

**Securities and Exchange Commission  
Washington, D.C. 20549**

**Form 8-K**

**Current Report Pursuant  
To Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

Date of Report (date of earliest event reported): May 22, 2002

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

Maryland  
(State or Other Jurisdiction  
of Incorporation)

1-14100  
(Commission File Number)

33-0675505  
(I.R.S. Employer Identification No.)

1401 Dove Street, Newport Beach, CA, 92660  
(Address of principal executive offices including zip code)

(949) 475-3600  
(Registrant's Telephone Number, Including Area Code)

Not Applicable  
(Former Name or Former Address, if Changed Since Last Report)

## ITEM 5. Other Events

This filing is made to effect the incorporation by reference of the accompanying information and exhibits in the Company's Post-Effective Amendment No. 1 to Registration Statement No. 333-74432 on Form S-3, filed with the Securities and Exchange Commission, which became effective on May 13, 2002.

On May 22, 2002, Impac Mortgage Holdings, Inc. (the "Company") entered into a Sales Agency Agreement (the "Agreement") with UBS Warburg LLC (the "Agent"). In accordance with the terms of the Agreement, the Company may offer and sell up to 3,594,082 shares of its common stock from time to time through the Agent. Sales of the shares, if any, will be made by means of ordinary brokers' transactions on the American Stock Exchange. The Agent will be entitled to a commission equal to 3.00% of the gross sales price per share of the shares sold under the Agreement.

The following are the estimated costs and expenses payable by the Company in connection with the sale of its common stock registered on the Form S-3 for the transactions contemplated by the Agreement, other than underwriting commissions and discounts.

<u>Item</u>	<u>Amount</u>
Printing expenses	\$ 15,000
Legal fees and expenses	60,000
Accounting fees and expenses	45,000
Listing fees	22,500
Transfer Agent Fees	5,000
Miscellaneous	2,500
<b>Total</b>	<b>\$ 150,000</b>

## ITEM 7. Exhibits

### (c) Exhibits

- 1.1 Sales Agency Agreement dated May 22, 2002 between Impac Mortgage Holdings, Inc. and UBS Warburg LLC.
- 5.1 Legal Opinion of Kirkpatrick & Lockhart LLP.
- 5.2 Legal Opinion of McKee Nelson LLP.
- 8.1 Legal Opinion of McKee Nelson LLP regarding tax matters.
- 23.1 Consent of Kirkpatrick & Lockhart LLP (contained in Exhibit 5.1)
- 23.2 Consent of McKee Nelson LLP (contained in Exhibit 5.2)
- 23.3 Consent of McKee Nelson LLP (contained in Exhibit 8.1)

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

IMPAC MORTGAGE HOLDINGS, INC.

By: /s/ RONALD M. MORRISON  
**Ronald M. Morrison**  
General Counsel and Secretary

Date: May 22, 2002

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**IMPAC MORTGAGE HOLDINGS, INC.**  
**3,594,082 Shares of Common Stock**  
**(par value \$.01 per share)**

**SALES AGENCY AGREEMENT**

May 22, 2002

UBS WARBURG LLC  
299 Park Avenue  
New York, New York 10171

Ladies and Gentlemen:

Impac Mortgage Holdings, Inc., a Maryland corporation (the "*Company*"), confirms its agreement with UBS Warburg LLC (the "*Agent*"), as follows:

SECTION 1. *Description of Securities.* The Company proposes to issue and sell through the Agent, as sales agent, up to 3,594,082 shares (the "*Shares*") of the Company's common stock, par value \$.01 per share (the "*Common Stock*"), on the terms set forth in Section 3 hereof.

SECTION 2. *Representations and Warranties of the Company.* The Company represents and warrants to the Agent that:

(a) The Company meets the requirements for use of Form S-3 under the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively called the "*Act*"). A registration statement on Form S-3 (Registration No. 333-74432) with respect to the Shares, including a form of prospectus and such amendments or supplements to such registration statement as may have been required prior to the date of this Agreement, has been prepared by the Company under the provisions of the Act, has been filed with the Securities and Exchange Commission (the "*Commission*"), and has become effective and which incorporates by reference documents which the Company has filed in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively called the "*Exchange Act*"). The Company has prepared a prospectus supplement (the "*Prospectus Supplement*"), including the prospectus included in the registration statement referred to above and the documents incorporated by reference therein, setting forth the terms of the offering, sale and plan of distribution of the Shares and additional information concerning the Company and its business. No stop order suspending the effectiveness of the registration statement or any post-effective amendment thereto has been issued and served on the Company, and no proceedings for that purpose are pending or, to the knowledge of the Company, threatened by the Commission. Copies of such registration statement and prospectus, any such amendment or supplement and all documents

incorporated by reference therein that were filed with the Commission on or prior to the date of this Agreement have been made available or delivered to the Agent. Such registration statement, as it may have heretofore been amended, is referred to herein as the "*Registration Statement*," and the final form of prospectus included in the Registration Statement, as amended or supplemented from time to time, is referred to herein as the "*Prospectus*." Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated (or deemed to be incorporated) by reference therein, and any reference herein to the terms "amend," "amendment" or "supplement" with respect to the Registration Statement or Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. As of the close of business on May 21, 2002, 3,594,082 shares of the Shares were available for issuance pursuant to the Registration Statement, which permits their sale in the manner contemplated by this Agreement;

(b) Each part of the Registration Statement, when such part became or becomes effective, and the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission and at each Filing Date (as defined below), did or will in all material respects comply with all applicable provisions of the Act and the Exchange Act. Each part of the Registration Statement, when such part became or becomes effective, did not or will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading. The Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission, did not or will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement have been so described or filed. The foregoing representations and warranties in this Section 2(b) do not apply to any statements or omissions made in reliance on and in conformity with information relating to the Agent furnished in writing to the Company by the Agent specifically for inclusion in the Registration Statement or Prospectus or any amendment or supplement thereto. The Company has not distributed any offering material in connection with the offering or sale of the Shares other than the Registration Statement, the Prospectus or any other materials, if any, permitted by the Act;

(c) The documents which are incorporated by reference in the Registration Statement or the Prospectus, or any amendment or supplement thereto, or from which information is so incorporated by reference, when they become effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the Act or the Exchange Act, as applicable, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not

misleading or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and any further documents so filed and incorporated by reference shall, when they became or become effective under the Act or when they were or are filed with the Commission, conform in all material respect with the requirements of the Act or the Exchange Act, as applicable;

(d) The only subsidiaries (as defined in the Act) of the Company are IMH Assets Corporation (“*IMH Assets*”) and Impac Warehouse Lending Group, Inc. (“*IWLG*”); Novelle Financial Services, Inc. (“*NFS*”) and Impac Secured Assets Corporation (“*SAC*”) are wholly-owned subsidiaries of Impac Funding Corporation (“*IFC*”); IMH Assets, *IWLG*, *NFS*, *SAC* and *IFC*, an affiliate of the Company, are collectively referred to herein as the “*Subsidiaries*”; complete and correct copies of the certificates of incorporation and of the bylaws of the Company and the Subsidiaries and all amendments thereto have been made available or delivered to the Agent. The Company and each of its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation. The Company and each of its Subsidiaries has the corporate power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Prospectus. The Company and each of its Subsidiaries is duly licensed or qualified to do business and in good standing as a foreign corporation in all jurisdictions in which the nature of the activities conducted by it, or the character of the assets owned or leased by it, makes such licensing or qualification necessary, except where the failure to so qualify will not have a material adverse effect on the Company or any of its Subsidiaries or their respective business, properties, business prospects, condition (financial or otherwise) or results of operations or on the transactions contemplated hereby (a “*Material Adverse Effect*”). All of the outstanding shares of the capital stock of the Subsidiaries have been duly authorized and validly issued and are fully paid and non-assessable and are owned by the Company or a Subsidiary (other than the outstanding common stock of *IFC*, which is owned by Joseph R. Tomkinson, William S. Ashmore and Richard J. Johnson), to the extent and as is described in the Prospectus, free and clear of all liens, encumbrances and claims whatsoever. Except for the stock of the Subsidiaries and as disclosed in the Prospectus, the Company does not own, directly or indirectly, any shares of stock or any other equity or long-term debt securities of any corporation or have any equity interest in any firm, partnership, joint venture, association or other entity (other than mortgage-backed securities held by the Company for long-term investment in the ordinary course of business). The outstanding shares of preferred stock of *IFC* have the rights and preferences described in the Prospectus;

(e) The financial statements and schedules included or incorporated by reference in the Prospectus present the consolidated financial condition of the Company and *IFC* as of the respective dates thereof and the consolidated results of operations and cash flows of the Company and *IFC* for the respective periods covered thereby, all in conformity with generally accepted accounting principles applied on a consistent basis

throughout the entire period involved, except as otherwise disclosed in the Prospectus. No other financial statements or schedules of the Company or IFC are required by the Act and the Exchange Act to be included in the Prospectus. KPMG LLP (the “Accountants”), who have reported on such financial statements and schedules, are independent accountants with respect to the Company and IFC as required by the Act . The statements included in the Registration Statement with respect to the Accountants pursuant to Item 509 of Regulation S-K under the Act are true and correct in all material respects;

