of the Ground Lease; (viii) the remaining term of the Ground Lease extends not less than ten (10) years following the maturity date of such Loan; and (ix) the execution, delivery and performance of the Mortgage do not require the consent (other than those consents which have been obtained and are in full force and effect) under, and will not contravene any provision of or cause a default under, the Ground Lease.

(yy) Value of Mortgaged Property. Seller has no knowledge of any circumstances existing that should reasonably be expected to adversely affect the value or the marketability of the Mortgaged Property or the Loan or to cause the Loan to prepay during any period materially faster or slower than the Loans originated by Seller generally.

(zz) HOEPA. No Loan is (a) subject to the provisions of the Homeownership and Equity Protection Act of 1994 as amended ("HOEPA"), (b) a "high cost" mortgage loan, "covered" mortgage loan, "high risk home" mortgage loan, or "predatory" mortgage loan or any other comparable term, no matter how defined under any federal, state or local law, (c) subject to any comparable federal, state or local statutes or regulations, or any other statute or regulation providing for heightened regulatory scrutiny or assignee liability to holders of such mortgage loans, or (d) a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the current Standard & Poor's LEVELS® Glossary Revised, Appendix E).

(aaa) No Predatory Lending. No predatory, abusive or deceptive lending practices, including but not limited to, the extension of credit to a mortgagor without regard for the mortgagor's ability to repay the Loan and the extension of credit to a mortgagor which has no tangible net benefit to the mortgagor, were employed in connection with the origination of the Loan.

Schedule 1-9

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(bbb) Georgia Loans. No Loan which is secured by a Mortgaged Property which is located in the state of Georgia was originated prior to March 7, 2004.

(ccc) Takeout Commitments. Each Takeout Commitment is or will be within thirty days of the related Purchase Date, a valid, binding and subsisting obligation of the Takeout Investor enforceable in accordance with its terms; provided that a Nonbinding Jumbo Takeout Agreement may be a nonbinding commitment in accordance with its terms. Each Loan (other than a Jumbo Loan) is subject to one (1) Takeout Commitment. Each Jumbo Loan is subject to either (i) at least two (2) Nonbinding Jumbo Takeout Agreements or (ii) one (1) Binding Jumbo Takeout Commitment. Each Takeout Commitment has been assigned to Buyer as of the related Purchase Date.

(ddd) Cooperative Loans. With respect to each Cooperative Loan, (i) the term of the related Proprietary Lease is longer than the term of the Cooperative Loan, (ii) there is no provision in any Proprietary Lease that requires the Mortgagor to offer for sale the Cooperative Shares owned by such Mortgagor first to the Cooperative Corporation, (iii) there is no prohibition in any Proprietary Lease against pledging the Cooperative Shares or assigning the Proprietary Lease and (iv) the recognition agreement is on a form of agreement published by Aztech Document Systems, Inc. or includes provisions that are no less favorable to the lender than those contained in such form of agreement.

(eee) Cooperative Filings. With respect to each Cooperative Loan, each original UCC Financing Statement, continuation statement or other governmental filing or recordation necessary to create or preserve the perfection and priority of the first priority lien and security interest in the Cooperative Shares and Proprietary Lease has been timely and properly made. Any security agreement, chattel mortgage or equivalent document related to the Cooperative Loan and delivered to Seller or its designee establishes in Seller a valid and subsisting perfected first lien on and security interest in the Mortgaged Property described therein, and Seller has full right to sell and assign the same.

(fff) Cooperative Apartment. With respect to each Cooperative Loan, each acceptance of assignment and assumption of lease agreement contains enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization of the benefits of the security provided thereby. The acceptance of assignment and assumption of lease agreement contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Note in the event the Cooperative Unit is transferred or sold without the consent of the holder thereof.

(ggg) MERS Loans. With respect to each MERS Loan, a Mortgage Identification Number has been assigned by MERS and such Mortgage Identification Number is accurately provided on the Loan Schedule. The related Assignment of Mortgage to MERS has been duly and properly recorded. With respect to each MERS Loan, Seller has not received any notice of liens or legal actions with respect to such Loan and no such notices have been electronically posted by MERS.

