UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

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

For the fiscal year ended December 31, 2009 or

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

For the transition period from __________ to __________.

Commission File Number: 1-14100

IMPAC MORTGAGE HOLDINGS, INC.
(Exact name of registrant as specified in its charter)

Maryland	**33-0675505**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)

19500 Jamboree Road, Irvine, California 92612
(Address of principal executive offices)
(949) 475-3600
(Registrant's telephone number, including area code)

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

Title of each class	**Name of each exchange on which registered**
Common Stock, $0.01 par value	NYSE Amex

Securities registered pursuant to Section 12(g) of the Act: none

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act Yes o No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes o No ☒

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 o

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 o No o

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

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

Large accelerated filer o	Accelerated filer o	Non-accelerated filer o (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 Exchange Act Rule 12b-2) Yes o No ☒

As of June 30, 2009, the aggregate market value of the voting stock held by non-affiliates of the registrant was approximately $7.6 million, based on the closing sales price of common stock on the Pink OTC Markets, Inc. (formerly, Pink Sheets) on that date. For purposes of the calculation only, all directors and executive officers of the registrant have been deemed affiliates. There were 7,698,146 shares of common stock outstanding as of March 16, 2010. The registrant's common stock commenced trading on the NYSE Amex on December 29, 2009. Prior to that, the common stock was quoted on the Pink OTC Markets, Inc.

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PART I

ITEM 1. BUSINESS

Impac Mortgage Holdings, Inc. (the Company or IMH) is a Maryland corporation incorporated in August 1995 and has the following subsidiaries: Integrated Real Estate Service Corporation (IRES), IMH Assets Corp. (IMH Assets), Impac Warehouse Lending Group, Inc. (IWLG) and Impac Funding Corporation (IFC).

Forward-Looking Statements

This report on Form 10-K contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements, some of which are based on various assumptions and events that are beyond our control, may be identified by reference to a future period or periods or by the use of forward-looking terminology, such as "may," "will," "believe," "expect," "likely," "should," "could," "seem to," "anticipate," or similar terms or variations on those terms or the negative of those terms. The forward-looking statements are based on current management expectations. Actual results may differ materially as a result of several factors, including, but not limited to the following: the ongoing volatility in the mortgage industry; our ability to successfully manage through the current market environment; our ability to meet liquidity needs from current cash flows or generate new sources of revenue; management's ability to successfully manage and grow the Company's mortgage and real estate fee-based business activities; the ability to make interest payments; increases in default rates or loss severities and mortgage related losses; the ability to satisfy conditions (payment and covenants) in the note payable with a major creditor; our ability to obtain additional financing and the terms of any financing that we do obtain; inability to effectively liquidate properties to mitigate losses; increase in loan repurchase requests and ability to adequately settle repurchase obligations; decreases in value of our residual interests that differ from our assumptions; the ability of our common stock to continue trading in an active market; the outcome of litigation or regulatory actions pending against us or other legal contingencies; our compliance with applicable local, state and federal laws and regulations and other general market and economic conditions.

For a discussion of these and other risks and uncertainties that could cause actual results to differ from those contained in the forward-looking statements, see Item 1A. "Risk Factors" and Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this report. This document speaks only as of its date and we do not undertake, and specifically disclaim any obligation, to publicly release the results of any revisions that may be made to any forward-looking statements to reflect the occurrence of anticipated or unanticipated events or circumstances after the date of such statements.

Available Information

Our Internet website address is www.impaccompanies.com. We make available our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and proxy statements for our annual stockholders' meetings, as well as any amendments to those reports, free of charge through our website as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or "SEC." You can learn more about us by reviewing our SEC filings on our website by clicking on "Stockholder Relations" located on our home page and proceeding to "Financial Reports." We also make available on our website, under "Corporate Governance," charters for the audit, compensation, and governance and nominating committees of our board of directors, our Code of Business Conduct and Ethics, our Corporate Governance Guidelines and other company information, including amendments to such documents and waivers, if any to our

Code of Business Conduct and Ethics. These documents will also be furnished, free of charge, upon written request to Impac Mortgage Holdings, Inc., Attention: Stockholder Relations, 19500 Jamboree Road, Irvine, California 92612. The SEC also maintains a website at www.sec.gov that contains reports, proxy statements and other information regarding SEC registrants, including the Company.

Recent Business Developments

During 2009, the Company continued to implement steps to restructure its debt obligations and establish new lines of business in building an integrated mortgage services platform that provides solutions to the mortgage and real estate markets.

The Company continued to improve its liquidity by successfully restructuring its debt obligations in 2009 by both settling and exchanging several significant liabilities, including:

- The Company purchased and canceled $28.5 million in outstanding trust preferred securities for $4.3 million. Additionally, the Company exchanged an aggregate of $51.3 million in trust preferred securities for junior subordinated notes with an aggregate principal balance of $62.0 million. Under the terms of the exchange, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017, at which point they become variable at 3-month LIBOR plus 375 basis points. Through December 31, 2009, the Company has successfully settled or restructured $87.8 million of the original $96.3 million in trust preferred securities issued, reducing its annual interest expense obligation from $7.8 million to approximately $2.0 million.

- The Company completed the purchase of 4,378,880 shares of its preferred stock, representing a liquidation value of $109.5 million, for $1.3 million plus $7.4 million in accumulated but unpaid dividends. In connection with the purchase, the Company eliminated its $14.9 million annual preferred dividend obligation.

- The Company entered into a settlement agreement (the Settlement Agreement) with its remaining reverse repurchase facility lender to settle its remaining restructured reverse repurchase line. The agreement retired this facility and removed any further exposure associated with the line or the loans that secured the line. Pursuant to the terms of the settlement agreement, the Company settled the $140.0 million balance of the restructured reverse repurchase line by (i) transferring the loans securing the line to the lender at their approximate carrying values, (ii) making a cash payment of $20.0 million and (iii) entering into a credit agreement (the Credit Agreement) with the lender for a $33.9 million term loan, which is to be paid over 18 months.

The Company also initiated various mortgage and real estate fee-based business activities, including loss mitigation, real estate disposition, monitoring and surveillance services, real estate brokerage and lending services and title and escrow services. The Company has been able to develop and enhance its service offerings in providing services to investors, servicers and individual borrowers primarily by focusing on loss mitigation and performance of our own long-term mortgage portfolio. These services have currently generated fees primarily from the Company's long-term mortgage portfolio and to a lesser extent from the marketplace, but we intend to expand service offerings to the marketplace. The development of these business activities focuses on vertical integration of a centralized platform which we believe we can operate synergistically to maximize their success.

The information contained throughout this document is presented on a continuing basis, unless otherwise stated.

Market Conditions

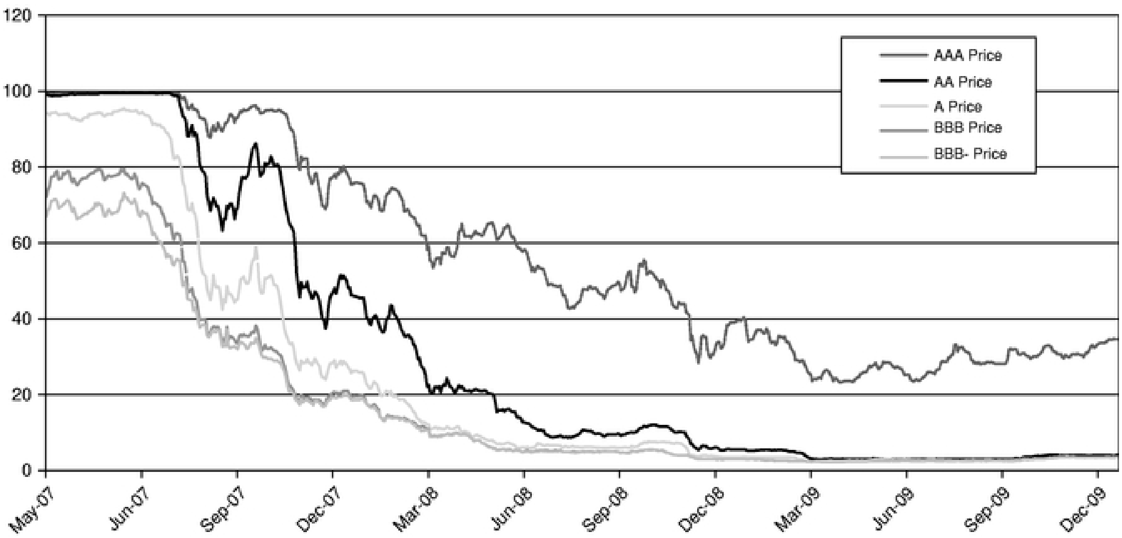
The economy continued to contract during 2009 before showing modest signs of improvement toward the end of the year. The current economic environment, considered the worst recession on record since the Great Depression, continues to adversely affect the credit performance of the Company's long-term mortgage portfolio. The economy remains weak, as evidenced by many key economic indicators. Notably, the national unemployment rate increased to 10.1% in October 2009 before declining to 10.0% at the end of the fourth quarter and 9.7% at January 2010. Higher unemployment and weaker overall economic conditions have led to a significant increase in the number of loan defaults, while continued weak housing prices have driven a significant increase in loan loss severities. Activity in the housing sector increased, with new home construction picking up for the first time in three and a half years. Home price appreciation, housing starts and home sales began to exhibit some modest signs of recovery during the second half of the year. Inflation remained low, and the Federal Reserve indicated that the federal funds rate would likely remain low for an "extended period," reiterating its intent to continue to use a wide range of tools to promote economic recovery and maintain price stability.

The Federal Reserve and U.S. government have undertaken certain initiatives during the year to strengthen the capital of financial institutions, promote lending, and inject liquidity into the financial markets. The U.S. government has also developed programs to incent lenders and servicers to provide loan modifications to troubled borrowers in an effort to fight the foreclosure crisis. However, mortgage delinquencies and foreclosures continued to increase in both the prime and subprime loan markets. The level of defaults and the national unemployment rate remain high, which creates some uncertainty about the strength or duration of any recovery. Additional deterioration in the overall economic environment, including continued weakening of the labor market, could cause loan delinquencies to increase beyond the Company's current expectations, resulting in additional increases in losses and reductions in fair value.

Should defaults continue to remain elevated, as the economy and housing market continues to struggle, the credit performance of the Company's long-term mortgage portfolio may continue to be negatively affected by these economic conditions. Delinquencies and nonperforming loans and assets continue to remain at elevated levels, although we have begun to see some stabilization along with significant decreases in REOs. In addition, borrowers with significant negative equity and the ability to pay their mortgage payments are intentionally defaulting, called strategic defaults, because they believe that home prices will not recover in a reasonable amount of time. Additional deterioration in the overall economic environment, including continued deterioration in the labor market, could cause delinquencies to increase beyond the Company's current expectations, resulting in additional increases in losses and reductions in fair value.

We believe there is currently no index for Alt-A mortgage products, but the general direction and magnitude of price movement in the ABX 2007-1index is reflective of the disruption in the market and general price movement experienced by the Company's securities. The index, which does not include any IMH bonds, is being used for illustrative purposes only because it is a non-conforming single-family mortgage index that has traded consistently in recent years. The ABX 2007-1 Index illustrates market prices for designated groups of subprime securities by credit rating. The index is shown here as an illustration of the price volatility in the general non-conforming subprime mortgage market since the beginning of 2007 and does not reflect actual pricing on IMH bonds, which are backed by Alt-A loans rather than subprime loans. As shown below, the ABX 2007-1 Index displays dramatic declines in the value of such securities.

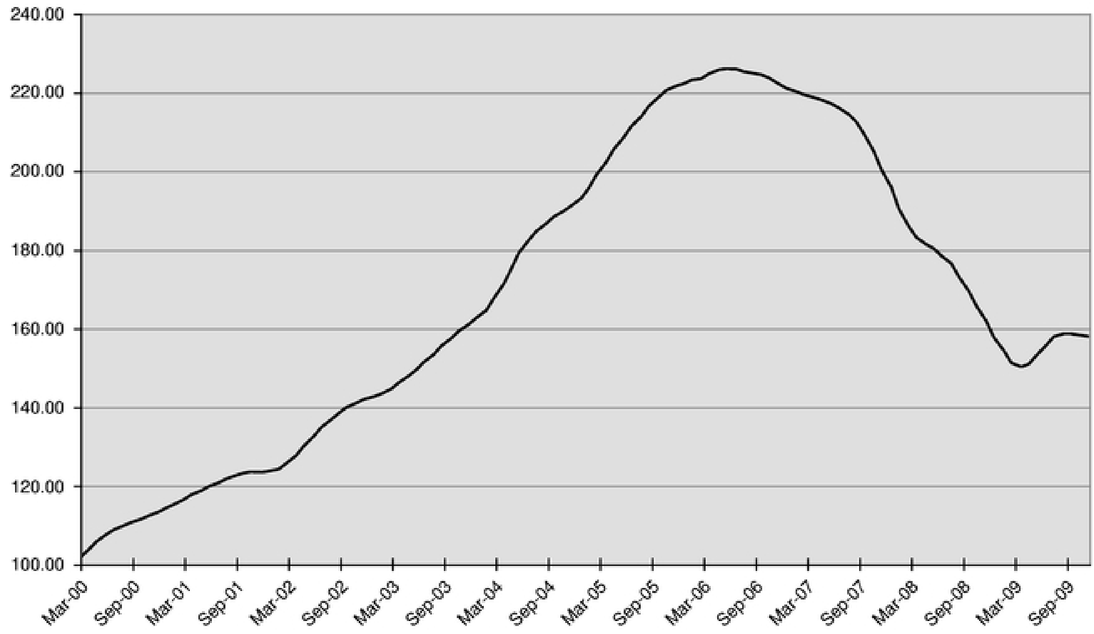
ABX 2007-1



Effects of Recent Market Activity

As a result of the Company's inability to sell or securitize non-conforming loans during the second half of 2007, the Company discontinued funding loans and discontinued substantially all of its mortgage (non-conforming single-family loans and commercial loans, which consist primarily of multifamily loans) and warehouse lending operations. Market conditions deteriorated in 2008 and continued to be depressed in 2009. As a result, the Company's investment in securitized non-conforming loans (residual interests) has been affected by the increase in estimated defaults and severities, evidenced by significant home price depreciation. The decline in single-family home prices can be seen in the chart below.

Case-Shiller (Composite-10)



As depicted in the chart above, average home prices peaked in June 2006 at 226.29 and continued their dramatic decline through much of the first half of 2009, while increasing slightly over the remaining half of the year. The Standard & Poor's Case-Shiller 10-City Composite Home Price Index (the Index) for December 2009 was 158.18 (with the base of 100.00 for January 2000) and hasn't been this low since October 2003 when the Index was 157.71. Beginning in the third quarter of 2007, the Company began to believe that there was a correlation between the borrowers' perceived equity in their homes and defaults. The original loan-to-value (defined as loan amount as a percentage of collateral value, "LTV") and original combined loan-to-value (defined as first lien plus total subordinate liens to collateral value, "CLTV") ratios of single-family mortgages remaining in the Company's securitized mortgage collateral as of December 31, 2009 was 73 percent and 82 percent, respectively. The current LTV and CLTV ratios likely increased from origination date as a result of the deterioration in the real estate market. We believe that home prices that have declined below the borrower's original purchase price have a higher risk of default within our portfolio. Based on the Index, home prices have declined 30 percent through December 2009 from the 2006 peak. Further, we believe the home prices in general within California and Florida, the states with the highest concentration of our mortgages, have declined even further than the Index. We have considered the deterioration in home prices and its impact on our loss severities, which are a primary assumption used in the valuation of securitized mortgage collateral and borrowings.

In response to the current market environment, during 2009, the Company initiated various fee-based business activities to provide solutions to the mortgage and real estate markets, including loss mitigation services such as loan modifications, real estate disposition and portfolio monitoring and surveillance services.

Continuing Operations

The Company's continuing operations include the mortgage and real estate fee-based business activities conducted by IRES and the long-term mortgage portfolio (residual interests in securitizations reflected as net trust assets and liabilities in the consolidated balance sheets).

Mortgage and real estate services

In 2009, the Company has sought to create an integrated services platform to provide solutions to the mortgage and real estate markets. Pursuant to that, the Company initiated various mortgage and real estate fee-based business activities, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage, mortgage lending, and title and escrow services. The Company has been able to develop and enhance its service offerings in providing services to investors, servicers and individual borrowers primarily by focusing on loss mitigation and performance of our own long-term mortgage portfolio. The development of these business activities focuses on vertical integration of a centralized platform which we believe we can operate synergistically to maximize their success. The Company has established the following business activities:

- *Loss Mitigation*—The Company has established loss mitigation operations to provide outsourced services including loan modification and short sale services to investors and institutions with distressed and delinquent residential and multifamily mortgage portfolios. In addition, we provide modification solutions to individual borrowers by interacting with loan servicers on behalf of the borrowers to assist them in lowering the monthly mortgage payments to an affordable level allowing them to remain in their homes. The Company receives fees paid by the borrower for loan modification services performed for the borrower.

- *Real Estate Solutions*—The Company has established real estate solutions operations to provide real estate owned (REO) surveillance services to servicers and portfolio managers to assist them in maximizing loss mitigation performance in managing distressed mortgage portfolios and foreclosed real estate assets, along with disposition of such assets. In addition, we perform default surveillance and monitoring services for residential and multifamily mortgage portfolios for investors and servicers to assist them with overall portfolio performance.

- *Real Estate Brokerage*—The Company has established real estate brokerage operations which primarily serves the southern California area. The primary business of the real estate brokerage business is the listing and selling of REO and pre-foreclosure properties associated with short sales.

- *Mortgage Lending Operations*—The Company has established mortgage lending operations as it seeks to re-enter the mortgage lending industry. The mortgage lending activities include earning fees for brokering loans to third-party lenders since 2008 and originating loans through our mortgage banking platform under the "Impac" brand name. Although we originated only a minimal amount of loans in 2009, we expect to increase our loan originations in 2010 through retail channels, real estate broker channels and captive financing from the Company's portfolio of transactions, focusing on originating only loans that are eligible for sale to HUD and other government-sponsored enterprises.

- *Title and Escrow*—During the fourth quarter of 2009, the Company received California Department of Insurance approval for our acquisition of a title insurance agency and escrow operations. Upon the approval, the Company acquired the operations effective December 31, 2009. The title insurance company services California and selected national markets to provide title insurance, escrow and settlement services to residential mortgage lenders, real estate agents, asset managers and REO companies in the residential market sector of the real estate industry. We deliver services through a proprietary integrated technology platform.

For the year ended December 31, 2009, mortgage and real estate services fees were $42.6 million. Although the Company intends to attempt to generate more fees by expanding its services to third parties in the marketplace in the near future, the revenues from these business activities have primarily been generated from the Company's long-term mortgage portfolio. Furthermore, since these business activities are newly established, there remains uncertainty about their future success.

Master Servicing

We have retained master servicing rights on substantially all of our non-conforming single-family residential and commercial mortgage acquisitions and originations that we retained or sold through securitizations. Our function as master servicer includes collecting loan payments from loan servicers and remitting loan payments, less master servicing fees receivable and other fees, to a trustee or other purchaser for each series of mortgage-backed securities or mortgages master serviced. In addition, as master servicer, we monitor compliance with our servicing guidelines and perform, or contract with a third party to perform, all obligations not adequately performed by any loan servicer. We are also required to advance funds or cause our loan servicers to advance funds to cover principal and interest payments not received from borrowers depending on the status of their mortgages. We also earn income or incur expense on principal and interest payments we receive from borrowers until those payments are remitted to the investors of those mortgages. Master servicing fees are generally 0.03 percent per annum on the unpaid principal balance of the mortgages serviced. Cash flows from master servicing has declined significantly due to a decrease in principal balances and a decline in interest rates since the end of 2008, which affects the amount we earn on balances held in custodial accounts. At December 31, 2009, we were the master servicer for approximately 51,700 mortgages with a principal balance of approximately $14.5 billion. At December 31, 2009, the Company's master servicing solely for unconsolidated securitizations included approximately $2.0 billion in servicing of which $0.6 billion of those loans were more than 60 days past due from the previous due date.

Real Estate Advisory Agreement

During 2008, the Company entered into an agreement with a real estate marketing company to generate advisory fees. The real estate marketing company specialized in the marketing of foreclosed properties. During the year, the Company earned $18.4 million in real estate advisory fees plus a $27.0 million fee for agreeing to terminate this relationship in the fourth quarter of 2008.

Long-Term Mortgage Portfolio

The long-term mortgage portfolio consists of the residual interest in securitizations represented on the consolidated balance sheet as the difference between trust assets and trust liabilities.

The long-term mortgage portfolio includes adjustable rate and, to a lesser extent, fixed rate Alt-A single-family residential mortgages and commercial (primarily multifamily) mortgages that were acquired and originated by the Company. Alt-A mortgages are primarily first lien mortgages made to borrowers whose credit is generally within typical Fannie Mae and Freddie Mac guidelines, but have loan characteristics that make them non-conforming under those guidelines.

For instance, Alt-A mortgages frequently may have had loan balances in excess of maximum Fannie Mae and Freddie Mac lending limits and may not have certain documentation or verifications that are required by Fannie Mae and Freddie Mac and, therefore, in making our credit decisions, we were more reliant upon the borrower's credit score and the adequacy of the underlying collateral.

Commercial mortgages (consisting primarily of multifamily residential loans) in the long-term mortgage portfolio are primarily adjustable rate mortgages with initial fixed interest rate periods of two-, three-, five-, seven- and ten-years that subsequently convert to adjustable rate mortgages, or (hybrid ARMs). Commercial mortgages have interest rate floors, which are the initial start rate, in some circumstances, lock out periods and prepayment penalty periods of three-, five- seven- and ten-years. Commercial mortgages have provided greater asset diversification on our balance sheet as borrowers of commercial mortgages typically have higher credit scores and commercial mortgages typically have a lower LTV.

The non-conforming single-family residential and commercial mortgages that we retained were primarily adjustable rate mortgages, or "ARMs," hybrid ARMs and fixed rate mortgages, or "FRMs." The interest rate on ARMs are typically tied to an index, usually the six-month London Interbank Offered Rate, or "LIBOR," plus a spread and adjust periodically (typically semi-annually), subject to lifetime interest rate caps and periodic interest rate and payment caps. The initial interest rates on ARMs are typically lower than average comparable FRMs but may be higher than average comparable FRMs over the life of the mortgage. Hybrid ARMs are mortgages with maturity periods ranging from 15 to 30 years with initial fixed interest rate periods generally ranging from two to ten years, which subsequently adjust to ARMs. The majority of mortgages retained by the long-term investment operations have prepayment penalty features with prepayment penalty periods ranging from six months to seven years. Prepayment penalties may be assessed to the borrower if the borrower refinances or, in some cases, sells the home.

Historically, the Company securitized mortgages in the form of collateralized mortgage obligations (CMOs), which were consolidated and accounted for as secured borrowings for financial statement purposes. Securitized mortgages in the form of real estate mortgage investment conduits (REMICs), were either consolidated or unconsolidated depending on the design of the securitization structure. CMO and certain REMIC securitizations were designed so that the transferee (securitization trust) was not a qualifying special purpose entity (QSPE), and therefore the Company consolidated the variable interest entity (VIE) as it was the primary beneficiary of the sole residual interest in each securitization trust. Generally, this was achieved by including terms in the securitization agreements that gave the Company the ability to unilaterally cause the securitization trust to return specific mortgages, other than through a clean-up call. Amounts consolidated are included in trust assets and liabilities as securitized mortgage collateral, real estate owned, derivative assets, securitized mortgage borrowings and derivative liabilities in the accompanying consolidated balance sheets.

Effective January 1, 2010, former QSPEs are evaluated for consolidation based on the provisions of FASB ASC 810-10-25, which eliminates the concept of a QSPE and changes the approach to determining a securitization trust's primary beneficiary. Refer to Note A-17—*Recent Accounting Pronouncements* in the notes to the consolidated financial statements for a discussion of the impact these new rules will have on the Company's consolidated balance sheets.

During 2009 and 2008, the Company did not acquire or retain any mortgages in the portfolio.

For additional information regarding the long-term mortgage portfolio refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," Note C "Securitized Mortgage Collateral" and Note F "Securitized Mortgage Borrowings" in the notes to the consolidated financial statements.

Discontinued Operations

Discontinued operations primarily include minimizing or settling repurchase liability exposure and managing the lease liabilities related to our former non-conforming mortgage operations.

In previous years, when our discontinued operations sold loans to investors, we were required to make normal and customary representations and warranties about the loans we had previously sold to investors. Our whole loan sale agreements generally required us to repurchase loans if we breached a representation or warranty given to the loan purchaser. In addition, we also could be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. The Company continues to attempt to settle outstanding repurchase requests from third-party investors.

In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. Since the discontinuation of these operations, the Company has sought to reduce its liability by subleasing a significant amount of this office space.

Regulation

Under our mortgage lending and real estate brokerage operations, we have established underwriting guidelines that include provisions for inspections and appraisals, required credit reports on prospective borrowers and determined maximum loan amounts. Our mortgage lending activities are subject to, among other laws, the Equal Credit Opportunity Act, Federal Truth-in-Lending Act, Fair Credit Reporting Act, Fair and Accurate Credit Transaction Act, Fair Housing Act, Gramm-Leach, Bliley Act, Telephone Consumer Protection Act, Can Spam Act, Real Estate Settlement Procedures Act, Home Mortgage Disclosure Act, the Fair Debt Collection Practices Act, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and the regulations promulgated thereunder. These laws and regulations, among other things, prohibit discrimination and require the disclosure of certain basic information to mortgagors concerning credit terms and settlement costs, prohibit the payment of kickbacks for the referral of business incident to a real estate settlement service, limit payment for settlement services to the reasonable value of the services rendered and goods furnished, restrict the marketing practices we used to find customers, require us to safeguard non-public information about our customers and require the maintenance, disclosure of information regarding the disposition of mortgage applications based on race, gender, geographical distribution, price and income level and established national minimum standards for mortgage licenses. Our mortgage lending, real estate brokerage and title and escrow activities are also subject to state and local laws and regulations, including state licensing laws, anti-predatory lending laws, and may also be subject to applicable state usury statutes. Our mortgage lending operation is an approved Housing and Urban Development "HUD" lender. As a HUD approved lender and if we become an approved Fannie Mae seller/servicer and Freddie Mac servicer, we are and will be required to submit annually to Fannie Mae, Freddie Mac, and HUD, as applicable, audited financial statements, or the equivalent, according to the financial reporting requirements of each regulatory entity for its sellers/ servicers. Our affairs will also be subject to examination by Fannie Mae and Freddie Mac at any time to assure compliance with applicable regulations, policies and procedures. Also refer to "Regulatory Risks" under Item 1A. Risk Factors for a further discussion of regulations that may affect our Company.

Competition

We operate in a highly competitive industry that could become even more competitive as a result of legislative, regulatory, economic, and technological changes, as well as continued consolidation. Our competitors include banks, thrifts, credit unions, real estate brokerage firms, title and escrow companies, and mortgage banking companies. Competition is based on a number of factors including, among others, customer service, quality and range of products and services offered, price, reputation, interest rates, lending limits and customer convenience. To compete effectively, we must have a very high level of operational, technological, and managerial expertise, as well as access to capital at a competitive cost. As a result of reduced access to capital, general housing trends, rising delinquencies and defaults and other factors, many mortgage and real estate services firms have recently experienced severe financial difficulty, with some exiting the business or filing for bankruptcy protection.

Our mortgage and real estate fee-based business activities compete with firms that provide similar services, including loan modification companies, real estate asset management and disposition companies, real estate brokerage firms and title and escrow companies.

Risk factors, as outlined below, provide additional information related to risks associated with competition in the mortgage, real estate services and title and escrow industries.

Employees

As of December 31, 2009 and 2008, we had a total of 299 and 127 full-time and part-time employees, respectively. Management believes that relations with its employees are good. We are not a party to any collective bargaining agreements.

ITEM 1A. RISK FACTORS

Some of the following risk factors relate to a discussion of our assets. For additional information on our asset categories refer to Item 7. "Management's Discussion and Analysis of Financial Condition and Results of Operations," as well as the accompanying notes to the consolidated financial statements.

Risks Related To Our Businesses

If we fail to generate new sources of revenue successfully, our business, financial condition and results of operations could be materially and adversely affected.

Since 2007, management has been challenged by the unprecedented turmoil in the mortgage market, including significant increases in delinquencies and foreclosures and significant increases in credit-related losses. In response, the Company discontinued its non-conforming mortgage and retail operations, its commercial operations and warehouse lending operations in 2007, and during 2008 and 2009 (i) terminated all of its reverse repurchase financings, except for one, which was restructured, (ii) reduced and restructured its trust preferred payment obligations, (iii) settled a significant portion of its outstanding loan repurchase claims, and (iv) eliminated its preferred stock dividends. Although these actions have decreased our debt obligations, certain others have caused a reduction in our cash and overall liquidity.

In light of the continuing turmoil in the mortgage market, our ability to continue our operations is dependent upon our ability to successfully initiate new sources of revenue, such as our mortgage and real estate fee-based business activities that we established during 2009, and re-enter the mortgage lending industry, which may include acquiring new operations, that contribute sufficient additional cash flow to enable us to generate net revenue to meet our current and future expenses. Our future financial performance and success are dependent in large part upon our ability to implement and maintain our mortgage and real estate fee-based business activities and mortgage lending operations successfully. The mortgage and real estate services market is volatile and highly competitive. The Company's ability to successfully compete in the mortgage and real estate services market is uncertain as these operations are newly established. Our business will be materially affected if we are unable to generate sufficient liquidity to conduct our operations as planned.

Our ability to acquire new businesses is significantly constrained by our limited liquidity and our likely inability to obtain financing or to issue equity securities as a result of our current financial condition and current market conditions, as well as other uncertainties and risks. There can be no assurances that we will be able to initiate or acquire new business operations. We may not be able to implement and maintain our new business operations successfully or achieve the anticipated benefits of their implementation. If we are unable to do so, we may be unable to satisfy our future operating costs and liabilities, including repayment of our note payable and long-term debt.

Our long-term liquidity is dependent on our ability to grow and maintain new businesses.

The ability to meet our long-term liquidity requirements is subject to several factors, such as realizing cash flows from our long-term mortgage portfolio and generating fees from our newly established mortgage and real estate fee-based business activities. Our future financial performance and success are dependent in large part upon our ability to grow our mortgage and real estate fee-based business activities. We believe that current cash balances, short-term investments, cash flows realized from our long-term mortgage portfolio and fees generated from our mortgage and real estate fee-based business activities will be adequate to fund our current operations and liabilities. At December 31, 2009, our debt obligations, consisting of our trust preferred securities, junior subordinated notes, and the note payable related to the Settlement Agreement, was an aggregate of approximately $101.6 million in outstanding principal balance. We cannot provide any assurances that we will be able to operate successfully our new mortgage and real estate fee-based business activities and other business that we may implement in the future. If we are unable to do so, we may be unable to satisfy our future operating costs and liabilities, including repayment of our note payable and long-term debt.

Deteriorating mortgage market conditions have had and may continue to have a material adverse effect on our earnings and financial condition.

Our results of operations are materially affected by conditions in the mortgage and real estate markets, the financial markets and the economy generally. Beginning in 2007, the mortgage industry and the single-family residential housing markets, and to a lesser extent multifamily residential, were adversely affected as home prices declined and delinquencies and defaults significantly increased. Borrowers have found it difficult to refinance due to home price depreciation and lenders tightened their underwriting guidelines, which has led to further increases in defaults and credit losses. During 2009, the Company continued to be significantly and negatively affected by the deteriorating real estate market and the weak economic environment. As a result, non-conforming mortgage loans have not performed up to historical expectations, and the fair value of non-conforming mortgage loans has deteriorated. This, in turn, has resulted in declining revenues and increased expenses, including significant increases in loan losses and impairment charges, losses sustained in the operation of real estate properties acquired in foreclosure proceedings and foreclosure related professional fees. These factors have led to continued deterioration in the quality of the Company's long-term mortgage portfolio, as evidenced by the continued increases in delinquencies, foreclosures and credit losses.

The disruption in the capital markets and secondary mortgage markets has also reduced liquidity and investor demand for mortgage loans and mortgage backed securities, while yield requirements for these products has increased. The increased defaults on residential mortgage loans, increases in the number of ratings downgrades with respect to bonds issued in connection with securitized loans, lack of liquidity in the bond market and the financial condition of many companies that typically participate in this market have negatively affected our ability to operate our business. Continuing concerns about the declining real estate market, as well as inflation, energy costs, geopolitical issues and the availability and cost of credit, have contributed to increased volatility and diminished expectations for the economy and markets going forward. The mortgage market has been severely affected by changes in the lending landscape and there is no assurance that these conditions have stabilized or that they will not worsen. These unprecedented disruptions and deterioration of the mortgage market, have had, and may continue to have, an adverse effect on the Company's earnings and financial condition.

Difficult market conditions have already affected our industry and may continue to adversely affect us.

Reflecting concern about the stability of the financial markets generally and the strength of counterparties, many lenders and institutional investors have reduced or ceased providing funding to borrowers, including other financial institutions. This market turmoil and tightening of credit have led to an increased level of commercial and consumer delinquencies, lack of consumer confidence, increased market volatility and widespread reduction of business activity generally. The resulting economic pressure on consumers and lack of confidence in the financial markets has already adversely affected our industry and may continue to adversely affect our business, financial condition and results of operations. We do not expect that the difficult conditions in the financial markets are likely to improve in the near future. A worsening of these conditions would likely exacerbate the adverse effects of these difficult market conditions on us and others in the financial institutions industry. In particular, we may face the following risks in connection with these events:

- We expect to face increased regulation of our industry. Compliance with such regulation may increase our costs and limit our ability to pursue business opportunities.

- Our ability to assess the creditworthiness of our customers may be impaired if the models and approaches we use to select, manage, and underwrite our customers become less predictive of future behaviors.

- The processes we use to estimate losses inherent in our credit exposure requires difficult, subjective, and complex judgments, including forecast of economic conditions and how these economic conditions might impair the ability of our borrowers to repay their loans, which may no longer be capable of accurate estimation and which may, in turn, impact the reliability of the processes.

- Our ability to borrow from financial institutions or to engage in sales of mortgage loans to third parties (including mortgage loan securitization transactions with government-sponsored entities) on favorable terms or at all could be adversely affected by further disruptions in the capital markets or other events, including deteriorating investor expectations.

- Competition in our industry could intensify as a result of increasing consolidation of financial services companies in connection with current market conditions.

- Higher credit losses because of federal or state legislation or regulatory action that either (i) reduces the amount that our borrowers are required to pay us, or (ii) limits our ability to foreclose on properties or collateral or makes foreclosures less economically viable. In particular, there is legislation pending in the U.S. Congress that would allow a Chapter 13 bankruptcy plan to "cram down" the value of certain mortgages on a consumer's principal residence to its market value and/or reset debtor interest rate and monthly payments to an amount that permits them to remain in their homes.

If defaults on our mortgage loans continue, it will result in continuing declines in revenues and net income.

Loan defaults result in a decrease in interest income and an increase in loan losses. The decrease in interest income resulting from loan defaults may be for a prolonged period of time as we seek to recover, primarily through legal proceedings, the outstanding principal balance and accrued interest due on a defaulted loan, plus the legal costs incurred in pursuing our legal remedies. Legal proceedings, which may include foreclosure actions and bankruptcy proceedings, are expensive and time consuming. The decrease in interest income, the costs incurred from defaulted loans and increases in loan losses will have an adverse impact on our liquidity, net income and shareholders' equity.

The adverse market conditions have negatively affected our mortgage loan delinquencies and real estate owned (REO). At December 31, 2009, the Company's mortgage portfolio had 25.1 percent or $3.1 billion of loans that were 60 days or more delinquent, included in continuing and discontinued operations, compared to 22.7 percent or $3.5 billion at December 31, 2008. REO decreased 76.2 percent to $142.7 million at December 31, 2009 as compared to $599.8 million at December 31, 2008 and we incurred losses from REOs of $218.2 million for the year ended December 31, 2009 compared to $52.0 million for the previous year. During 2009, the Company increased its loss assumptions for its long-term mortgage portfolio due to the increase in expected defaults and loss severities related to the weak economy and housing market. These conditions, which increase the cost and reduce the availability of debt, may continue or worsen in the future.

Without adequate financing, the growth of our business operations will be limited.

We have historically been dependent on warehouse lines, repurchase agreements, credit facilities, securitizations and other structured financings, and equity and debt issuances. The current dislocation and weakness in the capital and credit markets have created difficulties in obtaining financing. We are currently seeking warehouse facilities, and although we have been tentatively approved for an aggregate of $12 million in warehouse financing, as of the date of this report, we have not executed definitive agreements. If we are unable to obtain adequate financing, we will not be able to expand our business operations as planned, which will limit our revenues and operating results.

We may not be able to access financing sources on favorable terms, or at all, which could adversely affect our ability to implement and operate our business as planned.

Future financing sources may include borrowings in the form of bank credit facilities (including term loans and revolving facilities), repurchase agreements, warehouse facilities, structured financing arrangements, public and private equity and debt issuances and derivative instruments, in addition to transaction or asset specific funding arrangements. Our access to sources of financing depend upon a number of factors over which we have little or no control, including general market conditions, our financial performance, and resources and policies or lenders. Under current market conditions, many forms of structured financing arrangements are generally unavailable, which has also limited borrowings under warehouse and repurchase agreements that are intended to be refinanced by such financings. In addition, if regulatory capital requirements imposed on our private lenders change, they may be required to limit, or increase the cost of, financing they provide to us. In general, this could potentially increase our financing costs and reduce our liquidity. Consequently, the implementation of our new mortgage lending operations may be dictated by the cost and availability of financing. Depending on market conditions at the relevant time, we may have to rely more heavily on additional equity issuances, which may be dilutive to our shareholders, or on less efficient forms of debt financing that require a larger portion of our cash flow from operations, thereby reducing funds available for our operations and future business opportunities. We cannot assure you that we will have access to such equity or debt capital on favorable terms (including, without limitation, cost and term) at the desired times, or at all, which could negatively affect our results of operations.

Our current long-term debt obligations, and any future debt financing may, contain restrictive covenants relating to our operations that may inhibit our ability to grow our business and increase revenues.

Our debt obligations consist of trust preferred securities, junior subordinated notes, and the Credit Agreement. The Credit Agreement contains various restrictive covenants, such as the ability to incur additional indebtedness, effect certain asset sales and acquisitions, pay dividends, maintain shareholders equity of not less than zero (based on certain calculations), cash and cash equivalents of not less than $10 million (based on certain calculations), and issue redeemable capital stock. The trust preferred securities and the junior subordinated notes no longer allow the company to defer interest payments and the Company may not repurchase stock, pay dividends or repay debt that is pari passu during an event of default. If or when we obtain additional financing, lenders may impose restrictions on us that would affect our ability to incur additional debt, make certain allocations or acquisitions, reduce liquidity below certain levels, make distributions to our shareholders, redeem debt or equity securities and restrict our flexibility to determine our operating policies and strategies. For example, our loan documents may contain negative covenants that limit, among other things, our ability to repurchase our common shares, employ leverage beyond certain amounts, sell assets, engage in mergers or acquisitions, grant liens, and enter into transactions with affiliates. If we fail to meet or satisfy any of these covenants, we would be in default under these agreements, and our lenders could elect to declare outstanding amounts due and payable, terminate their commitments, require the posting of additional collateral and enforce their interests against existing collateral. We may also be subject to cross-default and acceleration rights and, with respect to collateralized debt, the posting of additional collateral and foreclosure rights upon default. Any new financing could subject us to recourse indebtedness and the risk that debt service on less efficient forms of financing would require a larger portion of our cash flows, thereby reducing cash available for operations. If we are not able to arrange for new financing on terms acceptable to us, or if we default on our covenants causing repayment acceleration and an increase in interest rates, we may not have funds available for operations as well as for future business opportunities, which would have a material adverse effect on our business, financial condition, liquidity and results of operations.

If we are forced to liquidate, we may have few unpledged assets for distribution to unsecured creditors or equity holders.

In the event we are forced to liquidate, the majority of our assets are either collateral for specific borrowings or pledged as collateral for secured liabilities. We may have few remaining assets available for unsecured creditors and equity holders.

A material difference between the assumptions used in the determination of the value of our residual interests and our actual experience would cause us to write down the value of these securities and could harm our liquidity and financial condition.

Investments in residual interests and subordinated securities are much riskier than investments in senior mortgage-backed securities because these subordinated securities bear credit losses prior to the related senior securities. The risk associated with holding residual interests and subordinated securities is greater than holding the underlying mortgage loans directly due to the concentration of losses attributed to the subordinated securities. The value of residual interests represents the present value of future cash flows expected to be received by us from the excess cash flows created in the securitization transaction. In general, future cash flows are estimated by taking the coupon rate of the loans underlying the transaction less the interest rate paid to the bond holders, less contractually specified servicing and trustee fees, and after giving effect to estimated prepayments, credit losses and overcollateralization requirements. We estimate future cash flows from these securities and value them utilizing assumptions based in part on projected interest rates, delinquency, mortgage loan prepayment speeds and credit losses. It is extremely difficult to validate the assumptions we use in valuing our residual interests. Even if the general accuracy of the valuation model is validated, valuations are highly dependent upon the reasonableness of our assumptions and the predictability of the relationships which drive the results of the model. Such assumptions are complex as we must make judgments about the effect of matters that are inherently uncertain. If our actual experience differs from our assumptions, we could be required to reduce the value of these securities. Furthermore, if our actual experience differs materially from these assumptions, our cash flow, financial condition, results of operations and liquidity may be harmed.

The Company's mortgage portfolio contains significant interest rate risks that are not currently hedged by the Company.

Residual interests in certain securitization trusts are expected to generate cash flows to the Company. These cash flows are contingent upon maintaining required overcollateralization levels and can be reduced or eliminated by realized losses from the disposition of loans or REO. Assuming realized losses have not reduced overcollateralization levels below required levels, excess cash flows are distributed to the residual interest holder after the required bond interest and principal payments are made to investors. Interest rates on the loans in the securitization trusts generally adjust bi-annually. Interest rates on the bonds usually adjust monthly with changes partially offset by derivatives instruments (primarily interest rate swap agreements) inside the securitization trusts. Since bond interest rates adjust more frequently than the related loans, increases in LIBOR rates could significantly reduce the future cash flows we receive from these securitization trusts. The amount of the derivatives instruments is not sufficient to fully protect the residual cash flows from increases in LIBOR. The Company does not have the ability to change the derivatives instruments inside the trusts and does not currently hedge this interest rate risk with derivatives instruments outside the securitization trusts. As a result of not fully hedging interest rate risks, the Company's future residual cash flows could be significantly affected by rising LIBOR rates.

We may experience reduced net earnings or losses if our liabilities re-price at different rates than our assets.

A significant source of revenue is net interest income or net interest spread from our long-term mortgage portfolio, which is the difference between the interest we earn on our interest earning assets and the interest we pay on our interest bearing liabilities. The rates we pay on our borrowings are independent of the rates we earn on our assets and may be subject to more frequent periodic rate adjustments. Therefore, we could experience a decrease in net earnings or a loss because the interest rates on our borrowings could increase faster than the interest rates on our assets, if the increased borrowing costs are not offset by reduced cash payments on derivatives recorded in other non-interest income. If our net interest spread becomes negative, we will be paying more interest on our borrowings than we will be earning on our assets and we will be exposed to a risk of loss.

The rates paid on our borrowings and the rates received on our assets may be based upon different indices. Our long-term mortgage portfolio includes mortgages that are one-, three- and six-month LIBOR and one-year LIBOR hybrid ARMs. These are mortgages with fixed interest rates for an initial period of time, after which they begin bearing interest based upon short-term interest rate indices and adjust periodically. We generally funded mortgages with adjustable interest rate borrowings having interest rates that are indexed to short-term interest rates, typically one-month LIBOR, and adjust periodically at various intervals. To the extent that there is an increase in the interest rate index used to determine our adjustable interest rate borrowings and it increases faster than the indices used to determine the rates on our assets (*i.e*., the increase is not offset by a corresponding increase in the rates at which interest accrues on our assets) or is not offset by various cash payments on interest rate derivatives that we have in place at any given time, our net earnings will decrease or we will have net losses. Additionally, the Company has commenced a policy to modify loans by either reducing the interest rates, waiving accrued and unpaid interest or deferring accrued interest to help minimize delinquencies and maximize recoveries on loans. Although we believe in the long run this is beneficial to the Company, the modification of loans to defer the re-pricing may cause the Company to experience a reduction in expected cash flows.

ARMs typically have interest rate caps, which limit interest rates charged to the borrower during any given period. Our borrowings are not subject to similar restrictions. As a result, in a period of rapidly increasing interest rates, the interest rates we pay on our borrowings could increase without limitation, while the interest rates we earn on our ARMs would be capped. If this occurs, our net interest spread could be significantly reduced or we could suffer a net interest loss if not offset by a decrease in the cash payments on interest rate derivatives that we have in place at any given time.

Second trust deed mortgages in our long term investment portfolio expose us to greater credit risks.

Our security interest in the property securing second mortgages in our portfolio is subordinated to the interest of the first mortgage holder. Typically, the second mortgages have a higher combined loan to value (CLTV) ratio than do our first mortgages. If the borrower experiences difficulties in making senior lien payments or if the value of the property is equal to or less than the amount needed to repay the borrower's obligation to the first mortgage holder upon foreclosure, our second mortgage loan may not be repaid.

Also, our senior security interests may be affected if there are junior liens on the same properties resulting in a higher CLTV which borrowers may perceive have no equity. This could result in our senior liens defaulting at a higher rate than senior liens without a junior lien.

We may be subject to losses on mortgages for which we did not obtain mortgage insurance.

We did not obtain credit enhancements such as mortgage pool or special hazard insurance for all of our mortgages and mortgage investments. Generally, we required mortgage insurance on any first mortgage with an LTV ratio greater than 80 percent. During the time we hold mortgages for investment, we are subject to risks of borrower defaults and bankruptcies and special hazard losses that are not covered by standard hazard insurance. If a borrower defaults on a mortgage that we hold, we bear the risk of loss of principal to the extent there is any deficiency between the value of the related mortgaged property and the amount owing on the mortgage loan and any insurance proceeds available to us through the mortgage insurer. Also, to the extent we have insurance coverage, we bear the risk of the insurance carriers not being able to make the required payments.

Loans to non-conforming borrowers may expose us to a higher risk of delinquencies, foreclosures and losses.

We were an acquirer and originator of non-conforming single family and multifamily mortgage loans. These are mortgages that generally may not qualify for purchase by government-sponsored agencies such as Fannie Mae and Freddie Mac. Our operations have been negatively affected due to our investments in these mortgages. Credit risks associated with these mortgages may be greater than those associated with conforming mortgages. Mortgages made to such borrowers generally entail a higher risk of delinquency and higher losses than mortgages made to borrowers who utilize conventional mortgage sources. Delinquency, foreclosures and losses generally increase during economic slowdowns or recessions. The actual risk of delinquencies, foreclosures and losses on mortgages made to our borrowers are higher under current economic conditions than those in the past. Additionally, the combination of different underwriting criteria and higher rates of interest leads to greater risk, including higher prepayment rates and higher delinquency rates and /or credit losses. We also have loans that are interest only and option-ARM loans that allow a borrower to pay only the stated interest or less than the stated interest, respectively, attributable to their loan for a set period of time. If there is a decline in real estate values borrowers may default on these types of loans since they have not reduced their principal balances, which, therefore, could exceed the value of their property. In addition, a reduction in property values would also cause an increase in the CLTV or LTV ratio for that loan which could have the effect of reducing the value of the property collateralized by that loan, reducing the borrowers' equity in their homes to a level that would increase the risk of default.

Our commercial and multifamily mortgages may expose us to increased lending risks.

Our commercial and multifamily mortgages typically involve larger mortgage balances to single borrowers or groups of related borrowers compared to one- to four-family residential mortgages. These commercial and multifamily mortgages have risks because repayment of the mortgages often depends on the successful operations and the income stream of the borrowers. Additionally, current economic conditions and the resulting tightening of credit markets have limited the opportunities for borrowers seeking to refinance their mortgages prior to scheduled interest rate resets. The inability of commercial and multifamily borrowers to successfully refinance their mortgages prior to scheduled interest rate reset dates could significantly increase delinquencies and losses within our long-term mortgage portfolio.

The geographic concentration of our mortgages increases our exposure to risks in those areas.

We do not set limitations on the percentage of our long-term mortgage portfolio composed of properties located in any one area (whether by state, zip code or other geographic measure). Concentration in any one area increases our exposure to the economic and natural hazard risks associated with that area. A majority of our mortgage acquisitions and originations, long-term mortgage portfolio and finance receivables are secured by properties in California and, to a lesser extent, Florida. California and Florida have experienced, and may experience in the future, an economic downturn and have also suffered the effects of certain natural hazards. As a result of the economic downturn, real estate values in California and Florida have decreased drastically and may continue to decrease in the future, which could have a material adverse effect on our results of operations or financial condition.

Furthermore, if borrowers are not insured for natural disasters, which are typically not covered by standard hazard insurance policies, then they may not be able to repair the property or may stop paying their mortgages if the property is damaged. This would cause increased foreclosures and decrease our ability to recover losses on properties affected by such disasters. This would have a material adverse effect on our results of operations or financial condition.

Representations and warranties made by us in our loan sales and securitizations may subject us to liability.

In connection with our loan sales to third parties and our prior securitizations, we transferred mortgages acquired and originated by us to the third parties or into a trust in exchange for cash and, in the case of a securitized mortgage, residual certificates issued by the trust. The trustee, purchaser, bondholder, or other entities involved in the issuance of the securities (which may include bond insurers) may have recourse to us with respect to the breach of the representations, and warranties made by us at the time such mortgages are transferred or when the securities are sold. While we may have recourse to our customers for any such breaches, there can be no assurance of our customers' abilities to honor their respective obligations. Also, we previously engaged in bulk whole loan sales pursuant to agreements that generally provide for recourse by the purchaser against us in the event of a breach of one of our representations or warranties, any fraud or misrepresentation during the mortgage origination process, or upon early default on such mortgage. We attempted to limit the potential remedies of such purchasers to the potential remedies we received from the customers from whom we acquired or originated the mortgages. However, in some cases, the remedies available to a purchaser of mortgages from us may be broader or extend longer than those available to us against the sellers of the mortgages and should a purchaser enforce its remedies against us, we are not always able to enforce whatever remedies we have against our customers. Furthermore, if we discover, prior to the sale or transfer of a loan, that there is any fraud or misrepresentation with respect to the mortgage and the originator fails to repurchase the mortgage, then we may not be able to sell the mortgage or we may have to sell the mortgage at a discount.

The performance of our long-term mortgage portfolio may be adversely affected by the performance of parties who service or sub-service our mortgage loans.

We sell or contract with third-parties for the servicing of all our mortgage loans, including those in our securitizations. Our operations are subject to risks associated with inadequate or untimely servicing. Poor performance by a servicer may result in greater than expected delinquencies and losses on our mortgage loans. A substantial increase in our delinquency or foreclosure rate could adversely affect our ability to access the capital and secondary markets for our financing needs. Also, with respect to mortgage loans subject to a securitization, greater delinquencies would adversely affect the value of our residual interest, if any, we hold in connection with that securitization.

