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**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

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| In re<br><br>TRUDY KALUSH,<br><br>Reorganized Debtor. | Case No. 8:11-bk-19563-ES<br><br>Chapter 11<br><br>Adv. Case No. 8:12-ap-01206-ES |
| TRUDY KALUSH,<br><br>Plaintiff,<br><br>vs.<br><br>DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE OF THE INDYMAC INDX DEED OF TRUST LOAN TRUST 2005-AR12, DEED OF TRUST PASS-THROUGH CERTIFICATES, SERIES 2005-AR12, UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005; ONEWEST BANK, FSB; and DOES 1-100, Inclusive,<br><br>Defendants. | **NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT PURSUANT TO FRBP 7056 AND FRBP 3007 ON (1) OBJECTION TO PROOF OF CLAIM 6 OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AND (2) FIRST CLAIM FOR RELIEF TO INVALIDATE LIEN**<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES AND REQUEST FOR JUDICIAL NOTICE IN SUPPORT THEREOF**<br><br>[Separate Statement of Uncontroverted Facts and Conclusions of Law, and Proposed Order Granting Summary Judgment filed concurrently herewith]<br><br><u>Hearing</u>:<br>Date: November 5, 2013<br>Time: 2:00 p.m.<br>Courtroom: 5A |

**PLEASE TAKE NOTICE** that a hearing will take place on **November 5, 2013 at 2:00 p.m.** in Courtroom 5A of the United States Bankruptcy Court, Central District on Plaintiff Trudy Kalush's ("Debtor") Motion for partial summary judgment pursuant to FRBP Rule 7056 on Objection to Proof of Claim 6 ("Claim") and Debtor's First Claim for Relief (Declaratory Relief/Invalidate Lien) ("Motion"). The claim objection has been consolidated with this Adversary Proceeding ("AP"). A true and correct copy of the Claim is attached to the Request for Judicial Notice ("RJN") as **Exhibit "1"**.

All of the evidence submitted in support of the Motion is either (1) documents produced by Deutsche Bank National Trust Company ("Deutsche Bank"), (2) documents of public record, or (3) sworn testimony from Deutsche Bank's person most knowledgeable. In other words, the Motion relies exclusively on Deutsche Bank's own documents and testimony.

This Motion is made pursuant to FRBP 7056 and Fed. R. Civ. P. 56 on the grounds that no genuine issue of material fact exists as to Debtor's Motion against Deutsche Bank as Trustee Of The IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 ("Trust"), Under The Pooling And Servicing Agreement Dated June 1, 2005 ("PSA") and she is entitled to judgment as a matter of law. Deutsche Bank was not Debtor's original lender and any rights it possesses comes through the PSA. True and correct copies of pertinent pages of the PSA are attached to the RJN as **Exhibit "2"**. The Cut-Off Date of the Trust was June 1, 2005 and the Trust's Closing Date was June 6, 2005. Pursuant to the Trust, Debtor's Note and DOT had to be transferred to the Trust by the Closing Date, which admittedly did not occur.

Deutsche Bank's Claim is allegedly secured by the Debtor's real property commonly referred to as 16625 S. Pacific Ave., Sunset Beach, California 90742 (the "Property"). Deutsche Bank has the burden to prove its legal standing concerning the Promissory Note dated January 20, 2005 ("Note") and Deed of Trust recorded on January 27, 2005 ("DOT") in favor of Commercial Capital Bank, FSB ("Commercial"). A true and correct copy of the Note is attached to the RJN as **Exhibit "3"** and the DOT as **Exhibit "4"**. Deutsche Bank is improperly attempting to foreclose on the Property, having recorded a Notice of Default on July 26, 2013.

The Motion should be granted and the Deutsche Bank Claim disallowed and its alleged lien invalidated as it is admittedly not a perfected secured creditor as claimed in Deutsche Bank's Claim. The undisputed evidence is that Debtor's Note (which did not have an allonge/endorsement attached) and DOT have never been assigned to the Trust, and further any alleged attempts to deliver the Note and DOT to the Trust or assign Debtor's DOT to Deutsche Bank were illegal and more than 7 years after the Trust admittedly closed.