(hhh) Seasoning. Each Loan was closed and funded by Seller less than fifteen (15) days prior to the related Purchase Date.

(iii) Reverse Mortgage Loans. No Loan is a reverse mortgage loan.

(jjj) Negative Amortization Loans. No Loan provides for negative amortization.

(kkk) Higher Priced Mortgage Loans. No Loans are “higher priced mortgage loans” as defined in 12 C.F.R. 226.35.

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Schedule 1-10

(lll) Compliance with Interagency Guidance. Each Purchased Loan that is a “nontraditional mortgage loan” within the meaning of the Interagency Guidance on Nontraditional Mortgage Product Risks, 71 FR 58609 (October 4, 2006), and that has a residential loan application date on or after October 13, 2007 (or, if such date cannot be determined, an origination date on or after October 1, 2007), complies in all respects with such guidance, including any interpretations, applications or implementation plans with respect thereto that have been communicated and/or agreed to by an institution’s regulator, regardless of whether the Purchased Loan’s originator or seller is subject to such guidance.

(mmm) Compliance with Subprime Statement. No Purchased Loan that is an Adjustable Rate Mortgage Loan and that has a residential loan application date on or after October 13, 2007, is subject to the Interagency Statement on Subprime Mortgage Lending, 72 FR 37569 (July 10, 2007) as defined by Fannie Mae in the Lender Letter 03-07 (August 15, 2007) or by Freddie Mac in Freddie Mac Single Family Advisory (October 7, 2007) and Freddie Mac Bulletin 2007-4).

(nnn) Underwriting Methodology. With respect to each Purchased Loan, the related originator has underwritten such Loan in accordance with the Underwriting Guidelines and determined, based on verified and documented information at the time the loan was originated, that the borrower has a reasonable ability to repay the loan according to its terms, using a payment schedule that fully amortizes the loan over the term of the loan.

(ooo) Jumbo Loans. With respect to each Jumbo Loan, (a) the related Back-End DTI Ratio does not exceed 41%, and (b) the related Front-End DTI Ratio does not exceed 31%.

(ppp) VA Loans. No Loan is a VA Loan.

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Schedule 1-11

**Schedule 2**

**Filing Jurisdictions and Offices**

**Secretary of State - State of California**

Schedule 2-1

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**Schedule 3**

**Subsidiaries**

HLC Escrow, Inc.  
HLC Settlement Services, Inc.  
Real Estate Title Services, LLC

Schedule 3-1

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**Schedule 4**

**Relevant States**

All 50 states and the District of Columbia

Schedule 4-1

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**Schedule 5**

**Other Credit Parties**

JPMorgan Chase Bank, N.A.

Credit Suisse First Boston Mortgage Capital LLC

Schedule 5-1

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**EXHIBIT A**  
**CERTIFICATION**

In connection with the Amended and Restated Master Repurchase Agreement dated as of February 17, 2012, as amended (the "Agreement"), between Home Loan Center, Inc. ("Seller") and Citibank, N.A. ("Buyer"), I, \_\_\_\_\_, \_\_\_\_\_ of Seller, do hereby certify that:

- (i) Seller is in compliance with all provisions and terms of the Agreement;
- (ii) no Default has occurred thereunder and no Default exists as of the date hereof;
- (iii) there have not been any modifications to the Underwriting Guidelines that would require notice to Buyer under the Agreement;
- (iv) all additional modifications to the Underwriting Guidelines since the date of the most recent disclosure to Buyer of any modification to the Underwriting Guidelines are set forth herein;
- (v) (A) The ratio of Seller's Total Indebtedness to Tangible Net Worth has at all times been less than 10:1, (B) Seller's Liquidity has at all times been equal to not less than the greater of (1) 3% of Seller's actual total assets (as set forth on Seller's most recent month-end balance sheets), and (2) \$7,000,000 (C) the Tangible Net Worth of Seller has at all times exceeded \$25,000,000, (D) the ratio of (i) the book value assigned to Seller's servicing portfolio to (ii) Seller's Tangible Net Worth has at all times been less than 1.5:1, and (E) Seller's consolidated net income has been equal to or greater than \$1.00 for at least one (1) of the previous two (2) consecutive fiscal quarters, as of the end of the last fiscal quarter;
- (vi) Seller (in its capacity as Servicer) has at all times during the term of the Agreement remained an approved mortgagee with the Department of Housing and Urban Development ("HUD") pursuant to Section 203 of the National Housing Act and has remained an approved servicer with the Federal Housing Administration to service mortgage loans for HUD;
- (vii) To the extent that any Mortgage Loan subject to any Transaction hereunder is an FHA Loan, Seller is in good standing with the FHA as an FHA Approved Mortgagee;
- (viii) [reserved];
- (ix) As at the end of [INSERT APPLICABLE MONTH/QUARTER/YEAR]:
  - (a) The Tangible Net Worth of Seller is \$ \_\_\_\_\_ ;
  - (b) The ratio of Seller's Total Indebtedness to its Tangible Net Worth is \_\_\_\_\_ ;