In a securitization, relevant agreements permit us to be terminated as servicer or master servicer under specific conditions described in these agreements. If, as a result of a servicer or sub-servicer's failure to perform adequately, we were terminated as master servicer of a securitization, the value of any master servicing rights held by us could be adversely affected.

We are a defendant in purported class action lawsuits and may not prevail in these matters.

Class action lawsuits and regulatory actions alleging improper marketing practices, abusive loan terms and fees, disclosure violations, improper yield spread premiums and other matters are risks faced by all mortgage originators, particularly those in the Alt-A and subprime market. We are a defendant in purported class actions pending in different states. Some of the class actions allege generally that the loan originator (not Impac) improperly charged fees in violation of various state lending or consumer protection laws in connection with mortgages that we acquired while others allege that our lending practice was a statutory violation, an unlawful business practice, an unfair business practice or a breach of a contract. Although the suits are not identical, they generally seek unspecified compensatory damages, punitive damages, pre- and post-judgment interest, costs and expenses and rescission of the mortgages, as well as a return of any improperly collected fees. We may incur defense costs and other expenses in connection with the class action lawsuits, and we cannot assure you that the ultimate outcome of these or other actions will not have a material adverse effect on our financial condition or results of operations. In addition to the expense and burden incurred in defending this litigation and any damages that we may suffer, our management's efforts and attention may be diverted from the ordinary business operations in order to address these claims. If the final resolution of this litigation is unfavorable to us, our financial condition, results of operations and cash flows might be materially adversely affected if our existing insurance coverage is unavailable or inadequate to resolve the matters. We believe we have meritorious defenses to the actions and intend to defend against them vigorously; however, an adverse judgment in any of these matters could have a material adverse effect on us.

There has been recent litigation in the mortgage industry related to securitizations.

As defaults, delinquencies, foreclosures, and losses in the real estate market continue, there have been recent lawsuits by various investors, insurers, underwriters and others against various participants in securitizations, such as sponsors, depositors, underwriters, and loan sellers. Some lawsuits have alleged that the mortgage loans had origination defects, that there were misrepresentations made about the mortgage loans and the parties failed to properly disclose the quality of the mortgage loans or repurchase defective loans. There have been other claims contending errors or misrepresentations in the securitization documents or process itself. Historically, we both securitized and sold mortgage loans to third parties that may have been deposited or included in pools for securitizations. In connection with these lawsuits, we may be asked to repurchase these mortgage loans, provide indemnification against such claims or we may become subject to litigation related to the securitizations. As a result, we may incur significant legal and other expenses in defending against claims and litigation and we may be required to pay settlement costs, damages, penalties or other charges which could adversely affect our financial results.

We are exposed to environmental liabilities, with respect to properties that we take title to upon foreclosure, that could increase our costs of doing business and harm our results of operations.

In the course of our activities, we may foreclose and take title to residential properties and become subject to environmental or mold liabilities with respect to those properties. The laws and regulations related to mold or environmental contamination often impose liability without regard to responsibility for the contamination. We may be held liable to a governmental entity or to third parties for property damage, personal injury, investigation and clean-up costs incurred by these parties in connection with mold or environmental contamination, or may be required to investigate or clean up hazardous or toxic substances, or chemical releases at a property. The costs associated with investigation or remediation activities could be substantial. Moreover, as the owner or former owner of a contaminated site, we may be subject to common law claims by third parties based upon damages and costs resulting from mold or environmental contamination emanating from the property. If we ever become subject to significant mold or environmental liabilities, our business, financial condition, liquidity and results of operations could be significantly harmed.

We are subject to risks of operational failure that are beyond our control.

Substantially all of our operations are located in Irvine, California. Our systems and operations are vulnerable to damage and interruption from fire, flood, telecommunications failure, break-ins, earthquake and similar events. Our operations may also be interrupted by power disruptions, including rolling black-outs implemented in California due to power shortages. Furthermore, our security mechanisms may be inadequate to prevent security breaches to our computer systems, including from computer viruses, electronic break-ins and similar disruptions. Such security breaches or operational failures could expose us to liability, impair our operations, result in losses, and harm our reputation.

Loss of our current executive officers or other key management could significantly harm our business.

We depend on the diligence, skill and experience of our senior executives, including our chief executive officer and president. We believe that our future results will also depend in part upon our attracting and retaining highly skilled and qualified management. We seek to compensate our executive officers, as well as other employees, through competitive salaries, bonuses and other incentive plans, but there can be no assurance that these programs will allow us to retain key management executives or hire new key employees. The loss of our chief executive officer, president, or other senior executive officers and key management could have a material adverse affect on our operations because other officers may not have the experience and expertise to readily replace these individuals. Competition for such personnel is intense, and we cannot assure you that we will be successful in attracting or retaining such personnel. Furthermore, in light of our present financial condition, no assurance can be given that we will retain these and other executive officers and key management personnel. To the extent that one or more of our top executives or other key management personnel are no longer employed by us, our operations and business prospects may be adversely affected. The loss of, and changes in, key personnel and their responsibilities may be disruptive to our business and could have a material adverse effect on our business, financial condition and results of operations.

If we fail to maintain effective systems of internal control over financial reporting and disclosure controls and procedures, we may not be able to report our financial results accurately or prevent fraud, which could cause current and potential stockholders to lose confidence in our financial reporting, adversely affect the trading price of our securities or harm our operating results.

Effective internal control over financial reporting and disclosure controls and procedures are necessary for us to provide reliable financial reports and effectively prevent fraud and operate successfully as a public company. Any failure to develop or maintain effective internal control over financial reporting and disclosure controls and procedures could harm our reputation or operating results, or cause us to fail to meet our reporting obligations. We cannot be certain that our efforts to improve or maintain our internal control over financial reporting and disclosure controls and procedures will be successful or that we will be able to maintain adequate controls over our financial processes and reporting in the future. Any failure to develop or maintain effective controls or difficulties encountered in their implementation or other effective improvement of our internal control over financial reporting and disclosure controls and procedures could harm our operating results, or cause us to fail to meet our reporting obligations. If we are unable to adequately establish or maintain our internal control over financial reporting, our external auditors will not be able to issue an unqualified opinion on the effectiveness of our internal control over financial reporting. In the past, we have reported, and may discover in the future, material weaknesses in our internal control over financial reporting.

Ineffective internal control over financial reporting and disclosure controls and procedures could cause investors to lose confidence in our reported financial information, which could have a negative effect on the trading price of our securities or affect our ability to access the capital markets and could result in regulatory proceedings against us by, among others, the SEC. In addition, a material weakness in internal control over financial reporting, which may lead to deficiencies in the preparation of financial statements, could lead to litigation claims against us. The defense of any such claims may cause the diversion of management's attention and resources, and we may be required to pay damages if any such claims or proceedings are not resolved in our favor. Any litigation, even if resolved in our favor, could cause us to incur significant legal and other expenses or cause delays in our public reporting. Such events could harm our business, affect our ability to raise capital and adversely affect the trading price of our securities.

Our ability to utilize our net operating losses and certain other tax attributes may be limited.

At the end of our 2009 taxable year, we had net operating loss (NOL) carryforwards of approximately $838.0 million for federal income tax purposes and approximately $819.5 million for state income tax purposes. Although, under existing tax rules, we are generally allowed to use those NOL carryforwards to offset taxable income in subsequent taxable years, our ability to use those NOL carryforwards to offset income may be severely limited to the extent that we have experienced or do experience an ownership change within the meaning of Section 382 of the Internal Revenue Code. These provisions could also limit our ability to deduct certain losses (built-in losses) we recognize after an ownership change with respect to assets we own at the time of the ownership change. In general, an ownership change, as defined by Section 382, results from transactions increasing ownership of certain stockholders or public groups in our stock by more than 50 percentage points over a three-year period. Any limitation on our NOL carryforwards that could be used to offset post-ownership change taxable income would adversely affect our liquidity and cash flow, as and when we become profitable. However, even if no ownership change occurs, we do not expect to generate sufficient taxable income in future periods to be able to realize fully the tax benefits of our NOL carryforwards.

Regulatory Risks

Violation of various federal, state and local laws may result in financial losses.

To the extent we originated and purchased mortgage loans and re-enter the mortgage lending business, or provide title and escrow services, applicable state and local laws generally regulate interest rates and other charges, require certain disclosure, and require licensing of the mortgage broker, lender and purchaser. In addition, other state and local laws, public policy and general principles of equity relating to the protection of consumers, unfair and deceptive practices and debt collection practices may apply to the origination, servicing and collection of our loans, and title and escrow services. Mortgage loans are also subject to federal laws, including:

- the Federal Truth-in-Lending Act and Regulation Z promulgated there under, which require certain disclosures to the borrowers regarding the terms of the loans;
- the Equal Credit Opportunity Act and Regulation B promulgated there under, which prohibit discrimination on the basis of age, race, color, sex, religion, marital status, national origin, receipt of public assistance or the exercise of any right under the Consumer Credit Protection Act, in the extension of credit;
- the Fair Housing Act, which prohibits discrimination in housing on the basis of race, color, national origin, religion, sex, familial status, or handicap, in housing-related transactions;
- the Fair Credit Reporting Act, which regulates the use and reporting of information related to the borrower's credit experience;
- the Fair and Accurate Credit Transaction Act, which regulates credit reporting and use of credit information in making unsolicited offers of credit;
- the Gramm-Leach-Bliley Act, which imposes requirements on all lenders with respect to their collection and use of nonpublic financial information and requires them to maintain the security of that information;
- the Real Estate Settlement Procedures Act, which requires that consumers receive disclosures at various times and outlaws kickbacks that increase the cost of settlement services;
- the Home Mortgage Disclosure Act, which requires the reporting of public loan data;
- the Telephone Consumer Protection Act and the Can Spam Act, which regulate commercial solicitations via telephone, fax, and the Internet;
- the Depository Institutions Deregulation and Monetary Control Act of 1980, which preempts certain state usury laws;
- the Alternative Mortgage Transaction Parity Act of 1982, which preempts certain state lending laws which regulate alternative mortgage transactions;

- the Fair Debt Collection Practices Act which prohibits unfair debt collection practices; and
- the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 establishes national minimum standards for mortgage licensees.

Violations of certain provisions of these federal and state laws may limit our ability to collect all or part of the principal of or interest on the loans and in addition could subject us to damages and could result in the mortgagors rescinding the loans whether held by us or subsequent holders of the loans. In addition, such violations could cause us to be in default under our credit and repurchase lines and could result in the loss of licenses held by us.

Similarly, it is possible borrowers may assert that the loan forms we used or acquired, including forms for "interest-only" and "option-ARM" loans for which there is little standardization or uniformity, fail to properly describe the transactions they intended, or that our forms failed to comply with applicable consumer protection statutes or other federal and state laws. This could result in liability for violations of certain provisions of federal and state consumer protection laws and our inability to sell the loans and our obligation to repurchase the loans or indemnify the purchasers.

On November 17, 2008, the Department of Housing and Urban Development ("HUD") published a new final rule that seeks to simplify and improve disclosures regarding mortgage settlement services and encourage consumers to compare prices for such services by consumers. Parts of the new rule became effective on January 16, 2009 but the majority of the rule had a mandatory effective date of January 1, 2010. The material provisions of the new rule include: new Good Faith Estimate ("GFE") and HUD-1 forms, permissibility of average cost pricing by settlement service providers, implementation of tolerance limits on various fees from the issuance of the GFE and the HUD-1 provided at closing, and disclosure of the title agent and title underwriter premium splits. We have revised our systems and processes to be compliant with the new rules and implemented our changes as of January 1, 2010. It is too early to determine the impact that these new rules may have on the real estate and settlement services industries, including on the Company.

The title insurance business is heavily regulated by state insurance regulatory authorities including the California Department of Insurance. These authorities generally possess broad powers with respect to the licensing of title insurers, the types and amounts of investments that title insurers may make, insurance rates, forms of policies and the form and content of required annual statements, as well as the power to audit and examine title insurers. Under state laws, certain levels of capital and surplus must be maintained and certain amounts of securities must be segregated or deposited with appropriate state officials. Various state statutes require title insurers to defer a portion of all premiums in a reserve for the protection of policyholders and to segregate investments in a corresponding amount. Further, most states restrict the amount of dividends and distributions a title insurer may make to its shareholders.

New regulatory laws affecting the mortgage industry may affect our ability to re-enter the mortgage market.

The regulatory environments in which we previously operated, and continue to operate on a limited basis, have an effect on the activities in which we may engage. Changes to the laws, regulations or regulatory policies can affect whether and to what extent we may be able to reenter the mortgage markets and whether it can be done profitably. Some states and local governments and the Federal Government have enacted, or may enact laws, or regulations that restrict or prohibit some provisions in mortgages or some loan programs that we have previously participated in. As such we cannot be sure that in the future we will be able to engage in lending or mortgage activities that were similar to those we engaged or participated in the past and we might be at a competitive disadvantage which would affect our operations.

Our operations may be adversely affected if we are subject to the Investment Company Act.

We intend to conduct our business at all times so as not to become regulated as an investment company under the Investment Company Act. The Investment Company Act exempts entities that are primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

In order to qualify for this exemption we must maintain at least 55 percent of our assets directly in mortgages, qualifying pass-through certificates and certain other qualifying interests in real estate. Our ownership of certain mortgage assets may be limited by the provisions of the Investment Company Act, should we ever be subject to the Act. If the SEC adopts a contrary interpretation with respect to these securities or otherwise believes we do not satisfy the above exception, we could be required to restructure our activities or sell certain of our assets. To insure that we continue to qualify for the exemption we may be required at times to adopt less efficient methods of financing certain of our mortgage assets and we may be precluded from acquiring certain types of higher-yielding mortgage assets. The net effect of these factors will be to lower our net interest income. If we fail to qualify for exemption from registration as an investment company, our ability to use leverage would be substantially reduced, and we would not be able to conduct our business as described. Our business will be materially and adversely affected if we fail to qualify for this exemption.

Limitations on acquisition and change in control ownership limit.

Our Charter and bylaws, and Maryland corporate law contain a number of provisions that could delay, defer, or prevent a transaction or a change of control of us that might involve a premium price for holders of our capital stock or otherwise be in their best interests by increasing the associated costs and timeframe necessary to make an acquisition, making the process for acquiring a sufficient number of shares of our capital stock to effectuate or accomplish such a change of control longer and more costly. In addition, investors may refrain from attempting to cause a change in control because of the difficulty associated with such a venture because of the limitations.

Risks Related to Ownership of Our Securities

Our share prices have been and may continue to be volatile and the trading of our shares may be limited.

The market price of our securities has been volatile. Our common stock was recently listed for trading on the NYSE Amex stock exchange in December 2009, and prior to that it was quoted on the pink sheets since November 2008. We cannot guarantee that a consistently active trading market for our securities will continue. In addition, there can be no assurances that such markets will continue or that any shares which may be purchased may be sold without incurring a loss. Any such market price of our shares may not necessarily bear any relationship to our book value, assets, past operating results, financial condition or any other established criteria of value, and may not be indicative of the market price for the shares in the future. The market price of our securities is likely to continue to be highly volatile and could be significantly affected by factors including:

- unanticipated fluctuations in our operating results;
- general market and mortgage industry conditions;
- mortgage and real estate fees;
- delinquencies and defaults on outstanding mortgages;

- loss severities on loans and REO;
- prepayments on mortgages;
- valuations of securitization related assets and liabilities;
- mark to market adjustments related to the fair value of derivatives; and
- interest rates.

During 2009, our common stock reached an intra-day high sales price of $4.99 on October 15, and an intra-day low sales price of $0.12 on March 13. As of March 5, 2010, our stock price closed at $3.95 per share. In addition, significant price and volume fluctuations in the stock market have particularly affected the market prices for the securities of mortgage companies such as ours. Furthermore, general conditions in the mortgage industry may adversely affect the market price of our securities. These broad market fluctuations have adversely affected and may continue to adversely affect the market price of our securities. If our results of operations fail to meet the expectations of securities analysts or investors in a future quarter, the market price of our securities could also be materially adversely affected and we may experience difficulty in raising capital.

Issuances of additional shares of our common stock may adversely affect its market price and significantly dilute stockholders.

In order to support our business objectives, we may raise capital through the sale of equity. We may also issue shares of common stock to settle outstanding obligations and liabilities. The issuance or sale, or the proposed sale, of substantial amounts of our common stock in the public market could materially adversely affect the market price of our common stock or other outstanding securities. We do not know the actual or perceived effect of these issuances, the timing of any offerings or issuances of securities, the potential dilution of the book value or earnings per share of our securities then outstanding and the effect on the market price of our securities then outstanding.

ITEM 1B. UNRESOLVED STAFF COMMENTS

As a smaller reporting company, we are not required to provide the information required by this Item.

ITEM 2. PROPERTIES

Our primary executive and administrative offices are located at 19500 Jamboree Road, Irvine, California 92612 where we have a premises lease expiring in November 2016. We have two options to extend the term for five-year periods for each option. The premises consist of a seven-story building containing approximately 210,000 square feet with an initial annual rental rate of $31.80 per square foot, which amount increases every 30 months since commencement of the lease in October 2006. As of December 31, 2009, the Company has subleased approximately 102,000 square feet of our corporate headquarters.

ITEM 3. LEGAL PROCEEDINGS

Mortgage-related Litigation

On June 27, 2000, a complaint captioned Michael P. and Shellie Gilmor v. Preferred Credit Corporation and Impac Funding Corporation, et al. was filed in the Circuit Court for Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second

Loans Act and Merchandising Practices Act. In July 2001, the Missouri complaint was amended to include IMH and other Impac-related entities. A plaintiffs class was certified on January 2, 2003. On January 27, 2006, the Company filed pleadings in response to the Sixth Amended Complaint, including motions to dismiss. No opposition has yet been filed by the plaintiffs.

On February 3, 2004, a complaint captioned James and Jill Baker v. Century Financial Group, Inc, et al was filed in the Circuit Court of Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loan Act and Merchandising Practices Act. An Answer was filed on March 7, 2005 and limited discovery has taken place since then.

On October 2, 2001, a complaint captioned Deborah Searcy, Shirley Walker, et al. v. Impac Funding Corporation, Impac Mortgage Holdings, Inc. et. al. was filed in the Wayne County Circuit Court, State of Michigan, as a purported class action lawsuit alleging that the defendants violated Michigan's Secondary Mortgage Loan Act, Credit Reform Act and Consumer Protection Act. A motion to dismiss an amended complaint has been filed, but not yet ruled upon.

The above purported class action lawsuits are similar in nature in that they allege that the mortgage loan originators violated the respective state's statutes by charging excessive fees and costs when making second mortgage loans on residential real estate. The complaints allege that IFC was a purchaser, and is a holder, along with other affiliated entities, of second mortgage loans originated by other lenders. The plaintiffs in the lawsuits are seeking damages that include disgorgement of interest paid, restitution, rescission, actual damages, statutory damages, exemplary damages, pre-judgment interest and punitive damages. No specific dollar amount of damages is specified in the complaints.

On November 9, 2007, and separately on August 25, 2008, two matters were filed against IFC in Orange County in the Superior Court of California, as case nos. 07CC11612 and 00110553, respectively, by Citimortgage, Inc., alleging claims for breach of contract and damages based upon representations and warranties made in conjunction with whole loan sales. These actions seek combined damages in excess of $7.5 million.

On June 28, 2008, a matter was filed against IFC in the Circuit Court of the Eighteenth Judicial District, Dupage County in Illinois, as case no. 2008L000721, by TR Mid America Plaza Corp., seeking damages for breach of contract (a lease agreement) in excess of $1.1 million plus such amount as determined through the date of judgment and payment of attorneys fees and costs.

On September 24, 2009, an action was filed in the United States district Court, Central district of California entitled Federal Deposit Insurance Corporation as Receiver for Indymac bank, F.S.B. v. Impac Funding Corporation as case No. CV09-6965 RC. The case claims damages for breach of contract based upon repurchase claims for loans sold to Indymac Bank. The action seeks $2.1 million in damages plus interest and attorneys fees.

The Company believes that it has meritorious defenses to the above claims and intends to defend these claims vigorously. Nevertheless, litigation is uncertain and the Company may not prevail in the lawsuits and can express no opinion as to its ultimate outcome. An adverse judgment in any of these matters could have a material adverse affect on us; however, no judgment in any matter is probable to occur nor is any amount of any loss from such judgment reasonably estimable at this time.

Securities Litigation

On August 17, 2007, a purported class action matter was filed in the United States District Court, Central District of California, against IMH and several of its senior officers entitled Sheldon Pittleman v. Impac Mortgage Holdings, Inc., et al. The action alleges against all defendants violations of

Section 10(b) and 10b-5 of the Securities Exchange Act of 1934 (the "Exchange Act") and against the individual defendants violations of Section 20(a) of the Exchange Act. Plaintiffs contend that the defendants caused the Company's stock to trade at artificially inflated prices through false and misleading statements and intentional or reckless disregard of basic accounting principles. The complaint seeks compensatory damages for all damages sustained as a result of the defendants' actions, including reasonable costs and expenses and other relief as the court may deem proper. On October 3, 2007, a similar case was filed in the same Court entitled Richard Abrams v. Impac Mortgage Holdings, Inc., et al. This action makes allegations similar to those in the Pittleman action and also seeks similar recovery. These matters were consolidated with lead counsel appointed by the court. A Consolidated Complaint captioned Sheldon Pittleman v. Impac Mortgage Holdings, Inc., et al was filed on January 8, 2008. A motion to dismiss was filed by the defendants on March 10, 2008 and that motion was granted. On October 27, 2008, a Third Amended Complaint was filed, and on December 15, 2008, the defendants filed a motion to dismiss, which the court sustained without leave to amend on March 10, 2009. On April 7, 2009, the plaintiffs filed a Notice of Appeal of the Order Granting the Motion to Dismiss With Prejudice and the Judgment thereon. That appeal is still pending.

We believe that we have meritorious defenses to the above claims and intend to defend these claims vigorously. Nevertheless, litigation is uncertain and we may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on us; however, no judgment in any matter is probable to occur nor is any amount of any loss from such judgment reasonably estimable at this time.

Other Litigation

We are a party to other litigation and claims which are normal in the course of our operations. While the results of such other litigation and claims cannot be predicted with certainty, we believe the final outcome of such matters will not have a material adverse effect on our financial condition or results of operations.

ITEM 4. RESERVED

PART II

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

Until November 20, 2008, our common stock was listed on the New York Stock Exchange and from then until December 29, 2009, the Company's common stock was quoted on the Pink OTC Markets (formerly, Pink Sheets). Our common stock is currently listed on the NYSE Amex (formerly known as the American Stock Exchange) under the symbol "IMPM."

The following table summarizes the high, low and closing sales prices for our common stock for the periods indicated:

	2009			2008 (1)		
	High	Low	Close	High	Low	Close
First Quarter	$ 0.80	$ 0.12	$ 0.18	$ 19.80	$ 5.30	$ 12.70
Second Quarter	1.01	0.16	1.00	16.00	6.90	7.50
Third Quarter	2.96	0.90	2.11	10.00	1.60	2.50
Fourth Quarter	4.99	2.11	3.29	3.70	0.20	0.60

(1) All historical share and per share data have been restated to give retroactive recognition of the Company's ten-for-one reverse stock split effected in December 2008.

On March 5, 2010, the last quoted price of our common stock on the NYSE Amex was $3.95 per share. As of March 5, 2010, there were 251 holders of record, including holders who are nominees for an undetermined number of beneficial owners, of our common stock.

The Board of Directors of the Company authorizes the payment of cash dividends on its common stock, subject to an ongoing review of the Company's profitability, liquidity and future operating cash requirements. The Board of Directors did not declare cash dividends on our common stock during the years ended December 31, 2009 and 2008. We do not expect to declare or pay any cash dividends on our common stock in the foreseeable future.

Pursuant to the terms of our settlement agreement with our remaining reverse repurchase facility lender, we are not allowed to authorize, declare or pay dividends on our common stock while the related note payable remains outstanding.

In connection with the completion of its Offer to Purchase and Consent Solicitation, the Company paid $7.4 million accumulated but unpaid dividends on its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock during the year ended December 31, 2009. There was $7.4 million and $11.2 million in dividends paid on preferred stock during the years ended December 31, 2009 and 2008, respectively.

ITEM 6. SELECTED FINANCIAL DATA

As a smaller reporting company, we are not required to provide the information required by this Item.

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

Management's discussion and analysis of financial condition and results of operations contain certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Refer to Item 1. "Business—Forward-Looking Statements" for a complete description of forward-looking statements. Refer to Item 1. "Business" for information on our businesses and operating segments.

Amounts are presented in thousands, except per share data or as otherwise indicated.

Selected Financial Results for 2009

Continuing Operations

- Earnings from continuing operations of $8.5 million for the year ended December 31, 2009, compared to $4.8 million for 2008.
- Net interest income of $9.8 million for the year ended December 31, 2009, compared to $13.7 million for 2008.
- Non-interest income—net trust assets of $13.0 million for the year ended December 31, 2009, compared to a loss of $27.7 million for 2008.
- Mortgage and real estate services fees of $42.6 million for the year ended December 31, 2009, compared to none for 2008.

Discontinued Operations

- Earnings from discontinued operations (net of tax) of $2.3 million for the year ended December 31, 2009, compared to a loss of $49.5 million for 2008.

Market Conditions

See Item 1. "Business" for discussion of market conditions.

Status of Operations

Mortgage and real estate services

During 2007, as a result of the disruption in the mortgage market and the Company's inability to sell or securitize mortgages, the Company's Board of Directors elected to discontinue the non-conforming mortgage and retail operations conducted by IFC, the commercial operations conducted by ICCC, and the warehouse lending operations conducted by IWLG (collectively, the discontinued operations).

In 2009, the Company has sought to create an integrated services platform to provide solutions to the mortgage and real estate markets. Pursuant to that, the Company initiated various mortgage and real estate fee-based business activities, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage, mortgage lending, and title and escrow services. The Company has been able to develop and enhance its service offerings in providing services to investors, servicers and individual borrowers primarily by focusing on loss mitigation and performance of our own long-term mortgage portfolio. The development of these business activities focuses on vertical integration of a centralized platform which we believe we can operate synergistically to maximize their success.

During the fourth quarter of 2009, the Company received California Department of Insurance approval for our acquisition of a title insurance agency and its escrow operations. Upon the approval, the Company acquired the operations effective December 31, 2009. The title insurance company services California and selected national markets and is integrated into the Company's services platform providing solutions to the mortgage and real estate markets.

For the year ended December 31, 2009, mortgage and real estate services fees were $42.6 million, primarily comprised of $17.5 million in loan modification fees, $13.6 million in monitoring and surveillance fees, $7.1 million in servicing income, and $4.4 million in title and escrow fees. Although the Company intends to attempt to generate more fees by providing these services to third parties in the marketplace in the near future, the revenues from these business activities have primarily been generated from the Company's long-term mortgage portfolio which is declining from principal repayments and liquidation of defaulted loans. Furthermore, since these business activities are newly established, there remains uncertainty about their future success.

Long-term mortgage portfolio

Throughout 2009, the Company continued to be significantly and negatively affected by the deteriorating real estate market and the weak economic environment. These factors have led to continued deterioration in the quality of the Company's long-term mortgage portfolio, as evidenced by the continued increases in delinquencies, foreclosures and credit losses. Existing conditions are unprecedented and inherently involve significant risks and uncertainty to the Company. The current market conditions have led to fewer sources of liquidity available to the Company to operate its business. These conditions continue to have an adverse effect on the performance of the Company's long-term mortgage portfolio, including significant losses on real estate owned. During 2009, the Company increased its loss assumptions for its long-term mortgage portfolio due to the increase in expected defaults and loss severities related to the weak economy and housing market.

At December 31, 2009, our residual interest in securitizations (represented by the difference between trust assets and trust liabilities) decreased to $23.0 million, compared to $28.0 million at December 31, 2008. The decrease was primarily related to the receipt of residual cashflows and increases in defaults and loss severities.

Liquidity and capital resources

During 2009, the Company continued to fund its operations primarily from the cash flows generated from its long-term mortgage portfolio, which included mortgage and real estate services fees and cash flows from our residual interests in securitizations.

Additionally, during 2009, the Company received $15.8 million in income tax refunds, including interest, primarily related to an $8.9 million refund attributable to favorable changes in tax laws surrounding the carryback of net operating losses for additional prior years.

Trust preferred securities

In January 2009, the Company purchased and canceled all of the $25.0 million in outstanding trust preferred securities of Impac Capital Trust #2 for $3.75 million and terminated the related debt.

In May 2009, the Company exchanged an aggregate of $51.3 million in trust preferred securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an increased aggregate principal balance of $62.0 million and a maturity date in March 2034. Under the terms of the exchange, in consideration for the increase in principal, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at 3-month LIBOR plus 375 basis points. In connection with the exchange, the Company paid a fee of $0.5 million.

In June 2009, the Company purchased and canceled $1.0 million in outstanding trust preferred securities of Impac Capital Trust #4 for $150 thousand.

In July 2009, the Company became current and is no longer deferring interest on its remaining trust preferred securities.

In August 2009, the Company purchased and canceled $2.5 million in outstanding trust preferred securities of Impac Capital Trust #4 for $375 thousand.

As a result of the restructuring of $51.3 million and the cumulative purchases and cancelation of $36.5 million in outstanding trust preferred securities, the Company reduced its annual interest expense obligation from $7.8 million to approximately $2.0 million. At December, 31, 2009, the Company has $8.5 million in outstanding trust preferred securities of Impac Capital Trust #4 and $62.0 million in outstanding junior subordinated notes.

Preferred stock

In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock. The Series B Preferred Stock had a liquidation preference of $50 million and the Series C Preferred Stock had a liquidation preference of $111.8 million, for a total of $161.8 million. Upon expiration of the Offer to Purchase, holders of approximately 67.7% of the Preferred Stock tendered an aggregate of 4,378,880 shares. Stockholders of the Company's Series B Preferred Stock tendered 1,323,844 shares at $0.29297 per share for $388 thousand. Stockholders of the Company's Series C Preferred Stock tendered 3,055,036 shares at $0.28516 per share for $871 thousand. The aggregate purchase price for the Preferred Stock was $1.3 million. In addition, in connection with the completion of the offer to purchase the Company paid $7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of $8.7 million, the Company eliminated $109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding $52.3 million liquidation preference of Series B and Series C Preferred Stock, but as discussed below is not obligated to pay dividends on such preferred stock.

In connection with the Offer to Purchase, the Company filed Articles of Amendment to its charter with the State Department of Assessments and Taxation of Maryland to modify the terms of each of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock to (i) make dividends, if any, non-cumulative, (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment, (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company, (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such Preferred Stock, (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment, (vi) eliminate the right of holders of preferred stock to elect two directors if dividends are in arrears for six quarterly periods and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of Preferred Stock senior to the preferred stock.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its $14.9 million annual preferred dividend obligation.

Restructured Financing

In October 2009, the Company entered into a settlement agreement (the Settlement Agreement) with its remaining reverse repurchase facility lender to settle the restructured financing. The Settlement Agreement retired the then-existing facility and removed any further exposure associated with the line or the loans that secured the line. Pursuant to the terms of the Settlement Agreement, the Company (i) settled the $140.0 million balance of the reverse repurchase line by transferring the loans securing the line to the lender at their approximate carrying values, (ii) made a cash payment of $20.0 million and (iii) entered into a credit agreement with the lender (the "Credit Agreement") for a $33.9 million term loan. The borrowing under the Credit Agreement, which is to be paid over 18 months, bears interest at a rate of one-month LIBOR plus 350 basis points and requires a monthly principal and interest payment of $1.5 million. A $10.0 million principal payment is due by April 2010 as part of the Credit Agreement. As of December 31, 2009, the outstanding balance of the note payable, included in our consolidated balance sheets was $31.1 million.

The ability to meet our long-term liquidity requirements is subject to several factors, such as generating fees from our mortgage and real estate fee-based business activities and realizing cash flows from our long-term mortgage portfolio. Our future financial performance and success are dependent in large part upon our ability to grow our mortgage and real estate fee-based business activities. We believe that current cash balances, short-term investments, cash flows from mortgage and real estate services fees generated from our long-term mortgage portfolio, and residual interest cash flows from our long-term mortgage portfolio are adequate for our current operating needs. There can be no assurances that we will be able to implement our new mortgage and real estate fee-based business activities successfully or achieve the anticipated benefits of their implementation. If we are unable to do so, we may be unable to satisfy our future operating costs and liabilities, including repayment of the note payable and long-term debt.

To understand the financial position of the Company better, we believe it is important to understand the composition of the Company's stockholders' equity (deficit) and to which component of the business it relates. At December 31, 2009, the equity (deficit) within our continuing and discontinued operations was comprised of the following significant assets and liabilities:

	Condensed Components of Stockholders' Equity (Deficit) As of December 31, 2009		
	Continuing Operations	Discontinued Operations	Total
Cash	$ 25,678	$ 172	$ 25,850
Short-term investments	5,002	-	5,002
Residual interests in securitizations	22,977	-	22,977
Note payable	(31,060)	-	(31,060)
Long-term debt ($71,120 par)	(9,773)	-	(9,773)
Repurchase reserve	-	(10,967)	(10,967)
Lease liability (1)	-	(3,875)	(3,875)
Deferred charge	13,144	-	13,144
Net other assets (liabilities)	4,137	(2)	4,135
Stockholders' equity (deficit)	$ 30,105	$ (14,672)	$ 15,433

(1) Guaranteed by IMH.

Continuing operations

At December 31, 2009, cash within our continuing operations decreased to $25.7 million from $46.2 million at December 31, 2008. The primary sources of cash between periods were cash flow of $30.4 million from residual interests in securitizations, $42.6 million fees generated from the mortgage and real estate fee-based business activities and income tax refunds of $15.8 million, including interest. Offsetting the sources of cash were operating expenses totaling $55.6 million, a $5.0 million investment in highly liquid short-term investments and a $20.0 million cash payment related to the settlement of the former restructured financing. The Company made $3.0 million in payments on the note payable associated with the settlement. Additionally, the Company made $15.0 million in payments on the restructured financing prior to the settlement in October 2009. During the year, the Company repurchased preferred stock for $1.3 million and paid $7.4 million in accumulated but unpaid preferred stock dividends. Additionally, the Company paid $4.3 million to purchase and cancel $28.5 million in trust preferred securities.

Since our consolidated and unconsolidated securitization trusts are nonrecourse, we have netted trust assets and liabilities to present the Company's interest in these trusts more simply, which are considered our residual interests in securitizations. For unconsolidated securitizations our residual interests represent the fair value of investment securities available-for-sale. For consolidated securitizations, our residual interests are represented by the fair value of securitized mortgage collateral and real estate owned, offset by the fair value of securitized mortgage borrowings and net derivative liabilities. We receive cash flows from our residual interests in securitizations to the extent they are available after required distributions to bondholders and maintaining overcollateralization levels within the trusts. The estimated fair value of the residual interests, represented by the difference in the fair value of trust assets and trust liabilities, was $23.0 million at December 31, 2009, compared to $28.0 million at December 31, 2008.

At December 31, 2009, we had deferred charges of $13.1 million, which is amortized as a component of income tax expense in the consolidated statements of operations over the estimated life of the approximately $12.0 billion in mortgages retained in the securitized mortgage collateral. The deferred charges represent the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. This balance is recorded as required by accounting principles generally accepted in the United States of America (GAAP) and does not have any realizable cash value.

Net other assets include $2.5 million in premises and equipment, $1.3 million in restricted cash and $2.6 million in prepaid expenses.

Discontinued operations

The Company's most significant liabilities in discontinued liabilities at December 31, 2009 relate to its repurchase reserve and a lease liability associated with the former non-conforming mortgage operations.

In previous years when our discontinued operations sold loans to investors, we were required to make normal and customary representations and warranties about the loans we had previously sold to investors. Our whole loan sale agreements generally required us to repurchase loans if we breached a representation or warranty given to the loan purchaser. In addition, we also could be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. The repurchase reserve is an estimate of losses from expected repurchases, and is based, in part, on the recent settlement of claims. At December 31, 2009, the repurchase reserve was $11.0 million.

In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. At December 31, 2009, the Company had a liability of $3.9 million included within discontinued operations, representing the present value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space.

Critical Accounting Policies

We define critical accounting policies as those that are important to the portrayal of our financial condition and results of operations. Our critical accounting policies require management to make difficult and complex judgments that rely on estimates about the effect of matters that are inherently uncertain due to the affect of changing market conditions and/or consumer behavior. In determining which accounting policies meet this definition, we considered our policies with respect to the valuation of our assets and liabilities and estimates and assumptions used in determining those valuations. We believe the most critical accounting issues that require the most complex and difficult judgments and that are particularly susceptible to significant change to our financial condition and results of operations include the following:

- fair value of financial instruments;
- variable interest entities and transfers of financial assets and liabilities;
- net realizable value of REO;
- lower of cost or market of loans held-for-sale;
- repurchase reserve; and

- interest income and interest expense.

Fair Value of Financial Instruments

On January 1, 2008, the Company elected to apply fair value accounting to certain financial instruments (certain trust assets, trust liabilities and trust preferred securities). Financial Accounting Standards Board—Accounting Standards Codification (FASB ASC) 820-10-35 defines fair value, establishes a framework for measuring fair value and outlines a fair value hierarchy based on the inputs to valuation techniques used to measure fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (also referred to as an exit price). Fair value measurements are categorized into a three-level hierarchy based on the extent to which the measurement relies on observable market inputs in measuring fair value. Level 1, which is the highest priority in the fair value hierarchy, is based on unadjusted quoted prices in active markets for identical assets or liabilities. Level 2 is based on observable market-based inputs, other than quoted prices, in active markets for identical assets or liabilities. Level 3, which is the lowest priority in the fair value hierarchy, is based on unobservable inputs. Assets and liabilities are classified within this hierarchy in their entirety based on the lowest level of any input that is significant to the fair value measurement.

The use of fair value to measure our financial instruments is fundamental to our financial statements and is a critical accounting estimate because a substantial portion of our assets and liabilities are recorded at estimated fair value. Financial instruments classified as Level 3 are generally based on unobservable inputs, and the process to determine fair value is generally more subjective and involves a high degree of management judgment and assumptions. These assumptions may have a significant effect on our estimates of fair value, and the use of different assumptions, as well as changes in market conditions and interest rates, could have a material effect on our results of operations or financial condition.

In conjunction with electing to apply fair value accounting to these financial instruments, the Company prospectively adopted FASB ASC 825-10-25 as of January 1, 2008. FASB ASC 825-10-25 provides an option on an instrument-by-instrument basis for most financial assets and liabilities to be reported at fair value with changes in fair value reported in earnings. After the initial adoption, the election is made at the acquisition of a financial asset, financial liability, or a firm commitment and it may not be revoked. Management believes that this adoption provides an opportunity to mitigate volatility in reported earnings and provides a better representation of the economics of the trust assets and liabilities.

Under the transition provisions, the Company elected to apply fair value accounting to certain financial instruments (certain trust assets, trust liabilities and trust preferred securities) held at January 1, 2008. Differences between the December 31, 2007 carrying values and the January 1, 2008 fair values were recognized as an adjustment to retained deficit, resulting in a $1.1 billion decrease to retained deficit on January 1, 2008 from $(1.4) billion at December 31, 2007 to $(308.8) million at January 1, 2008.

As a result of the lack of observable market data resulting from inactive markets, the Company has classified all its investment securities available-for-sale, securitized mortgage collateral and borrowings, net derivative liabilities and long-term debt as Level 3 fair value measurements at December 31, 2009 and 2008. Level 3 assets and liabilities were 100 percent of total assets and liabilities at fair value.

Recurring basis

Investment securities available-for-sale—The Company elected to carry all of its investment securities available-for-sale at fair value. The investment securities consist primarily of non-investment grade mortgage-backed securities. The fair value of the investment securities are measured based upon our expectation of inputs that other market participants would use. Such assumptions include our judgments about the underlying collateral, prepayment speeds, future credit losses, forward interest rates and certain other factors. Given the market disruption and lack of observable market data as of December 31, 2009 and 2008, the fair value of the investment securities available-for-sale were measured using significant internal expectations of market participants' assumptions.

Securitized mortgage collateral—The Company elected to carry all of its securitized mortgage collateral at fair value. These assets consist primarily of non-conforming mortgage loans securitized between 2002 and 2007. Fair value measurements are based on the Company's internal models used to compute the net present value of future expected cash flows, with observable market participant assumptions, where available. The Company's assumptions include our expectations of inputs that other market participants would use in pricing these assets. These assumptions include our judgments about the underlying collateral, prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors.

Securitized mortgage borrowings—The Company elected to carry all of its securitized mortgage borrowings at fair value. These borrowings consist of individual tranches of bonds issued by securitization trusts and are primarily backed by non-conforming mortgage loans. Fair value measurements include our judgments about the underlying collateral and assumptions such as prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors.

Financial Guaranty Insurance Company (FGIC) provides bond guaranty insurance for three of the Company's consolidated securitizations. In determining the fair value of securitized mortgage borrowings, the Company excludes consideration of bond guaranty insurance payments in accordance with FASB ASC 820-10-35-18A. In November 2009, the Company was notified that FGIC had been ordered by the New York Insurance Department to suspend paying any and all claims based on its financial condition. As the related securitization trusts are nonrecourse to the Company, it is not required to replace or otherwise settle bond guaranty insurance within the consolidated trusts. However, other insurance companies have issued bond guaranty insurance policies for certain securities within the Company's securitized mortgage borrowings. Additional suspensions on the payment of claims may arise, which could materially affect industry-wide market prices for collateralized mortgage bonds.

Long-term debt—The Company elected to carry all of its long-term debt (consisting of trust preferred securities and junior subordinated notes) at fair value. These securities were measured based upon an analysis prepared by management, which considered the Company's own credit risk, including recent settlements with trust preferred debt holders and discounted cash flow analysis.

Derivative assets and liabilities—For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company's judgments about the future cash flows, forward interest rates and certain other factors, including counterparty risk. Additionally, these values also take into account the Company's own credit standing, to the extent applicable; thus the valuation of the derivative instrument includes the estimated value of the net credit differential between the counterparties to the derivative contract.

The Company's primary objective is to limit the exposure to the variability in future cash flows attributable to the variability of one-month LIBOR, which is the underlying index of adjustable rate securitized mortgage borrowings. The Company also monitors on an ongoing basis the prepayment risks that arise in fluctuating interest rate environments. The Company's interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates on securitized mortgage borrowings.

To mitigate exposure to the effect of changing interest rates on cash flows on securitized mortgage borrowings, the Company purchased derivative instruments primarily in the form of interest rate swap agreements (swaps) and, to a lesser extent, interest rate cap agreements (caps) and interest rate floor agreements (floors). Due to the closure of the non-conforming mortgage operations, the Company has not entered into a new derivative instrument since the third quarter of 2007. However, the Company has $126.5 million in net derivative liabilities outstanding as of December 31, 2009.

On September 15, 2008, Lehman Brothers Holdings Inc. (LBHI) filed a petition for protection under Chapter 11 of the U.S. Bankruptcy Code. As of that date, LBHI, through affiliated companies, was an interest rate swap counterparty to several of the Company's CMO and REMIC securitizations. At December 31, 2009, the estimated value of derivative liabilities to LBHI, through its affiliated companies was approximately $49.2 million and is included in derivative liabilities in the consolidated balance sheet. As the related securitization trusts are nonrecourse to the Company, the Company is not required to replace or otherwise settle any derivative positions affected by counterparty default within the consolidated trusts.

Nonrecurring basis

The Company is required to measure certain assets and liabilities at estimated fair value from time to time. These fair value measurements typically result from the application of specific accounting pronouncements under GAAP. The fair value measurements are considered nonrecurring fair value measurements under FASB ASC 820-10.

Loans held-for-sale—Loans held-for-sale for which the fair value option was not elected are carried at lower of cost or market (LOCOM). When available, such measurements are based upon what secondary markets offer for portfolios of loans with similar characteristics, and are considered Level 2 measurements. If market pricing is not available, such measurements are significantly impacted by the Company's expectations of other market participants' assumptions, and are considered Level 3 measurements. The Company utilizes internal pricing processes to estimate the fair value of loans held-for-sale, which is based on recent loan sales and estimates of the fair value of the underlying collateral. Loans held-for-sale, which are primarily included in assets of discontinued operations, are considered Level 3 fair value measurements at December 31, 2009 and 2008, based on the lack of observable market inputs.

Real estate owned—REO consists of residential real estate acquired in satisfaction of loans. Upon foreclosure, REO is adjusted to the estimated fair value of the residential real estate less estimated selling and holding costs, offset by expected contractual mortgage insurance proceeds to be received, if any. Subsequently, REO is recorded at the lower of carrying value or estimated fair value less costs to sell. Fair values of REO are generally based on observable market inputs, and considered Level 2 measurements at December 31, 2009.

Lease liability—In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. The Company has recorded a liability, included within discontinued operations, representing the present value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space. This liability is based on present value techniques that incorporate the Company's judgments about estimated sublet revenue and discount rates. This lease liability is considered a Level 3 measurement at December 31, 2009.

Deferred charge—Deferred charge represents the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. The deferred charge is amortized as a component of income tax expense over the estimated life of the mortgages retained in the securitized mortgage collateral. The Company evaluates the deferred charge for impairment quarterly using internal estimates of estimated cash flows and lives of the related mortgages retained in the securitized mortgage collateral. The deferred charge is considered a Level 3 measurement at December 31, 2009.

Intangible asset—Intangible assets deemed to have an indefinite life are tested annually for impairment, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Impairment losses are recognized if carrying amount of an intangible asset exceeds its estimated fair value. The intangible asset is considered a Level 3 measurement at December 31, 2009.

We continue to refine our valuation methodologies as markets and products develop and the pricing for certain products becomes more or less transparent. While we believe our valuation methods are appropriate and consistent with those of other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a materially different estimate of fair value as of the reporting date.

Variable Interest Entities and Transfers of Financial Assets and Liabilities

Historically, the Company securitized mortgages in the form of collateralized mortgage obligations (CMO), which were consolidated and accounted for as secured borrowings for financial statement purposes. The Company also securitized mortgages in the form of real estate mortgage investment conduits (REMICs), which were either consolidated or unconsolidated depending on the design of the securitization structure. CMO and certain REMIC securitizations were designed so that the transferee (securitization trust) was not a qualifying special purpose entity (QSPE), and therefore the Company consolidated the variable interest entity (VIE) as it was the primary beneficiary of the sole residual interest in each securitization trust. Generally, this was achieved by including terms in the securitization agreements that gave the Company the ability to unilaterally cause the securitization trust to return specific mortgages, other than through a clean-up call. Amounts consolidated are included in trust assets and liabilities as securitized mortgage collateral, real estate owned, derivative assets, securitized mortgage borrowings and derivative liabilities in the accompanying consolidated balance sheets.

Our estimate of the fair value of our net retained residual interests in unconsolidated securitizations, which are included in investment securities available-for-sale in the consolidated balance sheets, requires us to exercise significant judgment as to the timing and amount of future cash flows from the residual interests. We are exposed to credit risk from the underlying mortgage loans in unconsolidated securitizations to the extent we retain subordinated interests. Changes in expected cash flows resulting from changes in expected net credit losses will impact the value of our subordinated retained interests and those changes are recorded as a component of change in fair value of net trust assets

In contrast, for securitizations that are structured as secured borrowing, we recognize interest income over the life of the securitized mortgage collateral and interest expense incurred for the securitized mortgage borrowings. We refer to these transactions as consolidated securitizations. The mortgage loans collateralizing the debt securities for these financings are included in securitized mortgage collateral and the debt securities payable to investors in these securitizations are included in securitized mortgage borrowings in our consolidated balance sheet.

Whether a securitization is consolidated or unconsolidated, investors in the securities issued by the securitization trust have no recourse to our non-securitized assets or to us and have no ability to require us to provide additional assets, but rather have recourse only to the assets transferred to the trust. Whereas the accounting differences are significant, the underlying economic impact to us, over time, will be the same regardless of whether the securitization trust is consolidated or unconsolidated.

Effective January 1, 2010, former QSPEs are evaluated for consolidation based on the provisions of FASB ASC 810-10-25, which eliminates the concept of a QSPE and changes the approach to determining a securitization trust's primary beneficiary. Refer to Note A-17—*Recent Accounting Pronouncements* in the notes to the consolidated financial statements for a discussion of the impact the new rules will have on the Company's consolidated balance sheets.

Net Realizable Value of REO

The Company considers the net realizable value (NRV) of its REO properties in evaluating REO losses. When real estate is acquired in settlement of loans, or other real estate owned, the mortgage is written-down to a percentage of the property's appraised value, broker's price opinion or list price less estimated selling costs and including mortgage insurance proceeds expected to be received. Subsequent changes in the NRV of the REO is reflected as a write-down of REO and results in additional losses.

Lower of Cost or Market of Loans Held-for-Sale

Loans held-for-sale are carried at the lower of amortized cost or fair value. Traditionally, we have estimated fair value by evaluating a variety of market indicators including recent trades and outstanding commitments. In response to diminished secondary market activity for loan sales, the Company also evaluates recent liquidation values of underlying collateral in estimating fair values. We apply fair value estimates to these stratifications to arrive at a valuation allowance which is applied against our carrying amount resulting in a net fair value estimate for mortgage loans held for sale.

Repurchase Reserve

When we have sold loans through whole loan sales we were required to make normal and customary representations and warranties about the loans to the purchaser. Our whole loan sale agreements generally required us to repurchase loans if we breach a representation or warranty given to the loan purchaser. In addition, we may be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale.

Investors have requested the Company to repurchase loans or to indemnify them against losses on certain loans which the investors believe either do not comply with applicable representations or warranties or defaulted shortly after its purchase. Upon completion of its own investigation regarding the investor claims, the Company repurchases or provides indemnification on certain loans, as appropriate. The Company maintains a liability for expected losses on dispositions of loans expected to be repurchased or on which indemnification is expected to be provided and regularly evaluates the adequacy of this repurchase liability based on trends in repurchase and indemnification requests, actual loss experience, settlement negotiations, and other relevant factors including economic conditions.

The Company estimates the repurchase reserve, included in liabilities of discontinued operations in the consolidated balance sheet, based on the estimated trailing whole loan sales that still have outstanding early payment and misrepresentation warranties. The calculation of the trailing whole loan sales subject to request is based upon historical analysis of the timing of requests in relation to their sale date. The Company also calculates the rate at which our whole loan sales will develop into early payment default or misrepresentation claims. Based on historical experience, management will determine what percentage of the claims may incur a loss. The Company applies a historical loss rate, adjusted for current market conditions based on the type of loan (first lien or to a lesser extent second lien) to the loans we expect to incur loss on in the future to derive the repurchase reserve. The reserve includes the Company's estimate of losses in the fair value of loans the Company expects it will repurchase, plus any premiums that will be refunded to the investor. The loss in fair value is predominately determined based on several factors including recent settlements and status of current settlement negotiations.

Interest Income and Interest Expense

Interest income on securitized mortgage collateral and interest expense on securitized mortgage borrowings are recorded using the effective yield for the period based on the previous quarter-end's estimated fair value.