(f) All of the outstanding shares of Common Stock have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance with all federal and state securities laws and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right; the Shares to be issued and sold by the Company pursuant to this Agreement have been duly authorized and upon such issuance will be validly issued, fully paid and nonassessable and are not subject to any preemptive right, resale right, right of first refusal or similar right and the certificates for the Shares are in due and proper form and the holders of the Shares will not be subject to personal liability by reason of being such holders. The description of the Common Stock in the Prospectus is complete and accurate in all material respects. Except as set forth in the Prospectus, there are no options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible or exchangeable into, or any contracts, commitments, plans or arrangements to issue or sell, any shares of capital stock of the Company, any shares of capital stock of any Subsidiary or any such warrants, convertible or exchangeable securities or obligations. The descriptions of the Company’s stock option and other stock plans or arrangements, and the options or other rights granted and exercised thereunder, set forth in the Prospectus, accurately present the information required to be shown with respect to such plans, arrangements, options and rights;

(g) Each of the Company and its Subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorization; and (iv) the recorded accountability of assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(h) Subsequent to the respective dates as of which information is given in the Prospectus, except as set forth in or contemplated by the Prospectus, (i) there has not been and will not have been any change in the capitalization of the Company or any of its Subsidiaries (except with respect to the reclassification of the Company’s authorized Series C Preferred Stock into general Preferred Stock), or any material adverse change in the business, properties, business prospects, condition (financial or otherwise) or results



of operations of the Company and its Subsidiaries, (ii) except for a warehouse line entered into in May 2002, neither the Company nor any of its Subsidiaries has incurred nor will incur any material liabilities or obligations, direct or contingent, nor has it entered into nor will it enter into any material transactions other than pursuant to this Agreement and the transactions referred to herein or in the ordinary course of business and (iii) except for dividends on shares of its capital stock, if and when declared, neither the Company nor any of its Subsidiaries has and none of them will have paid or declared any dividends or other distributions of any kind on any class of their respective classes of capital stock;

(i) Except as set forth in the Prospectus, there are no actions, suits or proceedings pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries or any of their respective officers in their capacity as such, before or by any Federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, wherein an unfavorable ruling, decision or finding might result in a Material Adverse Effect;

(j) All legal or governmental proceedings, contracts, leases or documents of a character required to be described in the Prospectus or to be filed as an exhibit to the Registration Statement have been so described or filed as required. All such contracts to which the Company or any Subsidiary is a party have been duly authorized, executed and delivered by the Company or such Subsidiary, constitute valid and binding agreements of the Company or such Subsidiary and are enforceable against the Company or such Subsidiary in accordance with the terms thereof and except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and be general equitable principles;

(k) The Company and each of its Subsidiaries has (i) all governmental licenses, permits, consents, orders, approvals and other authorizations, and has made all governmental or regulatory filings, as are necessary to carry on its business as contemplated in the Prospectus, (ii) complied in all respects with all laws, regulations and orders applicable to it or its business and (iii) performed all its obligations required to be performed by it, and is not in breach of or default under, any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement, lease, contract or other agreement or instrument (collectively, a "*contract or other agreement*") to which it is a party or by which its property is bound or affected, the effect of any of which, individually or in the aggregate, might result in a Material Adverse Effect and no event has occurred which with notice, lapse of time or both would result in such breach or default. To the knowledge of the Company and each of its Subsidiaries, no other party under any contract or other agreement to which it is a party is in breach or default in any respect thereunder. Neither the Company nor any of its Subsidiaries is in violation of any provision of its charter or by-laws;

(l) The Company has full corporate power and authority to enter into this Agreement. This Agreement has been duly authorized, executed and delivered by the Company and constitutes a valid and binding agreement of the Company and is enforceable against the Company in accordance with its terms, except as the enforceability hereof may be limited by applicable bankruptcy, insolvency, reorganization and similar laws affecting creditors' rights generally and moratorium laws in effect from time to time and by equitable principles restricting the availability of equitable remedies. The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the consummation of the transactions contemplated hereby and the application of the net proceeds from the offering and sale of the Shares to be sold by the Company in the manner set forth in the Prospectus under the caption "Use of Proceeds" will not result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company or any of its Subsidiaries pursuant to the terms or provisions of, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, or give any other party a right to terminate any of its obligations under, or result in the acceleration of any obligation under, the charter or by-laws of the Company or any of its Subsidiaries, any contract or other agreement to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries or any of its properties is bound or affected, or violate or conflict with any judgment, ruling, decree, order, statute, rule or regulation of any court or other governmental agency or body applicable to the business or properties of the Company or any of its Subsidiaries the effect of any of which, individually or in the aggregate, might have a Material Adverse Effect;

(m) No consent, approval, authorization or order of, or any filing or declaration with, any court or any national, state or local governmental agency, regulatory commission, board, authority or body is required in connection with the (i) authorization, issuance, transfer, sale or delivery of the Shares by the Company, (ii) the execution, delivery and performance of this Agreement by the Company or (iii) the taking by the Company of any other action contemplated hereby, except such as have been obtained under the Act and such as may be required under state securities or Blue Sky laws or the by-laws and rules of the National Association of Securities Dealers, Inc. (the "NASD") in connection with the offer by sale through the Agent of the Shares;

(n) The Company and each of its Subsidiaries has good and marketable title to all properties and assets described in the Prospectus as owned by it, free and clear of all liens, charges, encumbrances, mortgages, security interests, claims or restrictions, except such as are described in, or contemplated by, the Prospectus and except such which would not have a Material Adverse Effect. The Company and each of its Subsidiaries has valid, subsisting and enforceable leases for the properties described in the Prospectus as leased by it, with such exceptions as are not material and which do not materially interfere with the use made and proposed to be made of such properties by the Company and such Subsidiaries;

(o) The Company and its Subsidiaries own, or are licensed or otherwise have the full and exclusive right to use all material trademarks and trade names which are used in or necessary for the conduct of their respective businesses as described in the Prospectus. To the Company's knowledge, no claims have been asserted by any person to the use of any such trademarks or trade names or challenging or questioning the validity or effectiveness of any such trademark or trade name that would have a Material Adverse Effect. The use, in connection with the business and operations of the Company and its Subsidiaries, of such trademarks and trade names does not, to the Company's knowledge, infringe on the rights of any person;

(p) The Company is, and if operated in the manner described in the Prospectus shall remain, qualified as a real estate investment trust ("*REIT*") under Sections 856 through 860 of the Internal Revenue Code of 1986 (the "*Code*"), and intends to operate in a manner so as to continue to remain so qualified;

(q) Neither the Company nor any of its Subsidiaries is, and if operated in the manner described in the Prospectus and after giving effect to the offering and sale of the Shares, none of them will be, an "investment company," an entity "controlled" by an "investment company" or an "affiliated person", or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended (the "*Investment Company Act*");

(r) Neither the Company nor any of its directors, officers or controlling persons has taken, directly or indirectly, any action intended, or which might reasonably be expected, to cause or result, under the Act or otherwise, in, or which has constituted, stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares;

(s) No person has the right, contractual or otherwise, to cause the Company to issue to it, or register pursuant to the Act, any securities of the Company because of the filing of the Registration Statement or the offering of the Shares, nor does any person have preemptive rights, co-sale rights, rights of first refusal or other rights to purchase any of the Shares other than those that have been expressly waived prior to the date hereof;

(t) The Shares are duly authorized for listing, subject to official notice of issuance, on the American Stock Exchange (the "*AMEX*");

(u) Neither the Company nor any of its Subsidiaries is involved in any material labor dispute nor, to the knowledge of the Company, is any such dispute threatened;

(v) Neither the Company nor any of its Subsidiaries nor, to the knowledge of the Company, any officer, director, employee or agent acting on behalf of the Company or any of its Subsidiaries has at any time (i) made any contributions to any candidate for political office in violation of law, or failed to disclose fully any

contributions to any candidate for political office in accordance with any applicable statute, rule, regulation or ordinance requiring such disclosure, (ii) made any payment to any local, state, federal or foreign governmental officer or official, or other person charged with similar public or quasi-public duties, other than payments required or allowed by applicable law, (iii) made any payment outside the ordinary course of business to any purchasing or selling agent or person charged with similar duties of any entity to which the Company or any Subsidiary sells or from which the Company or any Subsidiary buys products for the purpose of influencing such agent or person to buy products from or sell products to the Company or such Subsidiary, or (iv) except as described in the Prospectus, engaged in any transaction, maintained any bank account or used any corporate funds except for transactions, bank accounts and funds which have been and are reflected in the normally maintained books and records of the Company or such Subsidiary;

(w) The Company and its Subsidiaries is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the business in which they engage as described in the Prospectus; neither the Company nor any Subsidiary has been refused any insurance coverage sought or applied for; and the Company has no reason to believe that it or any Subsidiary will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its proposed business at a cost that would not result in a Material Adverse Effect;

(x) Neither the Company nor any of its Subsidiaries is, and if operated in the manner described in the Prospectus, will not be a “broker” within the meaning of Section 3(a)(4) of the Exchange Act or a “dealer” within the meaning of Section 3(a)(5) of the Exchange Act or required to be registered pursuant to Section 15(a) of the Exchange Act;

(y) The Common Stock is an “actively-traded security” excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule;

(z) Except as contemplated by Section 3 of this Agreement, the Company has not incurred any liability for any finder’s fees or similar payments in connection with the transactions herein contemplated; and

(aa) The Company has not entered into any other sales agency agreements or other similar arrangements with any agent or other representative in respect of the Shares and the equity shelf program established by this Agreement.