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(c) The Liquidity of Seller is \$ \_\_\_\_\_ ;

(d) Attached as Schedule I hereto are the calculations demonstrating Seller's compliance with the Tangible Net Worth covenant, Seller's compliance with the ratio of Indebtedness to Tangible Net Worth covenant, and Seller's compliance with the Liquidity Covenant, each as set forth in Section 13(p) of the Agreement and such Schedule I includes a line item which sets forth the amount of Seller's restricted cash that represents cash collateral in respect of letter of credit obligations;

(e) Attached as Schedule II hereto is a list of any repurchase agreements, loan and security agreements or similar credit facilities or agreements for borrowed funds entered into by Seller and any third party that have been terminated in the last thirty (30) Business Days or with respect to which the amount available for borrowing has been reduced;

(f) Attached as Schedule III hereto is a list of any repurchase agreements, loan and security agreements or similar credit facilities or agreements for borrowed funds entered into by Seller and any third party and shall include the size of such facilities and the related termination date of such facilities;

(g) Seller has received \_\_\_\_\_ repurchase and indemnity requests from its third party investors (including any Agency) during the previous calendar month. The aggregate amount of all repurchase and indemnity requests delivered to Seller by its third party investors (including any Agency) during the previous calendar month is \$ \_\_\_\_\_ ;

(h) The aggregate amount of all repurchase and indemnity claims paid by Seller to its third party investors (including any Agency) during the previous calendar month is \$ \_\_\_\_\_ ;

(i) As of the date hereof, the aggregate outstanding amount of all repurchase and indemnity obligations of Seller to its third party investors (including any Agency) is \$ \_\_\_\_\_ ;

(j) The amount of Loan Loss Reserves of Seller is equal to \$ \_\_\_\_\_ ;

(k) Seller has at all times during the previous calendar month maintained its status with (i) Ginnie Mae as an approved issuer, (ii) HUD, pursuant to Sections 203 and 211 of the National Housing Act, (iii) the FHA, as an FHA Approved Mortgagee and servicer, and (iv) Freddie Mac as an approved seller and lender; and

(l) As of the date hereof, the "compare ratio" assigned to Seller by FHA under its "Neighborhood Watch" program is \_\_\_\_\_ .

Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

IN WITNESS WHEREOF, I have signed this certificate.

Date: \_\_\_\_\_, 2012

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HOME LOAN CENTER, INC.

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

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SCHEDULE I-A

A-I-1

SCHEDULE I-B

A-I-2

SCHEDULE II

NAME OF LENDER	TYPE	PREVIOUS SIZE (\$)	CURRENT SIZE (\$)	TERMINATION DATE

A-II-1

SCHEDULE III

NAME OF LENDER	TYPE	CURRENT SIZE (\$)	MAXIMUM SIZE (\$)	TERMINATION DATE

A-II-2

**EXHIBIT B**

**FORM OF OPINION OF COUNSEL TO SELLER**

(date)

Citibank, N.A.  
390 Greenwich Street, 4th Floor  
New York, New York 10001  
Attention:

Dear Sirs and Mesdames:

You have requested [our] [my] opinion, as counsel to Home Loan Center, Inc., a California corporation (the "Seller"), with respect to certain matters in connection with that certain Amended and Restated Master Repurchase Agreement, dated as of February 17, 2012 (the "Agreement"), by and between Seller and Citibank, N.A. (the "Buyer") being executed contemporaneously with the agreements listed below. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

[We] [I] have examined the following documents:

1. the Agreement;

2. Custodial Agreement;
3. the Pricing Side Letter;
4. the Electronic Tracking Agreement
5. the Collection Account Control Agreement; and
6. such other documents, records and papers as we have deemed necessary and relevant as a basis for this opinion.