Income Taxes

Effective January 1, 2009, the Company revoked its election to be taxed as a real estate investment trust (REIT). As a result of revoking this election, the Company is subject to income taxes as a regular (Subchapter C) corporation. With this election, we will not be allowed to elect to be taxed as a REIT until 2014.

We have significant NOL carryforwards from prior years. We do not expect to be able to generate sufficient taxable income in future years to utilize these losses and have recognized a full valuation allowance against these NOL carryforwards in our consolidated balance sheets.

In periods prior to revoking our election to be taxed as a REIT, we were generally allowed to pass through income to our stockholders in the form of dividends without the payment of corporate level tax. To maintain our qualification as a REIT, we were required to satisfy certain quarterly asset tests, annual gross income tests, and certain organizational tests, as well as satisfy a distribution requirement under which we had to distribute dividends to our stock holders in an amount at least equal to 90 percent of our taxable income (other than net capital gains).

Financial Condition and Results of Operations

Financial Condition

As of December 31, 2009 compared to December 31, 2008

	December 31, 2009	December 31, 2008	Increase (Decrease)	% Change
Investment securities available-for-sale	$ 813	$ 2,068	$ (1,255)	(61)%
Securitized mortgage collateral	5,666,122	5,894,424	(228,302)	(4)
Derivative assets	146	37	109	295
Real estate owned	142,364	599,084	(456,720)	(76)
Total trust assets	5,809,445	6,495,613	(686,168)	(11)
Assets of discontinued operations	4,480	141,053	(136,573)	(97)
Other assets	58,987	78,851	(19,864)	(25)
Total assets	$ 5,872,912	$ 6,715,517	$ (842,605)	(13)%
Securitized mortgage borrowings	$ 5,659,865	$ 6,193,984	$ (534,119)	(9)%
Derivative liabilities	126,603	273,584	(146,981)	(54)
Total trust liabilities	$ 5,786,468	$ 6,467,568	$ (681,100)	(11)
Liabilities of discontinued operations	19,152	217,241	(198,089)	(91)
Other liabilities	51,859	21,456	30,403	142
Total liabilities	5,857,479	6,706,265	(848,786)	(13)
Total stockholders' equity	15,433	9,252	6,181	67
Total liabilities and stockholders' equity	$ 5,872,912	$ 6,715,517	$ (842,605)	(13)%

Total assets and total liabilities were $5.9 billion at December 31, 2009 as compared to $6.7 billion at December 31, 2008. The decrease in total assets and liabilities are primarily attributable to decreases in the Company's trust assets and trust liabilities as summarized below:

- Securitized mortgage collateral decreased $228.3 million during 2009. The decrease in securitized mortgage collateral from $5.9 billion at December 31, 2008 to $5.7 billion at December 31, 2009 was primarily due to increased loss assumptions and reductions in principal balances from defaults and principal payments during the period, offset by the adoption of FASB ASC 820-10-65-4 during the second quarter of 2009, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. For the year ended December 31, 2009, increases in fair value totaled $984.9 million, offset by reductions in principal balances (resulting from transfers to REO and principal paydowns) of $1.2 billion.

- REO within the Company's securitization trusts decreased $456.7 million to $142.4 million at December 31, 2009. Increases in REO from foreclosures totaled $347.3 million. Offsetting the increase in REO from foreclosures were $676.1 million in liquidations and $127.9 million in additional net realizable value write-downs subsequent to foreclosure.

- Securitized mortgage borrowings decreased $534.1 million to $5.7 billion at December 31, 2009. The decrease in securitized mortgage borrowings was primarily due to increased loss assumptions and reductions in principal balances during the period, offset by the adoption of FASB ASC 820-10-65-4 during the second quarter of 2009, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial asset and liabilities in illiquid markets as the Company had used in prior periods. For the year ended December 31, 2009, decreases in fair value totaled $1.4 billion, offset by reductions in outstanding balances of $1.9 billion.

- Derivative liabilities, net decreased $147.1 million to $126.5 million at December 31, 2009. The decrease is the result of a $54.2 million reduction in fair value resulting from decreases in the forward LIBOR curve, offset by $201.3 million in derivative cash payments from the securitization trusts.

Book value per common share was $(4.79) as of December 31, 2009, as compared to $(19.93) as of December 31, 2008.

Since our consolidated and unconsolidated securitization trusts are nonrecourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. Therefore, in the following table we have netted trust assets and trust liabilities to present these residual interests more simply. Our residual interests in securitizations are segregated between our single-family (SF) residential and multifamily (MF) residential portfolios and are represented by the difference between trust assets and trust liabilities. For unconsolidated securitizations, our residual interests represent the fair value of investment securities available-for-sale. For consolidated securitizations, our residual interests are represented by the fair value of securitized mortgage collateral and net realizable value of real estate owned, offset by the fair value of securitized mortgage borrowings and net derivative liabilities. The following tables present the estimated fair value of our residual interests by securitization vintage year and other related assumptions used to derive these values at December 31, 2009:

	Estimated Fair Value of Residual Interests by Vintage Year		
	SF	**MF**	**Total**
2002-2003 (1)	$ 10,496	$ 5,336	$ 15,832
2004	512	6,107	6,619
2005 (2)	8	216	224
2006 (2)	-	298	298
2007 (2)	-	4	4
Total	**$ 11,016**	**$ 11,961**	**$ 22,977**
Weighted avg. prepayment rate	7%	8%	7%
Weighted avg. discount rate	30%	21%	25%

(1) 2002-2003 vintage year includes CMO 2007-A, since the majority of the mortgages collateralized in this securitization were originated during this period.
(2) The estimated fair values of residual interests in vintage years 2005 through 2007 is reflective of higher estimated future losses and investor yield requirements compared to earlier vintage years.

The credit loss, prepayment and forward interest rate assumptions used in the fair value process were the same for trust assets, trust liabilities and residual interests, as the collateral assumptions determine collateral cash flows which are used to pay the bonds and residual interests. The only difference in assumptions was between the investor yield requirements on trust assets and liabilities (trust liabilities were slightly less on those securitization trusts with residual interests) and the discount rates used for residual interests. The table below reflects the estimated future credit losses and investor yield requirements for trust assets by product (SF and MF) and securitization vintage:

	Estimated Future Losses (1)		Investor Yield Requirement (2)	
	SF	MF	SF	MF
2002-2003	6%	1%	13%	12%
2004	18%	1%	15%	12%
2005	37%	5%	20%	16%
2006	50%	9%	22%	20%
2007	48%	6%	21%	20%

(1) Estimated future losses derived by dividing future projected losses by unpaid principal balances at December 31, 2009.
(2) Investor yield requirements represent the Company's estimate of the yield third-party market participants would require to price our trust assets and liabilities given our prepayment, credit loss and forward interest rate assumptions.

As illustrated in S&Ps Case Shiller 10-City Composite Home Price Index, from 2002 through 2007, home price appreciation escalated to historic levels. During 2005 through 2007, the company originated or acquired mortgages supported by these elevated real estate values. Beginning in 2007, deterioration in the economy resulting in high unemployment and a dramatic drop in home prices resulted in significant negative equity for borrowers. These factors have led to significant increases in loss severities resulting from deterioration in the credit quality of borrowers, as well as strategic defaults, whereby borrowers with the ability to pay are defaulting on their mortgages based on the belief that home prices will not recover in a reasonable amount of time. Home prices have deteriorated back to October 2003 levels which has significantly reduced or eliminated equity for loans originated after 2003. Future loss estimates are significantly higher for mortgage loans included in securitization vintages after 2004 which reflect severe home price deterioration and defaults experienced with mortgages originated during these periods.

The adoption of FASB ASC 820-10-65-4 clarified the use of quoted prices in determining fair value for assets and liabilities in inactive markets. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction. Upon adoption and at December 31, 2009, the Company relied on observable market participant assumptions for investor yield requirements resulting in an overall decrease in weighted average yield requirements as compared to prior periods. The increases in fair value as a result of decreased yield requirements was offset by increased loss assumptions due to increases in expected defaults and severities related to the weak economy and housing market.

We believe that in order for us to generate cash flows from the long-term mortgage portfolio, we must successfully manage the following operational and market risks:

- interest rate risk;
- liquidity risk;
- credit risk; and
- prepayment risk.

Interest Rate Risk. The Company's earnings depend largely on our interest rate spread, represented by the relationship between the yield on our interest-earning assets (primarily investment securities available-for-sale and securitized mortgage collateral) and the cost of our interest-bearing liabilities (primarily securitized mortgage borrowings, long-term debt and note payable). Our interest rate spread is impacted by several factors, including general economic factors, forward interest rates and our own credit quality.

The residual interests in our long-term mortgage portfolio are sensitive to changes in interest rates on securitized mortgage collateral and the related securitized mortgage borrowings. Changes in interest rates can significantly affect the cash flows and fair values of the Company's assets and liabilities, as well as our earnings and stockholders' equity.

The Company uses derivative instruments to manage some of its interest rate risk. However, the Company does not attempt to completely hedge interest rate risk. To help mitigate some of the exposure to the effect of changing interest rates on cash flows on securitized mortgage borrowings, the Company utilized derivative instruments primarily in the form of interest rate swap agreements (swaps) and, to a lesser extent, interest rate cap agreements (caps) and interest rate floor agreements (floors). These derivative instruments are recorded at fair value in the consolidated balance sheets. For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company's judgments about future cash flows, forward interest rates and certain other factors, including counterparty risk. Additionally, these values also take into account the Company's own credit standing, to the extent applicable; thus, the valuation of the derivative instrument includes the estimated value of the net credit differential between the counterparties to the derivative contract.

At December 31, 2009, derivative liabilities, net were $126.5 million and reflect the securitization trust's liability to pay third-party counterparties based on the estimated value to settle the derivative instruments. Cash payments on these derivative instruments are based on notional amounts that are decreasing over time. Excluding the effects of other factors such as portfolio delinquency and loss severities within the securitization trusts, as the notional amount of these derivative instruments decrease over time, payments to counterparties in the current interest rate environment are reduced, thereby potentially increasing cash flows on our residual interests in securitizations. Conversely, increases in interest rates from current levels could potentially reduce overall cash flows on our residual interests in securitizations. Since our consolidated and unconsolidated securitization trusts are nonrecourse to the Company, our economic risk is limited to our residual interests in these securitization trusts.

The Company is also subject to interest rate risk on its long-term debt (consisting of trust preferred securities and junior subordinated notes) and notes payable. These interest bearing liabilities include adjustable rate periods based on one-month LIBOR (note payable) and three-month LIBOR (trust preferred securities and junior subordinated notes). The Company does not currently hedge its exposure to the effect of changing interest rates related to these interest-bearing liabilities. Significant fluctuations in interest rates could have a material adverse effect on the Company's business, financial condition, results of operations or liquidity.

Liquidity Risk. Refer to "Liquidity and Capital Resources."

Credit risk. We manage credit risk by actively managing delinquencies and defaults through our servicers. Starting with the second half of 2007 we have not retained any additional Alt-A mortgages in our long-term mortgage portfolio. Our securitized mortgage collateral primarily consists of Alt-A mortgages which are generally within typical Fannie Mae and Freddie Mac guidelines but have loan characteristics, which may include higher loan balances, higher loan-to-value ratios or lower documentation requirements (including stated-income loans), that make them non-conforming under those guidelines.

As of December 31, 2009, single-family and multifamily securitized mortgage collateral had an original weighted average credit score of 702 and 732, an original weighted average LTV ratio of 73 percent and 66 percent and an original CLTV of 82 percent and 66 percent, respectively. The current LTV and CLTV ratios may have increased from origination date as a result of the deterioration of the real estate market.

Using historical losses, current portfolio statistics and market conditions and available market data, the Company has estimated future loan losses, which are included in the fair value adjustment to our securitized mortgage collateral. While the credit performance for the loans has been clearly far worse than the Company's initial expectations when the loans were originated, the ultimate level of realized losses will largely be influenced by events that will likely unfold over the next several years, including the severity of housing price declines and overall strength of the economy. If market conditions continue to deteriorate in excess of our expectations, the Company may need to recognize additional fair value reductions to our securitized mortgage collateral, which may also affect the value of the related securitized mortgage borrowings and residual interests.

We monitor our servicers to attempt to ensure that they perform loss mitigation, foreclosure and collection functions according to their servicing practices and each securitization trust's pooling and servicing agreement. We have met with the management of our servicers to assess our borrowers' current ability to pay their mortgages and to make arrangements with selected delinquent borrowers which will result in the best interest of the trust and borrower, in an effort to minimize the number of mortgages which become seriously delinquent. When resolving delinquent mortgages, servicers are required to take timely action. The servicer is required to determine payment collection under various circumstances, which will result in the maximum financial benefit. This is accomplished by either working with the borrower to bring the mortgage current or by foreclosing and liquidating the property. When a borrower fails to make required payments on a mortgage and does not cure the delinquency within 60 days, we generally record a notice of default and commence foreclosure proceedings, or arrange alternative terms of forbearance. If the mortgage is not reinstated within the time permitted by law for reinstatement, the property may then be sold at a foreclosure sale. At a foreclosure sale, the trusts consolidated on our balance sheet generally acquire title to the property.

We use the Mortgage Bankers Association (MBA) method to define delinquency as a contractually required payment being 30 days or more past due. We measure delinquencies from the date of the last payment due date in which a payment was received. Delinquencies for loans 60 days late or greater, foreclosures and delinquent bankruptcies were $3.1 billion or 25.1 percent as of December 31, 2009.

The following table summarizes the unpaid principal balances of non-performing loans in our mortgage portfolio, included in securitized mortgage collateral, loans held-for-investment and loans held-for-sale for continuing and discontinued operations combined, that were 60 or more days delinquent (utilizing the MBA method) as of the periods indicated:

	December 31,			
	2009	%	2008	%
Loans held-for-sale and investment (1)				
60 - 89 days delinquent	$ 66	0.0%	$ 13,694	0.1%
90 or more days delinquent	6,928	0.1%	63,541	0.4%
Foreclosures (2)	7,397	0.1%	65,661	0.4%
Total 60+ days delinquent loans held-for-sale and investment	14,391	0.1%	142,896	0.9%
Long-term mortgage portfolio				
60 - 89 days delinquent	$ 324,032	2.6%	$ 494,960	3.2%
90 or more days delinquent	1,043,718	8.4%	1,096,366	7.0%
Foreclosures (2)	1,449,538	11.6%	1,614,472	10.3%
Delinquent bankruptcies (3)	302,314	2.4%	200,251	1.3%
Total 60+ days delinquent long-term mortgage portfolio	3,119,602	25.0%	3,406,049	21.7%
Total 60 or more days delinquent	$ 3,133,993	25.1%	$ 3,548,945	22.7%
Total collateral	12,492,493	100%	15,666,243	100%

(1) Loans held-for-sale are primarily included in assets of discontinued operations in the consolidated balance sheets. Loans held-for-investment are included in other assets in the consolidated balance sheets.
(2) Represents properties in the process of foreclosure.
(3) Represents bankruptcies that are 30 days or more delinquent.

The following table summarizes securitized mortgage collateral, loans held-for-investment, loans held-for-sale and real estate owned, that were non-performing for continuing and discontinued operations combined as of the dates indicated (excludes 60-89 days delinquent):

	December 31,			
	2009	%	2008	%
90 or more days delinquent, foreclosures and delinquent bankruptcies	$ 2,809,895	95%	$ 3,040,291	83%
Real estate owned	142,676	5%	606,451	17%
Total non-performing assets	$ 2,952,571	100%	$ 3,646,742	100%

Non-performing assets consist of non-performing loans (mortgages that are 90 days or more delinquent, including loans in foreclosure and delinquent bankruptcies) plus REO. It is our policy to place a mortgage on non-accrual status when it becomes 90 days delinquent and to reverse from revenue any accrued interest, except for interest income on securitized mortgage collateral when the scheduled payment is received from the servicer. The servicers are required to advance principal and interest on loans within the securitization trusts to the extent the advances are considered recoverable. As of December 31, 2009, non-performing loans (unpaid principal balance of loans 90 or more days delinquent, foreclosures and delinquent bankruptcies) as a percentage of the total loans was 22 percent. At December 31, 2008, non-performing loans to total loans was 19 percent. As of December 31, 2009, non-performing assets (representing the fair value of loans 90 or more days delinquent, foreclosures and delinquent bankruptcies plus REO) as a percentage of the total assets was 16 percent. At December 31, 2008, non-performing assets to total assets was 26 percent.

REO, which consists of residential real estate acquired in satisfaction of loans, is carried at the lower of cost or net realizable value less estimated selling costs. Adjustments to the loan carrying value required at the time of foreclosure are included in the change in the fair value of net trust assets. Changes in the Company's estimates of net realizable value subsequent to the time of foreclosure and through the time of ultimate disposition are recorded as gains or losses from real estate owned in the consolidated statements of operations. REO, for continuing and discontinued operations, at December 31, 2009 decreased $463.8 million or 76 percent from December 31, 2008 as a result of increased liquidations.

We realized a loss on sale of REO in the amount $90.4 million for 2009 as compared to a loss of $22.3 million for 2008. Additionally, for 2009, the Company recorded write-downs of the net realizable value of the REO in the amount of $127.8 million as compared to $29.7 million for 2008, which reflects the decline in value of the REO from the foreclosure date.

The following table presents the balances of the REO for continuing operations:

	December 31, 2009	December 31, 2008
REO	$ 176,800	$ 635,285
Impairment (1)	(34,080)	(35,533)
Ending balance	$ 142,720	$ 599,752
REO inside trusts	$ 142,364	$ 599,084
REO outside trusts (2)	356	668
Total	$ 142,720	$ 599,752

(1) Impairment represents the cumulative write-downs of net realizable value subsequent to foreclosure.
(2) Amount represents REO related to former on-balance sheet securitizations, which were collapsed as the result of the Company exercising its clean-up call options. This REO is included in other assets in the accompanying consolidated balance sheets.

In calculating the cash flows to assess the fair value of the securitized mortgage collateral, the Company estimates the future losses embedded in our loan portfolio. In evaluating the adequacy of these losses, management takes many factors into consideration. For instance, a detailed analysis of historical loan performance data is accumulated and reviewed. This data is analyzed for loss performance and prepayment performance by product type, origination year and securitization issuance. The data is also broken down by collection status. Our estimate of losses for these loans is developed by estimating both the rate of default of the loans and the amount of loss severity in the event of default. The rate of default is assigned to the loans based on their attributes (e.g., original loan-to-value, borrower credit score, documentation type, geographic location, etc.) and collection status. The rate of default is based on analysis of migration of loans from each aging category. The loss severity is determined by estimating the net proceeds from the ultimate sale of the foreclosed property. The results of that analysis are then applied to the current mortgage portfolio and an estimate is created. We believe that pooling of mortgages with similar characteristics is an appropriate methodology in which to evaluate the future loan losses.

Management recognizes that there are qualitative factors that must be taken into consideration when evaluating and measuring losses in the loan portfolios. These items include, but are not limited to, economic indicators that may affect the borrower's ability to pay, changes in value of collateral, political factors, employment and market conditions, competitor's performance, market perception, historical losses, and industry statistics. The assessment for losses, is based on delinquency trends and prior loss experience and management's judgment and assumptions regarding various matters, including general economic conditions and loan portfolio composition. Management continually evaluates these assumptions and various relevant factors affecting credit quality and inherent losses.

Prepayment Risk. The Company historically used prepayment penalties as a method of partially mitigating prepayment risk for those borrowers that have the ability to refinance. The recent economic downturn, lack of available credit and declines in property values have limited borrowers' ability to refinance. These factors have significantly reduced prepayment risk within our long-term mortgage portfolio. With the seasoning of the long-term mortgage portfolio, a significant portion of prepayment penalties terms have expired, thereby further reducing prepayment penalty income.

Results of Operations

Condensed Statements of Operations Data

	For the year ended December 31,			
	2009	**2008**	**Increase (Decrease)**	**% Change**
Interest income	$ 1,780,923	$ 1,476,972	$ 303,951	21%
Interest expense	1,771,143	1,463,239	307,904	21
Net interest income	9,780	13,733	(3,953)	(29)
Total non-interest income	56,392	42,444	13,948	33
Total non-interest expense	(55,633)	(29,138)	(26,495)	(91)
Income tax expense	(2,017)	(22,270)	20,253	91
Earnings from continuing operations	8,522	4,769	3,753	79
Earnings (loss) from discontinued operations, net	2,315	(49,492)	51,807	105
Net earnings (loss)	$ 10,837	$ (44,723)	$ 55,560	124
Earnings (loss) per share available to common stockholders – basic and diluted (1)	$ 0.44	$ (7.34)	$ 7.78	106%

(1) As discussed in Note L to the consolidated financial statements, the difference between the carrying value of the tendered preferred stock ($106.1 million) and the amount paid for the shares ($1.3 million) was recognized as a decrease in retained deficit in 2009 and is reflected in the consolidated statements of changes in stockholders' equity (deficit) as a reclassification from additional paid in capital. Including the redemption, total basic and diluted earnings per share from continuing operations available to common stockholders were $14.18 and $13.97, respectively. However, because of the special nature of the preferred stock redemption (which the Company considers an infrequently occurring item), management believes that earnings per common share excluding such transaction are more meaningful from an operations standpoint.

Net Interest Income

We earn net interest income primarily from mortgage assets which include securitized mortgage collateral, loans held-for-sale and investment securities available-for-sale, or collectively, "mortgage assets," and, to a lesser extent, interest income earned on cash, cash equivalents and short-term investments. Interest expense is primarily interest paid on borrowings secured by mortgage assets, which include securitized mortgage borrowings and to a lesser extent, interest expense paid on reverse repurchase agreements, long-term debt and notes payable. Interest income and interest expense during the period primarily represents the effective yield, based on the fair value of the trust assets and liabilities.

The following tables summarize average balance, interest and weighted average yield on mortgage assets and borrowings, included within continuing and discontinued operations, for the periods indicated. Cash receipts and payments on derivative instruments hedging interest rate risk related to our securitized mortgage borrowings are not included in the results below. These cash receipts and payments are included as a component of the change in fair value of net trust assets.

	For the year ended December 31,					
	2009			2008		
	Average Balance	Interest	Yield	Average Balance	Interest	Yield
ASSETS						
Investment securities available-for-sale	$ 1,317	$ 496	37.66%	$ 9,544	$ 2,168	22.72%
Securitized mortgage collateral	6,230,451	1,779,535	28.56%	10,527,535	1,472,877	13.99%
Other	32,815	892	2.72%	35,750	1,927	5.39%
Total interest-earning assets	$ 6,264,583	$ 1,780,923	28.43%	$ 10,572,829	$ 1,476,972	13.97%
LIABILITIES						
Securitized mortgage borrowings	$ 6,331,770	$ 1,767,555	27.92%	$ 10,846,318	$ 1,455,683	13.42%
Long-term debt	11,093	3,378	30.45%	36,730	7,556	20.57%
Note payable	5,719	210	3.67%	-	-	0.00%
Total interest-bearing liabilities	$ 6,348,582	$ 1,771,143	27.90%	$ 10,883,048	$ 1,463,239	13.45%
Net Interest Spread (1)		$ 9,780	0.53%		$ 13,733	0.52%
Net Interest Margin (2)			0.16%			0.13%

(1) Net interest spread is calculated by subtracting the weighted average yield on interest-bearing liabilities from the weighted average yield on interest-earning assets.

(2) Net interest margin is calculated by dividing net interest spread by total average interest-earning assets.

For the year ended December 31, 2009 compared to the year ended December 31, 2008

Net interest income spread for the year ended December 31, 2009 decreased $4.0 million to $9.8 million from $13.7 million for the comparable 2008 period. The decrease in net interest spread was primarily attributable to declines in outstanding balances of securitized mortgage collateral and borrowings resulting in a $5.2 million decrease in net interest income on securitized mortgage collateral and securitized mortgage borrowings. Additionally, interest income on investment securities available-for-sale decreased $1.7 million as cash flows received and expected future cash flows have decreased as a result of deterioration in credit quality of the collateral underlying these securities. Offsetting the reduction in net interest income on securitized mortgage collateral and borrowings was a reduction in interest expense on long-term debt of $4.2 million, which was attributable to both reductions in interest expense as a result of the purchase and cancellation of $28.5 million in trust preferred securities during 2009 and the exchange of $51.3 million trust preferred securities for $62 million in junior subordinated notes, which reduced the interest rate from the original 8.01 percent to 2.00 percent through 2013. Net interest margin increased from 0.13 percent for year ended December 31, 2008 to 0.16 percent for the year ended December 31, 2009.

During the year ended December 31, 2009, the yield on interest-earning assets increased to 28.43 percent from 13.97 percent in the comparable 2008 period. The yield on interest-bearing liabilities increased to 27.90 percent for the year ended December 31, 2009 from 13.45 percent for comparable 2008 period. In connection with the fair value accounting for investment securities available-for-sale and securitized mortgage collateral and borrowings, interest income and interest expense is recognized using effective yields based on estimated fair values for these instruments. As the market's expectation of future credit losses has increased between periods, market participants have demanded higher yields, which have resulted in significant reductions in the fair values of these instruments. These reductions in fair value have significantly increased the effective yields used for purposes of recognizing interest income and interest expense on these instruments.

Non-Interest Income

For the year ended December 31, 2009 compared to the year ended December 31, 2008

	For the year ended December 31,			
	2009	2008	Increase (Decrease)	% Change
Change in fair value of net trust assets, excluding REO	$ 231,162	$ 24,281	$ 206,881	852%
Losses from REO	(218,157)	(52,011)	(166,146)	(319)
Non-interest income – net trust assets	13,005	(27,730)	40,735	147
Change in fair value of long-term debt	765	24,879	(24,114)	(97)
Real estate advisory fees	-	45,388	(45,388)	(100)
Mortgage and real estate services fees	42,613	-	42,613	n/a
Other	9	(93)	102	110
Total non-interest income	$ 56,392	$ 42,444	$ 13,948	33%

Non-interest income—net trust assets. Since our consolidated and unconsolidated securitization trusts are nonrecourse to the Company, our economic risk is limited to our residual interests in these securitization trusts. To better understand the economics on our residual interests in securitizations, it is necessary to consider the net effect of changes in fair value of net trust assets and losses from REO. All estimated future losses are included in the estimate of the fair value of securitized mortgage collateral and REO. Losses on REO are reported separately in the consolidated statement of operations as REO is a nonfinancial asset which is the only component of trust assets and liabilities that is not recorded at fair value. Therefore, REO value at the time of sale or losses from further write-downs are recorded separately in the Company's consolidated statement of operations. The net effect of changes in value related to our investment in all trust assets and trust liabilities is shown as non-interest income—net trust assets, which includes losses from real estate owned. Non-interest income related to our net trust assets (residual interests in securitizations) was $13.0 million for the year ended December 31, 2009, compared to $(27.7) million in the comparable 2008 period. The $13.0 million gain on net trust assets was primarily attributable to adopting the provisions of FASB ASC 820-10-65-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. Also contributing to the gain was increased expected net interest spread as a result of a downward shift in the forward Libor curve during the year ended December 31, 2009. Offsetting these gains were declines in fair value resulting from the Company increasing its loss assumptions for its long-term mortgage portfolio due to the increase in expected defaults and loss severities related to the weak economy and housing market. The individual components of the non-interest income from net trust assets were comprised of:

Change in fair value of net trust assets, excluding REO. For the year ended December 31, 2009, the Company recognized a $231.2 million gain from the change in fair value of net trust assets, excluding REO. The net gain recognized during the period was comprised of gains resulting from the increase in fair value of investment securities-for-sale and securitized mortgage collateral, and reduction in the fair value of securitized mortgage borrowings of $3.5 million, $27.8 million and $254.0 million, respectively. Offsetting these gains were losses from the increase in the fair value of net derivative liabilities of $54.2 million.

For the year ended December 31, 2008, the Company recognized a $24.3 million gain from the change in fair value of net trust assets, excluding REO. This gain was comprised of losses resulting from the reductions in the fair value of investment securities available-for-sale, securitized mortgage collateral and derivative instruments of $10.6 million, $7.8 billion and $298.7 million, respectively. Offsetting these losses were gains from reductions in the fair value of securitized mortgage borrowings of $8.1 billion.

Losses from REO. Losses from REO were $218.2 million for the year ended December 31, 2009. This loss was comprised of a $90.4 million loss on sale of REO, coupled with $127.8 million in additional impairment write-downs during the period. During 2009, loss severities resulting from liquidations in areas where we have high concentration of foreclosed properties (such as California and Florida) have continued to increase significantly over the previous year as a result of deterioration in the U.S. economy and real estate markets. The declines in housing prices have resulted in liquidations of foreclosed assets at prices below expected levels as well as additional impairment write-downs of REO since foreclosure.

Losses from REO were $52.0 million for the year ended December 31, 2008, comprised of $27.9 million in losses from the sale of REO and $24.1 million in additional impairment write-downs.

Change in the fair value of long-term debt. Change in the fair value of long-term debt was a gain of $765 thousand for the year ended December 31, 2009, compared to $24.9 million for the comparable 2008 period. Long-term debt (consisting of trust preferred securities and junior subordinated notes) is measured based upon an analysis prepared by the Company, which considers the Company's own credit risk, including consideration of recent settlements with trust preferred debt holders and discounted cash flow analysis. During the year ended December 31, 2008, the Company recorded a $24.9 million change in the fair value of long-term debt associated with decreases in estimated market pricing and anticipated settlements of the Company's trust preferred securities.

Real estate advisory fees. During 2008, the Company entered into an agreement with a real estate marketing company to generate advisory fees. The real estate marketing company specialized in the marketing of foreclosed properties. During 2008, the Company earned $18.4 million in real estate advisory fees plus a $27.0 million fee for agreeing to terminate this relationship in the fourth quarter of 2008.

Mortgage and real estate services fees. During 2009, the Company initiated various mortgage and real estate fee-based business activities. Revenues generated from these business activities are primarily from the Company's long-term mortgage portfolio. For the year ended December 31, 2009, mortgage and real estate services fees, which primarily include loan modification fees and monitoring and surveillance services fees, were $42.6 million compared to none in the comparable 2008 period. For the year ended December31, 2008, mortgage and real estate services fees were zero, representing servicing income of $9.3 million, offset by amortization and impairment of $9.3 million.

Non-Interest Expense

For the year ended December 31, 2009 compared to the year ended December 31, 2008

	For the year ended December 31,			
	2009	**2008**	**Increase (Decrease)**	**% Change**
Personnel expense	$ 35,688	$ 10,320	$ 25,368	246%
General, administrative and other	10,338	7,642	2,696	35
Occupancy expense	4,234	2,734	1,500	55
Legal and professional expense	3,207	5,627	(2,420)	(43)
Data processing expense	2,166	2,815	(649)	(23)
Total non-interest expense	$ 55,633	$ 29,138	$ 26,495	91%

Total non-interest expense was $55.6 million for the year ended December 31, 2009, compared to $29.1 million for the comparable period of 2008. The $26.5 million increase in non-interest expense was primarily attributable to a $25.4 million increase in personnel expense over the previous period. The increase in personnel expense is attributable to increases in personnel and related costs associated with the initiation of our new mortgage and real estate fee-based business activities. For the year ended December 31, 2009, personnel expense increased $25.4 million to $35.7 million as a result of increases in personnel and related costs associated with the initiation of the new mortgage and real estate fee-based business activities. Additionally, in April 2009, certain of the Company's officers and directors gave notice of the surrender of an aggregate of 581,000 options and our Board of Directors accepted and approved the cancellation of those options. In connection with the cancellation of those options, the Company recognized non-cash compensation expense of approximately $1.7 million during the second quarter of 2009.

Income Taxes

In accordance with FASB ASC 810-10-45-8, the Company records a deferred charge representing the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. The deferred charge is included in other assets in the consolidated balance sheets and is amortized as a component of income tax expense in the consolidated statements of operations over the estimated life of the mortgages retained in the securitized mortgage collateral. The Company recorded a tax provision of $2.0 million and $22.3 million for the years ended December 31, 2009 and 2008, respectively. The net provision is the result of the amount of the deferred charge amortized and/or impaired resulting from credit losses, which does not result in any tax liability to be paid.

Results of Operations by Business Segment

Mortgage and Real Estate Services

For the year ended December 31, 2009 compared to the year ended December 31, 2008

During the first quarter of 2009, the Company initiated various mortgage and real estate fee-based business activities, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage, mortgage lending and title and escrow services. During the fourth quarter of 2009, the Company received California Department of Insurance approval for our acquisition of a title insurance agency and escrow operations. Upon the approval, the Company acquired the operations effective December 31, 2009. The title insurance company services California and selected national markets to provide title insurance, escrow and settlement services. Although the Company intends to attempt to generate fees by providing these services to third parties in the marketplace in the near future, the revenues from these business activities have primarily been generated from the Company's long-term mortgage portfolio. Furthermore, since these business activities are newly established, there remains uncertainty about their future success.

Condensed Statements of Operations Data

	For the year ended December 31,			
	2009	2008	Increase (Decrease)	% Change
Net interest income (expense)	$ 12	$ (5)	$ 17	340%
Mortgage and real estate services fees	42,613	-	42,613	n/a
Other non-interest income	29	(10)	39	390
Total non-interest income	42,642	(10)	42,652	n/a
Personnel expense	(23,099)	(1,238)	(21,861)	(1,766)
Non-interest expense and income taxes	(6,707)	(524)	(6,183)	(1,180)
Net earnings (loss)	$ 12,848	$ (1,777)	$ 14,625	823%

For the year ended December 31, 2009, mortgage and real estate services fees were $42.6 million compared to none in the comparable period for 2008. For the year ended December 31, 2009, mortgage and real estate services fees, which are generated primarily from the Company's long-term mortgage portfolio, included $17.5 million in loan modification fees, $13.6 million in monitoring and surveillance fees, $7.1 million in servicing income, and $4.4 million in title and escrow fees. For the year ended December 31, 2008, mortgage and real estate services fees were zero, representing servicing income of $9.3 million, offset by amortization and impairment of $9.3 million.

For the year ended December 31, 2009, personnel expense increased $21.9 million to $23.1 million as a result of increases in personnel and related costs associated with the initiation of the new mortgage and real estate fee-based business activities.

For the year ended December 31, 2009, non-interest expense and income taxes increased $6.2 million to $6.7 million. The increase is related to higher occupancy and general and administrative expenses associated with the new mortgage and real estate fee-based business activities.

Refer to Note G. "Segment Reporting" in the notes to consolidated financial statements for financial results of the continuing operating segments and see Item 1. "Business" for additional information regarding the operating structure.

Long-term Portfolio

For the year ended December 31, 2009 compared to the year ended December 31, 2008

	For the year ended December 31,			
	2009	2008	Increase (Decrease)	% Change
Net interest income	$ 9,768	$ 13,738	$ (3,970)	(29)%
Change in fair value of net trust assets, excluding REO	231,162	24,281	206,881	852
Losses from real estate owned	(218,157)	(52,011)	(166,146)	(319)
Non-interest income- net trust assets	13,005	(27,730)	40,735	147
Change in fair value of long-term debt	765	24,879	(24,114)	(97)
Other non-interest income	(20)	45,305	(45,325)	(100)
Total non-interest income	13,750	42,454	(28,704)	(68)
Personnel expense	(12,589)	(9,082)	(3,507)	(39)
Non-interest expense and income taxes	(15,255)	(40,564)	25,309	62
Net (loss) earnings	$ (4,326)	$ 6,546	$ (10,872)	(166)%

Net (loss) earnings for the year ended December 31, 2009 decreased $10.9 million to a net loss of $4.3 million, compared to net earnings of $6.5 million for the comparable period of 2008. The increase in net loss during the period is attributable to the following:

During 2009, there was a $4.0 million reduction in net interest income primarily resulting from declines in outstanding balances in the long-term mortgage portfolio.

Non-interest income from net trust assets increased $40.7 million to a $13.0 million gain for the year ended December 31, 2009, compared to a loss of $27.7 million for the comparable period in 2008. The increase in the fair value of net trust assets was primarily due to the adoption of FASB ASC 820-10-65-4, which clarified the use of quoted prices in determining fair values in markets that are inactive, thus moderating the need to use distressed prices in valuing financial assets and liabilities in illiquid markets as the Company had used in prior periods. Also contributing to the gain was increased expected net interest spread as a result of a downward shift in the forward LIBOR curve during the year ended December 31, 2009. Offsetting these gains were declines in fair value resulting from increased loss assumptions and reductions in principal balances during the period.

Changes in the fair value of long-term debt declined to $765 thousand in 2009 as compared to $24.9 million in 2008. The gain of $24.9 million in 2008 was related to decreases in estimated market pricing and anticipated settlements of the Company's trust preferred securities during the year ended December 31, 2008.

Other non-interest income decreased $45.3 million during the year ended December 31, 2009 to $(20) thousand from $45.3 million. The decrease is attributable to real estate advisory fees that the Company earned in 2008 related to an agreement with a real estate marketing company. The Company earned $18.4 million in real estate advisory fees plus a $27.0 million fee for agreeing to terminate the relationship in the fourth quarter of 2008.

Non-interest expense and income taxes decreased $25.3 million during the year ended December 31, 2009 to $15.3 million from $40.6 million. The decrease is primarily attributable to a $20.3 million reduction in income tax expense to $2.0 million as a result of reductions in amortization of deferred charge during the year ended December 31, 2009. Additionally, legal and professional fees decreased $2.4 million during the period to $3.2 million.

Discontinued Operations

For the year ended December 31, 2009 compared to the year ended December 31, 2008

Condensed Statements of Operations Data

	For the year ended December 31,			
	2009	**2008**	**Increase (Decrease)**	**% Change**
Net interest (expense) income	$ (351)	$ 2,499	$ (2,850)	(114)%
Loss on sale of loans	(5,739)	(36,349)	30,610	84
(Provision) recovery for repurchases	(647)	6,712	(7,359)	(110)
Other non-interest income	(2,144)	1,250	(3,394)	(272)
Total non-interest income	(8,530)	(28,387)	19,857	70
Personnel expense	(546)	(15,340)	14,794	96
Non-interest expense and income taxes	11,742	(8,264)	20,006	242
Net earnings (loss)	$ 2,315	$ (49,492)	$ 51,807	105%

Net earnings for the discontinued operations were $2.3 million for the year ended December 31, 2009, compared to a loss of $49.5 million for 2008. Net interest (expense) income decreased $2.9 million to net interest expense of $0.3 million as a result of increased delinquencies and nonperforming loans within loans held for sale and the resulting decreases in interest income.

Loss on sale of loans decreased $30.6 million to $5.7 million as a result of reductions in LOCOM adjustment against loans held-for-sale between periods.

Recoveries from repurchases decreased $7.4 million to a provision of $647 thousand for the year ended December 31, 2009, compared to a recovery of $6.7 million in 2008. The $7.4 million decrease is the result of settlements reached with whole-loan investors during 2008, coupled with increases in estimated repurchases obligations during 2009.

Other non-interest income decreased $3.4 million during the year to $(2.1) million. The decrease in other non-interest income was primarily the result of a $3.4 million increase in losses on REO, resulting from losses on the sale of REO and additional impairment write-downs based on changes in estimated values of the REO.

The $14.8 million decrease in personnel expense during the year ended December 31, 2009 as compared to 2008 was due to a reduction in personnel associated with the Company's discontinued non-conforming mortgage, retail mortgage, warehouse lending and commercial operations

Non-interest expense and income taxes decreased $20.0 million between periods primarily due to a Federal tax refund in the amount of $8.9 million, including interest, as a result of an election to carryback net operating losses five years pursuant to 2009 Federal legislation, *The Worker, Homeownership, and Business Assistance Act of 2009*. When the Company discontinued operations in 2007, it recorded a lease liability for unused space, but as we have sublet the unused space, the lease liability has decreased. As a result, the Company recorded income of $2.5 million related to a reduction in estimated lease liabilities as a result of changes in our expected minimum future lease payments within discontinued operations, compared to a charge of $2.5 million in 2008. Furthermore, there were reductions of $3.9 million in legal and professional fees and $2.1 million in general and administrative expenses associated with less personnel and reduced activities within discontinued operations.

Refer to Note Q. "Discontinued Operations" in the notes to consolidated financial statements for financial results of the discontinued operating segments and see Item 1. "Business" for additional detail regarding the operating structure.

Liquidity and Capital Resources

Due to the unprecedented volatility in the marketplace since the beginning of the third quarter of 2007, it has become difficult to anticipate market conditions and therefore meet our liquidity objectives. We believe that current cash balances, short-term investments, cash flows from mortgage and real estate services fees generated from our long-term mortgage portfolio, and residual interest cash flows from our long-term mortgage portfolio are adequate for our current operating needs. However, we believe the mortgage and real estate services market is volatile and highly competitive. The Company's ability to successfully compete in the mortgage and real estate services industry is uncertain as its business activities are newly established and many competitors have recently entered or have established businesses delivering similar services. Additionally, performance of the long-term mortgage portfolio is subject to the continued deterioration in the real estate market and current economic conditions. Cash flows from our residual interests in securitizations are sensitive to delinquencies, defaults and credit losses associated with the securitized loans. Losses in excess of current estimates will reduce the residual interest cash receipts from our long-term mortgage portfolio.

In response to these unprecedented market conditions, the Company has taken the following steps:

- restructured and entered into a settlement agreement with the remaining reverse repurchase facility lender to remove any further exposure associated with the facility or the loans securing the facility;
- purchased and canceled $36.5 million and exchanged $51.3 million in outstanding trust preferred securities to reduce annual interest expense obligations;
- completed the Offer to Purchase and Consent Solicitation for which the Company repurchased the majority of its preferred stock and eliminated its annual dividend obligation; and
- created an integrated services platform to provide solutions to the mortgage and real estate markets. During 2009, the Company initiated various mortgage and real estate fee-based business activities, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage and lending services and title and escrow services.

While the Company continues to pay its obligations as they become due, the ability of the Company to continue is dependent upon many factors, particularly the Company's ability to successfully compete in the mortgage and real estate services industry and realize the value of its long-term mortgage portfolio. There can be no assurance of the Company's ability to do so.

During 2009, our operating businesses were primarily funded as follows:

- cash flows from our mortgage and real estate fee-based business activities;
- cash flows from our long-term mortgage portfolio (residual interests in securitizations); and
- income tax refunds, primarily attributable to new legislation surrounding the carryback of net operating losses.

The Company primarily used available funds as follows:

- settlement payment to the remaining reverse repurchase facility lender associated with the Settlement Agreement, and interest and principal payments on the Credit Agreement under the terms of the agreement associated with the settlement;
- interest payments on the reverse repurchase line and monthly principal amounts under the terms of the agreement prior to the settlement of the agreement;
- purchase and cancellation of trust preferred securities;
- interest payments on long-term debt, including trust preferred securities and junior subordinated notes;
- repurchase of preferred stock and payment of accumulated but unpaid preferred stock dividends;
- lease obligations, payroll obligations, operating expenses; and
- repurchase loans or settle repurchase claims.

Sources of Liquidity

Fees from our mortgage and real estate service business activities. The Company earns fees from various mortgage and real estate fee-based business activities, including loss mitigation, real estate disposition, monitoring and surveillance services, real estate brokerage and lending services and title and escrow services. The Company provides services to investors, servicers and individual borrowers primarily by focusing on loss mitigation and performance of our long-term mortgage portfolio. Additionally, the Company acts as the master servicer for mortgages included in our CMO and REMIC securitizations. The master servicing fees we earn are generally 0.03 percent per annum on the declining principal balances of these mortgages plus interest income on cash held in custodial accounts until remitted to investors, less any interest shortfall. However, due to the recent decline in interest rates, the interest income earned on cash held in custodial accounts has declined significantly.

Cash flows from our long-term mortgage portfolio (residual interests in securitizations). We receive residual cash flows on mortgages held as securitized mortgage collateral after distributions are made to investors on securitized mortgage borrowings to the extent required credit enhancements are maintained and performance covenants are complied with for credit ratings on the securitized mortgage borrowings. These cash flows represent the difference between principal and interest payments on the underlying mortgages, affected by the following:

- servicing and master servicing fees paid;
- premiums paid to mortgage insurers;
- cash payments / receipts on derivatives;
- interest paid on securitized mortgage borrowings;
- principal payments and prepayments paid on securitized mortgage borrowings;
- overcollateralization requirements;
- actual losses, net of any gains incurred upon disposition of other real estate owned or acquired in settlement of defaulted mortgages;
- unpaid interest shortfall;
- basis risk shortfall; and
- bond write-downs reinstated.

Income tax refunds. During 2009, the Company received $15.8 million in income tax refunds, including interest, $8.9 million of which is attributable to favorable changes in tax laws surrounding the carryback of net operating losses. New legislation was passed in the fourth quarter of 2009 that allowed businesses to carry back net operating losses beyond the previously statutory two-year to a five-year period. This resulted in an increase to stockholders' equity for amounts received from the additional carryback year.

Uses of Liquidity

Settlement Agreement and Restructured Financing. In the past we used reverse repurchase agreements to fund substantially all financing for the origination of mortgages. In October 2009, the Company entered into a settlement agreement (the Settlement Agreement) with its remaining reverse repurchase facility lender to settle the reverse repurchase line. The Settlement Agreement retires the current facility and removed any further exposure associated with the facility or the loans that secured the facility. Pursuant to the terms of the Settlement Agreement, the Company settled the $140.0 million balance of the reverse repurchase line by (i) transferring the loans securing the line to the lender at their approximate carrying values, (ii) making a cash payment of $20.0 million and (iii) entering into a credit agreement with the lender (the Credit Agreement) for a $33.9 million term loan. The borrowing under the Credit Agreement, which is to be paid over 18 months, bears interest at a rate of one-month LIBOR plus 350 basis points and requires a monthly principal and interest payment of $1.5 million. A $10.0 million principal payment is due by April 2010 as part of the Credit Agreement. As of December 31, 2009, the outstanding balance of the note payable was $31.1 million.

The borrowing under the Credit Agreement may be prepaid by the Company at any time. Upon any sale of assets, excluding mortgage assets, issuance of debt, excluding warehouse borrowings, or equity by the Company, then all of the proceeds therefrom are required to be applied to the borrowing under the Credit Agreement, or in the case of an equity issuance, applied to the $10.0 million principal payment due by April 2010.

In addition to the restrictions above, the Credit Agreement requires the Company to maintain certain business and financial covenants until the borrowing is paid in full. These covenants place several restrictions on the Company and its operations, including limiting its ability to pay dividends, issue equity interests, make investments over certain amounts without prior consent or enter into any transaction to merge or consolidate. The covenants also require the Company to maintain cash and cash equivalents of $10.0 million (based on certain calculations) and stockholders' equity greater than zero (based on certain calculations).

Purchase and cancellation of trust preferred securities. In 2009, the Company purchased and canceled $28.5 million in outstanding trust preferred securities for $4.3 million. In January 2009, the Company purchased and canceled all of the $25.0 million in outstanding trust preferred securities of Impac Capital Trust #2 for $3.8 million and terminated the related debt. In June 2009 and August 2009, the Company purchased and canceled $1.0 million and $2.5 million, respectively, in outstanding trust preferred securities of Impac Capital Trust #4 for $150 thousand and $375 thousand, respectively. At December 31, 2009, the Company has $8.5 million in outstanding trust preferred securities of Impac Capital Trust #4.

Restructure trust preferred securities. In May 2009, the Company exchanged an aggregate of $51.3 million in trust preferred securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an increased aggregate principal balance of $62.0 million and a maturity date in March 2034. Under the terms of the exchange, in consideration for the increase in principal, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at 3-month LIBOR plus 375 basis points. In connection with the exchange, the Company paid a fee of $0.5 million.

Repurchase preferred stock. In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock. Stockholders of the Company's Series B Preferred Stock tendered 1,323,844 shares at $0.29297 per share for $388 thousand. Stockholders of the Company's Series C Preferred Stock tendered 3,055,036 shares at $0.28516 per share for $871 thousand. The aggregate purchase price for the Preferred Stock was $1.3 million. In addition, in connection with the completion of the offer to purchase the Company paid $7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of $8.7 million, the Company eliminated $109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding $52.3 million liquidation preference of Series B and Series C Preferred Stock.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its $14.9 million annual preferred dividend obligation.

Repurchase reserve. When we sell loans through whole loan sales we are required to make normal and customary representations and warranties about the loans to the purchaser. Our whole loan sale agreements generally require us to repurchase loans if we breach a representation or warranty given to the loan purchaser. In addition, we may be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale.

Investors have requested the Company to repurchase loans or to indemnify them against losses on certain loans which the investors believe either do not comply with applicable representations or warranties or defaulted shortly after its purchase. The Company records an estimated reserve for these losses at the time the loan is sold, and adjusts the reserve to reflect the estimated loss. The repurchase reserve is included in liabilities of discontinued operations in the consolidated balance sheets.

The reserve totaled approximately $11.0 million at December 31, 2009, compared to $13.9 million at December 31, 2008. In determining the adequacy of the reserve for mortgage repurchases, management considers such factors as specific requests for repurchase, known problem loans, underlying collateral values, recent sales activity of similar loans, historical experience, recent settlement experience, current settlement negotiations, current market conditions and other appropriate information. During 2009, the Company recorded a provision for repurchase losses of $647 thousand included in the net earnings from discontinued operations.

Financing. The Company is seeking warehouse financing and any decision to provide financing to us in the future will depend upon a number of factors, including:

- our compliance with the terms of existing credit arrangements, including any financial covenants;
- the ability to obtain waivers upon any non compliance;
- our financial performance;
- industry and market trends in our various businesses;
- the general availability of, and rates applicable to, financing and investments;
- our lenders or investors resources and policies concerning loans and investments; and
- the relative attractiveness of alternative investment or lending opportunities.

Operating activities. Net cash provided by operating activities was $389.3 million for 2009 as compared to $439.8 million for 2008. During 2009, the primary sources of cash in operating activities were cash received from fees generated by our mortgage and real estate service business activities, excess cash flows from our residual interests in securitizations and income tax refunds received from the carryback of net operating losses to prior years. During 2008, the primary sources of cash in operating activities were cash received from excess cash flows from our residual interests in securitizations, master servicing fees and real estate advisory fees.

Investing activities. Net cash provided by investing activities was $1.6 billion for 2009 as compared to $2.2 billion for 2008. For 2009 and 2008, the primary source of cash from investing activities was provided by principal repayments on our securitized mortgage collateral and proceeds from the liquidation of REO.

Financing activities. Net cash used in financing activities was $2.0 billion for 2009 and $2.6 billion for 2008. For 2009, net cash used in financing activities was primarily for principal repayments on securitized mortgage borrowings. Additionally, as a result of restructuring the Company's balance sheet to reduce its debt burden, cash was used for the purchase and cancellation of trust preferred securities, repurchase preferred stock and pay accumulated but unpaid dividends associated with the Offer to Purchase, principal repayments for the former reverse repurchase line, and a cash payment under the Settlement Agreement to settle the reverse repurchase line. For 2008, net cash used in financing activities was primarily for principal repayments on securitized mortgage borrowings, warehouse and reverse repurchase lines.

Inflation. The consolidated financial statements and corresponding notes to the consolidated financial statements have been prepared in accordance with GAAP, which require the measurement of financial position and operating results in terms of historical dollars without considering the changes in the relative purchasing power of money over time due to inflation. The impact of inflation is reflected in the increased costs of our operations during 2009 and 2008. Unlike industrial companies, nearly all of our assets and liabilities are monetary in nature. As a result, interest rates have a greater impact on our performance than do the effects of general levels of inflation. Inflation affects our operations primarily through its effect on interest rates, since interest rates normally increase during periods of high inflation and decrease during periods of low inflation.