**SECTION 3. *Sale and Delivery of Securities.*** On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell through the Agent, as

sales agent, and the Agent agrees to use its reasonable efforts to sell, as sales agent for the Company, the Shares on the terms set forth herein.

The Shares are to be sold on a daily basis or otherwise as shall be agreed to by the Company and the Agent on any day that is a trading day for the AMEX (other than a day on which the AMEX is scheduled to close prior to its regular weekday closing time). The Company will designate the maximum amount of Shares to be sold by the Agent daily as reasonably agreed to by the Agent and in any event not in excess of the amount available for issuance under the currently effective Registration Statement. Subject to the terms and conditions hereof, the Agent shall use its reasonable efforts to sell all of the designated Shares. The gross sales of any Shares sold under this Agreement shall be the market price for shares of the Company's Common Stock sold by the Agent under this Agreement on the AMEX at the time of such sale.

Notwithstanding the foregoing, the Company may instruct the Agent by telephone (confirmed promptly by teletype) not to sell Shares if such sales cannot be effected at or above the price designated by the Company in any such instruction. Furthermore, the Company shall not authorize the issuance and sale of, and the Agent shall not be obligated to use its reasonable efforts to sell, any Share at a price lower than the minimum price therefor designated from time to time by the Company's Board of Directors and notified to the Agent in writing. In addition, the Company or the Agent may, upon notice to the other party hereto by telephone (confirmed promptly by teletype), suspend the offering of the Shares; *provided, however*, that such suspension or termination shall not affect or impair the parties' respective obligations with respect to the Shares sold hereunder prior to the giving of such notice. Under no circumstances shall the number of Shares sold pursuant to this Agreement exceed the number set forth in Section 1 or the number of shares of Common Stock available for issuance under the currently effective Registration Statement.

If either party has reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied with respect to the Shares, it shall promptly notify the other party and sales of Shares under this Agreement shall be suspended until that or other exemptive provisions have been satisfied in the judgment of each party. The Agent shall calculate on a weekly basis the average daily trading volume (as defined by Rule 100 of Regulation M under the Exchange Act) of the Common Stock.

The Agent hereby covenants and agrees not to make any sales of Shares on behalf of the Company other than by means of ordinary brokers' transactions between members of the AMEX that qualify for delivery of a Prospectus to the AMEX in accordance with Rule 153 under the Securities Act.

The compensation to the Agent for sales of Shares shall be 3.00% of the gross sales price of the Shares sold pursuant to this Agreement. The remaining proceeds, after further deduction for any transaction fees imposed by any governmental or self-

regulatory organization in respect of such sales, shall constitute the net proceeds to the Company for such Shares (the “*Net Proceeds*”).

The Agent shall provide written confirmation to the Company following the close of trading on the AMEX each day in which Shares are sold under this Agreement setting forth the amount of Shares sold on such day, the Net Proceeds to the Company, and the compensation payable by the Company to the Agent with respect to such sales.

Settlement for sales of Shares will occur on the third business day following the date on which such sales are made (each such day, a “*Settlement Date*”). On each Settlement Date, the Shares sold through the Agent for settlement on such date shall be delivered by the Company to the Agent against payment of the Net Proceeds for the sale of such Shares. Settlement for all Shares shall be effected by free delivery of Shares to the Agent’s account at The Depository Trust Corporation in return for payments in same day funds delivered to the account designated by the Company. If the Company shall default on its obligation to deliver Shares on any Settlement Date, the Company shall (i) hold the Agent harmless against any loss, claim or damage arising from or as a result of such default by the Company and (ii) pay the Agent any commission to which it would otherwise be entitled absent such default. If the Agent breaches this Agreement by failing to deliver proceeds on any Settlement Date for Shares delivered by the Company, the Agent will pay the Company interest based on the effective overnight Federal Funds rate.

At each Settlement Date and Filing Date (as defined below), the Company shall be deemed to have affirmed each representation and warranty contained in this Agreement. The Company covenants and agrees with the Agent that on or prior to the second business day after any date on which the Company shall file a quarterly report on Form 10-Q in respect of any quarter in which sales of Shares were made by the Agent under this Agreement (each such date, a “*Filing Date*”), the Company will (i) file a prospectus supplement with the Commission under the applicable paragraph of Rule 424(b) which prospectus supplement will set forth, with regard to such quarter, the number of Shares sold through the Agent under this Agreement, the Net Proceeds to the Company and the compensation paid by the Company with respect to sales of Shares pursuant to this Agreement and (ii) deliver such number of copies of each such prospectus supplement to the AMEX as are required by such Exchange. Any obligation of the Agent to use its reasonable efforts to sell the Shares on behalf of the Company shall be subject to the continuing accuracy of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 5 of this Agreement.

SECTION 4. *Covenants of the Company.* The Company agrees with the Agent:

(a) During the period in which a prospectus relating to the Shares is required to be delivered under the Act, to notify the Agent promptly of the time when any subsequent amendment to the Registration Statement has become effective or any subsequent supplement to the Prospectus has been filed and of any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information; to prepare and file with the Commission, promptly upon the Agent's request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agent's reasonable opinion, may be necessary or advisable in connection with the offering of the Shares by the Agent; not to file any amendment or supplement to the Registration Statement or Prospectus (other than any prospectus supplement relating to the offering of other securities (including, without limitation, Common Stock) other than pursuant to this Agreement) unless a copy thereof has been submitted to the Agent a reasonable period of time before the filing and the Agent has not reasonably objected thereto; to file promptly all reports and any definitive proxy or information statements required to be filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act for so long as the delivery of a prospectus is required in connection with the offering or sale of the Shares and to advise the Agent of any such filing; and to furnish to the Agent, by e-mail to [jorge.solares@ubsw.com](mailto:jorge.solares@ubsw.com) or such other e-mail address provided by the Agent, at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference in the Registration Statement or Prospectus, *provided* that if the Company receives an error message in its attempt to make such e-mail delivery, the Company shall then comply with Section 9; and to cause each amendment or supplement to the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Act or, in the case of any document to be incorporated therein by reference, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed;

(b) To promptly advise the Agent, of any request by the Commission for amendments or supplements to the Registration Statement or Prospectus or for additional information with respect thereto, or of notice of institution of proceedings for, or the entry of a stop order suspending the effectiveness of the Registration Statement and, if the Commission should enter a stop order suspending the effectiveness of the Registration Statement, to make every reasonable effort to obtain the lifting or removal of such order as soon as possible; to promptly advise the Agent of any proposal to amend or supplement the Registration Statement or Prospectus, including by filing any documents that would be incorporated therein by reference, and to file no such amendment or supplement to which the Agent shall object in writing;

(c) To make available to the Agent, as soon as practicable after the Registration Statement becomes effective, and thereafter from time to time to furnish to the Agent, copies of the Prospectus (or of the Prospectus as amended or supplemented if the Company shall have made any amendments or supplements thereto after the effective date of the Registration Statement) in such quantities and at such locations as the Agent may reasonably request for the purposes contemplated by the Act, which Prospectus and

any amendments or supplements thereto furnished to the Agent will be materially identical to the version created to be transmitted to the Commission for filing via EDGAR, except to the extent permitted by Regulation S-T; and for so long as this agreement is in effect, the Company will prepare and file promptly such amendment or amendments to the Registration Statement and the Prospectus as may be necessary to comply with the requirements of Section 10(a)(3) of the Act;

(d) To promptly notify the Agent to suspend the offering of Shares upon the happening of any event known to the Company within the time during which a Prospectus relating to the Shares is required to be delivered under the Act which, in the judgment of the Company, would require the making of any change in the Prospectus then being used, or in the information incorporated therein by reference, so that the Prospectus would not include an untrue statement of material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading, and, during such time, to prepare and furnish, at the Company's expense, to the Agent promptly such amendments or supplements to such Prospectus as may be necessary to reflect any such change and, to the extent it relates solely to the Shares, to furnish the Agent with a copy of such proposed amendment or supplement before filing any such amendment or supplement with the Commission and thereafter promptly to furnish at the Company's own expense to the Agent, copies in such quantities and at such locations as the Agent may from time to time reasonably request of an appropriate amendment to the Registration Statement or supplement to the Prospectus so that the Prospectus as so amended or supplemented will (i) reflect such change, or (ii) not, in the light of the circumstances when it is so delivered, be misleading, or (iii) comply with applicable securities laws;

(e) To furnish such information as may be required and otherwise to cooperate in qualifying the Shares for offering and sale under the securities or blue sky laws of such states as the Agent may designate and to maintain such qualifications in effect so long as required for the distribution of the Shares; *provided* that the Company shall not be required to qualify as a foreign corporation or to consent to the service of process under the laws of any such state (except service of process with respect to the offering and sale of the Shares); and to promptly advise the Agent of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(f) To furnish to the Agent (i) copies of any reports or other communications which the Company shall send directly to its stockholders or shall from time to time publish or publicly disseminate (except with respect to information, other than press releases, on the Company's website), (ii) by email to [jorge.solares@ubsw.com](mailto:jorge.solares@ubsw.com) or such other e-mail address provided by the Agent, copies of all annual, quarterly and current reports filed with the Commission on Forms 10-K, 10-Q and 8-K (other than Form 8-K reporting Item 9), or such other similar form as may be designated by the Commission, *provided* that if the Company receives an error message in its attempt to



make such e-mail delivery, the Company shall then comply with Section 9, (iii) copies of any financial statements or reports filed with any national securities exchange on which any class of securities of the Company is listed, and (iv) such other information as the Agent may reasonably request regarding the Company or its Subsidiaries, in each case as soon as such reports, communications, documents or information becomes available;