The documents referred to in items in 1 through 6 shall be referred to herein as the "Program Documents." To the extent [we] [I] have deemed necessary and proper, [we] [I] have relied upon the representations and warranties of Seller contained in the Agreement. [We] [I] have assumed the authenticity of all documents submitted to me as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all documents.

Based upon the foregoing, it is [our] [my] opinion that:

1. Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of California and is qualified to transact business in, duly licensed and is in good standing under, the laws of each state in which any Mortgaged Property is located to the extent necessary to ensure the enforceability of each Loan and the servicing of each Loan pursuant to the Agreement.

C-1

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2. Seller has the corporate power to engage in the transactions contemplated by the Program Documents to which it is a party and all requisite corporate power, authority and legal right to execute and deliver each of the Program Documents to which it is a party and observe the terms and conditions of such instruments. Seller has all requisite corporate power to enter into Transactions under the Repurchase Agreement and to grant a security interest in the Purchased Items pursuant to the Repurchase Agreement.

3. The execution, delivery and performance by Seller of the Program Documents to which it is a party, and the sale by Seller of the Purchased Items under the Repurchase Agreement have been duly authorized by all necessary corporate action on the part of Seller. Each of the Program Documents to which it is a party have been executed and delivered by Seller and are legal, valid and binding agreements enforceable in accordance with their respective terms against Seller, subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance, none of which will materially interfere with the realization of the benefits provided thereunder or with Buyer's security interest in the Loans.

4. No consent, approval, authorization or order of, and no filing or registration with, any court or governmental agency or regulatory body is required on the part of Seller for the execution, delivery or performance by Seller of the Program Documents to which it is a party or for the borrowings by Seller under the Repurchase Agreement or the granting of a security interest to Buyer in the Purchased Items, pursuant to the Repurchase Agreement.

5. The execution, delivery and performance by Seller of, and the consummation of the transactions contemplated by, the Program Documents to which it is a party do not and will not (a) violate any provision of Seller's charter or by-laws, (b) violate any applicable law, rule or regulation, (c) violate any order, writ, injunction or decree of any court or governmental authority or agency or any arbitral award applicable to Seller of which I have knowledge (after due inquiry) or (d) result in a breach of, constitute a default under, require any consent under, or result in the acceleration or required prepayment of any indebtedness pursuant to the terms of, any agreement or instrument of which I have knowledge (after due inquiry) to which Seller is a party or by which it is bound or to which it is subject, or (except for the Liens created pursuant to the Repurchase Agreement) result in the creation or imposition of any Lien upon any Property of Seller pursuant to the terms of any such agreement or instrument.

6. There is no action, suit, proceeding or investigation pending or, to the best of [our] [my] knowledge, threatened against Seller which, in [our] [my] judgment, either in any one instance or in the aggregate, would be reasonably likely to result in any material adverse change in the properties, business or financial condition, or prospects of Seller or in any material impairment of the right or ability of Seller to carry on its business substantially as now conducted or in any material liability on the part of Seller or which would draw into question the validity of the Program Documents or the Loans or of any action taken or to be taken in connection with the transactions contemplated thereby, or which would be reasonably likely to impair materially the ability of Seller to perform under the terms of the Repurchase Agreement, the Custodial Agreement or other Program Documents to which it is a party or the Loans.

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7. The Repurchase Agreement is effective to create, in favor of Buyer, a valid security interest under the Uniform Commercial Code in all of the right, title and interest of Seller in, to and under the Purchased Items as collateral security for the payment of the Obligations (as defined in the Repurchase Agreement), except that (a) such security interests will continue in the Purchased Items after their sale, exchange or other disposition only to the extent provided in Section 9-306 of the Uniform Commercial Code, (b) the security interests in Purchased Items in which Seller acquires rights after the commencement of a case under the Bankruptcy Code in respect of Seller may be limited by Section 552 of the Bankruptcy Code.