Off Balance Sheet Arrangements

When we sell or broker loans through whole-loan sales, we are required to make normal and customary representations and warranties to the loan originators or purchasers, including guarantees against early payment defaults typically 90 days, and fraudulent misrepresentations by the borrowers. Our agreements generally require us to repurchase loans if we breach a representation or warranty given to the loan purchaser. In addition, we may be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. Because the loans are no longer on our balance sheet, the recourse component is considered a guarantee. During 2009, we sold $2.5 million and brokered $6.0 million of loans with recourse compared to $84.4 million in 2008. We maintained an $11.0 million reserve related to these guarantees as of December 31, 2009 compared to a reserve of $13.9 million as December 31, 2008. During 2009 we paid $1.1 million to settle repurchase demands on loans previously sold to third parties as compared to $5.4 million to settle or repurchase loans during 2008.

See disclosures in the notes to the consolidated financial statements under "Commitments and Contingencies" for other arrangements that qualify as off balance sheet arrangements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

As a smaller reporting company, we are not required to provide the information required by this Item.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this Item 8 is incorporated by reference to Impac Mortgage Holdings, Inc.'s Consolidated Financial Statements and Independent Auditors' Report beginning at page F-1 of this Form 10-K.

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

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

The Company maintains disclosure controls and procedures (as defined in the Securities Exchange Act of 1934 Rules 13a-15(e) or 15d-15(e)) designed to ensure that information required to be disclosed in reports filed or submitted under the Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

The Company's management, with the participation of its chief executive officer (CEO) and its chief financial officer (CFO), evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2009. Based on that evaluation, the Company's chief executive officer and chief financial officer concluded that, as of that date, the Company's disclosure controls and procedures were effective at a reasonable assurance level.

Management's Report on Internal Control over Financial Reporting

Management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Section 13a-15(f) of the Exchange Act). Internal control over financial reporting is a process designed by, or under the supervision of, the Company's CEO and CFO to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company's financial statements for reporting purposes in conformity with U.S. generally accepted accounting principles and include those policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

As of December 31, 2009, management conducted an assessment of the effectiveness of the Company's internal control over financial reporting based on the framework established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on the criteria established by COSO, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2009.

Our management, including our chief executive officer and chief financial officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by improper management override of the controls. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with associated policies or procedures. Because of the inherent limitations in a cost-effective control system, there is a risk that material misstatements due to error or fraud may occur and will not be detected on a timely basis.

Squar, Milner, Peterson, Miranda & Williamson, LLP, the registered public accounting firm that audited the consolidated financial statements included in this Annual Report on Form 10-K, has issued an attestation report on the Company's internal control over financial reporting, a copy of which is included herein.

Changes in Internal Control Over Financial Reporting

During the quarter ended December 31, 2009, there were no changes in our internal control over financial reporting that materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
Impac Mortgage Holdings, Inc.

We have audited Impac Mortgage Holdings, Inc.'s (the Company) internal control over financial reporting as of December 31, 2009 based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). Impac Mortgage Holdings, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

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

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

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Impac Mortgage Holdings, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2009 based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of Impac Mortgage Holdings, Inc. and subsidiaries as of December 31, 2009 and the related consolidated statements of operations, changes in stockholders' equity (deficit) and cash flows for the year then ended, and our report dated March 15, 2010 expressed an unqualified opinion thereon.

/s/ SQUAR, MILNER, PETERSON, MIRANDA & WILLIAMSON, LLP

Newport Beach, California
March 15, 2010

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item 10 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2009 fiscal year.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2009 fiscal year.

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

The information required by this Item 12 including Equity Compensation Plan Information is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2009 fiscal year.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The information required by this Item 13 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2009 fiscal year.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 is hereby incorporated by reference to Impac Mortgage Holdings, Inc.'s definitive proxy statement, to be filed pursuant to Regulation 14A within 120 days after the end of Impac Mortgage Holdings, Inc.'s 2009 fiscal year.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(3) Exhibits

The exhibits listed on the accompanying Exhibit Index are incorporated by reference into this Item 15 of this Annual Report on Form 10-K.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on the 16th day of March 2010.

IMPAC MORTGAGE HOLDINGS, INC.

by /s/ JOSEPH R. TOMKINSON

Joseph R. Tomkinson
Chairman of the Board
and Chief Executive Officer

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

Signature	Title	Date
/s/ JOSEPH R. TOMKINSON Joseph R. Tomkinson	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)	March 16, 2010
/s/ WILLIAM S. ASHMORE William S. Ashmore	President and Director	March 16, 2010
/s/ TODD R. TAYLOR Todd R. Taylor	Chief Financial Officer (Principal Financial and Accounting Officer)	March 16, 2010
/s/ JAMES WALSH James Walsh	Director	March 16, 2010
/s/ FRANK P. FILIPPS Frank P. Filipps	Director	March 16, 2010
/s/ STEPHAN R. PEERS Stephan R. Peers	Director	March 16, 2010
/s/ LEIGH J. ABRAMS Leigh J. Abrams	Director	March 16, 2010

Exhibit Index

Exhibit Number	Description
3.1	Charter of the Registrant (incorporated by reference to the corresponding exhibit number to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on November 8, 1995).
3.1(a)	Certificate of Correction of the Registrant (incorporated by reference to exhibit 3.1(a) of the Registrant's 10-K for the year-ended December 31, 1998).
3.1(b)	Articles of Amendment of the Registrant (incorporated by reference to exhibit 3.1(b) of the Registrant's 10-K for the year-ended December 31, 1998).
3.1(c)	Articles of Amendment for change of name to Charter of the Registrant (incorporated by reference to exhibit number 3.1(a) of the Registrant's Current Report on Form 8-K/A Amendment No. 1, filed February 12, 1998).
3.1(d)	Articles Supplementary and Certificate of Correction for Series A Junior Participating Preferred Stock of the Registrant (incorporated by reference to exhibit 3.1(d) of the Registrant's 10-K for the year-ended December 31, 1998).
3.1(e)	Articles of Amendment, filed with the State Department of Assessments and Taxation of Maryland on July 16, 2002, increasing authorized shares of Common Stock of the Registrant (incorporated by reference to exhibit 10 of the Registrant's Form 8-A/A, Amendment No. 2, filed July 30, 2002).
3.1(f)	Articles of Amendment, filed with the State Department of Assessments and Taxation of Maryland on June 22, 2004, amending and restating Article VII of the Registrant's Charter (incorporated by reference to exhibit 7 of the Registrant's Form 8-A/A, Amendment No. 1, filed June 30, 2004).
3.1(g)	Articles Supplementary designating the Company's 9.375 percent Series B Cumulative Redeemable Preferred Stock, liquidation preference $25.00 per share, par value $0.01 per share, filed with the State Department of Assessments and Taxation of Maryland on May 26, 2004 (incorporated by reference to exhibit 3.8 of the Registrant's Form 8-A/A, Amendment No. 1, filed June 30, 2004).
3.1(h)	Articles Supplementary designating the Company's 9.125 percent Series C Cumulative Redeemable Preferred Stock, liquidation preference $25.00 per share, par value $0.01 per share, filed with the State Department of Assessments and Taxation of Maryland on November 18, 2004 (incorporated by reference to exhibit 3.10 of the Registrant's Form 8-A filed November 19, 2004).
3.1(i)	Articles of Amendment of the Company, effective as of December 30, 2008, effecting 1-for-10 reverse stock split (incorporated by reference to exhibit 3.1 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 30, 2008).
3.1(j)	Articles of Amendment of the Company, effective as of December 30, 2008, amending par value (incorporated by reference to exhibit 3.2 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on December 30, 2008).

Exhibit Number	Description
3.1(k)	Articles of Amendment of Series B Preferred Stock (incorporated by reference to exhibit 3.1 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 30, 2009).
3.1(l)	Articles of Amendment of Series C Preferred Stock (incorporated by reference to exhibit 3.2 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 30, 2009).
3.2	Bylaws, as amended and restated (incorporated by reference to the corresponding exhibit number of the Registrant's Quarterly Report on Form 10-Q for the period ending March 31, 1998).
3.2(a)	Amendment to Bylaws (incorporated by reference to exhibit 3.2(a) of the Registrant's Registration Statement of Form S-3 (File No. 333-111517) filed with the Securities and Exchange Commission on December 23, 2003).
3.2(b)	Second Amendment to Bylaws (incorporated by reference to Exhibit 3.2(b) of the Registrant's Form 8-K, filed with the Securities and Exchange Commission on April 1, 2005).
3.2(c)	Third Amendment to Bylaws of the Company (incorporated by reference to Exhibit 3.2(c) of the Registrant's Form 8-K, filed with the Securities and Exchange Commission on March 29, 2006).
3.2(d)	Fourth Amendment to Bylaws of the Company (incorporated by reference to Exhibit 3.2 of the Registrant's Quarterly Report on Form 10-Q, filed with the Securities and Exchange Commission on December 20, 2007).
3.2(e)	Fifth Amendment to Bylaws of the Company (incorporated by reference to Exhibit 3.2(e) of the Registrant's Form 8-K, filed with the Securities and Exchange Commission on February 13, 2008).
3.2(f)	Amendment No. 6 to Bylaws of the Company (incorporated by reference to the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 5, 2008).
4.1	Form of Stock Certificate of the Company (incorporated by reference to the corresponding exhibit number to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on September 7, 1995).
4.2	Specimen Certificate representing the 9.375 percent Series B Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-A, filed with the Securities and Exchange Commission on May 27, 2004).
4.3	Specimen Certificate representing the 9.125 percent Series C Cumulative Redeemable Preferred Stock (incorporated by reference to Exhibit 4.1 of the Registrant's Form 8-A, filed with the Securities and Exchange Commission on November 19, 2004).
4.4	Indenture between Impac Mortgage Holdings, Inc. and Wilmington Trust Company, as trustee, dated October 18, 2005 (incorporated by reference to Exhibit 4.8 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2005).

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Exhibit Number	Description
4.4(a)	First Supplemental Indenture dated as of July 14, 2009 between Wilmington Trust Company and Impac Mortgage Holdings, Inc. to Indenture dated October 18, 2005 (incorporated by reference to Exhibit 4.1 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2009).
4.5	Junior Subordinated Indenture dated May 8, 2009 between Impac Mortgage Holdings, Inc. and The Bank of New York Mellon Trust Company, National Association, as trustee, related to Junior Subordinated Note due 2034 in the principal amount of $30,244,000 (incorporated by reference to exhibit 10.3 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2009).
4.6	Junior Subordinated Indenture dated May 8, 2009 between Impac Mortgage Holdings, Inc. and The Bank of New York Mellon Trust Company, National Association, as trustee, related to Junior Subordinated Note due 2034 in the principal amount of $31,756,000 (incorporated by reference to exhibit 10.4 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2009).
10.1*	1995 Stock Option, Deferred Stock and Restricted Stock Plan, as amended and restated (incorporated by reference to exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the period ending March 31, 1998).
10.2(a)	Form of 2002 Indemnification Agreement between the Registrant and its Directors and Officers (incorporated by reference to exhibit 10.1(a) of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2004).
10.2(b)	Schedule of each officer and director that is a party to an Indemnification Agreement (incorporated by reference to exhibit 10.2(b) of the Registrant's Annual Report on Form 10-K for the year-ended December 31, 2007).
10.3	Form of Loan Purchase and Administrative Services Agreement between the Registrant and Impac Funding Corporation (incorporated by reference to exhibit 10.9 to the Registrant's Registration Statement on Form S-11, as amended (File No. 33-96670), filed with the Securities and Exchange Commission on September 7,1995).
10.4	Servicing Agreement effective November 11, 1995 between the Registrant and Impac Funding Corporation (incorporated by reference to exhibit 10.14 to the Registrant's Registration Statement on Form S-11, as amended (File No. 333-04011), filed with the Securities and Exchange Commission on May 17, 1996).
10.5	Lease dated March 4, 2005 regarding 19500 Jamboree Road, Newport Beach California (incorporated by reference to exhibit 10.8 of the Registrant's Annual Report on Form 10-K for the year-ended December 31, 2004).
10.6*	Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to Appendix A of Registrant's Definitive Proxy Statement filed with the SEC on April 30, 2001).
10.6(a)*	Amendment to Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 4.1(a) of the Registrant's Form S-8 filed with the SEC on March 1, 2002).
10.6(b)*	Amendment No. 2 to Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 10.10(b) of the Registrant's Annual Report on Form 10-K for the year-ended December 31, 2003).

Exhibit Number	Description
10.6(c)*	Amendment No. 3 to Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the period ended March 31, 2009).
10.6(d)*	Amendment No. 4 to Impac Mortgage Holdings, Inc. 2001 Stock Option Plan, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the period ended March 31, 2009).
10.6(e)*	Form of Stock Option Agreement for 2001 Stock Option, Deferred Stock and Restricted Stock Plan (incorporated by reference to exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2004).
10.6(f)*	Form of Restricted Stock Agreement (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed with the Securities and Exchange Commission on September 2, 2005).
10.7*	Executive Employment Agreement made as of April 1, 2008 between Impac Funding Corporation and Joseph R. Tomkinson (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 17, 2008).
10.8*	Impac Mortgage Holdings, Inc. Guaranty dated as of April 1, 2008 in favor of Joseph R. Tomkinson (incorporated by reference to exhibit 10.2 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 17, 2008).
10.9*	Executive Employment Agreement made as of April 1, 2008 between Impac Funding Corporation and William S. Ashmore (incorporated by reference to exhibit 10.3 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 17, 2008).
10.10*	Impac Mortgage Holdings, Inc. Guaranty dated as of April 1, 2008 in favor of William S. Ashmore (incorporated by reference to exhibit 10.4 of the Registrant's Current Report on Form 8-K filed with the Securities and Exchange Commission on June 17, 2008).
10.11*	Employment Agreement executed January 9, 2007 between Impac Funding Corporation and Ronald M. Morrison (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K, filed January 12, 2007).
10.12*	Guaranty executed January 9, 2007 between Impac Mortgage Holdings, Inc. in favor of Ronald M. Morrison (incorporated by reference to exhibit 10.1(a) of the Registrant's Current Report on Form 8-K, filed January 12, 2007).
10.13	Amended and Restated Declaration of Trust among Impac Mortgage Holdings, Inc., Wilmington Trust Company, as Delaware and Institutional Trustee, and the Administrative Trustees named therein, dated October 18, 2005 (incorporated by reference to Exhibit 10.29 of the Registrant's Annual Report on Form 10-K for the year ended December 31, 2005).
10.13(a)	Amendment No. 1 dated as of July 14, 2009 among Wilmington Trust Company, Impac Mortgage Holdings, Inc. and holders of Capital Securities to Amended and Restated Declaration of Trust dated October 18, 2005 (incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2009).

Exhibit Number	Description
10.14*	Employment Agreement effective October 1, 2007 and Amendment No. 1 effective February 12, 2008 between Impac Mortgage Holdings, Inc. and Todd R. Taylor (incorporated by reference to exhibit 10.27 of the Registrant's Annual Report on Form 10-K for the year-ended December 31, 2007).
10.15	Amended and Restated Master Purchase Agreement between UBS Real Estate Securities, Inc., Impac Funding Corporation, Impac Mortgage Holdings, Inc. and Impac Warehouse Lending Group, Inc. dated as of September 11, 2008 (incorporated by reference to exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2008).
10.15(a)	Waiver Agreement with UBS Real Estate Securities, Inc., dated September 11, 2008 (incorporated by reference to exhibit 10.1(a) of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2008).
10.15(b)	Fee Letter with UBS Real Estate Securities, Inc., dated September 11, 2008(incorporated by reference to exhibit 10.1(b) of the Registrant's Quarterly Report on Form 10-Q for the period ended September 30, 2008).
10.16	Exchange Agreement dated May 8, 2009 between Impac Mortgage Holdings, Inc., Taberna Preferred Funding I, Ltd., and Taberna Preferred Funding II, Ltd. (incorporated by reference to exhibit 10.2 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2009).
10.17	Credit Agreement dated as of October 30, 2009 among Impac Mortgage Holdings, Inc., Impac Funding Corporation, Impac Warehouse Lending Group, Inc., Integrated Real Estate Service Corp. and UBS Real Estate Securities, Inc.
10.17(a)	Tranche A Term Note dated October 30, 2009 for $23,850,000
10.17(b)	Tranche B Term Note dated October 30, 2009 for $10,000,000
10.18	Settlement Agreement dated October 30, 2009 among Impac Mortgage Holdings, Inc., Impac Funding Corporation, Impac Warehouse Lending Group, Inc. and UBS Real Estate Securities, Inc.
21.1	Subsidiaries of the Registrant (incorporated by reference to exhibit 21.1 of the Registrant's Quarterly Report on Form 10-Q for the period ended June 30, 2009).
23.1	Consent of Squar, Milner, Peterson, Miranda & Williamson, LLP
31.1	Certification of Chief Executive Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
31.2	Certification of Chief Financial Officer pursuant to Item 601(b)(31) of Regulation S-K, as adopted pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.
32.1**	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Denotes a management or compensatory plan or arrangement required to be filed as an exhibit pursuant to Item 601 of Regulation S-K

** This exhibit shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language in any filings.

CONSOLIDATED FINANCIAL STATEMENTS
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Report of Independent Registered Public Accounting Firm

The Board of Directors and Shareholders
Impac Mortgage Holdings, Inc.

We have audited the accompanying consolidated balance sheets of Impac Mortgage Holdings, Inc. and subsidiaries (the Company) as of December 31, 2009 and 2008, and the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Impac Mortgage Holdings, Inc. and subsidiaries at December 31, 2009 and 2008, and the consolidated results of their operations and their cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Impac Mortgage Holdings, Inc's. internal control over financial reporting as of December 31, 2009, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 15, 2010 expressed an unqualified opinion thereon.

/s/ SQUAR, MILNER, PETERSON, MIRANDA & WILLIAMSON, LLP

Newport Beach, California
March 15, 2010

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	At December 31, 2009	At December 31, 2008
ASSETS		
Cash and cash equivalents	$ 25,678	$ 46,215
Restricted cash	1,253	1,243
Short-term investments	5,002	-
Trust assets		
Investment securities available-for-sale	813	2,068
Securitized mortgage collateral	5,666,122	5,894,424
Derivative assets	146	37
Real estate owned	142,364	599,084
Total trust assets	5,809,445	6,495,613
Assets of discontinued operations	4,480	141,053
Other assets	27,054	31,393
Total assets	$ 5,872,912	$ 6,715,517
LIABILITIES		
Trust liabilities		
Securitized mortgage borrowings	$ 5,659,865	$ 6,193,984
Derivative liabilities	126,603	273,584
Total trust liabilities	5,786,468	6,467,568
Long-term debt	9,773	15,403
Note payable	31,060	-
Liabilities of discontinued operations	19,152	217,241
Other liabilities	11,026	6,053
Total liabilities	5,857,479	6,706,265
Commitments and contingencies		
STOCKHOLDERS' EQUITY		
Series A junior participating preferred stock, $0.01 par value; 2,500,000 shares authorized; none issued or outstanding	-	-
Series B 9.375% redeemable preferred stock, $0.01 par value; liquidation value $16,904; 2,000,000 shares authorized, 665,592 noncumulative and 2,000,000 cumulative shares issued and outstanding as of December 31, 2009 and December 31, 2008, respectively	7	20
Series C 9.125% redeemable preferred stock, $0.01 par value; liquidation value $35,389; 5,500,000 shares authorized; 1,405,086 noncumulative and 4,470,600 cumulative shares issued and outstanding as of December 31, 2009 and December 31, 2008, respectively	14	45
Common stock, $0.01 par value; 200,000,000 shares authorized; 7,698,146 and 7,618,146 shares issued and outstanding as of December 31, 2009 and December 31, 2008, respectively	77	76
Additional paid-in capital	1,075,707	1,177,697
Net accumulated deficit:		
Cumulative dividends declared	(822,520)	(815,077)
Retained deficit	(237,852)	(353,509)
Net accumulated deficit	(1,060,372)	(1,168,586)
Total stockholders' equity	15,433	9,252
Total liabilities and stockholders' equity	$ 5,872,912	$ 6,715,517

See accompanying notes to consolidated financial statements.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	For the year ended December 31, 2009	2008
INTEREST INCOME	$ 1,780,923	$ 1,476,972
INTEREST EXPENSE	1,771,143	1,463,239
Net interest income	9,780	13,733
NON-INTEREST INCOME:		
Change in fair value of net trust assets, excluding REO	231,162	24,281
Losses from REO	(218,157)	(52,011)
Non-interest income – net trust assets	13,005	(27,730)
Change in fair value of long-term debt	765	24,879
Real estate advisory fees	-	45,388
Mortgage and real estate services fees	42,613	-
Other	9	(93)
Total non-interest income	56,392	42,444
NON-INTEREST EXPENSE:		
Personnel expense	35,688	10,320
General, administrative and other	10,338	7,642
Occupancy expense	4,234	2,734
Legal and professional expense	3,207	5,627
Data processing expense	2,166	2,815
Total non-interest expense	55,633	29,138
Earnings from continuing operations before income taxes	10,539	27,039
Income tax expense from continuing operations	2,017	22,270
Earnings from continuing operations	8,522	4,769
Earnings (loss) from discontinued operations, net of tax	2,315	(49,492)
Net earnings (loss)	10,837	(44,723)
Cash dividends on preferred stock	(7,443)	(11,165)
Net earnings (loss) available to common stockholders before preferred stock redemption (Note M)	$ 3,394	$ (55,888)
Earnings (loss) per common share – basic and diluted:		
Earnings (loss) from continuing operations	$ 0.14	$ (0.84)
Earnings (loss) from discontinued operations	0.30	(6.50)
Net earnings (loss) available to common stockholders before preferred stock redemption (Note L)	$ 0.44	$ (7.34)

See accompanying notes to consolidated financial statements.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share amounts)

	Preferred Shares Outstanding	Preferred Stock	Common Shares Outstanding (1)	Common Stock (1)	Additional Paid-In Capital (1)	Accumulated Other Comprehensive Income	Cumulative Dividends Declared	Retained (Deficit)	Total Stockholders' Equity (Deficit)
Balance, December 31, 2007	6,470,600	$ 65	7,609,639	$ 76	$ 1,174,247	$ 1,028	$ (803,912)	$(1,449,232)	$ (1,077,728)
Dividends declared on preferred shares	- -	- -	- -	- -	- -	- -	(11,165)	- -	(11,165)
Issuance of vested restricted shares	-	-	413	-	-	-	-	-	-
Shares issued upon reverse stock split	-	-	8,094	-	-	-	-	-	-
Stock based compensation expense	-	-	-	-	3,450	-	-	-	3,450
Adoption of fair value accounting	-	-	-	-	-	(1,028)	-	1,140,446	1,139,418
Net loss	-	-	-	-	-	-	-	(44,723)	(44,723)
Balance, December 31, 2008	6,470,600	65	7,618,146	76	1,177,697	-	(815,077)	(353,509)	9,252
Dividends declared on preferred shares	- -	- -	- -	- -	- -	- -	(7,443)	- -	(7,443)
Redemption of preferred stock	(4,399,922)	(44)	-	-	(106,041)	-	-	104,820	(1,265)
Shares issued upon legal settlement	-	-	80,000	1	299	-	-	-	300
Stock based compensation expense	-	-	-	-	3,752	-	-	-	3,752
Net earnings	-	-	-	-	-	-	-	10,837	10,837
Balance, December 31, 2009	2,070,678	$ 21	7,698,146	$ 77	$ 1,075,707	$ -	$ (822,520)	$ (237,852)	$ 15,433

(1) Amounts retrospectively reflect the ten-for-one reverse stock split and subsequent reduction in par value. Refer to Note A-11—"Common Stock" for additional information related to the reverse stock split.

See accompanying notes to consolidated financial statements.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

	For the year ended December 31, 2009	2008
CASH FLOWS FROM OPERATING ACTIVITIES:		
Earnings from continuing operations	$ 8,522	$ 4,769
Losses from real estate owned	218,157	52,011
Amortization of deferred charge, net	1,998	22,270
Amortization and impairment of mortgage servicing rights	-	2,209
Loss on sale of loans	104	1,129
Change in fair value of net trust assets, excluding REO	(433,924)	(171,779)
Change in fair value of trust preferred securities	(765)	(24,879)
Accretion of interest income and expense	693,748	507,795
Stock-based compensation	3,651	1,741
Net change in restricted cash	-	(1,243)
Net cash provided by operating activities of discontinued operations	21,558	82,469
Net change in other assets and liabilities	(124,135)	(36,675)
Net cash provided by operating activities	388,914	439,817
CASH FLOWS FROM INVESTING ACTIVITIES:		
Net change in securitized mortgage collateral	865,669	1,674,077
Net change in mortgages held-for-investment	526	73
Purchase of short-term investments	(5,041)	-
Purchase of premises and equipment	(676)	(90)
Net principal change on investment securities available-for-sale	4,904	3,589
Proceeds from the sale of real estate owned	715,764	483,756
Net cash provided by investing activities of discontinued operations	15,513	14,997
Net cash provided by investing activities	1,596,659	2,176,402
CASH FLOWS FROM FINANCING ACTIVITIES:		
Repayment of securitized mortgage borrowings	(1,928,316)	(2,436,075)
Settlement of trust preferred securities	(4,275)	(1,200)
Repurchase of preferred stock	(1,265)	-
Preferred stock dividends paid	(7,443)	(11,165)
Principal payments on notes payable	(2,790)	-
Payment under settlement agreement	(20,000)	-
Net cash used in financing activities of discontinued operations	(41,862)	(148,013)
Net cash used in financing activities	(2,005,951)	(2,596,453)
Net change in cash and cash equivalents	(20,378)	19,766
Cash and cash equivalents at beginning of year	46,228	26,462
Cash and cash equivalents at end of year – continuing operations	25,678	46,215
Cash and cash equivalents at end of year – discontinued operations	172	13
Cash and cash equivalents at end of year	$ 25,850	$ 46,228

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS - (continued)

(in thousands)

	For the year ended December 31, 2009	For the year ended December 31, 2008
SUPPLEMENTARY INFORMATION (Continuing and Discontinued Operations):		
Interest paid	$ 130,940	$ 559,452
Taxes paid	-	-
NON-CASH TRANSACTIONS (Continuing and Discontinued Operations):		
Common stock issued upon legal settlement	$ 300	$ -
Transfer of loans held-for-sale and held-for-investment to real estate owned	12,540	7,345
Transfer of securitized mortgage collateral to real estate owned	347,539	713,974
Issuance of note payable	33,850	-
Transfer of net assets from discontinued operations to continuing operations	(54,527)	25,600
Redemption of preferred stock	104,820	-

See accompanying notes to consolidated financial statements.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data or as otherwise indicated)

Note A—Summary of Market Conditions, Business and Financial Statement Presentation including Significant Accounting Policies

1. Business Summary, Market Conditions and Status of Operations

Business Summary

Impac Mortgage Holdings, Inc. (the Company or IMH) is a Maryland corporation incorporated in August 1995 and has the following subsidiaries: Integrated Real Estate Service Corporation (IRES), IMH Assets Corp. (IMH Assets), Impac Warehouse Lending Group, Inc. (IWLG) and Impac Funding Corporation (IFC).

In the first quarter of 2009, the Company created a new subsidiary, Integrated Real Estate Service Corporation, which includes mortgage and real estate fee-based business activities.

The Company's continuing operations include the long-term mortgage portfolio (residual interests in securitizations reflected as net trust assets and liabilities in the consolidated balance sheets) and the mortgage and real estate fee-based business activities conducted by IRES. The discontinued operations include the former non-conforming mortgage and retail operations conducted by IFC and subsidiaries, and warehouse lending operations conducted by IWLG.

Effective January 1, 2009, the Company revoked its election to be taxed as a real estate investment trust (REIT). As a result of revoking this election, the Company is subject to income taxes as a regular (Subchapter C) corporation.

The information set forth in these notes is presented on a continuing operations basis, unless otherwise stated.

Market Conditions and Status of Operations

The economy continued to contract during 2009 before showing modest signs of improvement toward the end of the year. Although certain economists have declared the recession to be over or at least abating, the current economic environment continues to adversely affect the credit performance of the Company's long-term mortgage portfolio. The economy remains weak, as evidenced by many key economic indicators. Notably, the national unemployment rate increased to 10.1% in October 2009 before declining to 10.0% at the end of the fourth quarter and 9.7% at January 2010. Higher unemployment and weaker overall economic conditions have led to a significant increase in the number of loan defaults, while continued weak housing prices have driven a significant increase in loan loss severities. Activity in the housing sector increased, with new home construction picking up for the first time in three and a half years. Home price appreciation, housing starts and home sales were at or close to record lows at the beginning of 2009, but all three indicators started to exhibit some modest signs of recovery during the second half of the year. Inflation remained low, and the Federal Reserve indicated that the federal funds rate would likely remain low for an "extended period," reiterating its intent to continue to use a wide range of tools to promote economic recovery and maintain price stability.

The Federal Reserve and U.S. government have undertaken certain initiatives during the year to strengthen the capital of financial institutions, promote lending, and inject liquidity into the financial markets. The U.S. government has also developed programs to incent lenders and servicers to provide loan modifications to troubled borrowers in an effort to fight the foreclosure crisis. However, mortgage delinquencies and foreclosures continued to increase in both the prime and subprime loan markets. The level of defaults and the national unemployment rate remain high, which creates some uncertainty about the strength or duration of any recovery. Additional deterioration in the overall economic environment, including continued weakening of the labor market, could cause loan delinquencies to increase beyond the Company's current expectations, resulting in additional increases in losses and reductions in fair value.

New Business Activity

During the first quarter of 2009, the Company initiated various mortgage and real estate fee-based business activities, including loan modifications, real estate disposition, monitoring and surveillance services, real estate brokerage, mortgage lending, and title and escrow services. For the year ended December 31, 2009, mortgage and real estate services fees were $42.6 million. However, since these business activities are newly established and currently generate fees primarily from the Company's long-term mortgage portfolio, there remains uncertainty about their future success, including the ability to provide similar services to the marketplace.

During the fourth quarter of 2009, the Company received California Department of Insurance approval for the acquisition of a title insurance agency and its escrow operations. Upon the approval, the Company acquired the operations for $1.0 million, effective December 31, 2009. The title insurance company services California and selected national markets and is integrated into the Company's services platform providing solutions to the mortgage and real estate markets. The acquisition was accounted for as a business combination and resulted in the recognition of an indefinite-lived intangible asset of $1.0 million.

Settlements and Exchange of Trust Preferred Securities

In January 2009, the Company purchased and canceled $25.0 million in outstanding trust preferred securities of Impac Capital Trust #2 for $3.75 million and terminated the related debt.

In May 2009, the Company exchanged an aggregate of $51.3 million in trust preferred securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an increased aggregate principal balance of $62.0 million and a maturity date in March 2034. Under the terms of the exchange, in consideration for the increase in principal, the interest rate for each note was reduced from the original 8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at three-month London Inter-bank Offered Rate (LIBOR) plus 375 basis points. In connection with the exchange, the Company paid a fee of $0.5 million. Refer to Note N—*Long-term Debt* for additional information.

In June 2009, the Company purchased and canceled $1.0 million in outstanding trust preferred securities of Impac Capital Trust #4 for $150 thousand.

In August 2009, the Company purchased and canceled $2.5 million in outstanding trust preferred securities of Impac Capital Trust #4 for $375 thousand, resulting in $8.5 million in outstanding trust preferred securities. In July 2009, the Company became current and is no longer deferring interest on its remaining trust preferred securities.

As a result of the restructuring of $51.3 million and purchase and cancelation of $36.5 million in outstanding trust preferred securities, the Company reduced its annual interest expense obligation from

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data or as otherwise indicated)

$7.8 million to approximately $2.0 million. With the restructuring and purchase and cancelations of trust preferred securities, the Company has $8.5 million in outstanding trust preferred securities of Impac Capital Trust #4 and $62.0 million in outstanding junior subordinated notes.

Repurchase of Preferred Stock

In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125% Series C Cumulative Redeemable Preferred Stock. The Series B Preferred Stock had a liquidation preference of $50 million and the Series C Preferred Stock had a liquidation preference of $111.8 million, for a total of $161.8 million. Upon expiration of the Offer to Purchase, holders of approximately 68% of the Preferred Stock tendered an aggregate of 4,378,880 shares. Holders of the Company's Series B Preferred Stock tendered 1,323,844 shares at $0.29297 per share for a total of $388 thousand. Holders of the Company's Series C Preferred Stock tendered 3,055,036 shares at $0.28516 per share for a total of $871 thousand. The aggregate purchase price for the Preferred Stock was $1.3 million. In addition, in connection with completing the Offer to Purchase, the Company paid $7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of $8.7 million, the Company eliminated $109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding $52.3 million liquidation preference of Series B and Series C noncumulative Preferred Stock. As this transaction is considered a redemption for accounting purposes, in accordance with FASB ASC 505-10 and 260-10-S99, the difference between the carrying value of the tendered preferred stock ($106.1 million) and the amount paid for the shares ($1.3 million) was recognized as a decrease in retained deficit in 2009 and is reflected in the consolidated statements of changes in stockholders' equity (deficit) as a reclassification from additional paid in capital. Including the redemption, total basic and diluted earnings per share from continuing operations available to common stockholders were $14.18 and $13.97, respectively.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its $14.9 million annual preferred dividend obligation. Refer to Note M—*Redeemable Preferred Stock* for additional information.

Settlement of Reverse Repurchase Facility

In October 2009, the Company entered into a settlement agreement (the Settlement Agreement) with its remaining reverse repurchase facility lender to settle the restructured financing. The Settlement Agreement retired the then-existing facility and removed any further exposure associated with the line or the loans that secured the line. Pursuant to the terms of the Settlement Agreement, the Company settled the $140.0 million balance of the reverse repurchase line by transferring the loans securing the line to the lender at their approximate carrying values, resulting in a cash payment of $20.0 million and the Company entering into a credit agreement with the lender (the Credit Agreement) for a $33.9 million term loan. The borrowing under the Credit Agreement, which is to be paid over 18 months, bears interest at a rate of one-month LIBOR plus 350 basis points and requires a monthly principal and interest payment of $1.5 million. A $10.0 million principal payment is due by April 2010 as part of the Credit Agreement. As of December 31, 2009, the outstanding balance of the note payable was $31.1 million. Refer to Note N—*Long-term Debt* for additional information.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data or as otherwise indicated)

2. Financial Statement Presentation

Principles of Consolidation

The financial condition, results of operations and cash flows have been presented in the accompanying consolidated financial statements for each of the years in the two-year period ended December 31, 2009 and include the financial results of IMH, IRES and IMH Assets within continuing operations and IWLG and IFC within discontinued operations.

All significant inter-company balances and transactions have been eliminated in consolidation. In addition, certain amounts in the prior periods' consolidated financial statements have been reclassified to conform to the current year presentation. Additionally, all historical share and per share data in our consolidated financial statements and notes thereto have been restated to give retroactive recognition of the Company's ten-for-one reverse stock split effected in December 2008. Refer to Note A-11—*Common Stock*, for additional information regarding this reverse stock split.

The accompanying consolidated financial statements include accounts of IMH and other entities in which the Company has a controlling financial interest. The usual condition for a controlling financial interest is ownership of a majority of the voting interests of an entity. However, a controlling financial interest may also exist in entities, such as special purpose entities (SPEs), through arrangements that do not involve voting interests.

Prior to January 1, 2010, there were two different accounting frameworks applicable to SPEs, depending on the nature of the entity and the Company's relation to that entity; the qualifying special purpose entity (QSPE) framework and the variable interest entity (VIE) framework.

The QSPE framework applied when an entity transfers (sells) financial assets to an SPE meeting certain criteria. These criteria were designed to ensure that the activities of the SPE are essentially predetermined in their entirety at the inception of the vehicle and that the transferor cannot exercise control over the entity, its assets or activities. Entities meeting these criteria were not consolidated by the Company.

When the SPE did not meet the QSPE criteria, consolidation was assessed pursuant to the VIE framework. A VIE is defined as an entity that (1) lacks enough equity investment at risk to permit the entity to finance its activities without additional subordinated financial support from other parties, (2) has equity owners who are unable to make decisions and/or (3) has equity owners that do not absorb or receive the entity's losses and returns. QSPEs were previously excluded from the scope of the VIE framework.

The VIE framework requires a variable interest holder (counterparty to a VIE) to consolidate the VIE if that party will absorb a majority of the expected losses of the VIE, receive a majority of the residual returns of the VIE, or both. This party is considered the primary beneficiary of the entity. The determination of whether the Company meets the criteria to be considered the primary beneficiary of a VIE requires an evaluation of all transactions (such as investments, liquidity commitments, derivatives and fee arrangements) with the entity.

Effective January 1, 2010, QSPE's are no longer excluded from the consolidation provisions of the VIE framework. Refer to Note A-17—*Recent Accounting Pronouncements*, for additional information

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES
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regarding the elimination of QSPE's from the VIE framework and its impact on the consolidated financial statements.

Use of Estimates and Assumptions

The accompanying consolidated financial statements of IMH and its subsidiaries have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). Management has made a number of estimates and assumptions relating to the reporting of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting periods to prepare these consolidated financial statements in conformity with GAAP. Actual results could differ from those estimates.

3. Fair Value Accounting Elections

On January 1, 2008, the Company elected to apply fair value accounting to certain financial instruments (certain trust assets, trust liabilities and trust preferred securities) held at January 1, 2008. Differences between the December 31, 2007 carrying values and the January 1, 2008 fair values were recognized as an adjustment to retained deficit. This election resulted in a $1.1 billion decrease to retained deficit on January 1, 2008 from $(1.4) billion at December 31, 2007 to $(308.8) million at January 1, 2008.

The following table summarizes the initial retained deficit charges and credits related to this election as of January 1, 2008 and the related fair value balances as of January 1, 2008.

	December 31, 2007 (Prior to Adoption)	Adoption Net Gain/(Loss)	January 1, 2008 (After Adoption) (5)
Impact of electing the fair value option:			
Investment securities available-for-sale	$ 15,248	$ 1,028 (1)	$ 15,248
Securitized mortgage collateral (2)	16,532,633	(821,311)	15,711,322
Securitized mortgage borrowings (3)	(17,780,060)	1,903,283	(15,876,777)
Trust preferred securities	(98,398)	57,446	(40,952)
Cumulative-effect adjustment (pre-tax)		1,140,446	
Tax impact (4)		-	
Cumulative-effect adjustment to reduce retained deficit		$ 1,140,446	
Total retained deficit as of December 31, 2007		$ (1,449,232)	
Cumulative-effect adjustment to reduce retained deficit		1,140,446	
Total retained deficit as of January 1, 2008 (6)		$ (308,786)	

(1) Investment securities available-for-sale were recorded at fair value at December 31, 2007, with a corresponding $1.0 million unrealized gain included in accumulated other comprehensive income. Included in the cumulative-effect adjustment was $1.0 million in unrealized holding gains that were reclassified from accumulated other comprehensive income to retained deficit. Due to the effect of reclassifying the

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$1.0 million from accumulated other comprehensive income to retained deficit, the investment securities available-for-sale balances do not add across.

(2) Components of securitized mortgage collateral at December 31, 2007 include the allowance for loan loss of $1.2 billion, accrued interest of $99.7 million and premiums of $183.1 million, which were part of its fair value upon electing the fair value option.

(3) Components of securitized mortgage borrowings at December 31, 2007 include accrued interest of $17.1 million and securitization costs of $37.5 million, which were part of its fair value upon electing the fair value option.

(4) There was no tax effect of the adoption of fair value accounting as the Company qualified as a REIT for federal income tax purposes for the year ended December 31, 2008.

(5) The securitized mortgage collateral and securitized mortgage borrowings include the mortgage insurance and bond insurance proceeds to be received from third parties.

(6) As of January 1, 2008, after adoption of fair value accounting, total stockholders' equity was $61.7 million.

4. Cash and Cash Equivalents, Restricted Cash and Short-term Investments

Cash and cash equivalents consist of cash and highly liquid investments with maturities of three months or less at the date of acquisition. The carrying amount of cash and cash equivalents approximates fair value.

Cash and cash equivalents balances that have restrictions as to the Company's ability to withdraw funds are considered restricted cash. At December 31, 2009 and 2008, restricted cash totaled $1.3 million and $1.2 million, respectively.

Short-term investments, which are recorded at amortized cost, represent an investment in liquid and highly-rated corporate bonds with a maturity of January 2010.

5. Investment Securities Available-for-Sale

Investment securities classified as available-for-sale are reported at fair value. Unrealized gains and losses are recognized in earnings as changes in fair value of net trust assets. Gains and losses realized on the sale of investment securities available-for-sale and declines in value considered to be other-than-temporary are based on the specific identification method and reported in current earnings.

Interest income from investment securities available-for-sale is recognized based on current market yields. Investment securities available-for-sale may be subject to credit, interest rate and/or prepayment risk.

6. Securitized Mortgage Collateral

The Company's long-term investment portfolio primarily includes adjustable rate and, to a lesser extent, fixed rate non-conforming mortgages and commercial mortgages that were acquired and originated by our mortgage and commercial operations.

Non-conforming mortgages may not have certain documentation or verifications that are required by government sponsored entities and, therefore, in making our credit decisions, we were more reliant upon the borrower's credit score and the adequacy of the underlying collateral.

Historically, the Company securitized mortgages in the form of collateralized mortgage obligations (CMO), which were consolidated and accounted for as secured borrowings for financial

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statement purposes. Securitized mortgages in the form of real estate mortgage investment conduits (REMICs), were either consolidated or unconsolidated depending on the design of the securitization structure. CMO and certain REMIC securitizations were designed so that the transferee (securitization trust) was not a QSPE, and therefore the Company consolidated the VIE as it was the primary beneficiary of the sole residual interest in each securitization trust. Generally, this was achieved by including terms in the securitization agreements that gave the Company the ability to unilaterally cause the securitization trust to return specific mortgages, other than through a clean-up call. Amounts consolidated are included in trust assets and liabilities as securitized mortgage collateral, real estate owned, derivative assets, securitized mortgage borrowings and derivative liabilities in the accompanying consolidated balance sheets.

Effective January 1, 2010, former QSPEs are evaluated for consolidation based on the provisions of FASB ASC 810-10-25, which eliminates the concept of a QSPE and changes the approach to determining a securitization trust's primary beneficiary. Refer to Note A-17—*Recent Accounting Pronouncements* for a discussion of the impact the new rules will have on the Company's consolidated balance sheets.

Securitized mortgage collateral is generally not placed on nonaccrual status as the servicer remits the interest payments to the trust regardless of the delinquency status of the underlying mortgage loan.

The Company accounts for securitized mortgage collateral at fair value, with changes in fair value during the period reflected in earnings. Fair value measurements are based on the Company's estimated cash flow models, which incorporate assumptions, inputs of other market participants and quoted prices for the underlying bonds. The Company's assumptions include its expectations of inputs that other market participants would use. These assumptions include judgments about the underlying collateral, prepayment speeds, credit losses, forward interest rates and certain other factors.

7. Real Estate Owned

Real estate owned (REO), which consists of residential real estate acquired in satisfaction of loans, is carried at net realizable value, which includes the estimated fair value of the residential real estate less estimated selling and holding costs, offset by expected contractual mortgage insurance proceeds to be received, if any. Adjustments to the loan carrying value required at the time of foreclosure affect the carrying amount of securitized mortgage collateral. Subsequent write-downs in the net realizable value of REO are included in losses from REO in the consolidated statements of operations.

8. Securitized Mortgage Borrowings

The Company records securitized mortgage borrowings in the accompanying consolidated balance sheets for the consolidated CMO and REMIC securitized trusts. The debt from each issuance of a securitized mortgage borrowing is payable from the principal and interest payments on the underlying mortgages collateralizing such debt, as well as the proceeds from liquidations of REO. If the principal and interest payments are insufficient to repay the debt, the shortfall is allocated first to the residual interest holders (generally owned by the Company) then, if necessary, to the certificate holders (e.g. third party investors in the securitized mortgage borrowings) in accordance with the specific terms of the various respective indentures. Securitized mortgage borrowings typically are structured as one-month LIBOR "floaters" and fixed rate securities with interest payable to certificate holders monthly. The maturity of each class of securitized mortgage borrowing is directly affected by the amount of net interest spread, overcollateralization and the rate of principal prepayments and defaults on the related securitized mortgage collateral. The actual maturity of any class of a securitized mortgage borrowing can occur later than the stated maturities of the underlying mortgages.

When the Company issued securitized mortgage borrowings, the Company generally sought an investment grade rating for the Company's securitized mortgages by nationally recognized rating agencies. To secure such ratings, it was often necessary to incorporate certain structural features that provide for credit enhancement. This generally included the pledge of collateral in excess of the principal amount of the securities to be issued, a bond guaranty insurance policy for some or all of the issued securities, or additional forms of mortgage insurance. The Company's total loss exposure is limited to the Company's initial net economic investment in each trust, which is referred to as a residual interest.

The Company accounts for securitized mortgage borrowings at fair value, with changes in fair value during the period reflected in earnings. Fair value measurements are based on the Company's estimated cash flow models, which incorporate assumptions, inputs of other market participants and quoted prices for the underlying bonds. The Company's assumptions include its expectations of inputs that other market participants would use. These assumptions include judgments about the underlying collateral, prepayment speeds, credit losses, forward interest rates and certain other factors.

Financial Guaranty Insurance Company (FGIC) provides bond guaranty insurance for three of the Company's consolidated securitizations. In determining the fair value of securitized mortgage borrowings, the Company excludes consideration of bond guaranty insurance payments in accordance with FASB ASC 820-10-35-18A. In November 2009, the Company was notified that FGIC had been ordered by the New York Insurance Department to suspend paying any and all claims based on its financial condition. As the related securitization trusts are nonrecourse to the Company, it is not required to replace or otherwise settle bond guaranty insurance within the consolidated trusts. However, other insurance companies have issued bond guaranty insurance policies for certain securities within the Company's securitized mortgage borrowings. Additional suspensions on the payment of claims may arise, which could materially affect industry-wide market prices for collateralized mortgage bonds.

9. Derivative Instruments

In accordance with FASB ASC 815-10 Derivatives and Hedging—Overview, the Company records all its derivative instruments at fair value as either derivative assets or derivative liabilities, included within trust assets and trust liabilities in the consolidated balance sheets. The Company has accounted for all its derivatives as non-designated hedge instruments or free-standing derivatives. The Company uses derivative instruments to manage interest rate risk.

Interest Rate Swaps, Caps and Floors

The Company's interest rate risk management objective was to limit the exposure to the variability in future cash flows attributable to the variability of one-month LIBOR, which is the underlying index of adjustable rate securitized mortgage borrowings. The Company's interest rate risk management policies are formulated with the intent to offset the potential adverse effects of changing interest rates on securitized mortgage borrowings.

To mitigate exposure to the effect of changing interest rates on cash flows on securitized mortgage borrowings and reverse repurchase borrowings, the Company purchased derivative instruments primarily in the form of interest rate swap agreements (swaps) and, to a lesser extent, interest rate cap agreements (caps) and interest rate floor agreements (floors). Due to the closure of the mortgage operations, the Company has not entered into a new derivative instrument since the third quarter of 2007. However, the Company still has $126.5 million in net derivative liabilities outstanding as of December 31, 2009.

The fair value of the Company's swaps, caps, floors and other derivative instruments is generally based on market prices provided by dealers and market- makers, or estimates of future cash flows from these financial instruments.

10. Long-term Debt

Long-term debt (consisting of trust preferred securities and junior subordinated notes) is reported at fair value. Unrealized gains and losses are recognized in earnings as changes in fair value of long-term debt.

The Company does not consolidate trust preferred entities (which are sometimes hereinafter referred to as capital trusts) since the Company does not have a significant variable interest in the trust. Instead, the Company records its investment in the trust preferred entities (included in other assets in the accompanying consolidated balance sheets) and accounts for such under the equity method of accounting and reflects a liability for the issuance of the notes to the trust preferred entities.

11. Common Stock

On December 29, 2008, the Company amended its charter to affect a reverse stock split of its outstanding shares of common stock and to reduce the common stock's par value subsequent to the reverse stock split. Every ten shares of common stock, par value $0.01 per share, of the Company which were issued and outstanding immediately prior to the reverse stock split were combined into one issued and outstanding share of common stock, par value $0.10 per share. No fractional shares of common stock of the Company were issued upon the effectiveness of the reverse stock split. Any fractional shares that would otherwise result from the reverse stock split were eliminated by rounding each fraction up to the nearest whole share. Immediately after the reverse stock split, the par value of the Company's issued and outstanding shares of common stock was decreased from $0.10 per share to $0.01 per share.

This reverse stock split and subsequent reduction in par value resulted in the issuance of an additional 8,094 shares of outstanding common stock and was accounted for by the transfer of $685 thousand from common stock to additional paid-in capital, which is retrospectively presented for all periods shown.

On October 27, 2009, the Company issued 80,000 shares of common stock and paid legal expenses in connection with the settlement of Sharon Page v. Impac Mortgage Holdings, Inc., et al., which was originally filed on December 17, 2007 in the United States District Court, Central District of California against IMH and several of its senior officers.

All share and per share amounts retrospectively reflect the ten-for-one reverse stock split and subsequent reduction in par value. Refer to Note L—*Reconciliation of Earnings Per Share* for the impact on the Company's net earnings (loss) per share amounts as a result of the reverse stock split.

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12. Interest Income and Interest Expense

Interest income on securitized mortgage collateral and interest expense on securitized mortgage borrowings are recorded quarterly using the effective yield for the period based on the previous quarter-end's estimated fair value.

13. Stock-Based Compensation

The Company maintains a stock-based incentive compensation plan, the terms of which are governed by the Impac Mortgage Holdings, Inc. 2001 Stock Option, Deferred Stock and Restricted Stock Plan, as amended (the 2001 Stock Plan). Officers, key employees, directors, consultants and advisors are eligible to receive awards pursuant to the 2001 Stock Plan. As of December 31, 2009, the aggregate number of shares reserved under the 2001 Stock Plan is 1,555,353 shares (including increases pursuant to the plan's "evergreen provision"), and there were 151,649 shares available for grant as stock options, restricted stock and deferred stock awards. The Company issues new shares of common stock to satisfy stock option exercises.

The Company accounts for stock-based compensation in accordance with FASB ASC 718 Compensation—Stock Compensation. Accordingly, the Company measures the cost of stock-based awards using the grant-date fair value of the award and recognizes that cost over the requisite service period.

The fair value of each stock option granted under the Company's stock-based compensation plan is estimated on the date of grant using the Black-Scholes-Merton option-pricing model and the assumptions noted below. Given the declines in the Company stock price and the resulting decreased exercise activity by option holders, there is a lack of historical exercise experience and therefore the expected term of options granted is derived using the simplified method as permitted under FASB ASC 718-10-S99-1. The risk-free interest rate is based on the U.S. Treasury rate with a term equal to the expected term of the option grants on the date of grant.

FASB ASC 718 requires forfeitures to be estimated at the time of grant and prospectively revised, if necessary, in subsequent periods if actual forfeitures differ from initial estimates. Stock-based compensation expense is recorded net of estimated forfeitures for the years ended December 31, 2009 and 2008, such that expense was recorded only for those stock-based awards that were expected to vest.