(g) To make generally available to its security holders, and to deliver to the Agent, an earnings statement of the Company (which will satisfy the provisions of Section 11(a) of the Act) covering a period of twelve months beginning after the effective date of the Registration Statement (as defined in Rule 158(c) of the Act) as soon as is reasonably practicable after the termination of such twelve-month period but not later than September 30, 2003;

(h) Whether or not the transactions contemplated hereunder are consummated or this Agreement is terminated, to pay all of its expenses incident to the performance of its obligations hereunder, including, but not limited to, such costs, expenses, fees and taxes in connection with (i) the preparation and filing of the Registration Statement, the Prospectus, each Prospectus Supplement, and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to the Agent (including costs of mailing and shipment), (ii) the registration, issue, sale and delivery of the Shares, (iii) any power of attorney and any closing documents (including compilations thereof) and the reproduction and/or printing and furnishing of copies of each thereof to the Agent (including costs of mailing and shipment), (iv) the qualification of the Shares for offering and sale under state laws and the determination of their eligibility for investment under state law as aforesaid (including the reasonable legal fees and filing fees and other disbursements of counsel for the Agent) and the printing and furnishing of copies of any blue sky surveys to the Agent, (v) the listing of the Shares on the AMEX and any registration thereof under the Exchange Act, (vi) any filing for review of the public offering of the Shares by the NASD (including the reasonable legal fees and other reasonable disbursements of counsel for the Agent in connection with any such filing) and (vii) the reasonable fees and disbursements of the Company's counsel and accountants. The Agent will pay its own out-of-pocket costs and expenses incurred in connection with entering into this Agreement and the transactions contemplated by this Agreement, including, without limitation, travel, reproduction, printing and similar expenses as well as the fees and disbursements of its legal counsel; *provided, however*, that if, within one year of the date of this Agreement, the Company terminates this Agreement and 100,000 shares of the Shares have not been sold through the Agent pursuant to the terms of this Agreement then the Company will promptly, upon the request of the Agent, reimburse the Agent for the reasonable fees and disbursements of the Agent's legal counsel incurred in connection with the entering into of this Agreement and the matters contemplated hereby but not to exceed an aggregate of \$25,000;

(i) To apply the net proceeds from the sale of the Shares in the manner set forth in the Prospectus;

(j) Not to sell, offer or agree to sell, contract to sell, grant any option to sell or otherwise dispose of, directly or indirectly, any shares of Common Stock or securities convertible into or exchangeable or exercisable for Common Stock or warrants or other rights to purchase Common Stock or any other securities of the Company that are substantially similar to Common Stock or permit the registration under the Act of any shares of Common Stock, except for the registration of the Shares and the sales through the Agent pursuant to this Agreement, except for sales of shares through any dividend reinvestment and stock purchase plan of the Company and except for options granted pursuant to employee benefit plans and for shares of Common Stock issuable upon the exercise of such outstanding options during the period from the date of this Agreement through the final Filing Date for the sale of Shares hereunder without (a) giving the Agent at least three business days' prior written notice specifying the nature of the proposed sale and the date of such proposed sale and (b) the Agent suspending activity under this program for such period of time as requested by the Company;

(k) At any time during the term of this Agreement, as supplemented from time to time, to advise the Agent immediately after it shall have received notice or obtain knowledge thereof, of any information or fact that would alter or affect any opinion, certificate, letter and other document provided to the Agent pursuant to Section 5 herein;

(l) Upon commencement of the offering of Shares under this Agreement, and each time that (i) the Registration Statement or the Prospectus shall be amended or supplemented (other than a Prospectus Supplement filed pursuant to Rule 424(b) under the Act that contains solely the information set forth in the final paragraph of Section 3 of this Agreement or relating solely to the offering of securities other than the Shares) or (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agent shall otherwise reasonably request), to furnish or cause to be furnished to the Agent forthwith a certificate dated the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in form satisfactory to the Agent to the effect that the statements contained in the certificate referred to in Section 5(e) hereof which were last furnished to the Agent are true and correct at the time of such amendment, supplement, or filing, as the case may be, as though made at and as of such time (except that such statements shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to such time) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to in said Section 5(e), modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such certificate.

(m) Upon commencement of the offering of Shares under this Agreement, and each time that (i) the Registration Statement or the Prospectus is amended or supplemented (other than a Prospectus Supplement filed pursuant to Rule 424(b) under the Act that contains solely the information set forth in the final paragraph of Section 3 of this Agreement or relating solely to the offering of securities other than the Shares) or

(ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agent shall otherwise reasonably request), to furnish or cause to be furnished forthwith to the Agent and to counsel to the Agent a written opinion of Kirkpatrick & Lockhart LLP, counsel to the Company (“*Company Counsel*”), or other counsel satisfactory to the Agent, dated the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in form and substance satisfactory to the Agent, of the same tenor as the opinions referred to in Section 5(c) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion;

(n) Upon commencement of the offering of Shares under this Agreement, and each time that (i) the Registration Statement or the Prospectus is amended or supplemented (other than a Prospectus Supplement filed pursuant to Rule 424(b) under the Act that contains solely the information set forth in the final paragraph of Section 3 of this Agreement or relating solely to the offering of securities other than the Shares) or (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agent shall otherwise reasonably request), to furnish or cause to be furnished forthwith to the Agent and to counsel to the Agent a written opinion of McKee Nelson LLP, Maryland counsel to the Company (“*Maryland Counsel*”), or other counsel satisfactory to the Agent, dated the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in form and substance satisfactory to the Agent, of the same tenor as the opinions referred to in Section 5(f) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion;

(o) Upon commencement of the offering of Shares under this Agreement, and each time that (i) the Registration Statement or the Prospectus is amended or supplemented (other than a Prospectus Supplement filed pursuant to Rule 424(b) under the Act that contains solely the information set forth in the final paragraph of Section 3 of this Agreement or relating solely to the offering of securities other than the Shares) or (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agent shall otherwise reasonably request), to furnish or cause to be furnished forthwith to the Agent and to counsel to the Agent a written opinion of McKee Nelson LLP, tax counsel to the Company (“*Tax Counsel*”), or other counsel satisfactory to the Agent, dated the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in form and substance satisfactory to the Agent, of the same tenor as the opinions referred to in Section 5(g) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion;

(p) Upon commencement of the offering of Shares under this Agreement, and each time that (i) the Registration Statement or the Prospectus is amended or

supplemented (other than a Prospectus Supplement filed pursuant to Rule 424(b) under the Act that contains solely the information set forth in the final paragraph of Section 3 of this Agreement or relating solely to the offering of securities other than the Shares) or (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agent shall otherwise reasonably request), to furnish or cause to be furnished forthwith to the Agent and to counsel to the Agent a written opinion of Ronald M. Morrison, general counsel to the Company (“*General Counsel*”), dated the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in form and substance satisfactory to the Agent, of the same tenor as the opinions referred to in Section 5(h) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion;

(q) Upon commencement of the offering of Shares under this Agreement, and each time that (i) the Registration Statement or the Prospectus is amended or supplemented (other than a Prospectus Supplement filed pursuant to Rule 424(b) under the Act that contains solely the information set forth in the final paragraph of Section 3 of this Agreement or relating solely to the offering of securities other than the Shares) or (ii) there is filed with the Commission any document incorporated by reference into the Prospectus (other than a Current Report on Form 8-K, unless the Agent shall otherwise reasonably request), to furnish or cause to be furnished forthwith to the Agent and to counsel to the Agent a written opinion of McKee Nelson LLP, Delaware counsel to the Company (“*Delaware Counsel*”), or other counsel satisfactory to the Agent, dated the date of effectiveness of such amendment, or the date of filing with the Commission of such supplement or other document, as the case may be, in form and substance satisfactory to the Agent, of the same tenor as the opinions referred to in Section 5(i) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the time of delivery of such opinion;

(r) (i) Upon commencement of the offering of Shares under this Agreement, and each time that the Registration Statement or the Prospectus shall be amended or supplemented to include additional amended financial information or (ii) at the Agent’s request and upon reasonable advance notice to the Company, each time there is filed with the Commission any document incorporated by reference into the Prospectus which contains additional amended financial information, to cause the Accountants, or other independent accountants satisfactory to the Agent, forthwith to furnish the Agent a letter, dated the date of effectiveness of such amendment, or the date of filing of such supplement or other document with the Commission, as the case may be, in form satisfactory to the Agent, of the same tenor as the letter referred to in Section 5(d) hereof but modified to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter;

(s) That it consents to the Agent trading in the Company's Common Stock for the Agent's own account and for the account of its clients at the same time as sales of Shares occur pursuant to this Agreement;

(t) For three years from the date of this Agreement, to furnish to its stockholders within 120 days after the end of each fiscal year, for so long as the Company shall not be required to file annual and periodic reports with the Commission under the Exchange Act, audited financial statements (including a balance sheet and statements of income, stockholders' equity and of cash flow of the Company for such fiscal year), accompanied by a copy of the certificate or report thereon of nationally recognized independent certified public accountants;

(u) If to the knowledge of the Company, any condition set forth in Section 5(a) or 5(j) hereof shall not have been satisfied on the applicable Settlement Date, to offer to any person who has agreed to purchase Shares from the Company as the result of an offer to purchase solicited by the Agent the right to refuse to purchase and pay for such Shares;

(v) Not to at any time, directly or indirectly, take any action intended, or which might reasonably be expected, to cause or result in, or which will constitute, stabilization of the price of the shares of Common Stock to facilitate the sale or resale of any of the Shares; and not invest in futures contracts, options on futures contracts or options on commodities, unless the Company is exempt from the registration requirements of the Commodity Exchange Act, as amended (the "*Commodity Act*"), or otherwise complies with the Commodity Act. The Company will not engage in any activities bearing on the Commodity Act, unless such activities are exempt from the Commodity Act or otherwise comply with the Commodity Act; and

(w) To disclose in its quarterly reports on Form 10-Q the number of Shares sold through the Agent under this Agreement, the Net Proceeds to the Company and the compensation paid by the Company with respect to sales of Shares pursuant to this Agreement during the relevant quarter.