8. When the Notes are delivered to Custodian, endorsed in blank by a duly authorized officer of Seller, the security interest referred to in paragraph 7 above in the Notes will constitute a fully perfected first priority security interest in all right, title and interest of Seller therein, in the Loan evidenced thereby and in Seller's interest in the related Mortgaged Property.

(a) Upon the filing of financing statements on Form UCC-1 naming Buyer as “Secured Party” and Seller as “Debtor”, and describing the Purchased Items, in the jurisdictions and recording offices listed on Schedule 1 attached hereto, the security interests referred to in paragraph 8 above will constitute fully perfected security interests under the Uniform Commercial Code in all right, title and interest of Seller in, to and under such Purchased Items, which can be perfected by filing under the Uniform Commercial Code.

(b) The UCC Search Report sets forth the proper filing offices and the proper debtors necessary to identify those Persons who have on file in the jurisdictions listed on Schedule 1 financing statements covering the Filing Collateral as of the dates and times specified on Schedule 2. Except for the matters listed on Schedule 2, the UCC Search Report identifies no Person who has filed in any Filing Office a financing statement describing the Filing Collateral prior to the effective dates of the UCC Search Report.

9. Neither Seller nor any of its Subsidiaries is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act of 1940, as amended. Seller is not subject to any Federal or state statute or regulation which limits its ability to incur indebtedness.

10. The Assignments of Mortgage are in recordable form, except for the insertion of the name of the assignee, and upon the name of the assignee being inserted, are acceptable for recording under the laws of the state where each related Mortgaged Property is located.

11. Seller is duly registered as a corporation in each state in which Loans were originated to the extent such registration is required by applicable law, and has obtained all other licenses and governmental approvals in each jurisdiction to the extent that the failure to obtain such licenses and approvals would render any Loan unenforceable or would materially and adversely affect the ability of Seller to perform any of its obligations under, or the enforceability of, the Program Documents.

12. Assuming that all other elements necessary to render a Loan legal, valid, binding and enforceable were present in connection with the execution, delivery and performance

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of each Loan (including completion of the entire Loan fully, accurately and in compliance with all applicable laws, rules and regulations) and assuming further that no action was taken in connection with the execution, delivery and performance of each Loan (including in connection with the sale of the related Mortgaged Property) that would give rise to a defense to the legality, validity, binding effect and enforceability of such Loan, nothing in the forms of such Loans, as attached hereto as Exhibit A, would render such Loans other than legal, valid, binding and enforceable.

13. Assuming their validity, binding effect and enforceability in all other respects (including completion of the entire Loan fully, accurately and in compliance with all applicable laws, rules and regulations), the forms of Loans attached hereto as Exhibit A are in sufficient compliance with law and Federal consumer protection laws so as not to be rendered void or voidable at the election of the Mortgagor thereunder.

14. The Repurchase Agreement is a “repurchase agreement”, a “master netting agreement”, and a “securities contract” within the meaning of Bankruptcy Code Sections 101(47), 101(38A) and 741(7), and the rights of Buyer contained in Section 45 thereof to setoff mutual debts and claims, and in Section 19 thereof to liquidate, terminate and accelerate the Repurchase Agreement, in the event of the bankruptcy of Seller will not be stayed, avoided, or otherwise limited by operation of any provision of the Bankruptcy Code or by order of a court or administrative agency in any proceeding thereunder, including without limitation the automatic stay provisions of Bankruptcy Code Section 362(a) pursuant to Sections 362(b)(6), (7) and (27) thereof.