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The fair value of options granted, which is amortized to expense over the option vesting period, is estimated on the date of grant using the Black-Scholes-Merton option pricing model with the following weighted average assumptions:

	For the year ended December 31,	
	2009	2008
Risk-free interest rate	2.86%	1.88% to 2.54%
Expected lives (in years)	5.50	3.25 - 3.50
Expected volatility (1)	259.16%	87.3% - 91.9%
Expected dividend yield	0.00%	0.00%
Fair value per share	$0.53	$5.02 - 7.76

(1) Expected volatilities are based on both the implied and historical volatility of the Company's stock over the expected option life.

The following table summarizes activity, pricing and other information for the Company's stock options for the years presented below:

	For the year ended December 31,			
	2009		2008	
	Number of Shares	Weighted-Average Exercise Price	Number of Shares	Weighted-Average Exercise Price
Options outstanding at beginning of year	1,140,186	$ 37.18	593,991	$ 98.03
Options granted	842,300	0.53	797,004	12.73
Options forfeited / canceled	(687,901)	36.92	(250,809)	104.02
Options outstanding at end of year	1,294,585	$ 13.47	1,140,186	$ 37.18
Options exercisable at end of year	203,330	$ 66.18	295,760	$ 86.96

	As of December 31,			
	2009		2008	
	Weighted-Average Remaining Life (Years)	Aggregate Intrinsic Value (in thousands)	Weighted-Average Remaining Life (Years)	Aggregate Intrinsic Value (in thousands)
Options outstanding at end of year	6.85	$ 2,283	3.33	$ -
Options exercisable at end of year	1.23	$ -	1.77	$ -

The aggregate intrinsic value in the preceding table represents the total pre-tax intrinsic value, based on the Company's closing stock price of $3.29 per common share as of December 31, 2009, which would have been received by the option holders, had all option holders exercised their options as of that date. As of December 31, 2009, there was approximately $500 thousand of total unrecognized compensation cost related to stock option compensation arrangements granted under the plan, net of estimated forfeitures. That cost is expected to be recognized over the remaining weighted average period of six months.

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For the years ended December 31, 2009 and 2008, the aggregate grant-date fair value of stock options granted was approximately $445 thousand and $6.0 million, respectively.

For the years ended December 31, 2009 and 2008, total stock-based compensation expense was $3.8 million and $3.5 million, respectively.

In April 2009, certain of the Company's officers and directors gave notice of the surrender of an aggregate of 581,000 options and the Board of Directors accepted and approved the cancellation of those options. In connection with the cancellation of these options, the Company recognized non-cash compensation expense of approximately $1.7 million during the second quarter of 2009.

Additional information regarding stock options outstanding as of December 31, 2009 is as follows:

	Stock Options Outstanding			Options Exercisable	
Exercise Price Range	Number Outstanding	Weighted-Average Remaining Contractual Life in Years	Weighted-Average Exercise Price	Number Exercisable	Weighted-Average Exercise Price
$0.53	827,000	9.44	$ 0.53	-	$ -
12.00	237,004	3.24	12.00	-	-
12.01 - 94.20	144,081	1.58	35.28	116,830	37.54
99.40	82,500	0.63	99.40	82,500	99.40
217.70	4,000	4.47	217.70	4,000	217.70
0.53 - 217.70	1,294,585	6.85	13.47	203,330	66.18

14. Impairment of Long-Lived Assets

The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. If an asset is considered to be impaired, the impairment recognized is measured by the amount by which the carrying amount of the assets exceeds its estimated fair value. Assets to be disposed of are reported at the lower of the carrying amount or estimated fair value less costs to sell.

15. Income Taxes and Deferred Charge

Effective January 1, 2009, the Company revoked its election to be taxed as a REIT. As a result of revoking this election, the Company is subject to income taxes as a regular (Subchapter C) corporation.

Prior to January 1, 2009, the Company operated as a REIT under the requirements of the Internal Revenue Code. Requirements for qualification as a REIT included various restrictions on ownership of

IMH's stock, requirements concerning distribution of taxable income and certain restrictions on the nature of assets and sources of income.

The Company accounts for income taxes in accordance with FASB ASC 740-Accounting for Income Taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets, including tax losses, credit carryforwards and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities on change in tax rates is recognized in income in the period that includes the enactment date. Deferred income tax expense represents the change during the period in the deferred tax assets and deferred tax liabilities. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all the deferred tax assets will not be realized.

In accordance with FASB ASC 810-10-45-8 the Company recorded a deferred charge representing the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. The deferred charge is included in other assets in the accompanying consolidated balance sheets and is amortized as a component of income tax expense in the accompanying consolidated statement of operations over the estimated life of the mortgages retained in the securitized mortgage collateral. The Company recorded income tax expense of $2.0 and $22.3 million for the years ended December 31, 2009 and 2008, respectively. The income tax expense is primarily the result of the amount of the deferred charge amortized and/or impaired resulting from credit losses, which does not result in any tax current liability required to be paid.

16. Earnings (Loss) per Common Share

Basic earnings (loss) per common share is computed on the basis of the weighted average number of shares outstanding for the year divided into earnings (loss) for the year. Diluted earnings (loss) per common share is computed on the basis of the weighted average number of shares and dilutive common equivalent shares outstanding for the year divided by earnings (loss) for the year, unless anti-dilutive. Refer to Note L—*Reconciliation of Earnings Per Share*.

17. Recent Accounting Pronouncements

Recently Adopted Accounting Pronouncements

In February 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-9 "Amendments to Certain Recognition and Disclosure Requirements" (ASU 2010-9). The ASU amends FASB Accounting Standards Codification Topic 855 "Subsequent Events" to address certain implementation issues related to an entity's requirement to perform and disclose subsequent events procedures. ASU 2010-9 requires (a) SEC filers and (b) conduit debt obligors for conduit debt securities that are traded in a public market to evaluate subsequent events through the date the financial statements are issued. All other entities are required to evaluate subsequent events through the date the financial statements are available to be issued. ASU 2010-9 exempts SEC filers from disclosing the date through which subsequent events have been evaluated. For the Company, ASU 2010-9 is effective immediately for financial statements that are to be issued or revised. The Company believes the amendments will not have a material impact on its consolidated financial statements.

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In June 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standard (SFAS) No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles"—a replacement of FASB Statement No. 162 (SFAS 168). Under SFAS 168, The FASB Accounting Standards Codification (Codification or FASB ASC) became the sole source of authoritative GAAP recognized by the FASB to be applied by nongovernmental entities. Rules and interpretive releases of the SEC under authority of federal securities laws are also sources of authoritative GAAP for SEC registrants. On July 1, 2009, the Codification superseded all then-existing non-SEC accounting and reporting standards for non-governmental entities. All other non-grandfathered non-SEC accounting literature not included in the Codification became non-authoritative at that time. SFAS 168 is effective for interim and annual periods ending after September 15, 2009. The adoption of SFAS 168 did not have a significant impact on the Company's consolidated financial statements.

In May 2009, the FASB issued SFAS No. 165, "Subsequent Events" (SFAS 165), which was incorporated into FASB ASC 855-10 "Subsequent Events—Overall" (FASB ASC 855-10). FASB ASC 855-10, which is effective for interim and annual periods ending after June 15, 2009, establishes general standards of and accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. The adoption of FASB ASC 855-10 did not have an impact on the Company's consolidated financial statements.

In April 2009, the FASB issued three FASB Staff Positions (FSP) related to fair value measurements:

- FSP No. FAS 157-4 "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly" (FASB ASC 820-10-65-4)
- FSP No. FAS 107-1 and APB 28-1 "Interim Disclosures about Fair Value of Financial Instruments" (FASB ASC 825-10-65-1)
- FSP No. FAS 115-2 and FAS 124-2 "Recognition and Presentation of Other-Than-Temporary Impairments" (FASB ASC 320-10-65-1)

FASB ASC 820-10-65-4 provides additional guidance for estimating fair value in accordance with FASB ASC 820-10 (formerly SFAS No. 157 "Fair Value Measurements" (SFAS 157)) when the volume and level of market activity for the asset or liability have significantly decreased. FASB ASC 820-10-65-4 also includes guidance on identifying circumstances that indicate a transaction is not orderly. It acknowledges that in these circumstances quoted prices may not be determinative of fair value. FASB ASC 820-10-65-4 emphasizes that even if there has been a significant decrease in the volume and level of market activity for the asset or liability and regardless of the valuation technique(s) used, the objective of a fair value measurement remains the same. Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction (that is, not a forced liquidation or distressed sale) between market participants at the measurement date under current market conditions. Prior to the clarifications included in FASB ASC 820-10-65-4, many companies, including the Company, interpreted FASB ASC 820-10 to emphasize the use of most recently available quoted market prices in estimating fair value, regardless of whether markets had experienced a significant decline in the volume and level of activity relative to normal conditions and/or increased frequency of transactions that are not orderly.

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Under FASB ASC 820-10-65-4, quoted prices for assets or liabilities in inactive markets may require adjustment due to uncertainty as to whether the underlying transactions are orderly. There is little information, if any, to evaluate if individual transactions are orderly in an inactive market. Accordingly, the Company is required to evaluate the facts and circumstances to determine whether the transaction is orderly based on the weight of the evidence. FASB ASC 820-10-65-4 does not designate a specific method for adjusting a transaction or quoted price, however, it does provide guidance for determining how much weight to give a transaction or quoted price. Price quotes derived from transactions that are not orderly are not considered to be determinative of fair value and should be given less weight, if any, when estimating fair value.

The adoption of FASB ASC 820-10-65-4 on April 1, 2009 resulted in an increase of $13.3 million in net trust assets, which is included in change in fair value of net trust assets in the accompanying consolidated statements of operations. Offsetting this increase were decreases in the fair values of trust assets and trust liabilities as a result of the Company increasing loss assumptions for its long-term mortgage portfolio due to increases in expected defaults and loss severities related to the weak economy and housing market.

FASB ASC 825-10-65-1 requires disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. The adoption of FASB ASC 825-10-65-1, which became effective for interim reporting periods ending after June 15, 2009, did not have a significant effect on the Company's consolidated financial statements.

FASB ASC 320-10-65-1 amends the other-than-temporary impairment guidance in GAAP for debt securities to make the guidance more operational and improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. For debt securities, the pronouncement requires that an entity assess whether it (a) has the intent to sell the debt security or (b) more likely than not will be required to sell the debt security before its anticipated recovery. If either of these conditions is met, the Company would be required to recognize other-than-temporary impairment. The adoption of FASB ASC 320-10-65-1, which became effective for interim reporting periods ending after June 15, 2009, did not have a significant effect on the Company's consolidated financial statements.

Effective January 1, 2009, the Company adopted Emerging Issues Task Force Issue No. 08-5, "Issuer's Accounting for Liabilities Measured at Fair Value with a Third-Party Credit Enhancement," which was incorporated into FASB ASC 820-10. FASB ASC 820-10-35 addresses whether issuers of liabilities should consider the effect of the third-party credit enhancement when measuring the liability at fair value. It requires that the issuer of a liability with a third-party credit enhancement that is inseparable from the liability shall not include the effect of the credit enhancement in the fair value measurement of the liability. The adoption of FASB ASC 820-10-35 did not have a significant impact on the Company's consolidated financial statements.

Effective January 1, 2009, application of FASB ASC 820-10-65 to nonfinancial assets and liabilities is required. As a result of the adoption of FASB ASC 820-10-65 for such assets and liabilities, the Company has included additional disclosures for nonrecurring fair value measurements related to its nonfinancial assets and liabilities (which include loans held for sale, REO, lease liability and deferred charge).

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Recently Issued Accounting Pronouncements

In January 2010, the FASB issued Accounting Standards Update (ASU) No. 2010-6 "Improving Disclosures About Fair Value Measurements" (ASU 2010-6). The ASU amends Codification Topic 820 "Fair Value Measurements and Disclosures" to add new disclosure requirements for transfers into and out of Levels 1 and 2 fair value measurements, as well as separate disclosures about purchases, sales, issuances, and settlements relating to Level 3 fair value measurements. ASU 2010-6 also clarifies existing fair value disclosures regarding the level of disaggregation and inputs and valuation techniques used to measure fair value. ASU 2010-6 is effective for the first reporting period (including interim periods) beginning after December 15, 2009, except for the requirement to provide the Level 3 activity of purchases, sales, issuances, and settlements on a gross basis, which will be effective for fiscal years beginning after December 15, 2010, and for interim periods within those fiscal years. ASU 2010-6 only adds new disclosures requirements and as a result, the Company does not expect its adoption to have an impact on its consolidated financial statements.

In August 2009, the FASB issued ASU 2009-05 "Fair Value Measurements and Disclosures (Topic 820)—Measuring Liabilities at Fair Value" (ASU 2009-05). ASU 2009-05 provides amendments to ASC Subtopic 820-10, Fair Value Measurements and Disclosures—Overall of the FASB Accounting Standards Codification for the fair value measurement of liabilities. The amendments provide clarification that in circumstances in which a quoted price in an active market for an identical liability is not available, companies are required to measure value using one or more of the techniques prescribed by the standard. Valuation techniques include the quoted price of the identical liability when traded as an asset, quoted prices of similar liabilities or similar liabilities when traded as an asset, and other valuation techniques consistent with the principles of FASB ASC 820. The amendments also clarify that when estimating the fair value of a liability, companies are not required to include a separate input or adjustment to other inputs relating to the existence of a restriction that prevents the transfer of the liability. ASU 2009-05 is effective for the first reporting period beginning after issuance. The Company does not expect the amendments to have a material impact on its consolidated financial statements.

In June 2009, the FASB issued SFAS No. 166, "Accounting for Transfers of Financial Assets—An Amendment of FASB Statement 140" which eliminates the concept of QSPEs and provides additional criteria transferors must use to evaluate transfers of financial assets. This standard modifies certain guidance contained in FASB ASC 860 "Transfers and Servicing" and is adopted into the Codification through the issuance of ASU 2009-16 "Transfers and Servicing (Topic 860): Accounting for Transfers of Financial Assets." In order to determine whether a transfer is accounted for as a sale, the transferor must assess whether it and all of its consolidated entities have surrendered control of the financial assets. The standard also requires financial assets and liabilities retained from a transfer accounted for as a sale to be initially recognized at fair value. This standard is effective for fiscal years and interim periods beginning after November 15, 2009, with adoption applied prospectively for transfers that occur on or after the effective date.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," which amends several key consolidation provisions related to VIEs. This standard amends guidance contained in FASB ASC 810 "Consolidation" and is adopted into the Codification through the issuance of ASU 2009-17 "Consolidations (Topic 810): Improvements to Financial Reporting by Enterprises Involved with Variable Interest Entities." Former QSPEs will be evaluated for consolidation based on the provisions of FASB ASC 810-10-25, which changes the approach to determining a VIE's primary beneficiary and requires companies to more frequently reassess whether they must consolidate or deconsolidate VIEs. The accounting standard requires a qualitative, rather than quantitative, analysis to determine the primary beneficiary of a VIE for consolidation purposes. The primary beneficiary of a VIE is the enterprise that has (a) the power to direct the VIE activities that most significantly affect the VIE's economic performance, and (b) the right to receive benefits of the VIE that could potentially be significant to the VIE or the obligation to absorb losses of the VIE that could potentially be significant to the VIE. This standard is effective for fiscal years and interim periods beginning after November 15, 2009 and applies to all current QSPEs and VIEs, and all VIEs created after the effective date. In accordance with this standard, the Company may consolidate QSPEs and VIEs at carrying value or elect the fair value option. The Company intends to elect the fair value option, in which all of the financial assets and liabilities of certain designated QSPEs and VIEs would be recorded at fair value upon the adoption of this standard and continue to be recorded at fair value thereafter with changes in fair value reported in earnings.

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Effective January 1, 2010, the Company will be required to consolidate the trust assets and trust liabilities related to $517.9 million in assets at December 31, 2009. Additionally, the Company will be required to deconsolidate the trust assets and liabilities related to $228.0 million in assets at December 31, 2009. The following is a summary of the expected impact of adopting the new consolidation provisions of FASB ASC 810.

	(prior to adoption) December 31, 2009	Variable Interest Entities		(after adoption) January 1, 2010
		Consolidated	Deconsolidated	
Investment securities available-for-sale	$ 813	$ (298)	$ -	$ 515
Securitized mortgage collateral	5,666,122	249,523	(132,908)	5,782,737
REO	142,364	4,499	(1,185)	145,678
Securitized mortgage borrowings	(5,659,865)	(244,683)	134,065	(5,770,483)
Derivative liabilities, net	(126,457)	(9,041)	28	(135,470)
Net trust assets	$ 22,977	-	-	$ 22,977

There was no overall impact on stockholders' equity as a result of the consolidation and deconsolidation of these trust assets and liabilities on January 1, 2010. However, the Company will continue to evaluate the impact of adopting the new accounting standards including the evaluation of applicable QSPE and VIE structures and interpretive guidance that becomes available. Accordingly, the amount of assets and liabilities that become consolidated or deconsolidated upon implementation of these standards on January 1, 2010 may differ from our preliminary estimates.

Note B—Fair Value of Financial Instruments

The use of fair value to measure the Company's financial instruments is fundamental to its consolidated financial statements and is a critical accounting estimate because a substantial portion of its assets and liabilities are recorded at estimated fair value.

Effective April 1, 2009, the Company adopted the provisions of FASB ASC 820-10-65-4 (formerly FSP No. FAS 157-4), which address determining fair value when there has been a significant decrease in the volume and level of activity for an asset or liability compared to normal market activity for those or similar assets or liabilities. When significant decreases in the volume and level of activity for assets and liabilities are present, transaction and quoted prices may not be indicative of fair value. In these instances, the Company performs additional analysis of the transaction and quoted prices and may apply significant adjustments to those prices in estimating fair value. In determining which adjustments may be needed, the Company considers the nature of the quote (indicative price or binding offer) when weighting the available evidence. In the absence of transaction or quoted prices based on normal market activity, the Company may use valuation techniques that reflect management's views as to the assumptions that market participants would use in pricing the assets and liabilities.

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Prior to adoption of the provisions of FASB ASC 820-10-65-4, the Company used independent broker quoted prices (unadjusted and non-binding quotes) to estimate fair value for substantially all of its securitized mortgage borrowings.

For securitized mortgage collateral and securitized mortgage borrowings, the underlying Alt-A residential and commercial loans and mortgage-backed securities market have experienced significant declines in market activity, along with a lack of orderly transactions. The Company's methodology to estimate fair value of these assets and liabilities included the use of internal pricing techniques such as the net present value of future expected cash flows (with observable market participant assumptions, where available) discounted at a rate of return based on the Company's estimates of market participant requirements. The significant assumptions utilized in these internal pricing techniques, which were based on the characteristics of the underlying collateral, included estimated credit losses, estimated prepayment speeds and appropriate discount rates.

The following table presents the estimated fair value of financial instruments included in the consolidated financial statements as of the dates indicated:

	December 31, 2009		December 31, 2008	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Assets				
Cash and cash equivalents	$ 25,678	$ 25,678	$ 46,215	$ 46,215
Restricted cash	1,253	1,253	1,243	1,243
Short-term investments	5,002	5,002	-	-
Investment securities available-for-sale	813	813	2,068	2,068
Securitized mortgage collateral	5,666,122	5,666,122	5,894,424	5,894,424
Derivative assets	146	146	37	37
Liabilities				
Securitized mortgage borrowings	5,659,865	5,659,865	6,193,984	6,193,984
Derivative liabilities	126,603	126,603	273,584	273,584
Long-term debt	9,773	9,773	15,403	15,403
Note payable	31,060	27,789	-	-

The fair value amounts above have been estimated by management using available market information and appropriate valuation methodologies. Considerable judgment is required to interpret market data to develop the estimates of fair value in both inactive and orderly markets. Accordingly, the estimates presented are not necessarily indicative of the amounts that could be realized in a current market exchange. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

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The carrying amount of cash and cash equivalents and restricted cash approximates fair value. The fair value of short-term investments is determined using quoted prices in active markets.

Refer to *Recurring Fair Value Measurements* below for a description of the valuation methods used to determine the fair value of investment securities available for sale, securitized mortgage collateral and borrowings, derivative assets and liabilities and long-term debt.

Note payable is recorded at amortized cost. Fair value of note payable is determined using a discounted cash flow model which factors in expected changes in interest rates and the Company's own credit risk.

Recurring Fair Value Measurements

The application of fair value measurements may be on a recurring or nonrecurring basis depending on the accounting principles applicable to the specific asset or liability or whether management has elected to carry the item at its estimated fair value.

FASB ASC 820-10-35 specifies a hierarchy of valuation techniques based on whether the inputs to those techniques are observable or unobservable. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect the Company's market assumptions. These two types of inputs create the following fair value hierarchy:

- Level 1—Quoted prices (unadjusted) in active markets for identical instruments or liabilities that an entity has the ability to assess at measurement date.

- Level 2—Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; inputs other than quoted prices that are observable for an asset or liability, including interest rates and yield curves observable at commonly quoted intervals, prepayment speeds, loss severities, credit risks and default rates; and market-corroborated inputs.

- Level 3—Valuations derived from valuation techniques in which one or more significant inputs or significant value drivers are unobservable.

This hierarchy requires the Company to use observable market data, when available, and to minimize the use of unobservable inputs when estimating fair value.

As a result of the lack of observable market data resulting from inactive markets, the Company has classified its investment securities available-for-sale, securitized mortgage collateral and borrowings, net derivative liabilities and long-term debt as Level 3 fair value measurements at December 31, 2009 and 2008. Level 3 assets and liabilities were 100 percent of total assets and total liabilities at fair value at December 31, 2009 and 2008.

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The following tables present the Company's assets and liabilities that are measured at estimated fair value on a recurring basis, including financial instruments for which the Company has elected the fair value option at December 31, 2009 and 2008, based on the fair value hierarchy:

	Recurring Fair Value Measurements					
	December 31, 2009			December 31, 2008		
	Level 1	Level 2	Level 3	Level 1	Level 2	Level 3
Assets						
Investment securities available-for-sale	$ -	$ -	$ 813	$ -	$ -	$ 2,068
Securitized mortgage collateral	-	-	5,666,122	-	-	5,894,424
Total assets at fair value	$ -	$ -	$ 5,666,935	$ -	$ -	$ 5,896,492
Liabilities						
Securitized mortgage borrowings	$ -	$ -	$ 5,659,865	$ -	$ -	$ 6,193,984
Derivative liabilities, net (1)	-	-	126,457	-	-	273,547
Long-term debt	-	-	9,773	-	-	15,403
Total liabilities at fair value	$ -	$ -	$ 5,796,095	$ -	$ -	$ 6,482,934

(1) At December 31, 2009, derivative liabilities, net include $146 thousand in derivative assets and $126.6 million in derivative liabilities, included within trust assets and trust liabilities, respectively. At December 31, 2008, derivative liabilities, net include $37 thousand in derivative assets and $273.6 million in derivative liabilities, included within trust assets and trust liabilities, respectively.

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The following tables present a reconciliation for all assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the year ended December 31, 2009 and December 31, 2008:

	Level 3 Recurring Fair Value Measurements For the year ended December 31, 2009				
	Investment securities available-for-sale	Securitized mortgage collateral	Securitized mortgage borrowings	Derivative liabilities, net	Long-term debt
Fair value, December 31, 2008	$ 2,068	$ 5,894,424	$ (6,193,984)	$ (273,547)	$ (15,403)
Total gains (losses) included in earnings:					
Interest income (1)	109	957,103	-	-	-
Interest expense (1)	-	-	(1,649,686)	-	(1,274)
Change in fair value of net trust assets, excluding REO	3,540	27,804	254,007	(54,189)	-
Change in fair value of long-term debt	-	-	-	-	765
Total gains (losses) included in earnings	3,649	984,907	(1,395,679)	(54,189)	(509)
Transfers in and/or out of Level 3	-	-	-	-	-
Purchases, issuances and settlements	(4,904)	(1,213,209)	1,929,798	201,279	6,139
Fair value, December 31, 2009	$ 813	$ 5,666,122	$ (5,659,865)	$ (126,457)	$ (9,773)
Unrealized gains (losses) still held (2)	$ 486	$ (6,333,766)	$ 7,838,814	$ (128,305)	$ 60,990

(1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was approximately $9.8 million for the year ended December 31, 2009, as reflected in the accompanying statement of operations.

(2) Represents the amount of unrealized gains (losses) relating to assets and liabilities classified as Level 3 that are still held at December 31, 2009.

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	Level 3 Recurring Fair Value Measurements For the year ended December 31, 2008				
	Investment securities available-for-sale	Securitized mortgage collateral	Securitized mortgage borrowings	Derivative liabilities, net	Long-term debt
Fair value, January 1, 2008	$ 15,248	$ 782,574	$ (767,704)	$ -	$ (40,952)
Total gains (losses) included in earnings:					
Interest income (1)	1,015	387,212	-	-	-
Interest expense (1)	-	-	(895,492)	-	(530)
Change in fair value of net trust assets, excluding REO	(10,606)	(7,806,959)	8,140,587	(298,741)	-
Change in fair value of long-term debt	-	-	-	-	24,879
Total (losses) gains included in earnings	(9,591)	(7,419,747)	7,245,095	(298,741)	24,349
Transfers in and/or out of Level 3 (2)	-	14,919,649	(15,109,073)	(120,260)	-
Purchases, issuances and settlements	(3,589)	(2,388,052)	2,437,698	145,454	1,200
Fair value, December 31, 2008	$ 2,068	$ 5,894,424	$ (6,193,984)	$ (273,547)	$ (15,403)
Unrealized (losses) gains still held (3)	$ (1,802)	$ (8,239,882)	$ 9,233,009	$ (276,879)	$ 75,841

(1) Amounts primarily represent accretion to recognize interest income and interest expense using effective yields based on estimated fair values for trust assets and trust liabilities. The total net interest income, including cash received and paid, was approximately $13.7 million for the year ended December 31, 2008, as reflected in the accompanying statement of operations.
(2) Transfers in and/or out of Level 3 are reflected using values as of the beginning of the period.
(3) Represents the amount of unrealized (losses) gains relating to assets and liabilities classified as Level 3 that are still held at December 31, 2008.

During the year ended December 31, 2008, $14.9 billion and $15.1 billion in securitized mortgage collateral and borrowings, respectively, were transferred from Level 2 to Level 3 fair value measurements due to significant market disruption and the lack of market activity. Additionally, $120.3 million in derivative liabilities, net was transferred from Level 2 to Level 3 fair value measurements.

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The following tables present the changes in recurring fair value measurements included in net earnings (loss) for the years ended December 31, 2009 and 2008:

	Recurring Fair Value Measurements Changes in Fair Value Included in Net Earnings For the year ended December 31, 2009				
			Change in Fair Value of		
	Interest Income (1)	Interest Expense (1)	Net Trust Assets	Long-term Debt	Total
Investment securities available-for-sale	$ 109	$ -	$ 3,540	$ -	$ 3,649
Securitized mortgage collateral	957,103	-	27,804	-	984,907
Securitized mortgage borrowings	-	(1,649,686)	254,007	-	(1,395,679)
Derivative instruments, net	-	-	(54,189)(2)	-	(54,189)
Long-term debt	-	(1,274)	-	765	(509)
Total	**$ 957,212**	**$ (1,650,960)**	**$ 231,162 (3)**	**$ 765**	**$ (461,821)**

(1) Amounts represent interest income and interest expense accretion included in interest income and interest expense, respectively in the consolidated statement of operations.
(2) Included in this amount is $148.6 million in changes in the fair value of derivative instruments, offset by $202.8 million in cash payments from the securitization trusts for the year ended December 31, 2009.
(3) For the year ended December 31, 2009, change in the fair value of trust assets, excluding REO was $231.2 million. Excluded from the $(433.9) million change in fair value of net trust assets, excluding REO, in the accompanying consolidated statement of cash flows is $202.8 million in cash payments from the securitization trusts related to the Company's net derivative liabilities.

	Recurring Fair Value Measurements Changes in Fair Value Included in Net Loss For the year ended December 31, 2008				
			Change in Fair Value of		
	Interest Income (1)	Interest Expense (1)	Net Trust Assets	Long-term Debt	Total
Investment securities available-for-sale	$ 1,015	$ -	$ (10,606)	$ -	$ (9,591)
Securitized mortgage collateral	387,212	-	(7,806,959)	-	(7,419,747)
Securitized mortgage borrowings	-	(895,492)	8,140,587	-	7,245,095
Derivative instruments, net	-	-	(298,741)(2)	-	(298,741)
Long-term debt	-	(530)	-	24,879	24,349
Total	**$ 388,227**	**$ (896,022)**	**$ 24,281 (3)**	**$ 24,879**	**$ (458,635)**

(1) Amounts represent interest income and interest expense accretion included in interest income and interest expense, respectively in the consolidated statement of operations.
(2) Included in this amount is $(151.2) million in changes in the fair value of derivative instruments and $147.5 million in cash payments from the securitization trusts for the year ended December 31, 2008.
(3) For the year ended December 31, 2008, change in the fair value of trust assets, excluding REO was $24.3 million. Excluded from the $(171.8) million change in fair value of net trust assets, excluding REO, in the accompanying consolidated statement of cash flows is $147.5 million in cash payments from the securitization trusts related to the Company's net derivative liabilities.

The following is a description of the measurement techniques for items recorded at fair value on a recurring basis.

Investment securities available-for-sale—The Company elected to carry all of its investment securities available-for-sale at fair value. The investment securities consist primarily of non-investment grade mortgage-backed securities. The fair value of the investment securities is measured based upon the Company's expectation of inputs that other market participants would use. Such assumptions include judgments about the underlying collateral, prepayment speeds, future credit losses, forward interest rates and certain other factors. Given the market disruption and lack of observable market data as of December 31, 2009 and 2008, the estimated fair value of the investment securities available-for-sale was measured using significant internal expectations of market participants' assumptions.

Securitized mortgage collateral—The Company elected to carry all of its securitized mortgage collateral at fair value. These assets consist primarily of non-conforming mortgage loans securitized between 2002 and 2007. Fair value measurements are based on the Company's internal models used to compute the net present value of future expected cash flows, with observable market participant assumptions, where available. The Company's assumptions include its expectations of inputs that other market participants would use in pricing these assets. These assumptions include judgments about the underlying collateral, prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As of December 31, 2009, securitized mortgage collateral had an unpaid principal balance of $12.0 billion, compared to an estimated fair value of $5.7 billion. The aggregate unpaid principal balance exceeds the fair value by $6.3 billion at December 31, 2009. As of December 31, 2009, the unpaid principal balance of loans 90 days or more past due was $2.7 billion compared to an estimated fair value of $0.8 billion. The aggregate unpaid principal balances of loans 90 days or more past due exceed the fair value by $1.9 billion at December 31, 2009.

Securitized mortgage borrowings—The Company elected to carry all of its securitized mortgage borrowings at fair value. These borrowings consist of individual tranches of bonds issued by securitization trusts and are primarily backed by non-conforming mortgage loans. Fair value measurements include the Company's judgments about the underlying collateral and assumptions such as prepayment speeds, estimated future credit losses, forward interest rates, investor yield requirements and certain other factors. As of December 31, 2009, securitized mortgage borrowings had an outstanding principal balance of $13.5 billion compared to an estimated fair value of $5.7 billion. The aggregate outstanding principal balance exceeds the fair value by $7.8 billion at December 31, 2009.

Long-term debt—The Company elected to carry all of its long-term debt (consisting of trust preferred securities and junior subordinated notes) at fair value. These securities are measured based upon an analysis prepared by management, which considered the Company's own credit risk, including recent settlements with trust preferred debt holders and discounted cash flow analysis. As of December 31, 2009, long-term debt had an unpaid principal balance of $70.5 million compared to an estimated fair value of $9.8 million. The aggregate unpaid principal balance exceeds the fair value by $61.0 million at December 31, 2009.

Derivative assets and liabilities. For non-exchange traded contracts, fair value is based on the amounts that would be required to settle the positions with the related counterparties as of the valuation date. Valuations of derivative assets and liabilities are based on observable market inputs, if available. To the extent observable market inputs are not available, fair values measurements include the Company's judgments about future cash flows, forward interest rates and certain other factors, including counterparty risk. Additionally, these values also take into account the Company's own credit standing, to the extent applicable; thus, the valuation of the derivative instrument includes the estimated value of the net credit differential between the counterparties to the derivative contract.

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Nonrecurring Fair Value Measurements

The Company is required to measure certain assets and liabilities at estimated fair value from time to time. These fair value measurements typically result from the application of specific accounting pronouncements under GAAP. The fair value measurements are considered nonrecurring fair value measurements under FASB ASC 820-10.

Loans held-for-sale—Loans held-for-sale for which the fair value option was not elected are carried at the lower of cost or market (LOCOM). When available, such measurements are based upon what secondary markets offer for portfolios with similar characteristics, and are considered Level 2 measurements. If market pricing is not available, such measurements are significantly impacted by the Company's expectations of other market participants' assumptions, and are considered Level 3 measurements. The Company utilizes internal pricing processes to estimate the fair value of loans held-for-sale, which is based on recent loan sales and estimates of the fair value of the underlying collateral. Loans held-for-sale, which are primarily included in assets of discontinued operations, are considered Level 3 fair value measurements at December 31, 2009 and 2008 based on the lack of observable market inputs.

Real estate owned—REO consists of residential real estate acquired in satisfaction of loans. Upon foreclosure, REO is adjusted to the estimated fair value of the residential real estate less estimated selling and holding costs, offset by expected contractual mortgage insurance proceeds to be received, if any. Subsequently, REO is recorded at the lower of carrying value or estimated fair value less costs to sell. Fair values of REO are generally based on observable market inputs, and considered Level 2 measurements at December 31, 2009.

Lease liability—In connection with the discontinuation of our non-conforming mortgage, retail mortgage, warehouse lending and commercial operations, a significant amount of office space that was previously occupied is no longer being used by the Company. The Company has subleased a significant amount of this office space. The Company has recorded a liability, included within discontinued operations, representing the present value of the minimum lease payments over the remaining life of the lease, offset by the expected proceeds from sublet revenue related to this office space. This liability is based on present value techniques that incorporate the Company's judgments about estimated sublet revenue and discount rates. Therefore, this liability is considered a Level 3 measurement at December 31, 2009.

Deferred charge—Deferred charge represents the deferral of income tax expense on inter-company profits that resulted from the sale of mortgages from taxable subsidiaries to IMH in prior years. The deferred charge is amortized as a component of income tax expense over the estimated life of the mortgages retained in the securitized mortgage collateral. The Company evaluates the deferred charge for impairment quarterly using internal estimates of estimated cash flows and lives of the related mortgages retained in the securitized mortgage collateral. Deferred charge is considered a Level 3 measurement at December 31, 2009.

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Intangible asset—Intangible assets deemed to have an indefinite life are tested annually for impairment, or more frequently if events or changes in circumstances indicate that the asset might be impaired. Impairment losses are recognized if carrying amount of an intangible asset exceeds its estimated fair value. Intangible asset is considered a Level 3 measurement at December 31, 2009.

The following tables present financial and non-financial assets and liabilities measured using nonrecurring fair value measurements at December 31, 2009 and 2008:

	Non-recurring Fair Value Measurements December 31, 2009			Total Gains (Losses) For the Year Ended December 31, 2009 (6)
	Level 1	Level 2	Level 3	
Loans held-for-sale (1)	$ -	$ -	$ 2,369	$ (4,495)
REO (2)	-	113,693	-	(130,594)
Lease liability (3)	-	-	(3,875)	2,228
Deferred charge (4)	-	-	13,144	(1,998)
Intangible asset (5)	-	-	1,000	-

(1) Represents $2.4 million of loans held-for-sale within discontinued operations at December 31, 2009.
(2) Represents $113.7 million in REO within continuing operations at December 31, 2009 which had additional impairment write-downs subsequent to the date of foreclosure. For the year ended December 31, 2009, the $130.6 million loss related to additional impairment write-downs during the period included $127.8 million and $2.8 million within continuing and discontinued operations, respectively.
(3) Amounts are included in discontinued operations. For the year ended December 31, 2009, the Company recorded $2.2 million in gains resulting from changes in lease liabilities as a result of changes in our expected minimum future lease payments, respectively.
(4) Amounts are included in continuing operations. For the year ended December 31, 2009, the Company recorded $2.0 million in income tax expense resulting from impairment write-downs based on changes in estimated cash flows and lives of the related mortgages retained in the securitized mortgage collateral.
(5) Amount is included in other assets in the accompanying consolidated balance sheets.
(6) Total gains (losses) reflect gains and losses from all non-recurring measurements during the period.

	Non-recurring Fair Value Measurements December 31, 2008			Total Losses For the Year Ended December 31, 2008
	Level 1	Level 2	Level 3	
Loans held-for-sale (1)	$ -	$ -	$ 108,223	$ 45,960

(1) Includes $0.4 million and $107.8 million of loans held-for-sale within continuing and discontinued operations, respectively, at December 31, 2008.

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Note C—Securitized Mortgage Collateral

Securitized mortgage collateral consisted of the following:

	December 31, 2009	December 31, 2008
Mortgages secured by residential real estate	$ 10,565,629	$ 12,602,220
Mortgages secured by commercial real estate	1,434,259	1,532,086
Fair value adjustment	(6,333,766)	(8,239,882)
Total securitized mortgage collateral	$ 5,666,122	$ 5,894,424

The Company had troubled debt restructurings during 2009 and 2008, which are included in change in fair value of net trust assets.

Historically, master servicing rights were retained when the sub-servicing of mortgage servicing rights were sold and the corresponding mortgages were retained in CMO or REMIC securitizations. The retained master servicing rights were recorded as a separate retained asset for the unconsolidated securitizations, with impairment losses being recognized when the master servicing rights had an unamortized balance in excess of the estimated fair value. During 2008, the Company recorded $2.1 million in impairment for master servicing rights in unconsolidated securitizations. There were no master servicing rights for unconsolidated securitizations at December 31, 2009 and 2008.

As of December 31, 2009, the Company master serviced mortgages for others of approximately $2.0 billion that were primarily mortgages collateralizing REMIC securitizations, compared to $2.6 billion at December 31, 2008. Related fiduciary funds are held in trust for investors in non-interest bearing accounts and therefore not included in the Company's consolidated balance sheets. The Company may also be required to advance funds or cause loan servicers to advance funds to cover principal and interest payments not received from borrowers depending on the status of their mortgages.

Note D—Real Estate Owned (REO)

The Company's REO consisted of the following:

	December 31, 2009	December 31, 2008
REO	$ 176,800	$ 635,285
Impairment (1)	(34,080)	(35,533)
Ending balance	$ 142,720	$ 599,752
REO inside trusts	$ 142,364	$ 599,084
REO outside trusts (2)	356	668
Total	$ 142,720	$ 599,752

(1) Impairment represents the cumulative write-downs of net realizable value subsequent to foreclosure.

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(2) Amount represents REO related to former on-balance sheet securitizations, which were collapsed as the result of the Company exercising its clean-up call options. This REO is included in other assets in the accompanying consolidated balance sheets.

Note E—Other Assets

Other Assets

Other assets consisted of the following:

	December 31, 2009	December 31, 2008
Deferred charge (See Note A-15)	$ 13,144	$ 15,142
Prepaid expenses	2,588	2,881
Premises and equipment, net	2,541	2,613
Accounts receivable	1,740	903
Investment in capital trusts	257	2,166
Other assets	6,784	7,688
Total other assets	$ 27,054	$ 31,393

Premises and equipment, net

Premises and equipment are stated at cost, less accumulated depreciation or amortization. Depreciation on premises and equipment is recorded using the straight-line method over the estimated useful lives of individual assets, typically three to twenty years. Premises and equipment consisted of the following as of the dates indicated:

	December 31, 2009	December 31, 2008
Premises and equipment	$ 10,216	$ 9,552
Less: Accumulated depreciation	(7,675)	(6,939)
Total premises and equipment, net	$ 2,541	$ 2,613

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Note F—Securitized Mortgage Borrowings

Selected information on securitized mortgage borrowings for the periods indicated consisted of the following (dollars in millions):

		Securitized mortgage borrowings outstanding as of December 31,		Range of Percentages:		
Year of Issuance	Original Issuance Amount	2009	2008	Fixed Interest Rates	Interest Rate Margins over One-Month LIBOR (1)	Interest Rate Margins after Contractual Call Date (2)
2002	$ 3,876.1	$ 28.8	$ 36.9	5.25 - 12.00	0.27 - 2.75	0.54 - 3.68
2003	5,966.1	260.9	316.5	4.34 - 12.75	0.27 - 3.00	0.54 - 4.50
2004	17,710.7	1,874.3	2,249.4	3.58 - 5.56	0.25 - 2.50	0.50 - 3.75
2005	13,387.7	4,275.1	4,956.3	-	0.24 - 2.90	0.48 - 4.35
2006	5,971.4	4,081.2	4,546.3	6.25	0.10 - 2.75	0.20 - 4.13
2007	3,860.5	2,978.4	3,321.6	-	0.06 - 2.00	0.12 - 3.00
Subtotal securitized mortgage borrowings		13,498.7	15,427.0			
Fair value adjustment		(7,838.8)	(9,233.0)			
Total securitized mortgage borrowings		$ 5,659.9	$ 6,194.0			

(1) One-month LIBOR was 0.23 percent as of December 31, 2009.
(2) Interest rate margins are generally adjusted when the unpaid principal balance is reduced to less than 10-20 percent of the original issuance amount, or if certain other triggers are met.

As of December 31, 2009, expected principal reductions of the securitized mortgage borrowings, which is based on expected prepayment rates, was as follows (dollars in millions):

	Payments Due by Period				
	Total	Less Than One Year	One to Three Years	Three to Five Years	More Than Five Years
Securitized mortgage borrowings	$ 13,498.7	$ 1,764.5	$ 2,770.4	$ 1,646.5	$ 7,317.3

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Note G—Segment Reporting

The Company has three reporting segments, consisting of the long-term mortgage portfolio, mortgage and real estate services and discontinued operations. The following table presents the selected balance sheet data by reporting segment as of the dates indicated:

Balance Sheet Items as of December 31, 2009:	**Long-term Portfolio**	**Mortgage and Real Estate Services**	**Discontinued Operations**	**Reclassifications (1)**	**Consolidated**
Cash and cash equivalents	$ 7,940	$ 17,738	$ 172	$ (172)	$ 25,678
Restricted cash	-	1,253	501	(501)	1,253
Short-term investment	5,002	-	-	-	5,002
Securitized mortgage collateral	5,666,122	-	-	-	5,666,122
Loans held-for-sale	-	-	2,371	(2,371)	-
Other assets	162,829	7,548	1,436	3,044	174,857
Total assets	5,841,893	26,539	4,480	-	5,872,912
Total liabilities	5,831,936	6,391	19,152	-	5,857,479
Total stockholders' equity (deficit)	9,957	20,148	(14,672)	-	15,433
Balance Sheet Items as of December 31, 2008:					
Cash and cash equivalents	46,215	-	13	(13)	46,215
Restricted cash	1,243	-	19,832	(19,832)	1,243
Securitized mortgage collateral	5,894,424	-	-		5,894,424
Loans held-for-sale	454	-	107,769	(107,769)	454
Other assets	632,128	-	13,439	127,614	773,181
Total assets	6,574,464	-	141,053	-	6,715,517
Total liabilities	6,489,024	-	217,241	-	6,706,265
Total stockholders' equity (deficit)	85,440	-	(76,188)	-	9,252

(1) Amounts represent reclassifications of balances within the discontinued operations segment to reflect balances within continuing operations as presented in the accompanying consolidated balance sheets.

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The following table presents selected statement of operations information by reporting segment for the years ended December 31, 2009 and 2008:

Statement of Operations Items for the year ended December 31, 2009:	Long-term Portfolio	Mortgage and Real Estate Services	Discontinued Operations	Reclassifications (1)	Consolidated
Net interest income	$ 9,768	$ 12	$ (351)	$ 351	$ 9,780
Non-interest income – net trust assets	13,005	-	-	-	13,005
Change in fair value of long-term debt	765	-	-	-	765
Mortgage and real estate services fees	-	42,613	-	-	42,613
Other non-interest (expense) income	(20)	29	(8,530)	8,530	9
Non-interest expense and income taxes	(27,844)	(29,806)	11,196	(11,196)	(57,650)
(Loss) earnings from continuing operations	$ (4,326)	$ 12,848			8,522
Earnings from discontinued operations, net of tax			$ 2,315		2,315
Net earnings					$ 10,837
Statement of Operations Items for the year ended December 31, 2008:					
Net interest income	$ 13,738	$ (5)	$ 2,499	$ (2,499)	$ 13,733
Non-interest income – net trust assets	(27,730)	-	-	-	(27,730)
Change in fair value of long-term debt	24,879	-	-	-	24,879
Other non-interest income (expense)	45,305	(10)	(28,387)	28,387	45,295
Non-interest expense and income taxes	(49,646)	(1,762)	(23,604)	23,604	(51,408)
Earnings (loss) from continuing operations	$ 6,546	$ (1,777)			4,769
Loss from discontinued operations, net of tax			$ (49,492)		(49,492)
Net loss					$ (44,723)

(1) Amounts represent reclassifications of activity in the discontinued operations segment into loss from discontinued operations, net of tax as presented in the accompanying consolidated statements of operations.

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Note H—Employee Benefit Plans

401(k) Plan

After meeting certain employment requirements, employees can participate in the Company's 401(k) plan. Under the 401(k) plan, employees may contribute up to 25 percent of their salaries, pursuant to certain restrictions. The Company matches 50 percent of the first 4 percent of employee contributions. Additional contributions may be made at the discretion of the board of directors. During the years ended December 31, 2009 and 2008, the Company recorded approximately $337 thousand and $300 thousand, respectively, for basic and discretionary matching contributions.

Note I—Related Party Transactions

Historically, mortgage loans have been extended to officers and directors of the Company. All such loans were made at the prevailing market rates and conditions existing at the time. At December 31, 2009, the Company had a mortgage loan with one director at market terms.

The Company earns mortgage and real estate service fees by providing such services to its long-term mortgage portfolio.

Note J—Commitments and Contingencies (Continuing and Discontinued Operations)

Legal Proceedings

Mortgage-related Litigation

On June 27, 2000, a complaint captioned Michael P. and Shellie Gilmor v. Preferred Credit Corporation and Impac Funding Corporation, et al. was filed in the Circuit Court for Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loans Act and Merchandising Practices Act. In July 2001, the Missouri complaint was amended to include IMH and other Impac-related entities. A plaintiffs class was certified on January 2, 2003. On January 27, 2006 the Company filed pleadings in response to the Sixth Amended Complaint, including motions to dismiss. No opposition has yet been filed by the Plaintiffs. On February 3, 2004, a complaint captioned James and Jill Baker v. Century Financial Group, Inc, et al was filed in the Circuit Court of Clay County, Missouri, as a purported class action lawsuit alleging that the defendants violated Missouri's Second Loan Act and Merchandising Practices Act. An Answer was filed on March 7, 2005 and limited discovery has taken place since then.

On October 2, 2001, a complaint captioned Deborah Searcy, Shirley Walker, et al. v. Impac Funding Corporation, Impac Mortgage Holdings, Inc. et. al. was filed in the Wayne County Circuit Court, State of Michigan, as a purported class action lawsuit alleging that the defendants violated Michigan's Secondary Mortgage Loan Act, Credit Reform Act and Consumer Protection Act. A motion to dismiss an amended complaint has been filed, but not yet ruled upon.

The above purported class action lawsuits are similar in nature in that they allege that the mortgage loan originators violated the respective state's statutes by charging excessive fees and costs when making second mortgage loans on residential real estate. The complaints allege that IFC was a purchaser, and is a holder, along with other affiliated entities, of second mortgage loans originated by other lenders. The plaintiffs in the lawsuits are seeking damages that include disgorgement of interest paid, restitution, rescission, actual damages, statutory damages, exemplary damages, pre-judgment interest and punitive damages. No specific dollar amount of damages is specified in the complaints.

On November 9, 2007, and separately on August 25, 2008, two matters were filed against IFC in Orange County in the Superior Court of California, as case nos. 07CC11612 and 00110553, respectively, by Citimortgage, Inc., alleging claims for breach of contract and damages based upon representations and warranties made in conjunction with whole loan sales. These actions seek combined damages in excess of $4.2 million.

On June 28, 2008 a matter was filed against IFC in the Circuit Court of the Eighteenth Judicial District, Dupage County in Illinois, as case no. 2008L000721, by TR Mid America Plaza Corp., seeking damages for breach of contract (a lease agreement) in excess of $1.1 million plus such amount as determined through the date of judgment and payment of attorneys fees and costs.

On September 24, 2009, an action was filed in the United States district Court, Central district of California entitled Federal Deposit Insurance Corporation as Receiver for Indymac bank, F.S.B. v. Impac Funding Corporation as case No. CV09-6965 RC. The case claims damages for breach of contract based upon repurchase claims for loans sold to Indymac Bank. The action seeks $2.1 million in damages plus interest and attorneys fees.

Securities Litigation

On August 17, 2007, a purported class action matter was filed in the United States District Court, Central District of California, against IMH and several of its senior officers entitled Sheldon Pittleman v. Impac Mortgage Holdings, Inc., et al. The action alleges against all defendants violations of Section 10(b) and 10b-5 of the Securities Exchange Act of 1934 (the "Exchange Act") and against the individual defendants violations of Section 20(a) of the Exchange Act. Plaintiffs contend that the defendants caused the Company's stock to trade at artificially inflated prices through false and misleading statements and intentional or reckless disregard of basic accounting principles. The complaint seeks compensatory damages for all damages sustained as a result of the defendants' actions, including reasonable costs and expenses and other relief as the court may deem proper. On October 3, 2007, a similar case was filed in the same Court entitled Richard Abrams v. Impac Mortgage Holdings, Inc., et al. This action makes allegations similar to those in the Pittleman action and also seeks similar recovery. These matters were consolidated with lead counsel appointed by the court. A Consolidated Complaint captioned Sheldon Pittleman v. Impac Mortgage Holdings, Inc., et al was filed on January 8, 2008. A motion to dismiss was filed by the defendants on March 10, 2008 and that motion was granted. On October 27, 2008, a Third Amended Complaint was filed, and on December 15, 2008, the defendants filed a motion to dismiss, which the court sustained without leave to amend on March 10, 2009. On April 7, 2009, the plaintiffs filed a Notice of Appeal of the Order Granting the Motion to Dismiss With Prejudice and the Judgment thereon. That appeal is still pending.

The Company believes that it have meritorious defenses to the above claims and intends to defend these claims vigorously and as such the Company believes the final outcome of such matters will not have a material adverse effect on its financial condition or results of operations. Nevertheless, litigation is uncertain and the Company may not prevail in the lawsuits and can express no opinion as to their ultimate resolution. An adverse judgment in any of these matters could have a material adverse effect on the Company's financial position and results of operations.

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Other Litigation

We are a party to other litigation and claims which are normal in the course of our operations. While the results of such other litigation and claims cannot be predicted with certainty, we believe the final outcome of such matters will not have a material adverse effect on our financial condition or results of operations.