SECTION 5. *Conditions of Agent's Obligations.* The obligations of the Agent hereunder are subject to (i) the accuracy of the representations and warranties on the part of the Company on the date hereof, any applicable date referred to in Section 4(l) and as of each Settlement Date, (ii) the performance by the Company of its obligations hereunder and (iii) to the following additional conditions precedent:

(a) (i) No stop order with respect to the effectiveness of the Registration Statement shall have been issued under the Act or proceedings initiated under Section 8(d) or 8(e) of the Act, and no order directed at any document incorporated by reference therein and no order preventing or suspending the use of the Prospectus has been issued by the Commission, and no suspension of the qualification of the Shares for offering or sale in any jurisdiction, or to the knowledge of the Company or the Agent of the initiation or threatening of any proceedings for any of such purposes, has occurred; (ii) the

Registration Statement and all amendments thereto, or modifications thereof, if any, shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (iii) the Prospectus and all amendments or supplements thereto, or modifications thereof, if any, shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(b) No material and unfavorable change, financial or otherwise (other than as referred to in the Registration Statement and Prospectus), in the business, condition or prospects of the Company and its Subsidiaries taken as a whole shall occur or become known and no transaction which is material and unfavorable to the Company (other than as referred to in the Registration Statement and Prospectus) shall have been entered into by the Company or any of its Subsidiaries.

(c) The Company shall furnish to the Agent, at every date specified in Section 4(m) hereof, an opinion of Company Counsel, addressed to the Agent, and dated as of such date, and in form satisfactory to the Agent, stating that:

(i) The Company and each of its Subsidiaries is a corporation duly incorporated, existing and in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Registration Statement and the Prospectus. Each Subsidiary is duly qualified to do business as a foreign corporation in good standing in each jurisdiction where the ownership or leasing of the properties or the conduct of its business requires such qualification, except where the failure to so qualify would not have a Material Adverse Effect. The Company is, directly or indirectly, the sole record owner and, to such counsel's knowledge, the sole beneficial owner of all of the capital stock of IWLG and IMH Assets, and all of the Preferred Stock of IFC to the extent and as described in the Prospectus. To such counsel's knowledge, all of the outstanding shares of common stock of IFC is owned by Joseph R. Tomkinson, William S. Ashmore and Richard J. Johnson, each an officer of the Company. To such counsel's knowledge, IFC is the beneficial owner of all of the outstanding capital stock of SAC;

(ii) All of the outstanding shares of Common Stock and the shares of capital stock of the Subsidiaries have been, and the Shares to be sold by the Company when paid for in accordance with the terms of this Agreement, will be, duly authorized, validly issued in compliance with all federal securities laws, fully paid and nonassessable and (a) to such counsel's knowledge, not issued in violation of any preemptive right, resale right, right of first refusal or similar right and (b) will not be subject to any right of first refusal, resale right or preemptive or similar right under (i) the statutes, judicial and administrative decisions and the

rules and regulations of the governmental agencies of the State of California, (ii) such Subsidiaries' charter or by-laws or (iii) any instrument, document, contract or other agreement specifically referred to in the Registration Statement or any instrument, document, contract or agreement filed as an exhibit to, or incorporated as an exhibit by reference in, the Registration Statement. Except as described in the Registration Statement or the Prospectus, to such counsel's knowledge, there (x) is no commitment or arrangement to issue, and (y) are no outstanding options, warrants or other rights calling for the issuance of, any share of capital stock of the Company or any Subsidiary to any person or any security or other instrument that by its terms is convertible into, exercisable for or exchangeable for capital stock of the Company;

(iii) The description of the Common Stock of the Company and the preferred stock of IFC contained in the Prospectus conforms in all material respects to the terms thereof contained in the charter of the Company and the articles of incorporation of IFC, respectively, and is complete and accurate in all material respects;

(iv) The Registration Statement has become effective under the Act and, to such counsel's knowledge, no order suspending the effectiveness of the Registration Statement has been issued and no proceeding for that purpose has been instituted or is threatened, pending or contemplated;

(v) The Registration Statement and the Prospectus (including any documents incorporated by reference into the Registration Statement and the Prospectus, at the time they became effective or were filed, as amended) comply (or complied) in all material respects as to form with the requirements of the Act or the Exchange Act, as applicable (except that such counsel expresses no opinion as to financial statements and related schedules and other financial or statistical data contained in the Registration Statement or the Prospectus, or incorporated by reference therein);

(vi) To such counsel's knowledge, any instrument, document, lease, license, contract or other agreement (collectively, "*Documents*") required by the Act to be described or referred to in the Registration Statement or the Prospectus has been described or referred to therein and any Document required to be filed as an exhibit to the Registration Statement, or any document incorporated by reference therein, has been filed as an exhibit thereto or has been incorporated as an exhibit by reference therein; and, to such counsel's knowledge, no default exists, nor has any event occurred which with notice, lapse of time or both, would result in a default, in the due performance or observance of any material obligation, agreement, covenant or condition contained in any Document filed or required by the Act to be filed as an exhibit to the Registration Statement, or any document incorporated by reference therein;

(vii) The Company has the corporate power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Company;

(viii) The execution and delivery by the Company of, and the performance by the Company of its agreements in this Agreement do not and will not (i) breach or result in a default under, cause the time for performance of any obligation to be accelerated under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the Company or any of its Subsidiaries pursuant to the express terms or provisions of, (x) any indenture, mortgage, deed of trust, voting trust agreement, loan agreement, bond, debenture, note agreement, capital lease or other evidence of indebtedness of which such counsel has knowledge, (y) any voting trust arrangement or any contract or other agreement that restricts the ability of the Company to issue securities and of which such counsel has knowledge or (z) any Document filed as an exhibit to, or incorporated as an exhibit by reference in, the Registration Statement, (ii) breach or otherwise violate any existing obligation of the Company under any court or administrative order, judgment or decree of which such counsel has knowledge and which names the Company or its Subsidiaries and is specifically directed to it or its properties or its Subsidiaries or their properties or (iii) violate applicable provisions of any statute or regulation of the State of California existing or in effect as of the date of such opinion;

(ix) No consent, approval, authorization or order of, or any filing or declaration with, any California, New York or federal court or governmental agency, regulatory commission, board, authority or body is required in connection with the authorization, issuance, transfer, sale or delivery of the Shares by the Company, in connection with the execution, delivery and performance of this Agreement by the Company or in connection with the taking by the Company of any action contemplated thereby or, if so required, all such consents, approvals, authorizations and orders, have been obtained and are in full force and effect, except such as may be required under state securities or Blue Sky laws and any rules or regulations thereunder or similar laws or by the by-laws and rules of the NASD in connection with the purchase and distribution by the Agent of the Shares as to which such counsel expresses no opinion;

(x) All pending or threatened legal or governmental proceedings of which such counsel has knowledge and which are required by the Act and the Exchange Act to be described in the Registration Statement or the Prospectus have been described as so required. To such counsel's knowledge, except as set forth in or contemplated by the Registration Statement and the Prospectus, there are no actions, suits, proceedings or investigations pending or overtly threatened in writing against the Company, any of its Subsidiaries or NFS or any of their respective officers or directors in their capacities as such, before or by any court, governmental agency or arbitrator which (i) seek to challenge the



legality or enforceability of this Agreement, (ii) seek to challenge the legality or enforceability of any of the Documents filed, or required to be filed, as exhibits to the Registration Statement or any document incorporated by reference therein, (iii) seek damages or other remedies with respect to any of the Documents filed, or required to be filed, as exhibits to the Registration Statement, (iv) seek to impose criminal penalties upon the Company, any of its Subsidiaries, NFS or any of their respective officers or directors in their capacities as such and of which such counsel has knowledge or (v) seek to enjoin any of the business activities of the Company, any of its Subsidiaries, NFS or the transactions described in the Prospectus; except (in the case of clauses (ii), (iii) and (v) above) where such illegality, unenforceability, damages, penalties or injunction which such counsel believes would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(xi) None of the Company, any of its Subsidiaries or NFS is, and if operated solely in the manner described in the Prospectus will be, (i) an “investment company” or an “affiliated person” of, or “promoter” or “principal underwriter” for, an “investment company,” as such terms are defined in the Investment Company Act or (ii) a “broker” within the meaning of Section 3(a)(4) of the Exchange Act or a “dealer” within the meaning of Section 3(a)(5) of the Exchange Act or required to be registered pursuant to Section 15(a) of the Exchange Act;