Very truly yours,

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## EXHIBIT C

### FORM OF CONFIDENTIALITY AGREEMENT

In connection with your consideration of a possible or actual acquisition of a participating interest (the “Transaction”) in an advance, note or commitment of Citibank, N.A. (“Buyer”) pursuant to a Amended and Restated Master Repurchase Agreement between Buyer and Home Loan Center, Inc. (the “Seller”) dated as of February 17, 2012, you have requested the right to review certain non-public information regarding Seller that is in the possession of Buyer. In consideration of, and as a condition to, furnishing you with such information and any other information (whether communicated in writing or communicated orally) delivered to you by Buyer or its affiliates, directors, officers, employees, advisors, agents or “controlling persons” (within the meaning of the Securities Exchange Act of 1934, as amended (the “1934 Act”)) (such affiliates and other persons being herein referred to collectively as Buyer “Representatives”) in connection with the consideration of a Transaction (such information being herein referred to as “Evaluation Material”), Buyer hereby requests your agreement as follows:

1. The Evaluation Material will be used solely for the purpose of evaluating a possible Transaction with Buyer involving you or your affiliates, and unless and until you have completed such Transaction pursuant to a definitive agreement between you or any such affiliate and Buyer, such Evaluation Material will be kept strictly confidential by you and your affiliates, directors, officers, employees, advisors, agents or controlling persons (such affiliates and other persons being herein referred to collectively as “your Representatives”), except that the Evaluation Material or portions thereof may be disclosed to those of your Representatives who need to know such information for the purpose of evaluating a possible Transaction with Buyer (it being understood that prior to such disclosure your Representatives will be informed of the confidential nature of the Evaluation Material and shall agree to be bound by this Agreement). You agree to be responsible for any breach of this Agreement by your Representatives.

2. The term "Evaluation Material" does not include any information which (i) at the time of disclosure or thereafter is generally known by the public (other than as a result of its disclosure by you or your Representatives) or (ii) was or becomes available to you on a nonconfidential basis from a person not otherwise bound by a confidential agreement with Buyer or its Representatives or is not otherwise prohibited from transmitting the information to you. As used in this Agreement, the term "person" shall be broadly interpreted to include, without limitation, any corporation, company, joint venture, partnership or individual.

3. In the event that you receive a request to disclose all or any part of the information contained in the Evaluation Material under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, you agree to (i) immediately notify Buyer and Seller of the existence, terms and circumstances surrounding such a request, (ii) consult with Seller on the advisability of taking legally available steps to resist or narrow such request, and (iii) if disclosure of such information is required, exercise your best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information.

4. Unless otherwise required by law in the opinion of your counsel, neither you nor your Representative will, without our prior written consent, disclose to any person the fact that the Evaluation Material has been made available to you.

5. You agree not to initiate or maintain contact (except for those contacts made in the ordinary course of business) with any officer, director or employee of Seller regarding the

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business, operations, prospects or finances of Seller or the employment of such officer, director or employee, except with the express written permission of Seller.

6. You understand and acknowledge that Seller is not making any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material or any other information provided to you by Buyer. None of Seller, its respective affiliates or Representatives, nor any of its respective officers, directors, employees, agents or controlling persons (within the meaning of the 1934 Act) shall have any liability to you or any other person (including, without limitation, any of your Representatives) resulting from your use of the Evaluation Material.

7. You agree that neither Buyer nor Seller has granted you any license, copyright, or similar right with respect to any of the Evaluation Material or any other information provided to you by Buyer.

8. If you determine that you do not wish to proceed with the Transaction, you will promptly deliver to Buyer all of the Evaluation Material, including all copies and reproductions thereof in your possession or in the possession of any of your Representatives.

9. Without prejudice to the rights and remedies otherwise available to Seller, Seller shall be entitled to equitable relief by way of injunction if you or any of your Representatives breach or threaten to breach any of the provisions of this Agreement. You agree to waive, and to cause your Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy.

10. The validity and interpretation of this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to agreements made and to be fully performed therein (excluding the conflicts of law rules). You submit to the jurisdiction of any court of the State of New York or the United States District Court for the Southern District of the State of New York for the purpose of any suit, action, or other proceeding arising out of this Agreement.

11. The benefits of this Agreement shall inure to the respective successors and assigns of the parties hereto, and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon the respective successors and assigns.

12. If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

13. This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendments, or change or supplement hereto shall be binding or effective unless the same is set forth in writing by a duly authorized representative of each party and may be modified or waived only by a separate letter executed by Seller and you expressly so modifying or waiving such Agreement.