Lease Commitments

The Company leases office space under various operating lease agreements. Minimum premises rental commitments under non-cancelable leases are as follows:

Year 2010	$	8,223
Year 2011		7,733
Year 2012		7,350
Year 2013		7,266
Year 2014		7,255
Year 2015 and thereafter		13,300
Subtotal		51,127
Sublet income		(21,894)
Total lease commitments	$	29,233

Total rental expense for the years ended December 31, 2009 and 2008 was $1.2 million and $4.9 million, respectively. During 2009 and 2008, approximately $3.7 million and $2.4 million, respectively, were charged to continuing operations, and is included in occupancy expense in the consolidated statements of operations. Included in rent expense for 2009 is a reduction of $2.5 million related to changes in estimated lease liabilities as a result of changes in our expected minimum future lease payments at the discontinued operations, compared to a charge of $2.5 million in 2008.

Repurchase Reserve

When the Company sells loans through whole loan sales it is required to make normal and customary representations and warranties about the loans to the purchaser. The Company's whole loan sale agreements generally require it to repurchase loans if the Company breaches a representation or warranty given to the loan purchaser. In addition, the Company may be required to repurchase loans as a result of borrower fraud or if a payment default occurs on a mortgage loan shortly after its sale. As of December 31, 2009 and 2008, the Company had a liability for losses on loans sold with representations and warranties totaling $11.0 million and $13.9 million, respectively, included in liabilities from discontinued operations in the accompanying consolidated balance sheets.

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Geographic Concentration

The aggregate unpaid principal balance of loans in the Company's long-term mortgage portfolio secured by properties in California and Florida was $6.4 billion and $1.5 billion, or 51 percent and 12 percent, respectively, at December 31, 2009.

Note K—Derivative Instruments

As of December 31, 2009, the net derivative liability included in the securitization trusts was $126.5 million, as compared to $273.5 million at December 31, 2008. The derivative values are based on the net cash receipts or payments expected to be received or paid by the bankruptcy remote trusts. The fair value of the derivatives fluctuates with changes in the future expectation of LIBOR, in addition to cash receipts or payments.

On September 15, 2008, Lehman Brothers Holdings Inc. ("LBHI") filed a petition for protection under Chapter 11 of the U.S. Bankruptcy Code. As of that date, LBHI, through affiliated companies, was an interest rate swap counterparty to several of the Company's CMO and REMIC securitizations. At December 31, 2009, the estimated fair value of derivatives with LBHI, through its affiliated companies was $49.2 million and is included in derivative liabilities in the accompanying consolidated balance sheet. As the related securitization trusts are non-recourse to the Company, the Company is not required to replace or otherwise settle any derivative positions affected by counterparty default within the consolidated trusts.

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Note L—Reconciliation of Earnings (Loss) Per Share

The following table presents the computation of basic and diluted earnings (loss) per common share, including the dilutive effect of stock options and cumulative redeemable preferred stock outstanding for the periods indicated:

	For the year ended December 31, 2009	2008
Numerator for basic earnings (loss) per share:		
Earnings from continuing operations	$ 8,522	$ 4,769
Cash dividends on cumulative redeemable preferred stock	(7,443)	(11,165)
Earnings (loss) from discontinued operations	2,315	(49,492)
Earnings (loss) per share available to common stockholders before redemption of preferred stock (1)	$ 3,394	$ (55,888)
Denominator for basic earnings (loss) per share (2):		
Basic weighted average common shares outstanding during the year	7,633	7,610
Denominator for diluted earnings (loss) per share (2):		
Basic weighted average common shares outstanding during the year	7,633	7,610
Net effect of dilutive stock options	112	-
Diluted weighted average common shares outstanding during the year	7,745	7,610
Earnings (loss) per common share – basic and diluted:		
Earnings (loss) from continuing operations	$ 0.14	$ (0.84)
Earnings (loss) from discontinued operations	0.30	(6.50)
Earnings (loss) per share available to common stockholders before redemption of preferred stock (1)	$ 0.44	$ (7.34)

(1) As discussed in Note M, the difference between the carrying value of the tendered preferred stock ($106.1 million) and the amount paid for the shares ($1.3 million) was recognized as a decrease in retained deficit in 2009 and is reflected in the consolidated statements of changes in stockholders' equity (deficit) as a reclassification from additional paid in capital. Including the redemption, total basic and diluted earnings per share from continuing operations available to common stockholders were $14.18 and $13.97, respectively.

(2) Share amounts presented in thousands.

The anti-dilutive stock options outstanding for the years ending December 31, 2009 and 2008 were 468 thousand and 1.1 million shares, respectively.

Note M—Redeemable Preferred Stock

In June 2009, the Company completed the Offer to Purchase and Consent Solicitation (the "Offer to Purchase") of all of its 9.375% Series B Cumulative Redeemable Preferred Stock and 9.125%

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Series C Cumulative Redeemable Preferred Stock (which are sometimes collectively hereinafter referred to as the Preferred Stock). The Series B Preferred Stock had a liquidation preference of $50 million and the Series C Preferred Stock had a liquidation preference of $111.8 million, for a total of $161.8 million. Upon expiration of the Offer to Purchase, holders of approximately 68% of the Preferred Stock tendered an aggregate of 4,378,880 shares. Holders of the Company's Series B Preferred Stock tendered 1,323,844 shares at $0.29297 per share for a total of $388 thousand. Holders of the Company's Series C Preferred Stock tendered 3,055,036 shares at $0.28516 per share for a total of $871 thousand. The aggregate purchase price for the Preferred Stock was $1.3 million. In addition, in connection with completing the offer to purchase the Company paid $7.4 million accumulated but unpaid dividends on its Preferred Stock. With the total cash payment of $8.7 million, the Company eliminated $109.5 million of liquidation preference on its Preferred Stock. After the completion of the Offer to Purchase, the Company has outstanding $52.3 million liquidation preference of Series B and Series C Preferred Stock. As this transaction is considered a redemption for accounting purposes, in accordance with FASB ASC 505-10 and 260-10-S99, the difference between the carrying value of the tendered preferred stock ($106.1 million) and the amount paid for the shares ($1.3 million) was recognized as a decrease in retained deficit in 2009 and is reflected in the consolidated statements of changes in stockholders' equity (deficit) as a reclassification from additional paid in capital. Including the redemption, total basic and diluted earnings per share from continuing operations available to common stockholders were $14.18 and $13.97, respectively.

With completion of the Offer to Purchase and modification to the terms of the Series B Preferred Stock and Series C Preferred Stock, the Company eliminated its $14.9 million annual preferred dividend obligation.

As a condition to completing the Offer to Purchase, the common stockholders and preferred stockholders approved and consented to modify the terms of both the Series B Cumulative Preferred Stock and Series C Cumulative Preferred Stock to (i) make Preferred Stock dividends, if any, non-cumulative, (ii) eliminate the provisions prohibiting the payment of dividends on junior stock and prohibiting the purchase or redemption of junior or parity stock if full cumulative dividends for all past dividend periods are not paid or declared and set apart for payment, (iii) eliminate any premiums payable upon the liquidation, dissolution or winding up of the Company, (iv) eliminate the provision prohibiting the Company from electing to redeem Preferred Stock prior to the fifth year anniversary of the issuance of such preferred stock, (v) eliminate the provision prohibiting the Company from redeeming less than all of the outstanding Preferred Stock if full cumulative dividends for all past dividend periods have not been paid or declared and set apart for payment, (vi) eliminate the right of holders of Preferred Stock to elect two directors if dividends are in arrears for six quarterly periods and (vii) eliminate the right of holders of Preferred Stock to consent to or approve the authorization or issuance of preferred stock senior to the Preferred Stock. The holders of each series of Preferred Stock retain the right to a $25.00/share liquidation preference in the event of a liquidation of the Company and the right to receive dividends on the Preferred Stock if any such dividends are declared.

Note N—Long-term Debt

Trust Preferred Securities

During 2005, the Company formed four wholly-owned trust subsidiaries (Trusts) for the purpose of issuing an aggregate of $99.2 million of trust preferred securities (the Trust Preferred Securities). All proceeds from the sale of the Trust Preferred Securities and the common securities issued by the Trusts were originally invested in $96.3 million of junior subordinated debentures (subordinated debentures), which became the sole assets of the Trusts. The Trusts pay dividends on the Trust Preferred Securities at the same rate as paid by the Company on the debentures held by the Trusts.

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The following table shows the remaining balance of Trust Preferred Securities issued as of December 31, 2009 and 2008:

	December 31, 2009	December 31, 2008
Trust preferred securities (1)	$ 8,500	$ 88,250
Common securities	263	2,994
Fair value adjustment	(6,501)	(75,841)
Total	$ 2,262	$ 15,403

(1) Stated maturity of July 30, 2035. Redeemable at par at any time after July 30, 2010. Requires quarterly distributions initially at a fixed rate of 8.55 percent per annum through July 30, 2010 and thereafter at a variable rate of three-month LIBOR plus 3.75 percent per annum.

If an event of default occurs (such as a payment default that is outstanding for 30 days, a default in performance, a breach of any covenant or representation, bankruptcy or insolvency of the Company or liquidation or dissolution of the Trust), either the trustee of the Notes or the holders of at least 25 percent of the aggregate principal amount of the outstanding Notes may declare the principal amount of, and all accrued interest on, all the Notes to be due and payable immediately, or if the holders of the Notes fail to make such declaration, the holders of at least 25 percent in aggregate liquidation amount of the Trust Preferred Securities outstanding shall have a right to make such declaration.

In December 2008, the Company fully satisfied $8.0 million in outstanding Trust Preferred Securities of Impac Capital Trust #4 for $1.2 million.

In January 2009, the Company fully satisfied $25.0 million in outstanding Trust Preferred Securities of Impac Capital Trust #2 for $3.75 million.

In June 2009, the Company purchased and canceled $1.0 million in outstanding Trust Preferred Securities of Impac Capital Trust #4 for $150 thousand.

In August 2009, the Company purchased and canceled $2.5 million in outstanding Trust Preferred Securities of Impac Capital Trust #4 for $375 thousand, resulting in $8.5 million in outstanding Trust Preferred Securities. In July 2009, the Company became current and is no longer deferring interest on its remaining trust preferred securities. The Company no longer has the right to defer interest payments on its remaining Trust Preferred Securities.

Junior Subordinated Notes

In May 2009, the Company exchanged an aggregate of $51.3 million in Trust Preferred Securities of Impac Capital Trusts #1 and #3 for junior subordinated notes with an increased aggregate principal balance of $62.0 million and a maturity date in March 2034. Under the terms of the exchange, in consideration for the increase in principal, the interest rate for each note was reduced from the original

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8.01 percent to 2.00 percent through 2013 with increases of 1.00 percent per year through 2017. Starting in 2018, the interest rates become variable at 3-month LIBOR plus 375 basis points. In connection with the exchange, the Company paid a fee of $0.5 million.

The following table shows the remaining balance of junior subordinated notes issued as of December 31, 2009 and 2008:

	December 31, 2009	December 31, 2008
Junior subordinated notes	$ 62,000	-
Fair value adjustment	(54,489)	-
Total	$ 7,511	-

Note O—Note Payable

In October 2009, the Company entered into a settlement agreement (the Settlement Agreement) with its remaining reverse repurchase facility lender to settle the restructured financing. The Settlement Agreement retires the current facility and removed any further exposure associated with the line or the loans that secured the line. Pursuant to the terms of the Settlement Agreement, the Company settled the $140.0 million balance of the reverse repurchase line by (i) transferring the loans securing the line to the lender at their approximate carrying values, (ii) making in a cash payment of $20.0 million and (iii) entering into a credit agreement with the lender (the Credit Agreement) for a $33.9 million term loan. The borrowing under the Credit Agreement, which is to be paid over 18 months, bears interest at a rate of one-month LIBOR plus 350 basis points and requires a monthly principal and interest payment of $1.5 million. A $10.0 million principal payment is due by April 2010 as part of the Credit Agreement. At December 31, 2009, the balance of the note payable was $31.1 million.

The borrowing under the Credit Agreement may be prepaid by the Company at any time. Upon any sale of assets, excluding mortgage assets, issuance of debt, excluding warehouse borrowings, or equity by the Company, then all of the proceeds therefrom are required to be applied to the borrowing under the Credit Agreement, or in the case of an equity issuance, applied to the $10.0 million principal payment due by April 2010.

In addition to the restrictions above, the Credit Agreement requires the Company to maintain certain business and financial covenants until the borrowing is paid in full. These covenants place several restrictions on the Company and its operations, including limiting its ability to pay dividends, issue equity interests, make investments over certain amounts without prior consent or enter into any transaction to merge or consolidate. The covenants also require the Company to maintain cash and cash equivalents of $10.0 million (based on certain calculations) and stockholders' equity greater than zero (based on certain calculations). At December 31, 2009, the Company was in compliance with these covenants.

Note P—Income Taxes

Effective January 1, 2009, the Company revoked its election to be taxed as a real estate investment trust (REIT). As a result of revoking this election, the Company is subject to income taxes as a regular (Subchapter C) corporation.

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Income taxes for the year ended December 31, 2009 were as follows:

	For the year ended December 31, 2009
Current income taxes:	
Federal	$ 1,997
State	20
Total current income taxes	2,017
Deferred income taxes:	
Federal	-
State	-
Total deferred income taxes	-
Total income tax expense	$ 2,017

Deferred tax assets are comprised of the following temporary differences between the financial statement carrying value and the tax basis of assets:

	December 31, 2009
Deferred tax assets:	
REMIC securitizations	$ 376,348
Federal and state net operating losses	236,151
Derivative liabilities	53,952
Fair value of financial instruments	44,893
REO – net realizable value	14,331
Depreciation and amortization	2,090
Other	575
Total gross deferred tax assets	728,340
Deferred tax liabilities:	
Non-accrual loans	(185)
Valuation allowance	(728,155)
Total net deferred tax asset	$ -

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data or as otherwise indicated)

The following is a reconciliation of income taxes to the expected statutory federal corporate income tax rates for the years ended December 31, 2009:

	For the year ended December 31, 2009
Expected income tax	$ 3,793
State tax, net of federal benefit	764
Change in valuation allowance	(5,887)
Deferred charge	2,017
Other permanent items	1,330
Total income tax expense	$ 2,017

As of December 31, 2009, the Company had estimated federal and California net operating loss carryforwards in the amount of $838.0 million and $819.5 million, respectively, of which $276.4 million (federal) relate to discontinued operations. Federal and state net operating loss carryforwards begin to expire in 2020 and 2013, respectively.

The Company has recorded a full valuation allowance against its deferred tax assets as management believes that as of December 31, 2009 it is more likely than not that the deferred tax assets will not be recoverable.

As of December 31, 2009 and 2008, the Company had a tax receivable balance of zero and $6.1 million, respectively. During the year ended December 31, 2009, the Company received $15.8 million in tax refunds, including interest, from the utilization of net operating losses (NOL). A Federal refund in the amount of $8.9 million was a result of an election to carryback a NOL five years pursuant to 2009 Federal legislation, *The Worker, Homeownership, and Business Assistance Act of 2009* and is included in the earnings from discontinued operations. At December 31, 2009 discontinued operations had gross deferred tax assets of $115.7 million which had a full valuation allowance.

The Company was examined by the State of California Franchise Tax Broad through tax year 2003 and by the Internal Revenue Service (specifically Impac Funding Corporation and subsidiaries) through 2006, with no significant resulting changes. The Company files numerous tax returns in various jurisdictions. While the Company is subject to examination by various taxing authorities, we believe there are no unresolved issues or claims likely to be material to our financial position. As of December 31, 2009 the Company has no material uncertain tax positions.

Note Q—Discontinued Operations

During 2007, the Company announced plans to exit substantially all of its non-conforming mortgage, commercial, retail, and warehouse lending operations. Consequently, the amounts related to these operations are presented as discontinued operations in the Company's consolidated statements of operations and comprehensive loss and its consolidated statements of cash flows, and the asset groups to be exited are reported as assets and liabilities of discontinued operations in its consolidated balance sheets for the periods presented.

IMPAC MORTGAGE HOLDINGS, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data or as otherwise indicated)

The following table presents the discontinued operations' condensed balance sheets as of December 31, 2009 and 2008:

	Discontinued Operations December 31, 2009	Discontinued Operations December 31, 2008
Cash and cash equivalents	$ 172	$ 13
Restricted cash	501	19,832
Loans held-for-sale	2,371	107,769
Other assets	1,436	13,439
Total assets	4,480	141,053
Total liabilities	19,152	217,241
Total stockholders' deficit	$ (14,672)	$ (76,188)

The following table presents discontinued operations' condensed statement of operations for the years ended December 31, 2009 and 2008.

	Discontinued Operations for the year ended December 31, 2009	Discontinued Operations for the year ended December 31, 2008
Net interest income	$ (351)	$ 2,499
Other non-interest (expense) income	(8,530)	(28,387)
Non-interest expense	2,331	(23,604)
Net earnings before income tax benefit	(6,550)	(49,492)
Income tax benefit	8,865	-
Net earnings (loss)	$ 2,315	$ (49,492)

Exhibit 10.17

$33,850,000

CREDIT AGREEMENT

dated as of October 30, 2009,

among

IMPAC MORTGAGE HOLDINGS, INC.,
IMPAC FUNDING CORPORATION,
IMPAC WAREHOUSE LENDING GROUP, INC., and
INTEGRATED REAL ESTATE SERVICE CORP.

as Borrowers,

UBS REAL ESTATE SECURITIES, INC.,

as Lender

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CREDIT AGREEMENT

This CREDIT AGREEMENT (this "**Agreement**") dated as of October 30, 2009, among IMPAC MORTGAGE HOLDINGS, INC. ("**Holdings**"), IMPAC FUNDING CORPORATION ("**IFC**"), IMPAC WAREHOUSE LENDING GROUP, INC. ("**IWLG**" and, together with Holdings and IFC, each, an "**ARMRA Borrower**" and, collectively, the "**ARMRA Borrowers**"), INTEGRATED REAL ESTATE SERVICE CORP. ("**IRES**" and, together with the ARMRA Borrowers, each, a "**Borrower**" and, collectively, the "**Borrowers**") and UBS REAL ESTATE SECURITIES, INC. ("**UBS RESI**") or any other Lender, as assignee of UBS RESI.

WITNESSETH:

WHEREAS, the ARMRA Borrowers and UBS RESI were parties to that certain Amended and Restated Master Repurchase Agreement dated September 11, 2008 (the "**ARMRA**").

WHEREAS, in connection with the ARMRA, the ARMRA Borrowers and UBS RESI have entered into that certain Settlement Agreement dated as of the date hereof (the "**Settlement Agreement**") pursuant to which the ARMRA Borrowers are required to make certain payments and to take certain other actions described therein.

WHEREAS, each of the Borrowers and UBS RESI acknowledge and agree that the ARMRA Borrowers will owe UBS RESI $33,850,000 in connection with the full and complete satisfaction of the ARMRA Borrowers' obligations under the ARMRA after the making of the payments pursuant to the Settlement Agreement, and the taking of such other actions, required on the date hereof pursuant to the Settlement Agreement and that such $33,850,000 obligation shall be deemed to be, and shall be evidenced as, two term loans (a Tranche A Loan in the initial principal amount of $23,850,000 and a Tranche B Loan in the initial principal amount of $10,000,000), payable by each of the Borrowers pursuant to the terms hereof.

WHEREAS, IRES is a subsidiary of Holdings and will obtain substantial benefits from the settlement provided under the Settlement Agreement.

NOW, THEREFORE, in consideration of the agreements set forth in the Settlement Agreement, UBS RESI, as the initial Lender, and each of the Borrowers are willing to evidence the aforementioned $33,850,000 owed to UBS RESI by the ARMRA Borrowers as two term loans extended to, and payable by, each of the Borrowers, on a joint and several basis and otherwise on the terms and subject to the conditions set forth herein. Accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01 **Defined Terms**. As used in this Agreement, the following terms shall have the meanings specified below:

"**ABR**", when used in reference to any Loan or Borrowing, is used when such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"**ABR Borrowing**" shall mean a Borrowing comprised of ABR Loans.

"**ABR Loan**" shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Article II.

"**Acquisitions**" shall have the meaning assigned to such term in Section 6.07(b).

"**Adjusted LIBOR Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) determined by the Lender to be equal to the sum of (i) (a) the LIBOR Rate for such Eurodollar Borrowing in effect for such Interest Period divided by (b) 1 *minus* the Statutory Reserves (if any) for such Eurodollar Borrowing for such Interest Period plus (ii) the Applicable Margin.

"**Affiliate**" shall mean, when used with respect to a specified person:

(A) an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of such specified person, other than an entity that holds such securities -

(i) in a fiduciary or agent capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(B) a person 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by such specified person, or any an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of such specified person, other than an entity that holds such securities -

(i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or

(ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;

(C) a person whose business is operated under a lease or operating agreement by such specified person, or a person substantially all of whose property is operated under an operating agreement with such specified person; or

(D) an entity that operates the business or substantially all of the property of such specified person under a lease or operating agreement.

"**Agency**" means Ginnie Mae, Fannie Mae or Freddie Mac, as applicable.

"**Agency Eligible Mortgage Loan**" means, a mortgage loan that is in compliance with the eligibility requirements for swap or purchase by the designated Agency under the applicable Agency Guide and designated Agency Program, a mortgage loan that is insured by a FHA Mortgage Insurance Contract or a mortgage loan that is guaranteed by a VA Loan Guaranty Agreement.

"**Agency Guide**" means in respect of Ginnie Mae, the Ginnie Mae Mortgage-Backed Securities Guide; in respect of Fannie Mae, the Fannie Mae Selling Guide and the Fannie Mae Servicing

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Guide; and in respect of Freddie Mac, the Freddie Mac Sellers' and Servicers' Guide; in each case as any of the foregoing may be amended from time to time.

"**Agency Program**" means the specific mortgage-backed securities swap or purchase program under the relevant Agency Guide or as otherwise approved by the relevant Agency.

"**Agreement**" shall have the meaning assigned to such term in the preamble hereto.

"**Alternate Base Rate**" shall mean, for any day, a rate per annum (rounded upward, if necessary, to the nearest 1/100th of 1%) equal to the sum of (i) the greater of (a) the Base Rate in effect on such day and (b) the Federal Funds Effective Rate in effect on such day *plus* 0.50% plus (ii) the Applicable Margin. If the Lender shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate for any reason, including the inability of the Lender to obtain sufficient quotations in accordance with the terms of the definition thereof, the Alternate Base Rate shall be determined without regard to clause (i)(b) of the preceding sentence until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Base Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change in the Base Rate or the Federal Funds Effective Rate, respectively.

"**Anti-Terrorism Laws**" shall have the meaning assigned to such term in Section 3.20.

"**Applicable Margin**" shall mean, with respect to any Tranche A Loan or Tranche B Loan , as the case may be, the applicable percentage set forth in Annex I under the appropriate caption.

"**Approved Fund**" shall mean any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"**ARMRA**" shall have the meaning assigned to such term in the first recital hereto.

"**ARMRA Borrower**" and "**ARMRA Borrowers**" shall have the meanings assigned to such term in the preamble hereto.

"**Asset Sale**" shall mean any conveyance, sale, lease, sublease, assignment, transfer or other disposition (including by way of merger or consolidation and including any Sale and Leaseback Transaction) of any property excluding (i) sales of mortgage loans originated or acquired by a Company after the Closing Date (and related servicing rights) and real estate owned by a Company relating to any such mortgage loan (including, without limitation, any such sales of mortgage loans related to the Re-Warehousing Business), (ii) sales of mortgage loans originated or acquired by a Company before the Closing Date (and related servicing rights) and real estate owned by a Company relating to any such mortgage loan (provided that the exclusion contained in this clause (ii) shall apply only to the first $2,000,000 of such sales (determined based on purchase price received)) and (iii) inventory and dispositions of cash and Cash Equivalents, in each case, in the ordinary course of business, by any Borrower or any of its Subsidiaries.

"**Assignment and Assumption**" shall mean an assignment and assumption entered into by a Lender and an Eligible Assignee.

"**Attributable Indebtedness**" shall mean, when used with respect to any Sale and Leaseback Transaction, as at the time of determination, the present value (discounted at a rate equivalent to

Borrower's then-current weighted average cost of funds for borrowed money as at the time of determination, compounded on a semi-annual basis) of the total obligations of the lessee for rental payments during the remaining term of the lease included in any such Sale and Leaseback Transaction.

"**Base Rate**" shall mean, for any day, a rate per annum that is equal to the corporate base rate of interest established by the Lender from time to time; each change in the Base Rate shall be effective on the date such change is effective. The corporate base rate is not necessarily the lowest rate charged by the Lender to its customers.

"**Board**" shall mean the Board of Governors of the Federal Reserve System of the United States.

"**Board of Directors**" shall mean, with respect to any person, (i) in the case of any corporation, the board of directors of such person, (ii) in the case of any limited liability company, the board of managers of such person, (iii) in the case of any limited partnership, the Board of Directors of the general partner of such person and (iv) in any other case, the functional equivalent of the foregoing.

"**Borrower**" and "**Borrowers**" shall have the meanings assigned to such term in the preamble hereto.

"**Borrowing**" shall mean Loans of the same Class and Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which banks in New York City or the State of California are authorized or required by law to close; *provided*, *however*, that when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

"**Capital Assets"** shall mean, with respect to any person, all equipment, fixed assets and Real Property or improvements of such person, or replacements or substitutions therefor or additions thereto, that, in accordance with GAAP, have been or should be reflected as additions to property, plant or equipment on the balance sheet of such person.

"**Capital Lease Obligations**" of any person shall mean the obligations of such person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"**Cash Equivalents**" shall mean, as to any person, (a) securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (*provided* that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person; (b) time deposits and certificates of deposit of the Lender or any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500.0 million and a rating of "A" (or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year

from the date of acquisition by such person; (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities; and (d) investments in money market funds substantially all of whose assets are comprised of securities of the types described in clauses (a) through (d) above; and (f) demand deposit accounts maintained in the ordinary course of business with a commercial bank meeting criteria set forth in clause (b) above.

"**Casualty Event**" shall mean any involuntary loss of title, any involuntary loss of, damage to or any destruction of, or any condemnation or other taking (including by any Governmental Authority) of, any property of any Borrower or any of its Subsidiaries. "Casualty Event" shall include but not be limited to any taking of all or any part of any Real Property of any person or any part thereof, in or by condemnation or other eminent domain proceedings pursuant to any Requirement of Law, or by reason of the temporary requisition of the use or occupancy of all or any part of any Real Property of any person or any part thereof by any Governmental Authority, civil or military, or any settlement in lieu thereof.

A "**Change in Control**" shall be deemed to have occurred if:

(a) Holdings at any time ceases to own 100% of the Equity Interests of the other three Borrowers;

(b) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause such person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock of Holdings representing more than 50% of the voting power of the total outstanding Voting Stock of Holdings; or

(c) the existing directors of Holdings for any reason cease to constitute a majority of the board of directors of Holdings.

"**Change in Law**" shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

"**Charges**" shall have the meaning assigned to such term in Section 9.14.

"**Class**," when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Tranche A Loans or Tranche B Loans.

"**Closing Date**" shall mean the date hereof.

"**Code**" shall mean the Internal Revenue Code of 1986.

"**Companies**" shall mean Holdings and its Subsidiaries; and "**Company**" shall mean any one of them.

"**Consolidated Assets**" shall mean, as at any date of determination, the total assets of the Companies which may properly be classified as assets on a consolidated balance sheet of the Companies in accordance with GAAP.

"**Consolidated Liabilities**" shall mean, as at any date of determination, the total liabilities of the Companies which may properly be classified as liabilities on a consolidated balance sheet of the Companies in accordance with GAAP.

"**Contested Lien Conditions**" shall mean, with respect to any Permitted Lien of the type described in clauses (a), (b), (e) and (f) of Section 6.02, the following conditions:

(a) Borrowers shall cause any proceeding instituted contesting such Lien to stay the sale or forfeiture of any portion of the property related to such Lien; and

(b) at the option and at the request of the Lender, to the extent such Lien is in an amount in excess of $1,000,000, the appropriate Borrower shall maintain cash reserves in an amount sufficient to pay and discharge such Lien and the Lender's reasonable estimate of all interest and penalties related thereto.

"**Contingent Obligation**" shall mean, as to any person, any obligation, agreement, understanding or arrangement of such person guaranteeing or intended to guarantee any Indebtedness, leases, dividends or other obligations ("**primary obligations**") of any other person (the "**primary obligor**") in any manner, whether directly or indirectly, including any obligation of such person, whether or not contingent, (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) with respect to bankers' acceptances, letters of credit and similar credit arrangements, until a reimbursement obligation arises (which reimbursement obligation shall constitute Indebtedness); or (e) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; *provided*, *however*, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business, any servicer advances reimbursable by a Person other than one of the Companies or any product warranties. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such person may be liable, whether singly or jointly, pursuant to the terms of the instrument evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"**Control**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise, and the terms "**Controlling**" and "**Controlled**" shall have meanings correlative thereto.

"**Debt Issuance**" shall mean the incurrence by Holdings or any of its Subsidiaries of any Indebtedness after the Closing Date (other than as permitted by Section 6.01).

"**Default**" shall mean any event, occurrence or condition which is, or upon notice, lapse of time or both would constitute, an Event of Default.

"**Default Rate**" shall have the meaning assigned to such term in Section 2.03(c).

"**Disqualified Capital Stock**" shall mean any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Final Maturity Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interests referred to in (a) above, in each case at any time on or prior to the Final Maturity Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations; *provided*, *however*, that any Equity Interests that would not constitute Disqualified Capital Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the Final Maturity Date shall not constitute Disqualified Capital Stock if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the repayment in full of the Obligations.

"**Dividend**" with respect to any person shall mean that such person has declared or paid a dividend or returned any equity capital to the holders of its Equity Interests or authorized or made any other distribution, payment or delivery of property (other than Qualified Capital Stock of such person) or cash to the holders of its Equity Interests as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for consideration any of its Equity Interests outstanding (or any options or warrants issued by such person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes, or shall have permitted any of its Subsidiaries to purchase or otherwise acquire for consideration any of the Equity Interests of such person outstanding (or any options or warrants issued by such person with respect to its Equity Interests). Without limiting the foregoing, "Dividends" with respect to any person shall also include all payments made or required to be made by such person with respect to any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans (other than any stock appreciation rights, plans, equity incentive or achievement plans or any similar plans offered solely to employees of one or more of the Companies) or setting aside of any funds for the foregoing purposes.

"**dollars**" or "**$**" shall mean lawful money of the United States.

"**Eligible Assignee**" shall mean (i) an Affiliate of the Lender, (ii) an Approved Fund and (iii) any other person so long as, in the case of clause (iii), (a) an agreement has been executed between such person and UBS RESI pursuant to which UBS RESI is appointed as administrative agent for such person with respect to this Agreement or (b) this Agreement has been amended to provide for an administrative agent and UBS RESI remains as administrative agent after an assignment to such person (and each of the parties hereto agrees to cooperate in the execution of any such amendment at the request of UBS RESI).

"**Embargoed Person**" shall have the meaning assigned to such term in Section 6.19.

"**Equity Interest**" shall mean, with respect to any person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such person, including, if such person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, whether outstanding on the date hereof or issued after the Closing Date, but excluding debt securities convertible or exchangeable into such equity.

"**Equity Issuance**" shall mean, without duplication, (i) any issuance or sale by Holdings after the Closing Date of any Equity Interests in Holdings (including any Equity Interests issued upon exercise of any warrant or option other than any warrant or option (a) issued solely to employees of one or more of the Companies prior to the Closing Date or (b) issued to Experience 1, Inc. (or any other entity) or any employee or officer thereof as payment for services rendered by Experience 1, Inc. or such other entity to a Company (as long as not more than 10% of the amount of outstanding shares of Holdings, as of the Closing Date, are issued, in aggregate over term of Credit Agreement, to Experience 1, Inc. or such other entity or any employee or officer thereof) or (ii) any contribution to the capital of Holdings; *provided*, *however*, that an Equity Issuance shall not include any Preferred Stock Issuance or Debt Issuance.

"**Eurodollar Borrowing**" shall mean a Borrowing comprised of Eurodollar Loans.

"**Eurodollar Loan**" shall mean any Loan bearing interest at a rate determined by reference to the Adjusted LIBOR Rate in accordance with the provisions of Article II.

"**Event of Default**" shall have the meaning assigned to such term in Section 7.01.

"**Excess Amount**" shall have the meaning assigned to such term in Section 2.05(g).

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Excluded Taxes**" shall mean, with respect to the Lender or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), franchise taxes imposed on it (in lieu of net income taxes) and branch profits taxes imposed on it, by a jurisdiction (or any political subdivision thereof) as a result of the recipient being organized or having its principal office or, in the case of the Lender, its applicable lending office in such jurisdiction and (b) in the case of a Foreign Lender, any U.S. federal withholding tax that (i) is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new lending office) or (ii) is attributable to such Foreign Lender's failure to comply with Section 2.10(e).

"**Executive Order**" shall have the meaning assigned to such term in Section 3.20(a).

"**Existing Lien**" shall have the meaning assigned to such term in Section 6.02(c).

"**Fannie Mae**" means the Federal National Mortgage Association and its successors in interest.

"**Federal Funds Effective Rate**" shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System of the United States arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the

average of the quotations for the day for such transactions received by the Lender from three federal funds brokers of recognized standing selected by it.

"**FHA**" shall mean the Federal Housing Administration, an agency within the United States Department of Housing and Urban Development, or any successor thereto.

"**FHA Mortgage Insurance Contract**" shall mean the contractual obligation of the FHA with respect to the insuring of a mortgage loan.

"**Final Maturity Date**" shall mean the Tranche A Maturity Date.

"**Financial Officer**" of any person shall mean the chief financial officer, principal accounting officer, treasurer or controller of such person.

"**FIRREA**" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"**Foreign Lender**" shall mean the Lender if it is not, for United States federal income tax purposes, (i) an individual who is a citizen or resident of the United States, (ii) a corporation, partnership or other entity treated as a corporation or partnership created or organized in or under the laws of the United States, or any political subdivision thereof, (iii) an estate whose income is subject to U.S. federal income taxation regardless of its source or (iv) a trust if a court within the United States is able to exercise primary supervision over the administration of such trust and one or more United States persons have the authority to control all substantial decisions of such trust.

"**Freddie Mac**" means the Federal Home Loan Mortgage Corporation and its successors in interest.

"**Fund**" shall mean any person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**GAAP**" shall mean generally accepted accounting principles in the United States applied on a consistent basis.

"**Ginnie Mae**" means the Government National Mortgage Association and its successors in interest.

"**Governmental Authority**" shall mean the government of the United States or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"**Hedging Agreement**" shall mean any swap, cap, collar, forward purchase or similar agreements or arrangements dealing with interest rates, currency exchange rates or commodity prices, either generally or under specific contingencies.

"**Hedging Obligations**" shall mean obligations under or with respect to Hedging Agreements.

"**Holdings**" shall have the meaning assigned to such term in the preamble hereto.

"**IFC**" shall have the meaning assigned to such term in the preamble hereto.

"**Indebtedness**" of any person shall mean, without duplication, (a) all obligations of such person for borrowed money or advances; (b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such person upon which interest charges are customarily paid or accrued; (d) all obligations of such person under conditional sale or other title retention agreements relating to property purchased by such person; (e) all obligations of such person issued or assumed as the deferred purchase price of property or services (excluding trade accounts payable and accrued obligations incurred in the ordinary course of business on normal trade terms and not overdue by more than 90 days); (f) all Indebtedness of others secured by any Lien on property owned or acquired by such person, whether or not the obligations secured thereby have been assumed, but limited to the fair market value of such property; (g) all Capital Lease Obligations, Purchase Money Obligations and synthetic lease obligations of such person; (h) all Hedging Obligations to the extent required to be reflected on a balance sheet of such person; (i) all Attributable Indebtedness of such person; (j) all obligations of such person for the reimbursement of any obligor in respect of letters of credit, letters of guaranty, bankers' acceptances and similar credit transactions; (k) all obligations under any repurchase agreement and (l) all Contingent Obligations of such person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (k) above. The Indebtedness of any person shall include the Indebtedness of any other entity (including any partnership in which such person is a general partner) to the extent such person is liable therefor as a result of such person's ownership interest in or other relationship with such entity, except (other than in the case of general partner liability) to the extent that terms of such Indebtedness expressly provide that such person is not liable therefor. Indebtedness shall not include the hedge transactions of the Companies constituting non-recourse securitization trusts listed on Schedule 1 hereto.

"**Indemnified Taxes**" shall mean all Taxes other than Excluded Taxes.

"**Indemnitee**" shall have the meaning assigned to such term in Section 9.03(b).

"**Information**" shall have the meaning assigned to such term in Section 9.12.

"**Interest Period**" shall mean, (a) in the case of the initial Interest Period for the Loans, the period commencing on the Closing Date and ending on (and including) the day preceding the next Payment Date and (b) in the case of each subsequent Interest Period for the Loans, the period commencing on (and including) the current or most recent Payment Date and ending on (and including) the day preceding the next Payment Date.

"**Investments**" shall have the meaning assigned to such term in Section 6.04.

"**IRES**" shall have the meaning assigned to such term in the preamble hereto.

"**IWLG**" shall have the meaning assigned to such term in the preamble hereto.

"**Joint Venture**" shall have the meaning assigned to such term in Section 6.04(d).

"**Leases**" shall mean any and all leases, subleases, tenancies, options, concession agreements, rental agreements, occupancy agreements, franchise agreements, access agreements and any other agreements (including all amendments, extensions, replacements, renewals, modifications and/or guaran-

tees thereof), whether or not of record and whether now in existence or hereafter entered into, affecting the use or occupancy of all or any portion of any Real Property.

"**Lender**" shall mean (a) UBS RESI or (b) any financial institution that has become a party hereto pursuant to an Assignment and Assumption, other than, in each case, any financial institution that has ceased to be a party hereto pursuant to an Assignment and Assumption.

"**LIBOR Rate**" shall mean, with respect to any Eurodollar Borrowing for any Interest Period, the rate per annum determined by the Lender to be the arithmetic mean of the offered rates for deposits in dollars with a term comparable to such Interest Period that appears on the Telerate British Bankers Assoc. Interest Settlement Rates Page (as defined below) at approximately 11:00 a.m., London, England time, on the second full Business Day preceding the first day of such Interest Period; *provided*, *however*, that (i) if no comparable term for an Interest Period is available, the LIBOR Rate shall be determined using the weighted average of the offered rates for the two terms most nearly corresponding to such Interest Period and (ii) if there shall at any time no longer exist a Telerate British Bankers Assoc. Interest Settlement Rates Page, "LIBOR Rate" shall mean, with respect to each day during each Interest Period pertaining to Eurodollar Borrowings comprising part of the same Borrowing, the rate per annum equal to the rate at which the Lender is offered deposits in dollars at approximately 11:00 a.m., London, England time, two Business Days prior to the first day of such Interest Period in the London interbank market for delivery on the first day of such Interest Period for the number of days comprised therein and in an amount comparable to its portion of the amount of such Eurodollar Borrowing to be outstanding during such Interest Period. "**Telerate British Bankers Assoc. Interest Settlement Rates Page**" shall mean the display designated as Reuters Screen LIBOR01 Page (or such other page as may replace such page on such service for the purpose of displaying the rates at which dollar deposits are offered by leading banks in the London interbank deposit market).

"**Lien**" shall mean, with respect to any property, (a) any mortgage, deed of trust, lien, pledge, encumbrance, claim, charge, assignment, hypothecation, security interest or encumbrance of any kind or any arrangement to provide priority or preference or any filing of any financing statement under the UCC or any other similar notice of lien under any similar notice or recording statute of any Governmental Authority, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, and any agreement to give any of the foregoing; (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property; and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"**Loans**" shall mean the Tranche A Loan and the Tranche B Loan, collectively.

"**Material Adverse Effect**" shall mean (a) a material adverse effect on the business, property, results of operations, prospects or condition, financial or otherwise, or material agreements of a Borrower and its Subsidiaries, taken as a whole; (b) material impairment of the ability of the Borrowers to fully and timely perform any of their obligations under any Transaction Document; or (c) a material impairment of the rights of or benefits or remedies available to the Lender under any Transaction Document.

"**Material Indebtedness**" shall mean any Indebtedness of Holdings or any of its Subsidiaries in an aggregate outstanding principal amount exceeding $1 million. For purposes of determining Material Indebtedness, the "principal amount" in respect of any Hedging Obligations of any Borrower at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Borrower would be required to pay if the related Hedging Agreement were terminated at such time.

"**Maximum Rate**" shall have the meaning assigned to such term in Section 9.14.

"**Monthly Payment**" shall have the meaning assigned to such term in Section 2.04.

"**Net Cash Proceeds**" shall mean:

(a) with respect to any Asset Sale, (1) the cash proceeds received by Holdings or any of its Subsidiaries (including cash proceeds subsequently received (as and when received by Holdings or any of its Subsidiaries) in respect of non-cash consideration initially received) net of (i) selling expenses (including reasonable brokers' fees or commissions, legal, accounting and other professional and transactional fees, transfer and similar taxes and Holding's good faith estimate of income taxes actually paid or payable in connection with such sale); (ii) amounts provided as a reserve, in accordance with GAAP, against (x) any liabilities under any indemnification obligations associated with such Asset Sale or (y) any other liabilities retained by Holdings or any of its Subsidiaries associated with the properties sold in such Asset Sale (*provided* that, to the extent and at the time any such amounts are released from such reserve, such amounts shall constitute Net Cash Proceeds); (iii) Holding's good faith estimate of payments required to be made with respect to unassumed liabilities relating to the properties sold within 90 days of such Asset Sale (*provided* that, to the extent such cash proceeds are not used to make payments in respect of such unassumed liabilities within 90 days of such Asset Sale, such cash proceeds shall constitute Net Cash Proceeds); and (iv) the principal amount, premium or penalty, if any, interest and other amounts on any Indebtedness for borrowed money which is secured by a Lien on the properties sold in such Asset Sale (so long as such Lien was permitted to encumber such properties under the Transaction Documents at the time of such sale) and which is repaid with such proceeds (other than any such Indebtedness assumed by the purchaser of such properties); plus (2) the amount of any non-cash consideration received (including, without limitation, the amount of any indebtedness or other obligations forgiven, terminated or set off against in connection with such Asset Sale);

(b) with respect to any Equity Issuance, any Preferred Stock Issuance or any other issuance or sale of Equity Interests by Holdings or (in case of a Subsidiary's breach of the negative covenants in Section 6.13(b) hereof) any of its Subsidiaries, (1) the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith; plus (2) the amount of any non-cash consideration received (including, without limitation, the amount of any indebtedness or other obligations forgiven, terminated or set off against in connection with such Equity Issuance, Preferred Stock Issuance or other issuance or sale of Equity Interests); and

(c) with respect to any Debt Issuance, the cash proceeds thereof, net of customary fees, commissions, costs and other expenses incurred in connection therewith.

"**Obligations**" shall mean obligations of Borrowers from time to time arising under or in respect of the due and punctual payment of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent,

fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of Borrowers under this Agreement and the other Transaction Documents.

"**OFAC**" shall have the meaning assigned to such term in Section 3.20.

"**Organizational Documents**" shall mean, with respect to any person, (i) in the case of any corporation, the certificate of incorporation and by-laws (or similar documents) of such person, (ii) in the case of any limited liability company, the certificate of formation and operating agreement (or similar documents) of such person, (iii) in the case of any limited partnership, the certificate of formation and limited partnership agreement (or similar documents) of such person, (iv) in the case of any general partnership, the partnership agreement (or similar document) of such person and (v) in any other case, the functional equivalent of the foregoing.

"**Other Taxes**" shall mean all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Transaction Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Transaction Document.

"**Participant**" shall have the meaning assigned to such term in Section 9.04(d).

"**Patriot Act**" shall have the meaning assigned to such term in Section 4.01(i).

"**Payment Date**" shall mean with respect to each Loan, the last day of each calendar month; or, if such day is not a Business Day, the immediately preceding Business Day.

"**Permitted Liens**" shall have the meaning assigned to such term in Section 6.02.

"**Permitted Tax Distributions**" shall mean payments, dividends or distributions by any other Borrower to Holdings in order to pay consolidated or combined federal, state or local taxes not payable directly by such Borrower or any of its Subsidiaries which payments by such Borrower are not in excess of the tax liabilities that would have been payable by such Borrower and its Subsidiaries on a stand-alone basis.

"**Permitted Residual Financing**" shall mean a Debt Issuance (i) the repayment of which is secured by the Residual Interests of Holdings or any of its Subsidiaries and (ii) the Net Cash Proceeds of which are sufficient to pay, and are applied to pay, in full of all principal and accrued interest with respect to the Tranche B Loan.

"**person**" shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"**Preferred Stock**" shall mean, with respect to any person, any and all preferred or preference Equity Interests (however designated) of such person whether now outstanding or issued after the Closing Date.

"**Preferred Stock Issuance**" shall mean the issuance or sale by Holdings or any of its Subsidiaries of any Preferred Stock after the Closing Date.

"**Pro Forma Basis**" shall mean on a basis in accordance with GAAP and Regulation S-X and otherwise reasonably satisfactory to the Lender.

"**property**" shall mean any right, title or interest in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including Equity Interests or other ownership interests of any person and whether now in existence or owned or hereafter entered into or acquired, including all Real Property.

"**Purchase Money Obligation**" shall mean, for any person, the obligations of such person in respect of Indebtedness (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any property (including Equity Interests of any person) or the cost of installation, construction or improvement of any property and any refinancing thereof; *provided*, *however*, that (i) such Indebtedness is incurred within one year after such acquisition, installation, construction or improvement of such property by such person and (ii) the amount of such Indebtedness does not exceed 100% of the cost of such acquisition, installation, construction or improvement, as the case may be.

"**Qualified Capital Stock**" of any person shall mean any Equity Interests of such person that are not Disqualified Capital Stock.

"**Real Property**" shall mean, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"**Regulation D**" shall mean Regulation D of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"**Regulation S-X**" shall mean Regulation S-X promulgated under the Securities Act.

"**Related Party**" shall mean, with respect to any person, such person's Affiliates and the partners, directors, officers, employees, agents and advisors of such person and of such person's Affiliates.

"**Repurchase Obligation**" has the meaning assigned to such term in Section 6.11(b).

"**Requirements of Law**" shall mean, collectively, any and all requirements of any Governmental Authority including any and all laws, judgments, orders, decrees, ordinances, rules, regulations, statutes or case law.

"**Residual Interests**" shall mean the right, title and interest in a subordinated tranche of securities issued in a securitization transaction (including, without limitation, any payments received in connection with such securities) and/or the ownership interest in the issuer of such securities.

"**Responsible Officer**" of any person shall mean any executive officer or Financial Officer of such person and any other officer or similar official thereof with responsibility for the administration of the obligations of such person in respect of this Agreement.

"**Re-Warehousing Business**" shall mean a new mortgage loan re-warehousing business described to the Lender by Holdings which shall include the formation of the Re-Warehousing SPV and the Re-Warehousing Originator and the entry into of one or more new credit facilities by such Subsidiary that shall provide financing for such business.

"**Re-Warehousing Indebtedness**" has the meaning assigned to such term in Section 6.01(i).

"**Re-Warehousing SPV**" has the meaning assigned to such term in Section 6.01(i).

"**Re-Warehousing Originator**" has the meaning assigned to such term in Section 6.01(j).

"**Re-Warehousing Reserve Account**" has the meaning assigned to such term in Section 6.02(o).

"**Re-Warehousing Reserve Account Investment**" has the meaning assigned to such term in Section 6.04(f).

"**Sale and Leaseback Transaction**" has the meaning assigned to such term in Section 6.03.

"**Sarbanes-Oxley Act**" shall mean the United States Sarbanes-Oxley Act of 2002, as amended, and all rules and regulations promulgated thereunder.

"**Securities Act**" shall mean the Securities Act of 1933, as amended, and all rules and regulations promulgated thereunder.

"**Settlement Agreement**" shall have the meaning assigned to such term in the second recital hereto.

"**Shareholders' Equity**" shall mean, as at any date of determination, Consolidated Assets, as at such date of determination, minus Consolidated Liabilities, as at such date of determination.

"**Solvency/Financial Covenant Compliance Certificate**" shall mean a certificate of a Financial Officer substantially in the form of Exhibit B.

"**Statutory Reserves**" shall mean for any Interest Period for any Eurodollar Borrowing, the average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during such Interest Period under Regulation D by member banks of the United States Federal Reserve System in New York City with deposits exceeding one billion dollars against "Eurocurrency liabilities" (as such term is used in Regulation D). Eurodollar Borrowings shall be deemed to constitute Eurodollar liabilities and to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to the Lender under Regulation D.

"**Subsidiary**" shall mean, with respect to any person (the "**parent**") at any date, (i) any person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, (ii) any other corporation, limited liability company, association or other business entity of which securities or other ownership interests representing more than 50% of the voting power of all Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Board of Directors thereof are, as of such date, owned, controlled or held by the parent and/or one or more subsidiaries of the parent, (iii) any partnership (a) the sole general partner or the managing general partner of which is the parent and/or one or more subsidiaries of the parent or (b) the only general partners of which are the parent and/or one or more subsidiaries of the parent and (iv) any other person that is otherwise Controlled by the parent and/or one or more subsidiaries of the parent. Unless the context requires otherwise, "Subsidiary" refers to a Subsidiary of Borrower.

"**Tax Return**" shall mean all returns, statements, filings, attachments and other documents or certifications required to be filed in respect of Taxes.

"**Taxes**" shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Notes**" shall mean the promissory notes evidencing the Loans, substantially in the form of Exhibit C-1 or Exhibit C-2.

"**Tranche A Lender**" shall mean UBS RESI or another Lender with an outstanding Tranche A Loan.

"**Tranche A Loan**" shall mean the term loans made by the Lender to Borrowers pursuant to Section 2.01(a)(i).

"**Tranche A Maturity Date**" shall mean the day that is eighteen (18) months after the Closing Date or, if such date is not a Business Day, the immediately preceding Business Day.

"**Tranche B Lender**" shall mean UBS RESI or another Lender with an outstanding Tranche B Loan.

"**Tranche B Loan**" shall mean the term loans made by the Lender to Borrowers pursuant to Section 2.01(a)(ii).

"**Tranche B Maturity Date**" shall mean the day that is six (6) months after the Closing Date or, if such date is not a Business Day, the immediately preceding Business Day.

"**Transaction Documents**" shall mean this Agreement, the Term Notes and the Settlement Agreement.

"**Transactions**" shall mean, collectively, the transactions to occur on or prior to the Closing Date pursuant to the Transaction Documents, including the making of all payments, and the taking of all actions, required under the Settlement Agreement on or prior to the Closing Date.

"**Treasury Services Agreement**" shall mean any agreement relating to treasury, depositary and cash management services or automated clearinghouse transfer of funds.

"**Trust Preferred Securities**" shall mean the trust preferred securities of Impac Capital Trust #4 which are outstanding on the Closing Date.

"**Type**," when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBOR Rate or the Alternate Base Rate.

"**UBS RESI**" shall have the meaning assigned to such term in the preamble hereto.

"**UCC**" shall mean the Uniform Commercial Code as in effect from time to time (except as otherwise specified) in any applicable state or jurisdiction.

"**United States**" shall mean the United States of America.

"**VA**" shall mean the United States Department of Veterans Affairs or any successor thereto.

"**VA Loan Guaranty Agreement**" shall mean 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.