(xii) The Shares have been duly authorized for listing by AMEX upon official notice of issuance;

(xiii) To such counsel’s knowledge, except as disclosed in the Registration Statement or the Prospectus, no person or entity has the right to require the registration under the Act of shares of Common Stock or other securities of the Company by reason of the filing or effectiveness of the Registration Statement;

(xiv) To such counsel’s knowledge, none of the Subsidiaries is in violation of its charter or by-laws;

(xv) All descriptions in the Prospectus and the Prospectus Supplement as such descriptions have been updated by descriptions in the Prospectus Supplement, or incorporated by reference therein, of statutes, regulations or legal or governmental proceedings to the extent that they constitute matters of law or legal conclusions, are accurate in all material respects and present in all material respects the information required to be shown by the Act and the Exchange Act; and

(xvi) Such counsel is not opining as to factual matters, and the character of determinations involved in the registration process is such that such counsel is not passing upon and does not assume any responsibility for the

accuracy, completeness or fairness of the information included in the Registration Statement, the Prospectus and the Prospectus Supplement. Such counsel assumes the correctness and completeness of the information included in the Registration Statement, the Prospectus and the Prospectus Supplement and such counsel has made no independent investigation or verification of that information (except as and to the extent set forth in subparagraphs (iii) and (xv) above). Such counsel has participated in the preparation of each of the Registration Statement, the Prospectus and the Prospectus Supplement and, such counsel can advise the Agent that nothing has come to the attention of such counsel that causes them to believe that, at the time it became effective and as of the date of the opinion, the Registration Statement, or any amendment thereto, including the documents incorporated by reference therein, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that the Prospectus or the Prospectus Supplement or any amendment or supplement thereto, including any documents incorporated by reference into the Prospectus or the Prospectus Supplement, at the time it was issued, at the time any such amended or supplemented Prospectus, as the case may be, was issued, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order make the statements therein, in the light of the circumstances in which they were made not misleading (except that such counsel need not express any opinion with respect to financial statements and related notes and schedules and other financial, accounting and, to the extent covered by the letters delivered by the Accountants to the Agent pursuant to Section 4(r) of this Agreement, statistical information, included in, incorporated by reference in, or omitted from the Registration Statement, the Prospectus or the Prospectus Supplement or any further amendment or supplement to any of them).

In rendering the foregoing opinion, counsel may rely, to the extent they deem such reliance proper, on the opinions (in form and substance reasonably satisfactory to the Agent) of other counsel acceptable to the Agent as to matters governed by the laws of jurisdictions other than the United States, the State of California and the State of New York, and as to matters of fact, upon certificates of officers of the Company and of government officials; *provided* that such counsel shall state that the opinion of any other counsel is in form satisfactory to such counsel and, in such counsel's opinion, such counsel and the Agent are justified in relying on such opinions of other counsel.

(d) At the dates specified in Section 4(r) hereof, the Agent shall have received from the Accountants letters dated the date of delivery thereof and addressed to the Agent in form and substance satisfactory to the Agent.

(e) The Company will deliver to the Agent a certificate, dated as of the next business day following each Filing Date (each, a "*Certificate Date*"), of two of its executive officers to the effect that (i) the representations and warranties of the Company as set forth in this Agreement are true and correct as of the Certificate Date, (ii) the

Company shall perform such of its obligations under this Agreement as are to be performed at or before each such Certificate Date, and (ii) the conditions set forth in paragraphs (a) and (b) of this Section 5 have been met.

In addition, on each Certificate Date, the certificate shall also state that the Shares to be sold on that date have been duly and validly authorized by the Company and that all corporate action required to be taken for the authorization, issuance and sale of the Shares on that date has been validly and sufficiently taken.

(f) The Agent shall have received, at every date specified in Section 4(n) hereof, the favorable opinion of Maryland Counsel, dated as of such date, and in form and substance satisfactory to the Agent, stating it is limited to matters of Maryland law and that:

(i) The Company is a corporation duly organized, existing and in good standing in the State of Maryland and has full power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Registration Statement and the Prospectus;

(ii) All of the outstanding shares of Common Stock have been, and the Shares to be sold by the Company when paid for in accordance with the terms of this Agreement will be, duly authorized, validly issued, fully paid and nonassessable and the outstanding shares of Common Stock were not and the Shares will not be subject to any right of first refusal, resale right or preemptive or similar right under (i) the statutes, judicial and administrative decisions and the rules and regulations of the governmental agencies of the State of Maryland or (ii) the Company's charter or by-laws;

(iii) The description of the Common Stock contained in the Prospectus conforms to the terms thereof contained in the Company's charter and is complete and accurate in all material respects. The form of certificate used to represent the Common Stock is in due and proper form and complies in all material respects with all applicable requirements of the Maryland General Corporation Law;

(iv) The Company is not (a) in violation of its charter or by-laws or (b), to such counsel's knowledge, in violation of, or in default with respect to, any law, rule, regulation, order, judgment or decree of the State of Maryland, except, in the case of (b), as may be described in the Prospectus or such as in the aggregate do not have a material adverse effect upon the results of operations, business, properties, business prospects, condition (financial or otherwise) of the Company or the transactions contemplated in this Agreement;

(v) All descriptions in the Prospectus and the Prospectus Supplement as such descriptions have been updated by the descriptions in the

Prospectus Supplement, or incorporated by reference therein, of statutes, regulations or legal or governmental proceedings as they pertain to the laws of the State of Maryland and to the extent that they constitute matters of law or legal conclusions are accurate in all material respects and present in all material respects the information required to be shown, including those contained in the Prospectus under the captions “Repurchase of Shares and Restrictions on Transfer,” “Maryland Business Combination Act,” and “Maryland Control Share Acquisition Act”;

(vi) The Company has full corporate power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Company;

(vii) The execution and delivery by the Company of, and the performance by the Company of its agreements in, this Agreement do not and will not (i) violate the Company’s charter or by-laws or (ii) violate applicable provisions of any statute or regulation in the State of Maryland; and

(viii) No consent, approval, authorization or order of, or any filing or declaration with, any court or any governmental agency, regulatory commission, board, authority or body of the State of Maryland is required under the Maryland General Corporation Law in connection with the authorization, issuance, transfer, sale or delivery of the Shares by the Company, in connection with the execution, delivery and performance of this Agreement by the Company or in connection with the taking by the Company of any action contemplated thereby or, if so required, all such consents, approvals, authorizations and orders, have been obtained and are in full force and effect.

(g) The Agent shall have received, at every date specified in Section 4(o) hereof, the favorable opinion of Tax Counsel, dated as of such date, and in form and substance satisfactory to the Agent, stating that:

(i) Commencing with the Company’s taxable year ended December 31, 1995, the Company has been and will continue to be organized in conformity with the requirements for qualification and taxation as a REIT under the Code and its method of operating has enabled the Company, and its proposed method of operating going forward will enable the Company, to meet the requirements for qualification and taxation as a REIT; and

(ii) All descriptions in the Prospectus and the Prospectus Supplement as such descriptions have been updated by descriptions in the Prospectus Supplement, or incorporated by reference therein, of statutes, regulations or legal or governmental proceedings as they pertain to federal income tax matters and to the extent they constitute matters of law or legal conclusions, are accurate in all material respects and present in all material respects the

information required to be shown, including those contained in the Prospectus under the caption "Federal Income Tax Considerations".

(h) The Agent shall have received, at every date specified in Section 4(p) hereof, the favorable opinion of the General Counsel, dated as of such date, and in form and substance satisfactory to the Agent, stating that:

(i) To such counsel's knowledge, the Company is not in violation of its charter or bylaws; to such counsel's knowledge, none of the Subsidiaries is in violation of its charter or by-laws and none of the Company or any of its Subsidiaries is in violation of, or in default with respect to, any law, rule, regulation, order, judgment or decree of the United States or the State of California, except as may be described in the Prospectus or such as in the aggregate do not have a Material Adverse Effect; and

(ii) Such counsel has participated in the preparation of the Registration Statement, the Prospectus and the Prospectus Supplement and, without assuming any responsibility for the accuracy, completeness and fairness of the statements contained in the Registration Statement, the Prospectus or the Prospectus Supplement or any amendment or supplement thereto or in any document incorporated by reference into the Prospectus or the Prospectus Supplement, nothing has come to the attention of such counsel that causes him to believe that, both as of each date of the Registration Statement and as of the date of the opinion, the Registration Statement, or any amendment thereto, including the documents incorporated by reference therein, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that any Prospectus Supplement, Prospectus or any amendment or supplement thereto, including any documents incorporated by reference into the Prospectus Supplement or Prospectus, as the case may be, at the time it was issued, at the time any such amended or supplemented Prospectus Supplement or Prospectus, as the case may be, was issued, and at the date of the opinion, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact necessary in order make the statements therein, in the light of the circumstances in which they were made, not misleading (except that such counsel need not express any opinion as to financial statements and schedules and other financial data contained in the Registration Statement, the Prospectus or the Prospectus Supplement or incorporated by reference therein).