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14. For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

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Kindly execute and return one copy of this letter which will constitute our Agreement with respect to the subject matter of this letter.

**CITIBANK, N.A.**

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





(i) deliver all servicing and "records" relating to such Servicing Released Loans to the designee of Buyer at the end of each such Servicing Term and (ii) cooperate in all respects with the transfer of servicing to Buyer or its designee. The transfer of servicing and such records by You shall be in accordance with customary standards in the industry and the terms of the Servicing Agreement, and such transfer shall include the transfer of the gross amount of all escrows held for the related mortgagors (without reduction for unreimbursed advances or "negative escrows").

Further, You hereby constitute and appoint Buyer and any officer or agent thereof, with full power of substitution, as Your true and lawful attorney-in-fact with full irrevocable power and authority in Your place and stead and in Your name or in Buyer's own name, following any Servicer Termination with respect solely to the Servicing Released Loans that are subject to such Servicer Termination, to direct any party liable for any payment under any such Servicing Released Loans to make payment of any and all moneys due or to become due thereunder directly to Buyer or as Buyer shall direct including, without limitation, the right to send "goodbye" and "hello" letters on Your behalf. You hereby ratify all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

For the purpose of the foregoing, the term "records" shall be deemed to include but not be limited to any and all servicing agreements, files, documents, records, data bases, computer tapes, copies of computer tapes, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of such Servicing Released Loans.

[NO FURTHER TEXT ON THIS PAGE]

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Please acknowledge receipt of this instruction letter by signing in the signature block below and forwarding an executed copy to Buyer promptly upon receipt. Any notices to Buyer should be delivered to the following address: Citibank, N.A. 390 Greenwich Street, New York, NY 10013, Attention: Bobbie Theivakumaran, Telecopier No.: (212) 723-8591, Telephone No.: (212) 723-6753.

Very truly yours,

HOME LOAN CENTER, INC.

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

Acknowledged and Agreed as of this      day of                      , 20      :

[SUBSERVICER] [ADDITIONAL COLLATERAL SERVICER]

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

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**EXHIBIT E**

**FORM OF SECURITY RELEASE CERTIFICATION**

[insert date]

Citibank, N.A.  
390 Greenwich Street, 4th Floor  
New York, New York 10001  
Attention:

Re:      Security Release Certification

Effective as of [DATE] [ ] hereby relinquishes any and all right, title and interest it may have in and to the Loans described in Exhibit A attached hereto upon purchase thereof by Citibank, N.A. ("Buyer") from Seller named below pursuant to that certain Amended and Restated Master Repurchase Agreement, dated as of February 17, 2012 as of the date and time of receipt by [ ] of \$                      for such Loans (the "Date and Time of Sale") and certifies that all notes, mortgages, assignments and other documents in its possession relating to such Loans have been delivered and released to Seller named below or its designees as of the Date and Time of Sale.

Name and Address of Lender:

[Custodian]  
[ ]  
For Credit Account No. [ ]  
Attention: [ ]  
Phone: [ ]  
Further Credit — [ ]

[NAME OF WAREHOUSE LENDER]

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

Seller named below hereby certifies to Buyer that, as of the Date and Time of Sale of the above mentioned Loans to Buyer, the security interests in the Loans released by the above named [corporation] comprise all security interests relating to or affecting any and all such Loans. Seller warrants that, as of such time, there are and will be no other security interests affecting any or all of such Loans.

[SELLER]

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

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EXHIBIT TO SECURITY RELEASE CERTIFICATION

[List of Loans]

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AMENDMENT NO. 8 TO MASTER REPURCHASE AGREEMENT

Dated as of April 25, 2012

Between:

HOME LOAN CENTER, INC., as Seller

and

JPMORGAN CHASE BANK, N.A., as Buyer

1. This Amendment

The Parties agree hereby to amend the Master Repurchase Agreement dated October 30, 2009 between them (the "Original MRA", as amended by Letter Agreement dated November 27, 2009, Amendment No. 1 to Master Repurchase Agreement dated March 11, 2010, Amendment No. 2 to Master Repurchase Agreement dated March 11, 2010, Amendment No. 3 to Master Repurchase Agreement dated July 22, 2010, Amendment No. 4 to Master Repurchase Agreement dated October 29, 2010, Amendment No. 5 to Master Repurchase Agreement dated March 31, 2011, Amendment No. 6 to Master Repurchase Agreement dated June 29, 2011, Amendment No. 7 to Master Repurchase Agreement dated October 28, 2011, and as further supplemented, amended or restated from time to time, the "MRA") to provide for certain changes to the MRA on the terms and conditions set forth herein, and they hereby amend the MRA as follows.

All capitalized terms used in the MRA and used, but not defined differently, in this amendment (this "Amendment") have the same meanings here as there.

The Paragraphs of this Amendment are numbered to correspond with the numbers of the Paragraphs in the MRA amended hereby and are accordingly often nonsequential.

2. Definitions; Interpretation

A. The definition of "Termination Date" in Paragraph 2(a) of the MRA is hereby amended in its entirety to read as follows:

"Termination Date" means the earliest of (i) the Business Day, if any, that Seller designates as the Termination Date by written notice to Buyer given at least thirty (30) days prior to such date, (ii) the date of declaration of the Termination Date pursuant to Paragraph 12(b), (iii) the Business Day that Buyer designates as the Termination Date pursuant to Paragraph 11(aa), (iv) the first Business Day that is forty-five (45) days after the closing of the Discover Financial Transaction and (v) October 25, 2012, as that date may be extended by written agreement of Buyer and Seller.

[Signature Page Follows]

Notwithstanding any other provision of this Amendment, the amendment of the MRA provided for above shall not become effective until (i) the Parties have executed and delivered this Amendment, and (ii) the Guarantors have executed a confirmation of the Guaranty in form and substance acceptable to Buyer. Such amendment shall become effective automatically upon the last to occur of the three events described in clauses (i) and (ii) of the immediately preceding sentence.

The Parties hereby ratify and confirm the MRA (as further amended hereby) and the other Transaction Documents to be in full force and effect.

As amended hereby, the MRA remains in full force and effect, and the Parties hereby ratify and confirm it.

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
John Greene,  
Underwriter and Vice President

HOME LOAN CENTER, INC.

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

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO RULE 13a-14(a) OR RULE 15d-14(a) OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Douglas R. Lebda, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended March 31, 2012 of Tree.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2012

/s/ DOUGLAS R. LEBDA

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Douglas R. Lebda  
*Chairman and Chief Executive Officer*  
*(principal executive officer)*

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## QuickLinks

[Exhibit 31.1](#)

[CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULE 13a-14\(a\) OR RULE 15d-14\(a\) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO RULE 13a-14(a) OR RULE 15d-14(a) OF THE  
SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Christopher R. Hayek, certify that:

1. I have reviewed this quarterly report on Form 10-Q for the period ended March 31, 2012 of Tree.com, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 15, 2012

/s/ CHRISTOPHER R. HAYEK

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Christopher R. Hayek  
Senior Vice President and Chief Accounting Officer  
(principal financial officer)

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## QuickLinks

[Exhibit 31.2](#)

[CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULE 13a-14\(a\) OR RULE 15d-14\(a\) OF THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Douglas R. Lebda, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) the Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2012 of Tree.com, Inc. (the "Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Tree.com, Inc.

Date: May 15, 2012

/s/ DOUGLAS R. LEBDA

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Douglas R. Lebda  
*Chairman and Chief Executive Officer*  
*(principal executive officer)*

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## QuickLinks

[Exhibit 32.1](#)

[CERTIFICATION OF THE PRINCIPAL EXECUTIVE OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Christopher R. Hayek, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

- (1) the Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2012 of Tree.com, Inc. (the "Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Tree.com, Inc.

Date: May 15, 2012

/s/ CHRISTOPHER R. HAYEK

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Christopher R. Hayek  
*Senior Vice President and Chief Accounting Officer*  
*(principal financial officer)*

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## QuickLinks

[Exhibit 32.2](#)

[CERTIFICATION OF THE PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)