"**Voting Stock**" shall mean, with respect to any person, any class or classes of Equity Interests pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the Board of Directors of such person.

"**Wholly Owned Subsidiary**" shall mean, as to any person, (a) any corporation 100% of whose capital stock (other than directors' qualifying shares) is at the time owned by such person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such person and/or one or more Wholly Owned Subsidiaries of such person have a 100% equity interest at such time.

SECTION 1.02 **Classification of Loans and Borrowings**. For purposes of this Agreement, Loans may be classified and referred to by Class (*e.g.*, a "Tranche A Loan") or by Type (*e.g.*, a "Eurodollar Loan").

SECTION 1.03 **Terms Generally**. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (a) any definition of or reference to any Transaction Document, agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any person shall be construed to include such person's successors and assigns, (c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any law or regulation herein shall refer to such law or regulation as amended, modified or supplemented from time to time and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights

SECTION 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all financial statements to be delivered pursuant to this Agreement shall be prepared in accordance with GAAP as in effect from time to time and all terms of an accounting or financial nature shall be construed and interpreted in accordance with GAAP, as in effect on the date hereof unless otherwise agreed to by Borrowers and the Lender.

SECTION 1.05 Resolution of Drafting Ambiguities. Each Borrower acknowledges and agrees that it was represented by counsel in connection with the execution and delivery of the Transaction Documents to which it is a party, that it and its counsel reviewed and participated in the preparation and negotiation hereof and thereof and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation hereof or thereof.

ARTICLE II

THE LOANS

SECTION 2.01 Loans.

(a) (i) Without any further action, the Tranche A Lender shall be deemed to have advanced Tranche A Loans, in an aggregate principal amount equal to $23,850,000, to Borrowers on the Closing Date.

(ii) Without any further action, the Tranche B Lender shall be deemed to have advanced Tranche B Loans, in an aggregate principal amount equal to $10,000,000, to Borrowers on the Closing Date.

(b) Amounts paid or prepaid in respect of Loans may not be reborrowed.

(c) Each Loan shall be a Eurodollar Loan unless, pursuant to Section 2.06, the Lender notifies Borrowers that the Loans shall be converted to ABR Loans, in which case the Loans shall be converted to ABR Loans as of the date designated for such conversion by the Lender.

(d) The initial Interest Period for the Loans shall commence on the Closing Date and end on (and include) the day preceding the next Payment Date. Each subsequent Interest Period for the Loans shall commence on (and include) the current or most recent Payment Date and end on (and include) the day preceding the next Payment Date.

SECTION 2.02 Evidence of Debt; Repayment of Loans.

(a) Promise to Pay. Borrowers hereby unconditionally promise to pay, on a joint and several basis, to the Lender, the principal amount of each Loan of the Lender as provided in Section 2.04. Borrowers hereby promise to pay, on a joint and several basis, to the Lender all other amounts payable by the Borrowers, or any single Borrower, hereunder.

(b) Lender Records. The Lender shall maintain accounts in which it will record (i) the amount of each Loan made, or deemed made, hereunder, and the Type and Class thereof; (ii) the amount of any principal or interest due and payable or to become due and payable from Borrowers to the Lender hereunder; and (iii) the amount of any sum received by the Lender hereunder . The entries made in the accounts maintained pursuant to this paragraph shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded; *provided* that the failure of the Lender to maintain such ac-

counts or any error therein shall not in any manner affect the obligations of Borrowers to repay the Loans in accordance with their terms.

(c) Promissory Notes. On the Closing Date, Borrowers shall execute and deliver to (i) each Tranche A Lender a promissory note payable to the order of such Tranche A Lender (or, if requested by such Tranche A Lender, to such Tranche A Lender and its registered assigns) substantially in the form of Exhibit C-1 and (ii) each Tranche B Lender a promissory note payable to the order of such Tranche B Lender (or, if requested by such Tranche B Lender, to such Tranche B Lender and its registered assigns) substantially in the form of Exhibit C-2. The Loans evidenced by such promissory notes and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.03 Interest on Loans.

(a) ABR Loans. Subject to the provisions of Section 2.03(c), the Loans comprising each ABR Borrowing, if any, shall bear interest at a rate per annum equal to the Alternate Base Rate in effect from time to time.

(b) Eurodollar Loans. Subject to the provisions of Section 2.03(c), the Loans comprising each Eurodollar Borrowing shall bear interest at a rate per annum equal to the Adjusted LIBOR Rate for the Interest Period in effect for such Borrowing.

(c) Default Rate. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall, to the extent permitted by applicable law, bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of amounts constituting principal of or interest on any Loan, 4% *plus* the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section 2.03 or (ii) in the case of any other amount, 4% *plus* the rate applicable to Loans as provided in Section 2.03(b) (in either case, the "**Default Rate**").

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Payment Date for such Loan; *provided* that (i) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (ii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. Each Monthly Payment received by the Lender shall be applied first to the payment of accrued interest on the Tranche A Loan and the Tranche B Loan, on a pro rata basis, and the remainder of such Monthly Payment shall be applied to the payment of principal on the Tranche A Loan.

(e) Interest Calculation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted LIBOR Rate shall be determined by the Lender in accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

SECTION 2.04 Amortization of Term Borrowings. Borrowers agree to pay to the Lender, on each Payment Date an amount equal to $1,500,000 (the "**Monthly Payment**"). Each Monthly

Payment received by the Lender shall be applied first to the payment of accrued interest on the Tranche A Loan and the Tranche B Loan, on a pro rata basis, and the remainder of such Monthly Payment shall be applied to the payment of principal on the Tranche A Loan. To the extent not previously paid, the entire principal balance of the Tranche A Loan (together with all accrued interest thereon) shall be due and payable on the Tranche A Maturity Date and the Borrowers agree to pay such amount on the Tranche A Maturity Date. The entire principal balance of the Tranche B Loan (together with all accrued interest thereon) shall be due and payable on the Tranche B Maturity Date and the Borrowers agree to pay such amount on the Tranche B Maturity Date.

SECTION 2.05 **Optional and Mandatory Prepayments of Loans**.

(a) Optional Prepayments. (i) Borrowers shall have the right at any time and from time to time to prepay any Borrowing, in whole or in part, subject to the requirements of this Section 2.05; *provided* that each partial prepayment shall be in an amount that is an integral multiple of $250,000 and not less than $1.0 million or, if less, the outstanding principal amount of such Borrowing.

(ii) Notwithstanding any other provision hereof, if the Borrowers elect to repay to the Lender the entire outstanding principal balance of the Tranche A Loan and the Tranche B Loan (together with all accrued interest thereon and any other amounts payable by the Borrowers hereunder) on or before December 31, 2009, then the Borrowers may pay the Lender, on or before December 31, 2009, an amount equal to the entire outstanding principal balance of the Tranche A Loan and the Tranche B Loan (together with all accrued interest thereon and any other amounts payable by the Borrowers hereunder) minus $5,000,000.

(b) Asset Sales. Unless otherwise agreed in writing by the Lender, not later than one Business Day following the receipt of any Net Cash Proceeds of any Asset Sale by Holdings or any of its Subsidiaries, Borrowers shall make prepayments of principal of Loans in accordance with Sections 2.05(e) and (f) in an aggregate amount equal to 100% of such Net Cash Proceeds or, if less, the outstanding amount of the Obligations.

(c) Debt Issuance; Preferred Stock Issuance; Permitted Residual Financing. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Debt Issuance (excluding, for purposes of clarification, any Permitted Residual Financing and any Re-Warehousing Indebtedness) or Preferred Stock Issuance by Holdings or any of its Subsidiaries, Borrowers shall make prepayments of principal of Loans in accordance with Sections 2.05(e) and (f) in an aggregate amount equal to 100% of such Net Cash Proceeds (it being understood and agreed that payment of Net Cash Proceeds of any Debt Issuance shall not limit any remedies available to the Lender with respect to any breach of Section 6.01) or, if less, the outstanding amount of the Obligations. Not later than one Business Day following the receipt of any Net Cash Proceeds of any Permitted Residual Financing by Holdings or any of its Subsidiaries, Borrowers shall prepay the entire outstanding principal of the Tranche B Loan, and all accrued interest related thereto.

(d) Equity Issuance. Until all outstanding principal of the Tranche B Loan, and all accrued interest related thereto, has been paid in full, not later than one Business Day following the receipt of any Net Cash Proceeds of any Equity Issuance, Borrowers shall make prepayments of principal of the Tranche B Loan in accordance with Sections 2.05(e) and (f) in an aggregate amount equal to 100% of such Net Cash Proceeds or, if less, the outstanding principal of the Tranche B Loan. At any time after the occurrence, and during the continuance, of an Event of Default, not later than one Business Day following the receipt of any Net Cash Proceeds of any Equity Issuance, Borrowers shall make prepayments of prin-

cipal of Loans in accordance with Sections 2.05(e) and (f) in an aggregate amount equal to 100% of such Net Cash Proceeds or, if less, the outstanding amount of the Obligations.

(e) Application of Prepayments. Subject to the last sentence of Section 2.05(c) and the first sentence of Section 2.05(d), in the event of any optional or mandatory prepayment of Loans made at a time when Loans of more than one Class remain outstanding, the aggregate amount of such prepayment shall be allocated first to the Tranche A Loans and second to the Tranche B Loans. Any prepayments of Loans pursuant to this Section 2.05 shall not change the Borrowers obligation to pay the Monthly Amount on each Payment Date other than that no Monthly Amounts need to be paid after the entire principal amount of the Tranche A Loan and all interest on the Tranche A Loan has been paid and no Monthly Amount need be in excess of the amount needed to pay the entire principal amount of the Tranche A Loan and all interest on the Tranche A Loan and, if applicable, the Tranche B Loan; *provided*, that, if the Tranche B Loan remains outstanding after the entire principal amount of the Tranche A Loan and all interest on the Tranche A Loan has been paid, the Borrowers shall pay a Monthly Amount on each Payment Date equal to the accrued interest on the Tranche B Loan.

Amounts to be applied pursuant to this Section 2.05 to the prepayment of Loans shall be applied, as applicable, first to reduce outstanding ABR Loans, if any, of the applicable Class of Loans being paid. Any amounts remaining after each such application, if any, shall be applied to prepay Eurodollar Loans of the applicable Class of Loans being paid. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.05 shall be in excess of the amount of the applicable ABR Loans at the time outstanding (an "**Excess Amount**"), only the portion of the amount of such prepayment as is equal to the amount of such outstanding ABR Loans shall be immediately prepaid and, at the election of Borrowers, the Excess Amount shall be either (A) deposited in an escrow account on terms satisfactory to the Lender and applied to the prepayment of applicable Eurodollar Loans on the last day of the then next-expiring Interest Period for such Eurodollar Loans; *provided* that (i) interest in respect of such Excess Amount shall continue to accrue thereon at the rate provided hereunder for the Loans which such Excess Amount is intended to repay until such Excess Amount shall have been used in full to repay such Loans and (ii) at any time while a Default has occurred and is continuing, the Lender may apply any or all proceeds then on deposit to the payment of such Loans in an amount equal to such Excess Amount or (B) prepaid immediately.

(f) Notice of Prepayment. Borrowers shall notify the Lender by written notice of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment and (ii) in the case of prepayment of an ABR Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing and otherwise in accordance with this Section 2.05. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.03.

SECTION 2.06 **Alternate Rate of Interest**. If, prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Lender determines (which determination shall be final and conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBOR Rate for such Interest Period, then the Lender shall give written notice thereof to Borrowers as promptly as practicable thereafter and, until the Lender notifies Borrowers that the circumstances giving rise to such notice no longer exist, each Eurodollar Borrowing shall be converted to an ABR Borrowing.

SECTION 2.07 Yield Protection.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in, by the Lender (except any reserve requirement reflected in the Adjusted LIBOR Rate);

(ii) subject the Lender to any tax of any kind whatsoever with respect to this Agreement or any Eurodollar Loan made by it, or change the basis of taxation of payments to the Lender in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 2.10 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Lender); or

(iii) impose on the Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Loans made by the Lender;

and the result of any of the foregoing shall be to increase the cost to the Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or any other amount), then, upon request of the Lender, Borrowers will pay to the Lender, as the case may be, such additional amount or amounts as will compensate the Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If the Lender determines (in good faith, but in its sole absolute discretion) that any Change in Law affecting the Lender or any lending office of the Lender or the Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy), then from time to time Borrowers will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.07 and delivered to Borrowers shall be conclusive absent manifest error. Borrowers shall pay the Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to this Section 2.07 shall not constitute a waiver of the Lender's right to demand such compensation; *provided* that Borrowers shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than three (3) months prior to the date that the Lender, as the case may be, notifies Borrowers of the Change in Law giving rise to such increased costs or reductions and of the Lender'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 four-month period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 2.08 [Reserved.].

SECTION 2.09 Payments Generally.

(a) Payments Generally. Borrowers shall make each payment required to be made by it hereunder or under any other Transaction Document (whether of principal, interest or amounts otherwise payable) on or before the time expressly required hereunder or under such other Transaction Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without setoff, deduction or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 677 Washington Boulevard, Stamford, CT 06901, and except that payments pursuant to Sections 2.07, 2.08, 2.10 and 9.03 shall be made directly to the persons entitled thereto and payments pursuant to other Transaction Documents shall be made to the persons specified therein. The Lender shall distribute any such payments received by it for the account of any other person to the appropriate recipient promptly following receipt thereof. If any payment under any Transaction Document shall be due on a day that is not a Business Day, unless specified otherwise, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments under each Transaction Document shall be made in dollars, except as expressly specified otherwise.

(b) [Reserved].

(c) Insufficient Funds. If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) *first*, toward payment of interest then due hereunder, and (ii) *second*, toward payment of principal then due hereunder. It is understood that the foregoing does not apply to any adequate protection payments under any federal, state or foreign bankruptcy, insolvency, receivership or similar proceeding, and that the Lender may, subject to any applicable federal, state or foreign bankruptcy, insolvency, receivership or similar orders, distribute any adequate protection payments it receives in its sole discretion (i.e., whether to pay the earliest accrued interest, all accrued interest on a pro rata basis or otherwise).

SECTION 2.10 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder or under any other Transaction Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes; *provided* that if the Borrowers shall be required by applicable Requirements of Law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the applicable Borrower shall make such deductions and (iii) the applicable Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(b) Payment of Other Taxes by Borrowers. Without limiting the provisions of paragraph (a) above, Borrowers shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Requirements of Law.

(c) Indemnification by Borrowers. Borrowers shall indemnify the Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrowers by the Lender shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by Borrowers to a Governmental Authority, Borrowers shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(e) Status of Lender. Any Foreign Lender shall, to the extent it may lawfully do so, deliver to Borrowers (in such number of copies as shall be requested) on or prior to the date on which such Foreign Lender becomes the Lender under this Agreement (and from time to time thereafter upon the request of Borrowers, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States of America is a party,

(ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) any other form prescribed by applicable Requirements of Law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable Requirements of Law to permit Borrowers to determine the withholding or deduction required to be made.

(f) Treatment of Certain Refunds. If the Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by a Borrowers or with respect to which such Borrower has paid additional amounts pursuant to this Section, it shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmen-

tal Authority with respect to such refund); *provided* that such Borrower, upon the request of the Lender, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender in the event the Lender is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Borrower or any other person. Notwithstanding anything to the contrary, in no event will the Lender be required to pay any amount to any Borrower the payment of which would place the Lender in a less favorable net after-tax position than the Lender would have been in if the additional amounts giving rise to such refund of any Indemnified Taxes or Other Taxes had never been paid.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to the Lender (with references to the Companies being references thereto after giving effect to the Transactions unless otherwise expressly stated) that:

SECTION 3.01 **Organization; Powers**. Each Company (a) is duly organized and validly existing under the laws of the jurisdiction of its organization, (b) has all requisite power and authority to carry on its business as now conducted and to own and lease its property and (c) is qualified and in good standing (to the extent such concept is applicable in the applicable jurisdiction) to do business in every jurisdiction where such qualification is required, except in such jurisdictions where the failure to so qualify or be in good standing, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There is no existing default under any Organizational Document of any Company or any event which, with the giving of notice or passage of time or both, would constitute a default by any party thereunder.

SECTION 3.02 **Authorization; Enforceability**. The Transactions to be entered into by each Borrower are within such Borrower's powers and have been duly authorized by all necessary action on the part of such Borrower. This Agreement has been duly executed and delivered by each Borrower and constitutes, and each other Transaction Document to which any Borrower is to be a party, when executed and delivered by such Borrower, will constitute, a legal, valid and binding obligation of such Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 **No Conflicts**. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except (i) such as have been obtained or made and are in full force and effect, (ii) filings necessary to perfect Liens created by the Transaction Documents and (iii) consents, approvals, registrations, filings, permits or actions the failure to obtain or perform which could not reasonably be expected to result in a Material Adverse Effect, (b) will not violate the Organizational Documents of any Company, (c) will not violate any Requirement of Law, (d) will not violate or result in a default or require any consent or approval under any indenture, agreement or other instrument binding upon any Company or its property, or give rise to a right thereunder to require any payment to be made by any Company, except for violations, defaults or the creation of such rights that could not reasonably be expected to result in a Material Adverse Effect,

and (e) will not result in the creation or imposition of any Lien on any property of any Company, except Liens created by the Transaction Documents and Permitted Liens.

SECTION 3.04 **Financial Statements**.

(a) Historical Financial Statements. Borrowers have heretofore delivered to the Lender (or the Lender has otherwise obtained) the consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Holdings (i) as of and for the fiscal years ended December 31, 2006, December 31, 2007 and December 31, 2008, audited by and accompanied by the unqualified opinion of independent public accountants, and (ii) as of and for the three-month period ended March 31, 2009 and for the comparable period of the preceding fiscal year, in each case, certified by the chief financial officer of Holdings. Borrowers have heretofore delivered to the Lender the consolidated balance sheets and related statements of income, stockholders' equity and cash flows of Holdings as of and for the six-month period ended June 30, 2009 (prepared on a Pro Forma Basis and giving effect to the transactions contemplated under the Settlement Agreement and the Loans under this Agreement) and for the comparable period of the preceding fiscal year, in each case, certified by the chief financial officer of Holdings. All financial statements described in this Clause (a) and all financial statements delivered pursuant to Sections 5.01(a), (b) and (c) have been prepared in accordance with GAAP and present fairly and accurately in all material respects the financial condition and results of operations and cash flows of Holdings as of the dates and for the periods to which they relate.

(b) No Liabilities. Except as set forth in the financial statements referred to in Section 3.04(a), there are no liabilities of any Company of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which could reasonably be expected to result in a Material Adverse Effect, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than liabilities under the Transaction Documents. Since December 31, 2008, there has been no event, change, circumstance or occurrence that, individually or in the aggregate, has had or could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.05 Properties.

(a) Generally. Each Company has good title to, or valid leasehold interests in, all its property material to its business, free and clear of all Liens except for Permitted Liens and minor irregularities or deficiencies in title that, individually or in the aggregate, do not interfere with its ability to conduct its business as currently conducted or to utilize such property for its intended purpose. The property of the Companies, taken as a whole, (i) is in good operating order, condition and repair (ordinary wear and tear excepted) and (ii) constitutes all the property which is required for the business and operations of the Companies as presently conducted.

(b) No Casualty Event. No Company has received any notice of, nor has any knowledge of, the occurrence or pendency or contemplation of any Casualty Event affecting all or any portion of its property.

(c) Property. Each Company owns or has rights to use all of the property used in, necessary for or material to each Company's business as currently conducted. The use by each Company of such property and all such rights with respect to the foregoing do not infringe on the rights of any person other than such infringement which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. No claim has been made and remains outstanding that any

Company's use of any property does or may violate the rights of any third party that could, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

SECTION 3.06 [Reserved].

SECTION 3.07 Equity Interests and Subsidiaries.

(a) Equity Interests. Schedule 3.07 hereto sets forth a list of all the Subsidiaries of Holdings and their jurisdictions of organization as of the Closing Date. All Equity Interests of each Company are duly and validly issued and are fully paid and non-assessable, and are owned by Holdings, directly or indirectly through Wholly Owned Subsidiaries. Each Company is the record and beneficial owner of, and has good and marketable title to, the Equity Interests that it owns, free of any and all Liens, rights or claims of other persons, and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any such Equity Interests.

SECTION 3.08 Litigation; Compliance with Laws. Except as otherwise publicly disclosed in Holdings' filings with the Securities and Exchange Commission, there are no actions, suits or proceedings at law or in equity by or before any Governmental Authority now pending or, to the knowledge of any Company, threatened against or affecting any Company or any business, property or rights of any Company (i) that involve any Transaction Document or any of the Transactions or (ii) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect. No Company or any of its property is in violation of, nor will the continued operation of its property as currently conducted violate, any Requirements of Law (including any zoning or building ordinance, code or approval or any building permits) or any restrictions of record or agreements affecting any Company's Real Property or is in default with respect to any Requirement of Law, where such violation or default, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

SECTION 3.09 Agreements. No Company is a party to any agreement or instrument or subject to any corporate or other constitutional restriction that has resulted or could reasonably be expected to result in a Material Adverse Effect. No Company is in default in any manner under any provision of any indenture or other agreement or instrument evidencing Indebtedness, or any other agreement or instrument to which it is a party or by which it or any of its property is or may be bound, where such default could reasonably be expected to result in a Material Adverse Effect, and no condition exists which, with the giving of notice or the lapse of time or both, would constitute such a default.

SECTION 3.10 [Reserved].

SECTION 3.11 [Reserved].

SECTION 3.12 [Reserved].

SECTION 3.13 Taxes. Each Company has (a) timely filed or caused to be timely filed all federal Tax Returns and all material state, local and foreign Tax Returns or materials required to have been filed by it and all such Tax Returns are true and correct in all material respects and (b) duly and timely paid, collected or remitted or caused to be duly and timely paid, collected or remitted all Taxes (whether or not shown on any Tax Return) due and payable, collectible or remittable by it and all assessments received by it, except Taxes (i) that are being contested in good faith by appropriate proceedings

and for which such Company has set aside on its books adequate reserves in accordance with GAAP and (ii) which could not, individually or in the aggregate, have a Material Adverse Effect. Each Company has made adequate provision in accordance with GAAP for all Taxes not yet due and payable. Each Company is unaware of any proposed or pending tax assessments, deficiencies or audits that could be reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect. Except as could not be reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, no Company has ever (a) been a party to any understanding or arrangement constituting a "tax shelter" within the meaning of Section 6662(d)(2)(C)(ii) of the Code, or within the meaning of Section 6111(c) or Section 6111(d) of the Code as in effect immediately prior to the enactment of the American Jobs Creation Act of 2004, or (b) "participated" in a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4.

SECTION 3.14 **No Material Misstatements**. No information, report, financial statement, certificate, exhibit or schedule furnished by or on behalf of any Company to the Lender in connection with the negotiation of any Transaction Document or the Settlement Agreement, or included therein or delivered pursuant thereto, taken as a whole, contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that to the extent any such information, report, financial statement, exhibit or schedule was based upon or constitutes a forecast or projection, each Company represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information, report, financial statement, exhibit or schedule.

SECTION 3.15 **[Reserved]**.

SECTION 3.16 **Solvency**. Immediately after the consummation of the Transactions to occur on the Closing Date and immediately following the deemed making of each Loan and after giving effect to each payment and other action contemplated under the Settlement Agreement, (a) the assets (determined in accordance with GAAP) of Holdings (on a consolidated basis with its Subsidiaries) will exceed its debts and liabilities (each determined in accordance with GAAP), subordinated, contingent or otherwise; (b) the present fair saleable value of the assets of Holdings (on a consolidated basis with its Subsidiaries) will be greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) Holdings (on a consolidated basis with its Subsidiaries) will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) Holdings (on a consolidated basis with its Subsidiaries) will not have unreasonably small capital with which to conduct its business in which it is engaged as such business is now conducted and is proposed to be conducted following the Closing Date.

SECTION 3.17 **[Reserved]**.

SECTION 3.18 **[Reserved]**.

SECTION 3.19 **[Reserved]**.

SECTION 3.20 **Anti-Terrorism Law**. (a) No Borrower and, to the knowledge of the Borrowers, none of its Affiliates is in violation of any Requirement of Law relating to terrorism or money laundering ("**Anti-Terrorism Laws**"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the "**Executive Order**"), and the Uniting and Strengthening America

by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56.

(b) No Borrower and to the knowledge of the Borrowers, no Affiliate or broker or other agent of any Borrower acting or benefiting in any capacity in connection with the Loans is any of the following:

(i) a person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(ii) a person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(iii) a person with which the Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(iv) a person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or

(v) a person that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control ("**OFAC**") at its official website or any replacement website or other replacement official publication of such list.

(c) No Borrower and, to the knowledge of the Borrowers, no broker or other agent of any Borrower acting in any capacity in connection with the Loans (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in paragraph (b) above, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

ARTICLE IV

CONDITIONS TO EFFECTIVENESS

SECTION 4.01 **Conditions to Effectiveness**. The effectiveness of this Agreement shall be subject to the prior or concurrent satisfaction of each of the conditions precedent set forth in this Section 4.01.

(a) Transaction Documents. All legal matters incident to this Agreement and the other Transaction Documents shall be satisfactory to the Lender and there shall have been delivered to the Lender an executed counterpart of each of the Transaction Documents.

(b) Corporate Documents. The Lender shall have received:

(i) a certificate of the secretary or assistant secretary of each Borrower dated the Closing Date, certifying (A) that attached thereto is a true and complete copy of each Organizational Document of such Borrower certified (to the extent applicable) as of a recent date by the Secretary of State of the state of its organization, (B) that attached thereto is a true and complete

copy of resolutions duly adopted by the Board of Directors of such Borrower authorizing the execution, delivery and performance of the Transaction Documents to which such person is a party and the borrowings hereunder, and that such resolutions have not been modified, rescinded or amended and are in full force and effect and (C) as to the incumbency and specimen signature of each officer executing any Transaction Document or any other document delivered in connection herewith on behalf of such Borrower (together with a certificate of another officer as to the incumbency and specimen signature of the secretary or assistant secretary executing the certificate in this clause (i));

(ii) a certificate as to the good standing of each Borrower (in so-called "long-form" if available) as of a recent date, from the Secretary of State (or other applicable Governmental Authority) of the jurisdiction of formation or incorporation of such Borrower; and

(iii) such other documents as the Lender may reasonably request.

(c) Other Transactions, etc.

(i) The Transactions shall have been consummated or shall be consummated simultaneously on the Closing Date, in each case in all material respects in accordance with the terms hereof and the terms of the other Transaction Documents, without the waiver or amendment of any such terms not approved by the Lender.

(d) Opinions of Counsel. The Lender shall have received a favorable written opinions of external and internal counsel for the Borrowers satisfactory to the Lender, (A) dated the Closing Date, (B) addressed to the Lender and (C) covering such matters relating to the Transaction Documents and the Transactions as the Lender shall reasonably request.

(e) Requirements of Law. The Lender shall be satisfied that Holdings, its Subsidiaries and the Transactions shall be in full compliance with all material Requirements of Law, including Regulations T, U and X of the Board, and shall have received satisfactory evidence of such compliance reasonably requested by them.

(f) Consents. The Lender shall be satisfied that all requisite Governmental Authorities and third parties shall have approved or consented to the Transactions, and there shall be no governmental or judicial action, actual or threatened, that has or would have, singly or in the aggregate, a reasonable likelihood of restraining, preventing or imposing burdensome conditions on the Transactions or the other transactions contemplated hereby.

(g) Litigation. The Lender shall be satisfied that there shall be no litigation, public or private, or administrative proceedings, governmental investigation or other legal or regulatory developments, actual or threatened, that, singly or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or could materially and adversely affect the ability of Borrowers to fully and timely perform their respective obligations under the Transaction Documents, or the ability of the parties to consummate the financings contemplated hereby or the other Transactions.

(h) Payments and Expenses. The Lender shall have received all amounts due and payable on or prior to the Closing Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses (including the legal fees and expenses of Kaye Scholer LLP, special counsel to

the Lender) required to be reimbursed or paid by Borrowers hereunder or under any other Transaction Document.

(i) USA Patriot Act. The Lender shall have received, sufficiently in advance of the Closing Date, all documentation and other information that may be required by the Lender in order to enable compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the United States PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**") including the information described in Section 9.13.

ARTICLE V

AFFIRMATIVE COVENANTS

Each Borrower warrants, covenants and agrees with the Lender that so long as this Agreement shall remain in effect and until the principal of and interest on each Loan and all other expenses or amounts payable under any Transaction Document shall have been paid in full, unless the Lender shall otherwise consent in writing, each Borrower will, and will cause each of its Subsidiaries to:

SECTION 5.01 Financial Statements, Reports, etc. Furnish to the Lender:

(a) Annual Reports. As soon as available and in any event within 90 days (or such earlier date on which Holdings is required to file a Form 10-K under the Exchange Act) after the end of each fiscal year, beginning with the fiscal year ending December 31, 2009 the consolidated balance sheet of Holdings as of the end of such fiscal year and related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, in comparative form with such financial statements as of the end of, and for, the preceding fiscal year, and notes thereto (including a note with a consolidating balance sheet and statements of income and cash flows separating out Holdings, the other Borrowers and the other Subsidiaries), all prepared in accordance with Regulation S-X and accompanied by an opinion of independent public accountants of recognized national standing (which opinion shall not be qualified as to scope or contain any going concern or other qualification), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Holdings as of the dates and for the periods specified in accordance with GAAP (it being understood that the information required by this clause (a) may be furnished in the form of a Form 10-K);

(b) Quarterly Reports. As soon as available and in any event within 45 days (or such earlier date on which Holdings is required to file a Form 10-Q under the Exchange Act) after the end of each of the first three fiscal quarters of each fiscal year, beginning with the fiscal quarter ending June 30, 2009, the consolidated balance sheet of Holdings as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year (provided that with respect to any fiscal quarter that ends on or prior to the first anniversary of the Closing Date, the foregoing requirement that such financial statements be presented in comparative form shall only apply to the extent financial statements of Holdings or the Acquired Business exist for such comparable periods in the previous fiscal year), and notes thereto (including a note with a consolidating balance sheet and statements of income and cash flows separating out Holdings, the other Borrower and the other Subsidiaries), all prepared in accordance with Regulation S-X under the Securities Act and accompanied by a certificate of a Financial Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Holdings as of the date and for the periods specified in accordance with GAAP

consistently applied, and on a basis consistent with audited financial statements referred to in clause (a) of this Section, subject to normal year-end audit adjustments (it being understood that the information required by this clause (b) may be furnished in the form of a Form 10-Q);

(c) Quarterly Repurchase Obligations. As soon as possible and in any event within 5 days after the end of each calendar quarter a written report, in reasonable detail, describing each instance during such calendar quarter in which any Company agreed upon the amount of, or paid any amount with respect to, any Repurchase Obligations;

(d) Solvency/Financial Covenant Compliance Certificate. As soon as possible and in any event within 15 calendar days after the end of each month a Solvency/Financial Covenant Compliance Certificate;

(e) Public Reports. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by Holdings or any of its Subsidiaries with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed to holders of its Indebtedness pursuant to the terms of the documentation governing such Indebtedness (or any trustee, agent or other representative therefor), as the case may be;

(f) Management Letters. Promptly after the receipt thereof by any Company, a copy of any "management letter" received by any such person from its certified public accountants and the management's responses thereto;

(g) Organizational Documents. Promptly provide copies of any Organizational Documents that have been amended or modified in accordance with the terms hereof and deliver a copy of any notice of default given or received by any Company under any Organizational Document within 15 days after such Company gives or receives such notice; and

(h) Other Information. Promptly, from time to time, such other information regarding the operations, business affairs and financial condition of any Company, or compliance with the terms of any Transaction Document, as the Lender may reasonably request.

SECTION 5.02 Litigation and Other Notices. Furnish to the Lender written notice of the following promptly (and, in any event, within three (3) Business Days after the occurrence thereof with respect to (a), (b)(ii), (c), (d) and (e) below and fifteen (15) Business Days after the occurrence thereof with respect to (b)(i) below):

(a) any Default, specifying the nature and extent thereof and the corrective action (if any) taken or proposed to be taken with respect thereto;

(b) the filing or commencement of any action, suit, litigation or proceeding, whether at law or in equity by or before any Governmental Authority, (i) against any Company or any Affiliate thereof that could reasonably be expected to result in a Material Adverse Effect or (ii) with respect to any Transaction Document;

(c) any development that has resulted in, or could reasonably be expected to result in a Material Adverse Effect; and

(d) (i) the incurrence of any Lien (other than Permitted Liens) on, or claim asserted against any material property of the Borrowers or (ii) the occurrence of any other event which could materially affect the value of such property; and

(e) any Investments described in Section 6.04 (e) or Section 6.04 (f), any Asset Sales described in Section 6.06 (d) and any Acquisitions described in Section 6.07 (b), in each case to the extent such Investment, Asset Sale or Acquisition exceeds $1,000,000, together with the dates, amounts and descriptions thereof. Any Investments described in Section 6.04(e) or Section 6.04 (f), any Asset Sales described in Section 6.06(d) and any Acquisitions described in Section 6.07(b) that are less than $1,000,000 shall be included in the monthly certificate described in Section 5.01(d) above together with all prior Investments described in Section 6.04(e)or Section 6.04 (f), any Asset Sales described in Section 6.06(d) and any Acquisitions described in Section 6.07(b) since the Closing Date, together, in each case, with the dates, amounts and descriptions thereof.

SECTION 5.03 Existence; Businesses and Properties. Except for IFC and IWLG,

(a) Do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence; *provided*, that the legal existence of any Company other than a Borrower need not be maintained if the termination of such legal existence could not reasonably be expected to result in a Material Adverse Effect.

(b) In the case of Holdings, do or cause to be done all things necessary for Holdings to remain a publicly traded company required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

(c) Do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the rights, licenses, permits, privileges, franchises, authorizations, patents, copyrights, trademarks and trade names material to the conduct of its business; maintain and operate such business in substantially the manner in which it is presently conducted and operated; comply with all applicable Requirements of Law (including any and all zoning, building, environmental law, ordinance, code or approval or any building permits or any restrictions of record or agreements affecting the Real Property) and decrees and orders of any Governmental Authority, whether now in effect or hereafter enacted, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; pay and perform its obligations under all Leases and Transaction Documents; and at all times maintain, preserve and protect all property material to the conduct of such business and keep such property in good repair, working order and condition (other than wear and tear occurring in the ordinary course of business) and from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith may be properly conducted at all times; *provided* that nothing in this Section 5.03(c) shall prevent (i) sales of property, consolidations or mergers by or involving any Company in accordance with Section 6.05 or Section 6.06; (ii) the withdrawal by any Company of its qualification as a foreign corporation in any jurisdiction where such withdrawal, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect; or (iii) the abandonment by any Company of any rights, franchises, licenses, trademarks, trade names, copyrights or patents that such person reasonably determines are not useful to its business or no longer commercially desirable.

SECTION 5.04 [Reserved].

SECTION 5.05 Obligations and Taxes.

(a) Payment of Obligations. Pay its Indebtedness and other obligations promptly and in accordance with their terms (except in the case of IFC and IWLG) and pay and discharge promptly when due all Taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful claims for labor, services, materials and supplies or otherwise that, if unpaid, might give rise to a Lien other than a Permitted Lien upon such properties or any part thereof; *provided* that such payment and discharge shall not be required with respect to any such Tax, assessment, charge, levy or claim so long as (x)(i) the validity or amount thereof shall be contested in good faith by appropriate proceedings timely instituted and diligently conducted and the applicable Company shall have set aside on its books adequate reserves or other appropriate provisions with respect thereto in accordance with GAAP, (ii) such contest operates to suspend collection of the contested obligation, Tax, assessment or charge and enforcement of a Lien other than a Permitted Lien and (iii) the applicable Company shall have otherwise complied with the Contested Lien Conditions and (y) the failure to pay could not reasonably be expected to result in a Material Adverse Effect.

(b) Filing of Returns. Timely and correctly file all material Tax Returns required to be filed by it. Withhold, collect and remit all Taxes that it is required to collect, withhold or remit.

(c) Tax Shelter Reporting. Borrowers do not intend to treat the Loans as being a "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4. In the event Borrowers determine to take any action inconsistent with such intention, it will promptly notify the Lender thereof.

SECTION 5.06 **Re-Warehousing Business**. Originate, fund, finance, purchase or otherwise include only Agency Eligible Mortgage Loans in the Re-Warehousing Business; *provided*, that the applicable Subsidiary or Subsidiaries of any Borrower may originate, fund, finance, purchase or otherwise include mortgage loans other than Agency Eligible Mortgage Loans in the Re-Warehousing Business with the written consent of the Lender, which consent shall not be unreasonably withheld.

SECTION 5.07 **Maintaining Records; Access to Properties and Inspections**.

Keep proper books of record and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law are made of all dealings and transactions in relation to its business and activities. Each Company will permit any representatives designated by the Lender to visit and inspect the financial records and the property of such Company at reasonable times and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any representatives designated by the Lender to discuss the affairs, finances, accounts and condition of any Company with the officers and employees thereof and advisors therefor (including independent accountants).

ARTICLE VI

NEGATIVE COVENANTS

Each Borrower warrants, covenants and agrees with the Lender that, so long as this Agreement shall remain in effect and until the principal of and interest on each Loan and all other expenses or amounts payable under any Transaction Document have been paid in full, unless the Lender shall have otherwise consented in writing, no Borrower will, nor will they cause or permit any Subsidiaries thereof to:

SECTION 6.01 **Indebtedness**. Incur, create, assume or permit to exist, directly or indirectly, any Indebtedness, except

(a) Indebtedness incurred under this Agreement and the other Transaction Documents;

(b) (i) Indebtedness outstanding on the Closing Date and listed on Schedule 6.01(b) and (ii) refinancings or renewals thereof; *provided* that (A) any such refinancing Indebtedness is in an aggregate principal amount not greater than the aggregate principal amount of the Indebtedness being renewed or refinanced, *plus* the amount of any premiums required to be paid thereon and reasonable fees and expenses associated therewith, (B) such refinancing Indebtedness has a later or equal final maturity and longer or equal weighted average life than the Indebtedness being renewed or refinanced and (C) the covenants, events of default, subordination and other provisions thereof (including any guarantees thereof) shall be, in the aggregate, no less favorable to the Lender than those contained in the Indebtedness being renewed or refinanced.

(c) Indebtedness in respect of accounts payable arising in the ordinary course of business;

(d) Indebtedness in respect of workers' compensation claims, insurance obligations and licensing bonds and related indemnity agreements arising in the ordinary course of business;

(e) Contingent Obligations of any Borrower in respect of Indebtedness otherwise permitted under this Section 6.01;

(f) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business; *provided*, *however*, that such Indebtedness is extinguished within five Business Days of incurrence;

(g) Indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(h) Indebtedness arising in connection with a Permitted Residual Financing; and

(i) Indebtedness, in an aggregate amount not in excess of $500,000,000, incurred by a new special purpose Subsidiary of a Borrower (the "**Re-Warehousing SPV**") to finance the Re-Warehousing Business (the "**Re-Warehousing Indebtedness**"); *provided*, that, there will be no recourse to any other Company (or assets thereof) other than the Re-Warehousing SPV with respect to the Re-Warehousing Business Indebtedness.

(j) Indebtedness incurred by a new Subsidiary of a Borrower (the "**Re-Warehousing Originator**") when it enters into a repurchase transaction with the Re-Warehousing SPV to fund its origination of residential mortgage loans which will later be sold to the Re-Warehousing SPV in connection with the Re-Warehousing Business.

(k) Indebtedness of one Borrower to another Borrower;

(l) Indebtedness constituting Investments permitted by Section 6.04;

(m) Indebtedness in connection with Acquisitions permitted by Section 6.07; and

(n) Indebtedness incurred in connection with the acquisition of equipment in the ordinary course of business; *provided*, that any Lien in connection with such Indebtedness shall attach solely to the equipment acquired.

SECTION 6.02 <u>**Liens**</u>. Create, incur, assume or permit to exist, directly or indirectly, any Lien on any property now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following (collectively, the "**Permitted Liens**"):

(a) inchoate Liens for taxes, assessments or governmental charges or levies not yet due and payable or delinquent and Liens for taxes, assessments or governmental charges or levies, which (i) are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien, and (ii) such Lien and the contest thereof shall satisfy the Contested Lien Conditions;

(b) Liens in respect of property of any Company imposed by Requirements of Law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, and (i) which do not in the aggregate materially detract from the value of the property of the Companies, taken as a whole, and do not materially impair the use thereof in the operation of the business of the Companies, taken as a whole, (ii) which, if they secure obligations that are then due and unpaid, are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien, and (iii) such Lien and the contest thereof shall satisfy the Contested Lien Conditions;

(c) any Lien in existence on the Closing Date and set forth on <u>Schedule 6.02(c)</u> and any Lien granted as a replacement or substitute therefor; *provided* that any such replacement or substitute Lien (i) except as permitted by <u>Section 6.01(b)(ii)(A)</u>, does not secure an aggregate amount of Indebtedness, if any, greater than that secured on the Closing Date and (ii) does not encumber any property other than the property subject thereto on the Closing Date (any such Lien, an "**Existing Lien**");

(d) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any Real Property owned by any Company, in each case whether now or hereafter in existence, not (i) securing Indebtedness, (ii) individually or in the aggregate materially impairing

the value or marketability of such Real Property or (iii) individually or in the aggregate materially interfering with the ordinary conduct of the business of the Companies at such Real Property;

(e) Liens arising out of judgments, attachments or awards not resulting in a Default and in respect of which such Company shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings and such Lien and the contest thereof shall satisfy the Contested Lien Conditions;

(f) Liens (x) imposed by Requirements of Law or deposits made in connection therewith in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation, (y) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) or (z) arising by virtue of deposits made in the ordinary course of business to secure liability for premiums to insurance carriers; *provided* that (i) with respect to clauses (x), (y) and (z) of this paragraph (f), such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, in connection with which proceedings orders have been entered that have the effect of preventing the forfeiture or sale of the property subject to any such Lien, (ii) to the extent such Liens are not imposed by Requirements of Law, such Liens shall in no event encumber any property other than cash and Cash Equivalents and (iii) such Lien and the contest thereof shall satisfy the Contested Lien Conditions;

(g) Leases of the properties of any Company granted by such Company to third parties, in each case entered into in the ordinary course of such Company's business so long as such Leases do not, individually or in the aggregate, (i) interfere in any material respect with the ordinary conduct of the business of any Company or (ii) materially impair the use (for its intended purposes) or the value of the property subject thereto;

(h) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Company in the ordinary course of business in accordance with the past practices of such Company;

(i) Liens securing Indebtedness incurred pursuant to <u>Section 6.01(n)</u>; *provided* that any such Liens attach only to the property being financed pursuant to such Indebtedness and do not encumber any other property of any Company;

(j) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by any Company, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; *provided* that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens on property of a person existing at the time such person is acquired or merged with or into or consolidated with any Company to the extent permitted hereunder (and not created in anticipation or contemplation thereof); *provided* that such Liens do not extend to property not subject

to such Liens at the time of acquisition (other than improvements thereon) and are no more favorable to the lienholders than such existing Lien;

(l) licenses of intellectual property granted by any Company in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Companies;

(m) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods;

(n) Liens on Residual Interests securing a Permitted Residual Financing;

(o) Liens incurred by the Re-Warehousing SPV to secure the Re-Warehousing Indebtedness including the Lien on a cash collateral/reserve account which will be initially funded in an amount not to exceed $10,000,000 and thereafter be increased by a percentage of excess income of the Re-Warehousing SPV (the "**Re-Warehousing Reserve Account**"); and

(p) Liens incurred in connection with the transactions permitted by Sections 6.01(j), (l) and (m).

SECTION 6.03 **Sale and Leaseback Transactions**. Enter into any arrangement, directly or indirectly, with any person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred (a "**Sale and Leaseback Transaction**") unless (i) the sale of such property is permitted by Section 6.06 and (ii) any Liens arising in connection with its use of such property are permitted by Section 6.02.

SECTION 6.04 **Investments, Loans and Advances**. Directly or indirectly, lend money or credit (by way of guarantee or otherwise) or make advances to any person, or purchase or acquire any stock, bonds, notes, debentures or other obligations or securities of, or any other interest in, or make any capital contribution to, any other person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract (all of the foregoing, collectively, "**Investments**"), except that the following shall be permitted:

(a) the Companies may consummate the Transactions in accordance with the provisions of the Transaction Documents;

(b) Investments outstanding on the Closing Date and identified on Schedule 6.04(b);

(c) the Companies may endorse negotiable instruments held for collection in the ordinary course of business;

(d) Investments in any entity that would not be considered a Subsidiary pursuant to the definition of such term (a "**Joint Venture**"); *provided*, that, during the period commencing on the date hereof and ending on the day that the principal of and interest on each Loan and all other expenses or amounts payable under any Transaction Document have been paid in full, the aggregate amount of such Investments, shall not exceed $2,000,000 without the prior written consent of the Lender;

(e) Investments with respect to Subsidiaries of the Borrowers (other than the Re-Warehousing Reserve Account Investment); *provided*, that, during the period commencing on the date hereof and ending on the day that the principal of and interest on each Loan and all other expenses or amounts payable under any Transaction Document have been paid in full, the aggregate amount of such Investments, together with Investments described in Section 6.04 (d), and the aggregate consideration paid in connection with Acquisitions described in Section 6.07 (b), shall not exceed $10,000,000. For the purpose of calculating compliance with the $10,000,000 limitation contained herein and in Section 6.07(b), Borrowers shall count each transaction only once, regardless of whether such transaction constitutes a transaction that meets the requirements of more than one of Sections 6.04(d), 6.04(e) and 6.07(b); and

(f) Investments with respect to the Re-Warehousing SPV in an amount not to exceed $10,000,000 which shall be used by the Re-Warehousing SPV for the initial funding of the Re-Warehousing Reserve Account (the "**Re-Warehousing Reserve Account Investment**") and any additional amounts thereafter added thereto from, and as a percentage of, excess income of the Re-Warehousing SPV;

(g) Investments in mortgage loans in the ordinary course of business; and

(h) Investments in Cash Equivalents.

SECTION 6.05 **Mergers and Consolidations**. Except for IFC and IWLG, wind up, liquidate or dissolve its affairs or enter into any transaction of merger or consolidation (or agree to do any of the foregoing at any future time), except that any Company may merge or consolidate with or into a Borrower (as long as such Borrower is the surviving person in the case of any merger or consolidation involving such Borrower).

SECTION 6.06 **Asset Sales**. Effect any Asset Sale, or agree to effect any Asset Sale, except that the following shall be permitted:

(a) disposition of used, worn out, obsolete or surplus property by any Company in the ordinary course of business and the abandonment or other disposition of intellectual property that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Companies taken as a whole;

(b) the Transactions as contemplated by the Transaction Documents;

(c) mergers and consolidations in compliance with Section 6.05; and

(d) other Asset Sales; *provided*, that, (i) no such Asset Sale may be to a Company or any Affiliate thereof and (ii) not later than one Business Day following the receipt of any Net Cash Proceeds of any such Asset Sale, Borrowers shall make prepayments of principal of Loans in accordance with Sections 2.05(b) in an aggregate amount equal to 100% of such Net Cash Proceeds or, if less, the outstanding amount of the Obligations.

SECTION 6.07 **Acquisitions**. Purchase or otherwise acquire (in one or a series of related transactions) any part of the property (whether tangible or intangible) of any person (or agree to do any of the foregoing at any future time) (excluding in all cases acquisitions of furniture, fixtures, equipment and supplies in the ordinary course of business), except that the following shall be permitted:

(a) the Transactions as contemplated by the Transaction Documents; and

(b) other purchases or acquisitions of property ("**Acquisitions**"); *provided*, that, during the period commencing on the date hereof and ending on the day that the principal of and interest on each Loan and all other expenses or amounts payable under any Transaction Document have been paid in full, the aggregate consideration paid in connection with such Acquisitions, together with the aggregate amount of Investments described in Section 6.04 (d) and Section 6.04 (e), shall not exceed $10,000,000. For the purpose of calculating compliance with the $10,000,000 limitation contained herein and in Section 6.04(e), Borrowers shall count each transaction only once, regardless of whether such transaction constitutes a transaction that meets the requirements of more than one of Sections 6.04(d), 6.04(e) and 6.07(b).

SECTION 6.08 **Dividends**. Authorize, declare or pay, directly or indirectly, any Dividends with respect to any Company, except that the following shall be permitted:

(a) Dividends to a Borrower from a Subsidiary of such Borrower;

(b) purchases by Holdings of its 9.375% Series B Cumulative Redeemable Preferred Stock (Pink Sheets: IMPHP) and/or 9.125% Series C Cumulative Redeemable Preferred Stock (Pink Sheets: IMPHO); provided, that the aggregate purchase price for such purchases shall not exceed $601,750 (with such purchase price amount, as so limited, to constitute the sole consideration for the purchase of such securities and/or the payment or extinguishment of accrued and unpaid dividends related to such securities);

(c) the payment of quarterly dividends on Trust Preferred Securities in an amount not to exceed $560,000 for any quarter; and

(d) purchases by Holdings or any Subsidiary thereof of all, but not less than all, of the outstanding Trust Preferred Securities for an aggregate purchase price not to exceed $1,650,000.

SECTION 6.09 Transactions with Affiliates. Enter into, directly or indirectly, any transaction or series of related transactions, whether or not in the ordinary course of business, with, or make any payments to, any Affiliate of any Company or any director, officer or employee of any Company, except that the following shall be permitted:

(a) Dividends permitted by Section 6.08;

(b) reasonable and customary director, officer and employee compensation and other benefits (including retirement, health, stock option and other benefit plans) and indemnification arrangements, in each case approved by the Board of Directors of the applicable Borrower;

(c) transactions on terms and conditions at least as favorable to such Company as would reasonably be obtained by such Company at that time in a comparable arm's-length transaction;

(d) transactions between the Re-Warehousing SPV and the Re-Warehousing Originator related to the Re-Warehousing Business; and

(e) the Transactions as contemplated by the Transaction Documents.

SECTION 6.10 Financial Covenants.

(a) Shareholders Equity. Permit the Shareholders' Equity, as at any date of determination, to be less than zero; provided, that, the effect of any increase or decrease in the amount of the obligations under the Trust Preferred Securities will be excluded for the purpose of calculating Shareholders' Equity.

(b) Cash and Cash Equivalents. Permit the unrestricted and unencumbered Cash and Cash Equivalents owned and held by the Borrowers, plus 50% of the fair value of Holdings' investment in the JAM Special Opportunities Fund L.P. (determined in accordance with GAAP), as at any date of determination, to be less than $10,000,000.