In rendering the foregoing opinion, counsel may rely, to the extent it deems such reliance proper, on the opinions (in form and substance satisfactory to the Agent) of other counsel acceptable to the Agent as to matters governed by the laws of jurisdictions other than the United States and the State of California, and as to matters of fact, upon certificates of officers of the Company and of government officials; *provided* that such counsel shall state that the opinion of any other counsel is in form satisfactory

to such counsel and, in such counsel's opinion, such counsel and the Agent are justified in relying on such opinions of other counsel.

(i) The Agent shall have received, at every date specified in Section 4(q) hereof, the favorable opinion of Delaware Counsel, dated as of such date, and in form and substance satisfactory to the Agent, stating that it is limited to matters of Delaware law and that:

(i) NFS is a corporation duly organized, existing and in good standing in the State of Delaware and has full power and authority to conduct all the activities conducted by it, to own or lease all the assets owned or leased by it and to conduct its business as described in the Registration Statement and the Prospectus;

(ii) All of the outstanding shares of the capital stock of NFS are duly authorized, validly issued, fully paid and nonassessable, and the outstanding shares of such capital stock are not subject to any right of first refusal, resale right or preemptive or similar right under (i) the statutes, judicial and administrative decisions and the rules and regulations of the government agencies of the State of Delaware, or (ii) the charter or bylaws;

(iii) To such counsel's knowledge, NFS is not in violation of its charter or bylaws; and

(iv) All of the outstanding shares of capital stock of NFS are owned by IFC.

(j) All filings with the Commission required by Rule 424 under the Act to have been filed by the Settlement Date, shall have been made within the applicable time period prescribed for such filing by Rule 424.

(k) The Shares shall have been approved for listing on the AMEX, subject only to notice of issuance at or prior to the Settlement Date.

#### SECTION 5. *Indemnification and Contribution.*

(a) The Company agrees to indemnify, defend and hold harmless the Agent, its partners, directors and officers, and any person who controls the Agent within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and the successors and assigns of all of the foregoing persons from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which the Agent or any such person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or in a Prospectus (the term

Prospectus for the purpose of this Section 6 being deemed to include the Prospectus and the Prospectus as amended or supplemented by the Company), or arises out of or is based upon any omission or alleged omission to state a material fact required to be stated in either such Registration Statement or Prospectus or necessary to make the statements made therein not misleading, except insofar as any such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by or on behalf of the Agent to the Company expressly for use with reference to the Agent in such Registration Statement or such Prospectus or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information required to be stated in such Registration Statement or such Prospectus or necessary to make such information not misleading.

If any action, suit or proceeding (together, a "*Proceeding*") is brought against the Agent or any such person in respect of which indemnity may be sought against the Company pursuant to the foregoing paragraphs, the Agent or such person shall promptly notify the indemnifying party in writing of the institution of such Proceeding and the Company shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; *provided, however*, that the omission to so notify the Company shall not relieve the Company from any liability which the Company may have to the Agent or any such person or otherwise except to the extent the Company was materially prejudiced by such omission. The Agent or such person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Agent or of such person unless the employment of such counsel shall have been authorized in writing by the Company in connection with the defense of such Proceeding or the Company shall not have, within a reasonable period of time in light of the circumstances, employed counsel to have charge of the defense of such Proceeding or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from, additional to or in conflict with those available to the Company (in which case the Company shall not have the right to direct the defense of such Proceeding on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by the Company, and paid as incurred (it being understood, however, that the Company shall not be liable for the expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). The Company shall not be liable for any settlement of any Proceeding effected without its written consent but if settled with the written consent of the Company, the Company agrees to indemnify and hold harmless the Agent and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested the Company to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then the Company agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more

than 60 business days after receipt by the Company of the aforesaid request, (ii) the Company shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 30 days' prior notice of its intention to settle. The Company shall not, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is or may be a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of such indemnified party.

(b) The Agent agrees to indemnify, defend and hold harmless the Company, its directors and officers and any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and the successors and assigns of all of the foregoing persons from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which, jointly or severally, the Company or any such person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by or on behalf of the Agent to the Company expressly for use with reference to the Agent in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or in a Prospectus, or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information required to be stated in such Registration Statement or such Prospectus or necessary to make such information not misleading.

If any Proceeding is brought against the Company or any such person in respect of which indemnity may be sought against the Agent pursuant to the foregoing paragraph, the Company or such person shall promptly notify the Agent in writing of the institution of such Proceeding and the Agent shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; *provided, however*, that the omission to so notify the Agent shall not relieve the Agent from any liability which the Agent may have to the Company or any such person or otherwise. The Company or such person shall have the right to employ its own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company or such person unless the employment of such counsel shall have been authorized in writing by the Agent in connection with the defense of such Proceeding or the Agent shall not have, within a reasonable period of time in light of the circumstances, employed counsel to have charge of the defense of such Proceeding or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to or in conflict with those available to the Agent (in which case the Agent shall not have the right to direct the defense of such Proceeding on behalf



of the indemnified party or parties, but the Agent may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of the Agent), in any of which events such fees and expenses shall be borne by the Agent and paid as incurred (it being understood, however, that the Agent shall not be liable for the expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). The Agent shall not be liable for any settlement of any such Proceeding effected without the written consent of the Agent but if settled with the written consent of the Agent, the Agent agrees to indemnify and hold harmless the Company and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested the Agent to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then the Agent agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by the Agent of the aforesaid request, (ii) the Agent shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the Agent at least 30 days' prior notice of its intention to settle. The Agent shall not, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding.

(c) If the indemnification provided for in this Section 6 is unavailable to an indemnified party under subsections (a) and (b) of this Section 6 in respect of any losses, damages, expenses, liabilities or claims referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, damages, expenses, liabilities or claims (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Agent, on the other hand, from the offering of the Shares or (ii) if, the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and the Agent, on the other, in connection with the statements or omissions which resulted in such losses, damages, expenses, liabilities or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Agent, on the other, shall be deemed to be in the same respective proportions as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total compensation (before deducting expenses) received by the Agent from the sale of Shares on behalf of the Company. The relative fault of the Company, on the one hand, and of the Agent, on the other, shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information

supplied by the Company or by the Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, damages, expenses, liabilities and claims referred to in this subsection shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating, preparing to defend or defending any Proceeding.

(d) The Company and the Agent agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in subsection (c) above. Notwithstanding the provisions of this Section 6, the Agent shall not be required to contribute any amount in excess of commissions received by it under the Agreement or any amount by which the total price at which the Shares sold by the Agent exceeds the amount of any damage which the Agent has otherwise been required to pay by reason of such untrue statement or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The indemnity and contribution agreements contained in this Section 6 and the covenants, warranties and representations of the Company contained in this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the Agent, its partners, directors or officers or any person (including each partner, officer or director of such person) who controls the Agent within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, or by or on behalf of the Company, its directors or officers or any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and shall survive any termination of this Agreement or the issuance and delivery of the Shares. The Company and the Agent agree promptly to notify each other of the commencement of any Proceeding against it and, in the case of the Company, against any of the Company's officers or directors in connection with the issuance and sale of the Shares, or in connection with the Registration Statement or Prospectus.

SECTION 6. *Representations and Agreements to Survive Delivery.* All representations, warranties and agreements of the Company herein or in certificates delivered pursuant hereto, and the agreements of the Agent contained in Section 6 hereof, shall remain operative and in full force and effect regardless of any investigation made by or on behalf of the Agent or any controlling persons, or the Company (or any of their officers, directors or controlling persons), and shall survive delivery of and payment for the Shares.

SECTION 7. *Termination.*

(a) The Company shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time.  
Any

such termination shall be without liability of any party to any other party except that (i) if Shares have been sold through the Agent for the Company, then Section 4(g) and (t) shall remain in full force and effect, (ii) with respect to any pending sale, through the Agent for the Company, the obligations of the Company, including in respect of compensation of the Agent, shall remain in full force and effect notwithstanding the termination and (iii) the provisions of Section 4(h), Section 6 and Section 7 hereof shall remain in full force and effect notwithstanding such termination.

(b) The Agent shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time. Any such termination shall be without liability of any party to any other party except that the provisions of Section 4(h), Section 6 and Section 7 hereof shall remain in full force and effect notwithstanding such termination.

(c) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 8(a) or (b) above or otherwise by mutual agreement of the parties; *provided* that any such termination by mutual agreement shall in all cases be deemed to provide that Section 4(h), Section 6 and Section 7 shall remain in full force and effect.

(d) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agent or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall settle in accordance with the provisions of the second to last paragraph of Section 3 hereof.

SECTION 8. *Notices.* Except as otherwise herein provided, all statements, requests, notices and agreements shall be in writing and delivered by hand, overnight courier, mail or facsimile and, if to the Agent, shall be sufficient in all respects if delivered or sent to UBS Warburg LLC, 299 Park Avenue, New York, N.Y. 10171-0026, Attention: Syndicate Department, Fax No. (212) 821-6186, with a copy for information purposes to UBS Warburg LLC, 677 Washington Blvd., Stamford, CT, 06901, Attention: Legal and Compliance Department, Fax No. (203) 719-0680; if to the Company, it shall be sufficient in all respects if delivered or sent to the Company at the offices of the Company at 1401 Dove Street, Newport Beach, CA 92660, Attention: Ron Morrison, Fax No. (949) 475-3969. Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

SECTION 10. *Parties.* The Agreement herein set forth has been and is made solely for the benefit of the Agent and the Company and to the extent provided in Section 6 hereof the controlling persons, directors and officers referred to in such section, and their respective successors, assigns, heirs, personal representatives and executors and administrators. No other person, partnership, association or corporation (including a

purchaser, as such purchaser, from any of the Agent) shall acquire or have any right under or by virtue of this Agreement.