SECTION 6.11 Prepayments of Other Indebtedness; Settlement of Repurchase Obligations; Modifications of Organizational Documents and Other Documents, etc. Directly or indirectly:

(a) make (or give any notice in respect thereof) any payment or prepayment of principal on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, change of control or similar event of, any Indebtedness outstanding under any Indebtedness of any Borrower or any of its Subsidiaries except (i) any payment of principal at scheduled maturity or (ii) a refinancing permitted by Section 6.01(b);

(b) agree upon the amount of, or pay any amount (or transfer any assets) with respect to, any liquidated or unliquidated repurchase, substitution or similar obligations (other than ordinary scheduled repurchases under master repurchase agreements which are not related to breaches of representations) of any Borrower or any Subsidiary thereof under any agreement to which it is a party (collectively, "**Repurchase Obligation**"); *provided*, that any Company can agree upon the amount of, or pay any amount with respect to, any Repurchase Obligations with the written consent of the Lender, which consent shall not be unreasonably withheld and; *provided*, *further*, that any Company can agree upon the amount of, or pay any amount with respect to, any Repurchase Obligations without the consent of the Lender if such amount is not in excess of $500,000 and such amount together with all other amounts paid by any Company to the same Person or its Affiliates with respect to Repurchase Obligations after the Closing Date does not exceed $1,000,000;

(c) amend or modify, or permit the amendment or modification of, any provision of any Transaction Document or any document governing any Material Indebtedness in any manner that is adverse in any material respect to the interests of the Lender; or

(d) terminate, amend or modify any of its Organizational Documents or any agreement to which it is a party with respect to its Equity Interests (including any stockholders' agreement), or enter into any new agreement with respect to its Equity Interests, other than any such amendments or modifications or such new agreements which are not adverse in any material respect to the interests of the Lender; *provided* that Holdings may issue such Equity Interests, so long as such issuance is not prohibited by Section 6.13 or any other provision of this Agreement, and may amend or modify its Organizational Documents to authorize any such Equity Interests.

SECTION 6.12 Limitation on Certain Restrictions on Subsidiaries. Directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction

on the ability of any Subsidiary of a Borrower (other than a Subsidiary of a Borrower that is a special purpose vehicle created in connection with the Re-Warehousing Business) to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by a Borrower, or pay any Indebtedness owed to a Borrower, (b) make loans or advances to a Borrower or (c) transfer any of its properties to a Borrower, except for such encumbrances or restrictions existing under or by reason of (i) applicable Requirements of Law; (ii) this Agreement and the other Transaction Documents; (iii) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of a Subsidiary; (iv) customary provisions restricting assignment of any agreement entered into by a Subsidiary in the ordinary course of business; (v) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 6.06 pending the consummation of such sale; (vi) any agreement in effect at the time such Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement was not entered into in connection with or in contemplation of such person becoming a Subsidiary of a Borrower; (vii) customary provisions in partnership agreements, limited liability company organizational governance documents, asset sale and stock sale agreements and other similar agreements entered into in the ordinary course of business that restrict the transfer of ownership interests in such partnership, limited liability company or similar person; or (viii) restrictions on cash or other deposits or net worth imposed by suppliers or landlords under contracts entered into in the ordinary course of business.

SECTION 6.13 **Limitation on Issuance of Capital Stock**.

(a) With respect to Holdings, issue any Equity Interest that is not Qualified Capital Stock.

(b) With respect to any other Borrower or any Subsidiary thereof, issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except (i) for stock splits, stock dividends and additional issuances of Equity Interests which do not decrease the percentage ownership of a Borrower or any such Subsidiaries in any class of the Equity Interest of such Subsidiary; (ii) Subsidiaries of a Borrower formed after the Closing Date may issue Equity Interests to a Borrower or the Subsidiary of a Borrower which is to own such Equity Interests; (iii) a Borrower may issue common stock that is Qualified Capital Stock to Holdings and (iv) any Borrower or any Subsidiary thereof may issue to any Person other than a Company, or any Affiliate thereof, options or warrants to purchase Equity Interests as compensation for services rendered or to be rendered to such Borrower or Subsidiary.

SECTION 6.14 **[Reserved.]**.

SECTION 6.15 **Business**.

With respect to the Borrowers, engage (directly or indirectly) in any business other than those businesses in which Borrowers are engaged on the Closing Date; *provided* that (A) the foregoing shall not prohibit (i) a Subsidiary of a Borrower from originating residential mortgage loans or engaging in the Re-Warehousing Business or (ii) Investments in Joint Ventures that are otherwise permitted hereunder and (B) notwithstanding any other provision hereof, this Section 6.15 shall cease to be in effect after the entire principal balance of the Tranche B Loan has been repaid in full (together with all accrued interest thereon).

SECTION 6.16 **Limitation on Accounting Changes**. Make or permit any change in accounting policies or reporting practices, without the consent of the Lender, which consent shall not be unreasonably withheld, except changes that are required by GAAP.

SECTION 6.17 **Fiscal Year**. Change its fiscal year-end to a date other than December 31.

SECTION 6.18 **Anti-Terrorism Law; Anti-Money Laundering**.

(a) Directly or indirectly, (i) knowingly conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in Section 3.20, (ii) knowingly deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or any other Anti-Terrorism Law, or (iii) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law (and the Borrowers shall deliver to the Lender any certification or other evidence requested from time to time by the Lender in its reasonable discretion, confirming the Borrowers' compliance with this Section 6.18.

(b) Cause or permit any of the funds of such Borrower that are used to repay the Loans to be derived from any unlawful activity with the result that the making of the Loans would be in violation of any Requirement of Law.

Embargoed Person. Cause or permit (a) any of the funds or properties of the Borrowers that are used to repay the Loans to constitute property of, or be beneficially owned directly or indirectly by, any person subject to sanctions or trade restrictions under United States law ("**Embargoed Person**" or "**Embargoed Persons**") that is identified on (1) the "List of Specially Designated Nationals and Blocked Persons" maintained by OFAC and/or on any other similar list maintained by OFAC pursuant to any authorizing statute including, but not limited to, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq*., The Trading with the Enemy Act, 50 U.S.C. App. 1 *et seq*., and any Executive Order or Requirement of Law promulgated thereunder, with the result that the investment in the Borrowers (whether directly or indirectly) is prohibited by a Requirement of Law, or the Loans made by the Lender would be in violation of a Requirement of Law, or (2) the Executive Order, any related enabling legislation or any other similar Executive Orders or (b) any Embargoed Person to have any direct or indirect interest, of any nature whatsoever in the Borrowers, with the result that the investment in the Borrowers (whether directly or indirectly) is prohibited by a Requirement of Law or the Loans are in violation of a Requirement of Law.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01 **Events of Default**. Upon the occurrence and during the continuance of the following events ("**Events of Default**"):

(a) default shall be made in the payment of any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof (including a Tranche A

Maturity Date or Tranche B Maturity Date) or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise (including, without limitation, the Borrowers failure to pay the Monthly Payment to the Lender on any Payment Date);

(b) default shall be made in the payment of any interest on any Loan or any other amount (other than an amount referred to in paragraph (a) above) due under any Transaction Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of two Business Days;

(c) any representation or warranty made or deemed made in or in connection with any Transaction Document or the borrowings hereunder, or any representation, warranty, statement or information contained in any report, certificate, financial statement or other instrument furnished in connection with or pursuant to any Transaction Document, shall prove to have been false or misleading in any material respect when so made, deemed made or furnished;

(d) default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in Section 5.02, 5.03(a) or (b), or in Article VI;

(e) default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in any Transaction Document (other than those specified in paragraphs (a), (b) or (d) immediately above) and such default shall continue unremedied or shall not be waived for a period of 30 days;

(f) any Company (other than IFC and IWLG) shall (i) fail to pay any principal or interest, regardless of amount, due in respect of any Indebtedness (other than the Obligations), when and as the same shall become due and payable beyond any applicable grace period, or (ii) fail to observe or perform any other term, covenant, condition or agreement contained in any agreement or instrument evidencing or governing any such Indebtedness or (iii) fail to pay any other amount due and payable; *provided* that it shall not constitute an Event of Default pursuant to this paragraph (f) unless the aggregate amount of all such Indebtedness referred to in clauses (i) and (ii) and/or all other amount referred to in clause (iii) exceeds $1,000,000 at any one time (*provided* that, in the case of Hedging Obligations, the amount counted for this purpose shall be the amount payable by all Companies if such Hedging Obligations were terminated at such time and *provided further* that for the purposes of this subsection (f) Repurchase Obligations shall not be included under clauses (i), (ii) or (iii) hereof);

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of any Company (other than IFC and IWLG), or of a substantial part of the property of any Company (other than IFC and IWLG), under Title 11 of the U.S. Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company (other than IFC and IWLG) or for a substantial part of the property of any Company (other than IFC and IWLG); or (iii) the winding-up or liquidation of any Company (other than IFC and IWLG); and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Company (other than IFC and IWLG) shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now

constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (g) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Company (other than IFC and IWLG) or for a substantial part of the property of any Company (other than IFC and IWLG); (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; (vii) take any action for the purpose of effecting any of the foregoing; or (viii) wind up or liquidate;

(i) one or more judgments, orders or decrees for the payment of money in an aggregate amount in excess of $1,000,000 shall be rendered against any Company (other than IFC and IWLG) or any combination thereof and the same shall remain undischarged, unvacated or unbonded for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon properties of any Company to enforce any such judgment;

(j) any Transaction Document or any material provisions thereof shall at any time and for any reason be declared by a court of competent jurisdiction to be null and void, or a proceeding shall be commenced by any Borrower or any other person, or by any Governmental Authority, seeking to establish the invalidity or unenforceability thereof (exclusive of questions of interpretation of any provision thereof), or any Borrower shall repudiate or deny any portion of its liability or obligation for the Obligations or any other obligations hereunder or under any other Transaction document;

(k) there shall have occurred a Change in Control; or

(l) any Company (other than IFC and IWLG) shall be prohibited or otherwise restrained from conducting the business theretofore conducted by it in any manner that has or could reasonably be expected to result in a Material Adverse Effect by virtue of any determination, ruling, decision, decree or order of any court or Governmental Authority of competent jurisdiction;

then, and in every such event (other than an event with respect to Holdings or another Borrower described in paragraph (g) or (h) above), and at any time thereafter during the continuance of such event, the Lender may by notice to Borrower, take the following actions, at the same or different times: declare the Loans then outstanding to be forthwith due and payable in whole or in part, whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and any unpaid accrued Fees and all other Obligations of Borrowers accrued hereunder and under any other Transaction Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other Transaction Document to the contrary notwithstanding; and in any event, with respect to Holdings or a Borrower described in paragraph (g) or (h) above, the principal of the Loans then outstanding, together with accrued interest thereon and all other Obligations of Borrowers accrued hereunder and under any other Transaction Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by Borrowers, anything contained herein or in any other Transaction Document to the contrary notwithstanding.

ARTICLE VIII

[Reserved]

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 <u>**Notices**</u>.

(a) <u>Generally</u>. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, or sent by email as follows:

(i) if to any Borrower, to such Borrower at:

19500 Jamboree Road
Irvine, California 92612
Attention: Ronald Morrison
Telecopier No.: (949) 706-6208
Email: ron.morrison@impaccompanies.com

(ii) if to the Lender, to it at:

677 Washington Boulevard
Stamford, Connecticut 06901
Attention: Jeffrey Mayer, Joseph Pigott, Greg Walker and Christopher Scolaro
Telecopier No.: (212) 882-3597
Email: jeffrey.mayer@ubs.com, joseph.pigott@ubs.com, greg.walker@ubs.com, christopher.scolaro@ubs.com

Notices sent by hand or overnight courier service, shall be deemed to have been given when received; notices sent by email shall be deemed to have been given when receipt thereof is confirmed (electronically or otherwise). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lender hereunder may (subject to Section 9.01(d)) be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Lender; *provided* that the foregoing shall not apply to notices to the Lender pursuant to Article II if the Lender has notified

the Borrowers that it is incapable of receiving notices under such Article by electronic communication. The Lender or Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it (including as set forth in Section 9.01(d)); *provided* that approval of such procedures may be limited to particular notices or communications.

Unless the Lender otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Change of Address, etc. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

(d) Posting. Each Borrower hereby agrees that it will provide to the Lender all information, documents and other materials that it is obligated to furnish to the Lender pursuant to this Agreement and any other Transaction Document, including all notices, requests, financial statements, financial and other reports, certificates and other information materials, but excluding any such communication that (i) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (ii) provides notice of any Default under this Agreement or (iii) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any borrowing or other extension of credit hereunder (all such non-excluded communications, collectively, the "**Communications**"), by transmitting the Communications in an electronic/soft medium in a format reasonably acceptable to the Lender at such e-mail address(es) as are provided by the Lender to Borrowers from time to time or in such other form, including hard copy delivery thereof, as the Lender shall require. In addition, each Borrower agrees to continue to provide the Communications to the Lender in the manner specified in this Agreement or any other Transaction Document or in such other form, including hard copy delivery thereof, as the Lender shall require. Nothing in this Section 9.01 shall prejudice the right of the Lender or any Borrower to give any notice or other communication pursuant to this Agreement or any other Transaction Document in any other manner specified in this Agreement or any other Transaction Document or as any such Lender shall require.

To the extent consented to by the Lender in writing from time to time, Lender agrees that receipt of the Communications by the Lender at its e-mail address(es) set forth above shall constitute effective delivery of the Communications to the Lender for purposes of the Transaction Documents.

SECTION 9.02 Waivers; Amendment.

(a) Generally. No failure or delay by the Lender in exercising any right or power hereunder or under any other Transaction Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Lender hereunder and under the other Transaction Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of

any provision of any Transaction Document or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of, or deemed making of, a Loan shall not be construed as a waiver of any Default, regardless of whether the Lender may have had notice or knowledge of such Default at the time. No notice or demand on any Borrower in any case shall entitle such Borrower to any other or further notice or demand in similar or other circumstances.

(b) Required Consents. Neither this Agreement nor any other Transaction Document nor any provision hereof or thereof may be waived, amended, supplemented or modified except pursuant to an agreement or agreements in writing entered into by Borrowers and the Lender.

SECTION 9.03 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Each party hereto shall bear its own expenses in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Transaction Documents or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated). Borrowers shall pay all out-of-pocket expenses incurred by the Lender (including the fees, charges and disbursements of any counsel for the Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Transaction Documents, including its rights under this Section 9.03, or (B) in connection with the Loans made, or deemed made, hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) Indemnification by Borrowers. Borrowers shall, on a joint and several basis, indemnify the Lender and each Related Party thereof (each such person being called an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any party hereto or any third party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Transaction Document, or any amendment, amendment and restatement, modification or waiver of the provisions hereof or thereof, or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or (ii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Transaction Document, if such Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) [Reserved]

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Requirements of Law, no Borrower shall assert, and each Borrower hereby waives, any claim

against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Transaction Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby or the use of the proceeds thereof. No Indemnitee referred to in paragraph (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Transaction Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than 3 Business Days after demand therefor.

SECTION 9.04 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of paragraph (b) of this Section 9.04, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section 9.04 or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any Borrower or the Lender shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the other Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lender. Any Lender may at any time assign to one (but not more than one) Eligible Assignee all (but not less than all) of its rights and obligations under this Agreement and both of the Term Notes (including all of the Loans at the time owing to it); *provided* that the parties to such assignment shall execute an Assignment and Assumption. From and after the effective date specified in any Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and have all of the rights and obligations of the Lender under this Agreement, and the assigning Lender thereunder shall be released from its obligations, if any, under this Agreement (and such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.07, 2.08, 2.10 and 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by the Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by the Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section 9.04.

(c) [Reserved].

(d) Participations. The Lender may at any time, without the consent of, or notice to, Borrowers, sell participations to any person (each, a "**Participant**") in all or a portion of the Lender's rights and/or obligations under this Agreement (including all or a portion of the Loans owing to it); *provided* that (i) the Lender's obligations under this Agreement shall remain unchanged, (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and

(iii) Borrowers shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which the Lender sells such a participation shall provide that the Lender shall retain the sole right to enforce the Transaction Documents and to approve any amendment, modification or waiver of any provision of the Transaction Documents; *provided* that such agreement or instrument may provide that the Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clause (i), (ii) or (iii) of the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (e) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.07, 2.08 and 2.10 (subject to the requirements of those Sections) to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were the Lender, provided such Participant agrees to be subject to Section 2.09 as though it were the Lender.

(e) Limitations on Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 2.07, 2.08 and 2.10 than the Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent.

(f) Certain Pledges. The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release the Lender from any of its obligations hereunder or substitute any such pledgee or assignee for the Lender as a party hereto. In the case the Lender is a fund that invests in bank loans, the Lender may, without the consent of Borrowers, collaterally assign or pledge all or any portion of its rights under this Agreement, including the Loans and Term Notes or any other instrument evidencing its rights as the Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable

Requirement of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.05 **Survival of Agreement**. All covenants, agreements, representations and warranties made by the Borrowers in the Transaction Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Transaction Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Transaction Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding. The provisions of

Sections 2.07, 2.08, 2.10 and Article IX (other than Section 9.12) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

SECTION 9.06 **Counterparts; Integration; Effectiveness**. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Transaction Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or other electronic transmission (i.e. a “pdf” or “tif” document) shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07 **Severability**. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 **Right of Setoff**. If an Event of Default shall have occurred and be continuing, the Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Lender or any such Affiliate to or for the credit or the account of any Borrower against any and all of the obligations of such Borrower now or hereafter existing under this Agreement or any other Transaction Document to the Lender, irrespective of whether or not the Lender shall have made any demand under this Agreement or any other Transaction Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch or office of the Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of the Lender and its Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that the Lender or its Affiliates may have. The Lender agrees to notify Borrowers promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 9.09 **Governing Law; Jurisdiction; Consent to Service of Process**.

(a) Governing Law. This Agreement and the transactions contemplated hereby, and all disputes between the parties under or relating to this Agreement or the facts or circumstances leading to its execution, whether in contract, tort or otherwise, shall be construed in accordance with and governed by the laws (including statutes of limitation) of the State of New York, without regard to conflicts of law principles that would require the application of the laws of another jurisdiction.

(b) Submission to Jurisdiction. Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive personal jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of

or relating to any Transaction Document, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Transaction Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Transaction Document against any Borrower or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Borrower hereby irrevocably and unconditionally waives, to the fullest extent permitted by applicable Requirements of Law, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Transaction Document in any court referred to in Section 9.09(b). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable Requirements of Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in any action or proceeding arising out of or relating to any Transaction Document, in the manner provided for notices (other than telecopier) in Section 9.01. Nothing in this Agreement or any other Transaction Document will affect the right of any party hereto to serve process in any other manner permitted by applicable Requirements of Law.

SECTION 9.10 **Waiver of Jury Trial**. Each Borrower hereby waives, to the fullest extent permitted by applicable Requirements of Law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement, any other Transaction Document or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section.

SECTION 9.11 **Headings**. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 **Treatment of Certain Information; Confidentiality**. The Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any Governmental Authority or regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Requirements of Law or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Transaction Document or any action or proceeding relating to this Agreement or any other Transaction Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section 9.12, to (i) any assignee of or

Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations or (iii) any rating agency for the purpose of obtaining a credit rating applicable to the Lender, (g) with the consent of Borrowers or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Lender or any of its Affiliates on a nonconfidential basis from a source other than a Borrower. For purposes of this Section, "**Information**" means all information received from a Borrower or any of its Subsidiaries relating to a Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by any Borrower or any of its Subsidiaries; *provided* that, in the case of information received from any Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information.

SECTION 9.13 **USA PATRIOT Act Notice**. The Lender hereby notifies Borrowers that pursuant to the requirements of the Patriot Act it is required to obtain, verify and record information that identifies Borrowers, which information includes the name, address and tax identification number of Borrowers and other information regarding Borrowers that will allow the Lender to identify Borrowers in accordance with the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act and is effective as to the Lender.

SECTION 9.14 **Interest Rate Limitation**. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable Requirements of Law (collectively, the "**Charges**"), shall exceed the maximum lawful rate (the "**Maximum Rate**") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable Requirements of Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to the Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by the Lender.

SECTION 9.15 **Structure of Re-Warehousing Transaction.** The Lender acknowledges that the transactions involving the Re-Warehousing Business and the Re-Warehousing SPV are still being structured with the potential re-warehousing counterparty and that such transactions may take a form other than the back-to-back master repurchase agreement structure currently contemplated. The Lender agrees that so long as the final structure does not involve an Investment by any Company or by the Companies in the aggregate in excess of the amount permitted pursuant to Section 6.04(f), and provided that except for such Investment the structure is non-recourse to each Company except the Re-Warehousing SPV, and provided further that the Lender shall have had a reasonable opportunity to review near final and final drafts of the documentation evidencing such structure and has confirmed the foregoing is correct, such structure and the transactions contemplated thereby shall be deemed approved by the Lender hereunder and Lender and the Borrowers shall work in good faith to amend Article VI hereof to reflect that the Re-Warehousing Business is in all respects permitted in its final form and not subject to

any restrictions not applicable thereto on the Closing Date because of any change in form of the re-warehousing transactions. **]**

SECTION 9.16 **Obligations Absolute**. To the fullest extent permitted by applicable Requirements of Law, all obligations of the Borrowers hereunder shall be absolute and unconditional irrespective of:

(a) any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or the like of any Borrower;

(b) any lack of validity or enforceability of any Transaction Document or any other agreement or instrument relating thereto against any Borrower;

(c) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other amendment or waiver of or any consent to any departure from any Transaction Document or any other agreement or instrument relating thereto;

(d) any exchange, release or non-perfection of any property, or any release or amendment or waiver of or consent to any departure from any guarantee, for all or any of the Obligations;

(e) any exercise or non-exercise, or any waiver of any right, remedy, power or privilege under or in respect hereof or any Transaction Document; or

(f) any other circumstances which might otherwise constitute a defense available to, or a discharge of, the Borrowers.

SECTION 9.17 **Enforcement** Notwithstanding anything to the contrary contained herein or in any other Transaction Document, the authority to enforce rights and remedies hereunder and under the other Transaction Documents against the Borrowers or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Lender.

SECTION 9.18 **Lender Consents** To the extent that the any action described herein requires the consent of the Lender, the Lender shall use commercially reasonable efforts to deliver its consent, or refusal to consent, within five (5) Business days of receipt of a written request for such consent.

SECTION 9.19 **Waiver of Deemed Guarantor Rights** To the extent that any Borrower is deemed to be a guarantor of the obligations of the other Borrowers ("**Guaranteed Obligations**"), and not a borrower itself, then such Borrower shall be deemed to have waived, and hereby expressly waives, (i) diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Lender exhaust any right, power or remedy or proceed against such other Borrowers under this Agreement or any other Transaction Document or against any other Person and (ii) any and all notice of the creation, renewal, extension, waiver, termination or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by the Lender upon such Borrower's deemed guarantee or acceptance of such deemed guarantee, and the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred in reliance upon such deemed guarantee, and all dealings between the other Borrowers and the Lender shall likewise be conclusively presumed to have been had or consummated in reliance upon such deemed guarantee.

SECTION 9.20 **Pledge of Re-Warehousing SPV**

Each Borrower agrees to (if it becomes the owner of any Equity Interests in the Re-Warehousing SPV), and to cause each of its Subsidiaries to (if it becomes the owner of any Equity Interests in the Re-Warehousing SPV) work diligently and in good faith to, (i) grant a first priority, perfected security interest in 100% of its Equity Interests in the Re-Warehousing SPV to the Lender to secure the payment of the Obligations and the performance of all other obligations under the Transaction Documents, pursuant to documentation satisfactory in form and substance to the Lender and (ii) deliver legal opinions satisfactory in form and substance to the Lender with respect to such first priority, perfected security interest. In the event the provisions of Section 9.15 are applicable because the structure of the Re-Warehousing Business changes in a manner such that no the Re-Warehousing SPV is created (or, if despite working diligently and in good faith to comply with the preceding sentence, it is not possible to grant the contemplated security interest in 100% of the Equity Interests in the Re-Warehousing SPV, including because of the refusal of the applicable financing source or structuring agent to consent to such a grant), the Borrowers will work diligently and in good faith to ensure that the Lender receives a security interest and/or has such other rights as may be reasonably necessary to ensure that the Lender has substantially similar rights and protections as it would have if it had obtained a security interest in 100% of the Equity Interests in the Re-Warehousing SPV. Each of the Lender and each Borrower agrees that the purpose of this provision is to ensure that in the event any Borrower or any Subsidiary of any Borrower is entitled to a return of any portion of the initial $10,000,000 investment in the Re-Warehousing SPV, in whatever form such investment may take, that such returned investment is subject to a security interest in favor of the Lender and the parties agree to work together in good faith to accomplish that purpose.

[Signature Pages Follow**]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Ronald Morrison
Name: Ronald Morrison
Title: Executive Vice President

IMPAC FUNDING CORPORATION

By: /s/ Ronald Morrison
Name: Ronald Morrison
Title: Executive Vice President

IMPAC WAREHOUSE LENDING GROUP, INC.

By: /s/ Ronald Morrison
Name: Ronald Morrison
Title: Executive Vice President

INTEGRATED REAL ESTATE SERVICE CORP.

By: /s/ Todd Taylor
Name: Todd Taylor
Title: Chief Financial Officer

UBS REAL ESTATE SECURITIES, INC. as a Lender

By: /s/ Robert Carpenter
Name: Robert Carpenter
Title: Executive Director

By: /s/ Arnold John
Name: Arnold John
Title: Executive Director

Annex I

Applicable Margin

Tranche A Loans:

3.50%

Tranche B Loans:

3.50%

Schedule 1

Non-recourse securitization trusts that have
entered into hedge transactions

[See Attached]

Schedule 3.07

Equity Interests

[See Attached]

Schedule 6.01(b)

Existing Indebtedness

[See Attached]

Schedule 6.02(c)

Existing Liens

[See Attached]

Schedule 6.04(b)

Existing Investments

[See Attached]

Exhibit A

[Reserved]

Exhibit B

Form of Solvency/Financial Covenant
Compliance Certificate

[See attached]

Exhibit C-1

Form of Tranche A Term Note

[See Attached]

Exhibit C-2

Form of Tranche B Term Note

[See Attached]

Exhibit 10.17(a)

TRANCHE A TERM NOTE

$23,850,000 — New York, New York
October 30, 2009

FOR VALUE RECEIVED, the undersigned, IMPAC MORTGAGE HOLDINGS, INC., IMPAC FUNDING CORPORATION, IMPAC WAREHOUSE LENDING GROUP, INC. and INTEGRATED REAL ESTATE SERVICE CORP. (each, a "**Borrower**" and, collectively, the "**Borrowers**"), hereby promises to pay, on a joint and several basis, to the order of UBS REAL ESTATE SECURITIES, INC. (the "**Lender**") on the Tranche A Maturity Date (as defined in the Credit Agreement referred to below) in lawful money of the United States and in immediately available funds, the principal amount of TWENTY THREE MILLION EIGHT HUNDRED FIFTY THOUSAND DOLLARS ($23,850,000), or, if less, the aggregate unpaid principal amount of all Tranche A Loans of the Lender outstanding under the Credit Agreement referred to below, which sum shall be due and payable in such amounts and on such dates as are set forth in the Credit Agreement. Borrowers further agree to pay, on a joint and several basis, interest in like money at such office specified in Section 2.09 of the Credit Agreement on the unpaid principal amount hereof from time to time from the date hereof at the rates, and on the dates, specified in Section 2.03 of such Credit Agreement.

The holder of this Term Note may endorse and attach a schedule to reflect the date, Type and amount of each Tranche A Loan of the Lender outstanding under the Credit Agreement, the date and amount of each payment or prepayment of principal hereof, and the date of each interest rate conversion pursuant to Section 2.06 of the Credit Agreement and the principal amount subject thereto; *provided* that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of Borrowers hereunder or under the Credit Agreement.

This Term Note is one of the Term Notes referred to in the Credit Agreement, dated as of October 30, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Borrowers and the Lender, is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein or unless the context otherwise requires.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable all as provided therein.

All parties now and hereafter liable with respect to this Term Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

THIS TERM NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT.

THIS TERM NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

IMPAC MORTGAGE HOLDINGS, INC., as a Borrower

By: /s/ Ronald Morrison
Name:
Title:

IMPAC FUNDING CORPORATION, as a Borrower

By: /s/ Ronald Morrison
Name:
Title:

IMPAC WAREHOUSE LENDING GROUP, INC., as a Borrower

By: /s/ Ronald Morrison
Name:
Title:

INTEGRATED REAL ESTATE SERVICE CORP., as a Borrower

By: /s/ Todd Taylor
Name:
Title:

Exhibit 10.17(b)

TRANCHE B TERM NOTE

$10,000,000 New York, New York
October 30, 2009

FOR VALUE RECEIVED, the undersigned, IMPAC MORTGAGE HOLDINGS, INC., IMPAC FUNDING CORPORATION, IMPAC WAREHOUSE LENDING GROUP, INC. and INTEGRATED REAL ESTATE SERVICE CORP. (each, a "**Borrower**" and, collectively, the "**Borrowers**"), hereby promises to pay, on a joint and several basis, to the order of UBS REAL ESTATE SECURITIES, INC. (the "**Lender**") on the Tranche B Maturity Date (as defined in the Credit Agreement referred to below) in lawful money of the United States and in immediately available funds, the principal amount of TEN MILLION DOLLARS ($10,000,000), or, if less, the aggregate unpaid principal amount of all Tranche B Loans of the Lender outstanding under the Credit Agreement referred to below, which sum shall be due and payable in such amounts and on such dates as are set forth in the Credit Agreement. Borrowers further agree to pay, on a joint and several basis, interest in like money at such office specified in Section 2.09 of the Credit Agreement on the unpaid principal amount hereof from time to time from the date hereof at the rates, and on the dates, specified in Section 2.03 of such Credit Agreement.

The holder of this Term Note may endorse and attach a schedule to reflect the date, Type and amount of each Tranche B Loan of the Lender outstanding under the Credit Agreement, the date and amount of each payment or prepayment of principal hereof, and the date of each interest rate conversion pursuant to Section 2.06 of the Credit Agreement and the principal amount subject thereto; *provided* that the failure of the Lender to make any such recordation (or any error in such recordation) shall not affect the obligations of Borrowers hereunder or under the Credit Agreement.

This Term Note is one of the Term Notes referred to in the Credit Agreement, dated as of October 30, 2009 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Borrowers and the Lender, is subject to the provisions thereof and is subject to optional and mandatory prepayment in whole or in part as provided therein. Terms used herein which are defined in the Credit Agreement shall have such defined meanings unless otherwise defined herein or unless the context otherwise requires.

Upon the occurrence of any one or more of the Events of Default specified in the Credit Agreement, all amounts then remaining unpaid on this Term Note shall become, or may be declared to be, immediately due and payable all as provided therein.

All parties now and hereafter liable with respect to this Term Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest and all other notices of any kind.

THIS TERM NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE CREDIT AGREEMENT.

THIS TERM NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

IMPAC MORTGAGE HOLDINGS, INC., as a Borrower

By: /s/ Ronald Morrison
Name:
Title:

IMPAC FUNDING CORPORATION, as a Borrower

By: /s/ Ronald Morrison
Name:
Title:

IMPAC WAREHOUSE LENDING GROUP, INC., as a Borrower

By: /s/ Ronald Morrison
Name:
Title:

INTEGRATED REAL ESTATE SERVICE CORP., as a Borrower

By: /s/ Todd Taylor
Name:
Title:

Exhibit 10.18

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (this "Agreement"), dated as of October 30, 2009, is by and among Impac Mortgage Holdings Inc., a Maryland corporation ("IMH"), Impac Funding Corporation, a California corporation ("IFC"), Impac Warehouse Lending Group, Inc., a California corporation ("IWLG" and collectively, with IMH and IFC, "Impac") and UBS Real Estate Securities Inc., a Delaware corporation ("UBS").

RECITALS

WHEREAS, Impac and UBS are parties to an Amended and Restated Master Repurchase Agreement dated as of September 11, 2008 (the "ARMRA") among IMH, IFC and IWLG as the Sellers thereunder, and UBS as the Buyer thereunder (capitalized terms used and not defined herein having the meanings ascribed thereto in the ARMRA);

WHEREAS, there exists an unpaid and unsatisfied Repurchase Price owing to UBS by Impac under the ARMRA as of the date hereof, consisting of $139,754,978.81 in outstanding Purchase Price (the "Outstanding Purchase Price") together with accrued and unpaid Price Differential thereon that as of the date hereof equals at least $244,116.78 (the "Outstanding Price Differential" and together with the Outstanding Purchase Price, the "Outstanding Repurchase Price");

WHEREAS, the Repurchase Obligations (which include the Outstanding Repurchase Price) and other Seller-Related Obligations under the ARMRA are secured by the Mortgage Loans and other Purchased Assets and Purchased Items pursuant to Section 6.02 of the ARMRA;

WHEREAS in order to provide for a workout and satisfaction of the Repurchase Obligations (including the Outstanding Repurchase Price) under the ARMRA, and other Seller-Related Obligations, if any, secured pursuant to the ARMRA, Impac and UBS desire to enter into this Settlement Agreement and to effect the various transactions, agreements and transfers contemplated and described herein, including without limitation, executing and delivering, simultaneously with the execution and delivery hereof, the Credit Agreement (as defined herein) pursuant to which IMH, IFC, IWLG and Integrated Real Estate Services Corporation (a subsidiary of IMH) ("IRES") jointly and severally are issuing the Term Notes (as defined therein) to UBS, along with Impac's effecting and evidencing hereunder an irrevocable transfer and conveyance to UBS of all Impac's right, title and interest in and to the Mortgage Loans and other Released Assets as described in Section 1(a)(ii) hereof.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants and agreements contained herein and in the Credit Agreement, the parties hereto agree as follows:

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1. **Payments and Actions of Impac.**

(a) Impac hereby agrees that, simultaneously with the execution and delivery of this Agreement by the parties hereto and in each case as a condition to the effectiveness of UBS's undertakings and agreements hereunder (including the Release of Claims by UBS described in Section 3 below):

(i) it shall transfer or cause to be transferred in immediately available funds an amount equal to $20,000,000, free of any lien, claim or encumbrance ("Adverse Claim"), to a bank account designated by UBS (the "Designated Account") for the exclusive benefit of UBS;

(ii) it shall release in its entirety to UBS, and otherwise agree, that it has assigned, conveyed and transferred to UBS, free and clear of any Adverse Claim, (A) all of its right, title and interest in and to the Mortgage Loans listed or described on Exhibit A to this Agreement (the "Applicable Mortgage Loans"), the Servicing Rights related to the Applicable Mortgage Loans, the REO Properties listed or described on Exhibit A to this Agreement and/or related to the Applicable Mortgage Loans, other Additional Purchased Items (if any) related to the Applicable Mortgage Loans, any mortgage guaranties or insurance (whether issued by governmental agencies or otherwise and including, without limitation, any title insurance) with respect to any of the Applicable Mortgage Loans and/or the aforementioned REO Properties, together with any claims thereunder and any past or future collections thereunder, and any other assets or property in each case listed or described on Exhibit A to this Agreement, together with any proceeds thereof, including any and all Income derived from or related to the Applicable Mortgage Loans (including, without limitation, all such Income on deposit in the UBS Cash Account or any other account contemplated under the ARMRA)(and with such assignment, transfer and conveyance being effected pursuant to and evidenced by the ARMRA, to the extent applicable, in addition to being confirmed and evidenced hereby), and (B) for the avoidance of doubt and not in limitation of the foregoing, all of its right, title and interest, if any, in the UBS Cash Account and the amounts, if any, evidenced thereby and/or held therein, together with any proceeds thereof (the foregoing assets and property described in clauses (A) and (B) above being the "Released Assets"); and

(iii) it shall have executed and delivered to UBS that certain Credit Agreement dated as of the date hereof among IMH, IFC, IWLG, IRES and UBS (the "Credit Agreement"), shall have issued to UBS the two separate Term Notes thereunder (as defined therein), and shall have otherwise satisfied any conditions precedent to the effectiveness of such Credit Agreement to be satisfied by it as stated therein (other than the effectiveness of this Agreement), such satisfaction to be evidenced by the execution and delivery by UBS to Impac and IRES of a signed execution version of such Credit Agreement.

(b) Subject to and conditioned on the effectiveness of the Release of Claims by UBS as described in Section 3 below, Impac agrees that it shall have no interest in any of the funds or assets transferred pursuant to or as described in this Section 1 or evidenced thereby on or after the date of such transfer.

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2. **Actions of UBS.** UBS hereby agrees that, simultaneously with the execution and delivery of this Agreement by the parties hereto and as a condition to the effectiveness of Impac's undertakings and agreements hereunder (including the Release of Claims by Impac described in Section 3 below), it shall have executed and delivered to Impac the Credit Agreement and shall have otherwise satisfied or caused to be satisfied any conditions precedent to the effectiveness of such Credit Agreement to be satisfied by it as stated therein (other than the effectiveness of this Agreement), such satisfaction to be evidenced by the execution and delivery by Impac and IRES to UBS of a signed execution version of such Credit Agreement.

3. **Mutual Releases.** Upon the completion of all of the actions described in Section 1 and Section 2 hereof in accordance with the terms thereof, such completion to be evidenced by the transfer of funds described in Section 1(a)(i) and the simultaneous delivery and release by each party to the other of an executed counterpart hereof, and subject to the rights of the parties to enforce the terms of this Agreement and the Credit Agreement,

(i) UBS hereby forever releases, waives, discharges and agrees and covenants not to sue, and is deemed to have forever released waived, discharged and agreed and covenanted not to sue, each of IMH, IFC and IWLG and any of their respective current, former or future predecessors, successors, parents, subsidiaries, branches and affiliates, or any current, former or future officers, directors, employees, members, stockholders, agents, attorneys, representatives, assigns and heirs of each of the foregoing persons or entities, and

(ii) each of IMH, IFC and IWLG hereby forever releases, waives, discharges and agrees and covenants not to sue, and is deemed to have forever released waived, discharged and agreed and covenanted not to sue, UBS and any of its respective current, former or future predecessors, successors, parents, subsidiaries, branches and affiliates, or any current, former or future officers, directors, employees, assigns and heirs of each of the foregoing persons or entities,

in each case in respect of any actual or potential claims, counterclaims, demands, allegations, rights, obligations, duties, debts, liabilities, liens, encumbrances, trespasses, levies, promises, covenants, contracts, agreements, understandings, damages, injuries, losses, actions, causes of action, setoffs, offsets, indemnities, costs, expenses, charges, attorneys' fees, judgments, orders and liabilities of any kind or nature whatsoever, whether in law or in equity, known or unknown, contractual, statutory, tort or otherwise based, concealed or revealed (any of the foregoing, "Claims") relating in any way to or arising out of the ARMRA (including the Fee Letter), the Old Repurchase Agreement, transactions under the ARMRA and the Old Repurchase Agreement, the Mortgage Loans, the other Purchased Assets, the Purchased Items and the Additional Purchased Items, and any other documents or instruments relating thereto, and including, in respect of UBS, Claims against Impac in respect of the Outstanding Repurchase Price, other repurchase obligations or any provision of the ARMRA (including the Fee Letter) or the Old Repurchase Agreement providing for the survival of indemnification or any other obligations, except to the limited extent described in the last sentence of this paragraph below (the agreements of UBS and Impac stated in clauses (i) and (ii) above in respect of such Claims being their respective "Release of Claims"). For the avoidance of doubt (and in no way to suggest that any parties hereto believe that any such Claims exist or will exist), the parties further agree that the aforementioned Release of Claims shall also extend to any Claims arising out of or

attributable to any prior arrangements or discussions among the parties or affiliates thereof concerning the transfer or potential transfer of the Platform (as defined in the ARMRA) or assets and liabilities relating thereto, and Impac also agrees that its agreement in this regard is made for the further benefit of any person or entity with whom UBS or any affiliate thereof may negotiate or arrange for a transfer of or investment in the Platform or assets and liabilities thereof or relating thereto. The parties hereto intend that their respective Release of Claims each be a complete and absolute bar to any and all such Claims and to be binding on any parties in interest claiming through them and any of their successors and assigns.

Notwithstanding the foregoing, nothing herein shall constitute a Release of Claims in respect of the indemnification provisions of Impac in favor of UBS or any other Indemnified Party under Section 11.01 of the ARMRA; provided, that, such indemnification obligations of Impac shall be preserved only to the extent that they arise from or are attributable to (1) any claim, assertion or action (in each case in writing) made by or arising through a mortgagor or other person obligated in respect of any Mortgage Loan (including any actual or purported amendment, modification, consent or waiver in respect thereof), the basis of such claim, assertion or action relates to any action, inaction or omission of Impac or any employee or agent thereof and such action, inaction or omission (or any similar action, inaction or omission) of Impac or any employee or agent thereof was determined to have occurred (whether in part or in full) in any court proceeding, arbitration or similar proceeding or was alleged in any court proceeding, arbitration or similar proceeding which was terminated in connection with a settlement which has been consented to by Impac, such consent not to be unreasonably withheld (and it being further understood that such surviving indemnification obligation of Impac in favor of UBS shall not cover any damages, costs or losses in respect of such claim, assertion or action to the extent such damage, cost or loss is attributable to actions, inactions or omissions of UBS or any employee or agent thereof, but with it being understood that any UBS failure to take action in respect of or make objection to any such above-described action, inaction or omission of Impac or its employees or agents, regardless of whether known to UBS or not, shall not constitute an action, inaction or omission of UBS or its employees or agents for this purpose), or (2) the asserted status or condition, including as to environmental matters, of any Mortgaged Property or REO Property, and such asserted status or condition relates to or is attributable to (A) any period covering the financing of such Mortgaged Property or ownership of such REO Property by Impac or (B) any action, inaction or omission of Impac or any employee or agent thereof.

4. **Status Under UCC Section 9-620**. With respect to UBS's election to receive the release and conveyance of Released Assets pursuant to Section 1(a)(ii) above in partial consideration for its Release of Claims, this Agreement shall constitute a proposal under UCC Sections 9-620 and 9-621 to take such Released Assets, together with the cash and other rights pursuant to this Agreement, and Impac's acceptance of and consent to such proposal. The parties to this Agreement agree that the acceptance of such proposals will not eliminate or satisfy the obligations to UBS under this Agreement, and agree that such acceptance shall be deemed to occur after default for the purposes of UCC Section 9-620.

5. **Representations and Warranties.** (i) Each of the parties hereto hereby represents and warrants that each of the following statements is true, accurate and complete as to such party as of the date hereof:

(a) Such party has carefully read and fully understood all of the terms and conditions of this Agreement and the Credit Agreement;

(b) Such party has consulted with, or had a full and fair opportunity to consult with, an attorney regarding the terms and conditions of this Agreement and the Credit Agreement;

(c) Such party has had a full and fair opportunity to participate in the drafting of this Agreement and the Credit Agreement;

(d) Such party is freely, voluntarily, knowingly and intelligently entering into this Agreement and the Credit Agreement;

(e) Such party is not prohibited from entering into this Agreement and the Credit Agreement, all necessary consents for entering into this Agreement and the Credit Agreement and for the performance of its obligations hereunder and thereunder have been obtained, and there are no pending actions or investigations the outcome of which could adversely affect such party's ability to perform its obligations hereunder;

(f) In entering into this Agreement and the Credit Agreement, such party has not relied upon any representation, warranty, covenant or agreement not expressly set forth herein or therein;

(g) Each of this Agreement and the Credit Agreement has been duly authorized and validly executed and delivered by such party and constitutes such party's legal, valid and binding obligation, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(h) Such party is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and has the full power and legal authority to execute this Agreement and the Credit Agreement, and to consummate the transactions contemplated hereby and thereby, and to perform its obligations hereunder and thereunder.

(ii) Each of IMH, IFC and IWLG hereby represents and warrants that it has not settled or released, in part or in full, any claim that it may have under or related to any mortgage guaranties or insurance (whether issued by governmental agencies or otherwise and including, without limitation, any title insurance) with respect to any of the Released Assets.

6. **Governing Law**. THIS AGREEMENT SHALL, IN ACCORDANCE WITH SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PRINCIPLES THEREOF THAT WOULD CALL FOR THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

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7. **Submission to Jurisdiction, Etc.** Each of the parties hereto hereby irrevocably and unconditionally submits, for itself to the exclusive personal jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that a party may otherwise have to bring any action or proceeding relating to this Agreement against another party or its respective properties in the courts of any jurisdiction.

8. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and it supersedes all prior and contemporaneous agreements and understandings relating to the same.

9. **Modifications.** No part or provision of this Agreement may be amended, modified, waived, discharged or terminated except by mutual written agreement of all of the parties hereto.

10. **Section Headings and Defined Terms.** The section headings and defined terms set forth in this Agreement are for convenience only and shall have no bearing on the characterization of any agreement or qualification of any agreement.

11. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile or by email in portable document format (pdf). Any facsimile or email signatures shall have the same legal effect as manual signatures.

12. **Further Assurances; Repurchase Obligation; Etc.**. (a) Each of IMH, IFC and IWLG hereby agree to execute and deliver all such other documents and to take all such other action as may be reasonably requested by UBS, without further consideration, in order to effectuate the terms hereof, including without limitation (i) preparing, executing and filing in the appropriate jurisdictions any mortgage assignments, assignments of title and other documents as may be necessary or advisable (in the reasonable determination of UBS) in connection with the transfer of any Mortgage Loan or REO Property contemplated under Section 1 hereof and the assignment and perfection of any related mortgages in respect of the same, (ii) delivering or transferring to UBS images of each credit file relating to obligors on Mortgage Loans, (iii) delivering or transferring to UBS an accurate data tape in respect of such Mortgage Loans, obligors and REO Property, as applicable, (iv) assisting UBS with reasonable requests to resolve documentation issues that may arise in connection with any attempt by UBS to further sell or transfer the Mortgage Loans and/or REO Property, (v) entering into mutually acceptable termination arrangements with the Custodian in respect of the Custodial Agreement and (v) taking commercially reasonable efforts to deliver the documents which are listed on Exhibit B hereto (the "Exception Report Documents"), at the direction of UBS, as soon as possible after

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the date hereof. In connection with the foregoing undertakings, Impac hereby authorizes UBS to execute, from time to time on its behalf, any endorsements, assignments or other instruments of conveyance or transfer with respect to the foregoing, and Impac 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.

(b) If IMH, IFC and IWLG fail to deliver any Exception Report Document within 60 days of the date hereof, then IMH, IFC and IWLG shall be jointly and severally obligated to, and shall, repurchase the Mortgage Loan related to such Exception Report Document for a purchase price equal to (i) the outstanding principal amount of such Mortgage Loan as of the date of such repurchase (plus accrued interest thereon) multiplied by (ii) a fraction, the numerator of which is equal to the Outstanding Repurchase Price (as defined in the second WHEREAS clause hereof) minus $55,000,000 and the denominator of which is the aggregate outstanding principal amount of all Mortgage Loans being transferred to UBS on the date hereof (as set forth on Exhibit A hereto).

(c) Each of IMH, IFC and IWLG hereby agree that after the date hereof, it shall not, and shall not permit any subsidiary thereof to, contact or direct any other Person to contact (in each case, whether in writing, by electronic mail, telephonically or otherwise and whether directly or indirectly) any Mortgagor with respect to a Mortgage Loan transferred to UBS hereunder in order to propose, solicit, or offer a refinancing or modification with respect to such Mortgage Loan, or any sale of the related Mortgaged Property or for any other reason, in each case, unless UBS has consented to such contact in writing; provided, that, the foregoing shall not preclude IMH, IFC or IWLG or any subsidiary thereof or their agents from engaging in promotions and solicitations to the general public by newspaper, radio, television or other media which are not directed specifically toward such Mortgagors.

13. **Binding Effect**. This Agreement shall be binding upon each of the parties hereto as well as the successors and assigns of each of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms of the Credit Agreement, this Agreement shall prevail.

14. **No Third Party Beneficiaries**. This Agreement and the provisions hereunder are made solely for the benefit of the parties hereto and may not be relied upon or enforced by any other person (except and only to the extent expressly stated otherwise herein).

15. **Confidentiality**. The parties hereto agree to keep confidential, and not to publish, disclose or otherwise divulge to any person or entity the existence or any terms of this Agreement (and to cause its officers, directors, employees, agents and representatives to keep confidential, and not to publish, disclose or otherwise divulge to any person or entity the existence or any terms of this Agreement), except that such parties are permitted to disclose the existence and terms of this Agreement (i) to such of its officers, directors, employees, agents and representatives as need to know such information in connection with the performance of their respective responsibilities in such capacities, and (ii) to the extent required by applicable laws and regulations, by any subpoena or similar legal process, or by order of any court of competent jurisdiction. UBS recognizes that IMH will be required to file this Agreement with the Securities and Exchange Commission and hereby consents to that filing. IMH shall not issue any press release associated with the transactions contemplated hereby and by the Credit Agreement

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without UBS first having an opportunity and review and approve the content of such press release, which approval shall not be unreasonably withheld or delayed. In connection with any such press release, IMH agrees to use its best efforts to deliver a draft thereof for purposes of UBS review and approval at least two business days' in advance of the date of intended publication.

16. **Costs and Expenses**. Each party hereto agrees to bear its own costs and expenses (including the fees and expenses of counsel or special counsel to such party) in connection with the preparation, negotiation and execution of this Agreement and the Credit Agreement. For the avoidance of doubt, the foregoing sentence shall not be deemed a limitation in respect of the survival of certain indemnification obligations of Impac as described in the last paragraph of Section 3 above.

17. **Waiver**. In connection with Impac's Release of Claims against UBS hereunder, Impac hereby waives the benefits of Section 1542 of the California Civil Code and any other law prohibiting the waiver of claims that are not know at the time of the giving of such waiver.

[signatures follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ Ronald Morrison
Name: Ronald Morrison
Title: Executive Vice President

IMPAC FUNDING CORPORATION

By: /s/ Ronald Morrison
Name: Ronald Morrison
Title: Executive Vice President

IMPAC WAREHOUSE LENDING GROUP, INC.

By: /s/ Ronald Morrison
Name: Ronald Morrison
Title: Executive Vice President

UBS REAL ESTATE SECURITIES INC.

By: /s/ Robert Carpenter
Name: Robert Carpenter
Title: Executive Director

By: /s/ Arnold John
Name: Arnold John
Title: Executive Director

EXHIBIT A

[see attached]

EXHIBIT B

[see attached]

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Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-12025, 333-68128, 333-83650, 333-106647, 333-117070, 333-117137, 333-128113 and 333-136575) of Impac Mortgage Holdings, Inc. of our reports dated March 15, 2010, with respect to the consolidated financial statements of Impac Mortgage Holdings, Inc., and the effectiveness of internal control over financial reporting of Impac Mortgage Holdings, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2009.

/s/ SQUAR, MILNER, PETERSON, MIRANDA & WILLIAMSON, LLP

Newport Beach, California
March 15, 2010

Exhibit 31.1

CERTIFICATION

I, Joseph R. Tomkinson, certify that:

1. I have reviewed this report on Form 10-K of Impac Mortgage Holdings, 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 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;

    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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Joseph R. Tomkinson
Joseph R. Tomkinson
Chief Executive Officer
March 16, 2010

QuickLinks
Exhibit 31.1
CERTIFICATION

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Exhibit 31.2

CERTIFICATION

I, Todd R. Taylor, certify that:

1. I have reviewed this report on Form 10-K of Impac Mortgage Holdings, 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 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;

    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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Todd R. Taylor
Todd R. Taylor
Chief Financial Officer
March 16, 2010

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Exhibit 31.2

CERTIFICATION

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the annual report of Impac Mortgage Holdings, Inc. (the "Company") on Form 10-K for the period ending December 31, 2009 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned, in the capacities and on the dates indicated below, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Joseph R. Tomkinson
Joseph R. Tomkinson
Chief Executive Officer
March 16, 2010

/s/ Todd R. Taylor
Todd R. Taylor
Chief Financial Officer
March 16, 2010

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Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002