SECTION 11. *Adjustments for Stock Splits.* The parties acknowledge and agree that all share related numbers contained in this Agreement shall be adjusted to take into account any stock split effected with respect to the Shares.

SECTION 12. *Entire Agreement.* This Agreement constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof.

SECTION 13. *Counterparts.* This Agreement may be signed by the parties in one or more counterparts which together shall constitute one and the same agreement among the parties.

SECTION 14. *Applicable Law.* This Agreement and any claim, counterclaim or dispute of any kind or nature whatsoever arising out of or in any way relating to this Agreement (“*Claim*”), directly or indirectly, shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to contracts entered into and to be performed within such state without regard to conflicts of law principles.

SECTION 15. *Headings.* The Section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

SECTION 16. *Submission to Jurisdiction.* Except as set forth below, no Claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company consents to the non-exclusive jurisdiction of such courts and personal service with respect thereto. The Company hereby consents to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against the Agent or any indemnified party. Each of the Agent and the Company (in the case of the Company on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The Company agree that a final, non-appealable judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon the Company and may be enforced in any other courts in the jurisdiction of which the Company is or may be subject, by suit upon such judgment.

SECTION 17. *Miscellaneous.* The Agent, an indirect, wholly owned subsidiary of UBS AG, is not a bank and is separate from any affiliated bank, including any U.S. branch or agency of UBS AG. Because the Agent is a separately incorporated entity, it is solely responsible for its own contractual obligations and commitments, including obligations with respect to sales and purchases of securities. Securities sold, offered or recommended by the Agent are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by a branch or agency, and are not otherwise an obligation or responsibility of a branch or agency.

A lending affiliate of the Agent may have lending relationships with issuers of securities underwritten or privately placed by the Agent. To the extent required under the securities laws, prospectuses and other disclosure documents for securities underwritten or privately placed by the Agent will disclose the existence of any such lending relationships and whether the proceeds of the issue will be used to repay debts owed to affiliates of the Agent.

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding agreement between the Company and the Agent. Alternatively, the execution of this Agreement by the Company and its acceptance by or on behalf of the Agent may be evidenced by an exchange of telegraphic or other written communications.

Very truly yours,

/s/ Richard J. Johnson

By:

Name: Richard J. Johnson

Title: EVP, CFO

ACCEPTED as of the date  
first above written

**UBS WARBURG LLC**

By: /s/ Halle J. Benett

\_\_\_\_\_  
Name: Halle J. Benett  
Title: Executive Director

**UBS WARBURG LLC**

By: /s/ Jorge Solares-Parkhurst

\_\_\_\_\_  
Name: Jorge Solares-Parkhurst  
Title: Associate Director

May 22, 2002

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California 92660

Re: Impac Mortgage Holdings, Inc.  
Registration Statement on Form S-3

Dear Sir/Madam:

We have acted as counsel to Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), in connection with the public offering from time to time of up to 3,594,082 shares (the "Shares") of common stock, \$0.01 par value (the "Common Stock"), pursuant to a Registration Statement on Form S-3 (File No. 333-74432) (the "Registration Statement") filed with the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the offer from time to time by the Company of shares of its Common Stock. This opinion is being delivered in accordance with the requirements of Item 601(b) (5) of Regulation S-K under the Securities Act.

For purposes of this opinion, we have examined such matters of law and originals, or copies, certified or otherwise, identified to our satisfaction, of such documents, corporate records of the Company relating to the authorization, offering and issuance of the Shares and other instruments as we have deemed necessary.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified, photostatic or conformed copies, and the authenticity of the originals of all such latter documents. We have also assumed the due execution and delivery of all documents where due execution and delivery are prerequisites to the effectiveness thereof. We have relied upon certificates of public officials and certificates of officers of the Company for the accuracy of material, factual matters contained therein which were not independently established.

Based upon the foregoing and all other instruments, documents and matters examined for the rendering of this opinion, it is our opinion that the Shares have been duly authorized and, when issued and paid for as contemplated by the Registration Statement, will be validly issued, fully paid and nonassessable.

With respect to the opinion set forth above, we have relied upon the opinion of McKee Nelson LLP, dated the date hereof, a copy of which has been delivered to you, as to matters of Maryland law.

We express no opinion as to the applicability or effect of any laws, orders or judgments of any state or jurisdiction other than federal securities laws and the substantive laws of the State of California but are opining with respect to Maryland law in reliance on the opinion of McKee Nelson LLP. Further, our opinion is based solely upon existing laws, rules and regulations, and we undertake no obligation to advise you of any changes that may be brought to our attention after the date hereof.

We consent to the use of our name under the caption "Legal Matters" in the prospectus, and any supplement thereto, constituting part of the Registration Statement. We hereby consent to the use of this opinion as an exhibit to the 8-K and incorporation by reference into the Registration Statement.

By giving you this opinion and consent, we do not admit that we are experts with respect to any part of the Registration Statement or Prospectus within the meaning of the term “expert” as used in Section 11 of the Securities Act, or the rules and regulations promulgated thereunder by the SEC, nor do we admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ KIRKPATRICK & LOCKHART LLP



[Letterhead of McKee Nelson LLP]

May 22, 2002

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California 92660

Ladies and Gentlemen:

This opinion is furnished in connection with the registration statement on Form S-3, as amended (File No. 333-74432) (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the offering by Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), from time to time of up to 3,594,082 shares of its common stock, par value \$0.01 per share (the "Shares").

As Maryland counsel to the Company, we have examined and relied on the originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, records, and other documents and have made such examination of law as we have deemed necessary or appropriate for the purpose of this opinion. In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies or by facsimile or other means of electronic transmission or which we obtained from the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") or freeEDGAR.com, and the authenticity of the originals of such latter documents. As to facts relevant to the opinions expressed herein and other statements made herein, we have relied without independent investigation upon certificates and oral or written statements and representations of public officials, officers, and other representatives of the Company.

We are attorneys admitted to practice in the State of Maryland. We express no opinion concerning the laws of any of the jurisdictions other than the laws of the United States of America and the State of Maryland.

Based upon the foregoing, we are of the opinion that the Shares have been duly authorized by the Company and, when issued and paid for as contemplated by the Registration Statement, will be duly and validly issued, fully paid and non-assessable.

This opinion is being furnished to you for use in connection with the Registration Statement and may be relied upon by Kirkpatrick & Lockhart LLP. We hereby consent to the filing of this opinion as Exhibit 5.2 to the Form 8-K and the reference to our firm under the caption "Legal Matters" in the prospectus or any supplement thereto. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ McKee Nelson LLP

[Letterhead of McKee Nelson LLP]

May 22, 2002

Impac Mortgage Holdings, Inc.  
1401 Dove Street  
Newport Beach, California 92660

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

This opinion is furnished in connection with the registration statement on Form S-3, as amended (File No. 333-74432) (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), relating to the offering by Impac Mortgage Holdings, Inc., a Maryland corporation (the "Company"), from time to time of up to 3,594,052 shares of its common stock, par value \$0.01 per share (the "Shares").

As tax counsel to the Company, we have examined and relied on the originals or copies, certified or otherwise identified to our satisfaction, of such instruments, certificates, records, and other documents and have made such examination of law as we have deemed necessary or appropriate for the purpose of this opinion. In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies or by facsimile or other means of electronic transmission or which we obtained from the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR") or FreeEDGAR.com, and the authenticity of the originals of such latter documents. As to facts relevant to the opinions expressed herein and other statements made herein, we have relied without independent investigation upon certificates and oral or written statements and representations of public officials, officers, and other representatives of the Company.

In addition, this opinion is based, in part, upon factual representations set forth in the Prospectus and in a letter delivered to us by the Company today. This opinion is also based upon the internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations promulgated thereunder, and existing administrative and judicial interpretations thereof, all as they exist at the date of this letter. All of the foregoing statutes, regulations, and interpretations are subject to change, in some circumstances with retroactive effect. Any changes to the foregoing authorities could affect the accuracy of the opinions contained herein.

Based on the foregoing, we are of the opinion that, commencing with the Company's taxable year ended December 31, 1995, the Company has been and will continue to be organized in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Code and its method of operating has enabled the Company, and its proposed method of operating going forward will enable the Company, to meet the requirements for qualification and taxation as a REIT.

The Company's qualification as a REIT will depend on the Company's meeting, in its actual operations, the applicable asset composition, source of income, shareholder diversification, distribution and other requirements of the Code and Treasury Regulations necessary for REIT qualification. We will not review these operations and no assurance can be given that the actual operations of the Company and its affiliates will meet these requirements or the representations made to us with respect thereto.

This opinion is being furnished to you for use in connection with the Registration Statement and may be relied upon by Kirkpatrick & Lockhart LLP. We hereby consent to the filing of this opinion as Exhibit 8.1 to the Form 8-K and the reference to our firm under the captions "Legal Matters" and "Material Federal Income Tax Consequences" in the prospectus or any supplement thereto. In giving this consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ McKee Nelson LLP