The Motion is based upon the attached Memorandum of Points and Authorities, the RJN, the discovery produced by Deutsche Bank, the Declaration and Deposition testimony of Reynaldo Reyes (Deutsche Bank PMK) ("Reyes") ("Reyes Declaration" and "Reyes Deposition", respectively), and the concurrently filed Separate Statement of Undisputed Facts ("SSF") and Conclusions of Law ("SSCL"), the papers and records on file herein, and any oral and documentary evidence as may be presented as evidence at the hearing on this Motion.

**IF YOU DO NOT OPPOSE THE MOTION, YOU NEED TAKE NO FURTHER ACTION. HOWEVER, IF YOU OBJECT TO THE RELIEF REQUESTED BY THE MOTION, PURSUANT TO LOCAL BANKRUPTCY RULE 9013-1, YOU MUST SERVE AND FILE A WRITTEN OBJECTION WITH THE CLERK OF THE BANKRUPTCY COURT AND SERVE SUCH WRITTEN OBJECTION UPON THE DEBTOR TO WHOSE MOTION THE OBJECTION IS BEING FILED, AT THE ADDRESS SET FORTH BELOW, AND UPON THE OFFICE OF THE UNITED STATES TRUSTEE LOCATED AT 411 WEST FOURTH STREET, SUITE 9041, SANTA ANA, CA 92701. OBJECTIONS MUST BE SERVED AND FILED NO LATER THAN FOURTEEN (14) DAYS PRIOR TO THE DATE SET FOR HEARING AS INDICATED ABOVE. YOU MUST FILE YOUR OPPOSING PAPERS AND PROOF OF SERVICE THEREOF WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT LOCATED AT 411 WEST FOURTH STREET, SANTA ANA, CA 92701. ANY FAILURE TO TIMELY FILE AND SERVE ANY SUCH OBJECTIONS MAY RESULT IN ANY SUCH OBJECTIONS BEING WAIVED. FOR FURTHER INFORMATION, SEE LOCAL BANKRUPTCY RULF 9013-1.**

Dated: September 24, 2013 **GOE & FORSYTHE, LLP**

By: /s/Robert P. Goe
Robert P. Goe, Attorneys for
Reorganized Debtor/Plaintiff Trudy
Kalush

# MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION AND OVERVIEW

As this Court combined the Claim objection with the pending AP, Debtor moves for partial summary judgment objecting to the Claim and to invalidate the lien.

Pursuant to FRBP 3001(c) and (d), the claimant bears the burden of proof to show it is the secured creditor of a claim or otherwise has standing to enforce the claim. Debtor has 2 primary arguments based on undisputed facts that establish the Claim must be disallowed and Deutsche Bank determined to not be a secured creditor on the Property:

(1) **THERE IS NO ALLONGE ATTACHED TO THE NOTE.** Deutsche Bank's Claim was signed by its alleged agent Michael B. Shaw an attorney at the law firm of Brice Vander Linden and Wenick, PC ("Brice Firm") (*see* RJN, **Exhibit "1"**). The Claim attached the Note but did not have an allonge attached, which is fatal to Deutsche Bank's standing pursuant to Cal. Commercial Code, Section 3204, which as discussed herein requires that an endorsement/allonge be "affixed" to the Note. Additionally, the Reyes Declaration (a true and correct copy is attached to the RJN as **Exhibit "5"** [Docket No. 272]) claims Deutsche Bank received the Note and endorsement on or about April 5, 2005, while the truth is that the Claim filed in 2011 had no endorsement. At his deposition (true and correct copies of pertinent pages of the Reyes Deposition are attached to the RJN as **Exhibit "6"**), Reyes testified that Deutsche Bank did not hire Mr. Shaw to file the Claim, and that he did not know he was filing the Claim (see Reyes Deposition, pages 28-29). The Debtor reviewed the Original Collateral Loan File ("Loan File") at Deutsche Bank's counsel's office which included evidence that the Brice Firm had the file in its possession prior to the filing of the Reyes Declaration. The Loan File contained a cover sheet entitled Collateral File Imaging Checklist, which stated on April 23, 2012 there was no allonge present ("N/A"). A true and correct copy of the Collateral Filing Image Checklist is attached to the RJN as **Exhibit "7"**.

(2) **DEBTOR'S NOTE AND DOT WERE NOT TIMELY TRANSFERRED TO THE TRUST.** Deutsche Bank filed the Reyes Declaration to support ownership of Debtor's loan through the Trust and PSA.[1] Remarkably, Reyes admits that Deutsche Bank did not receive the Debtor's DOT until May 3, 2012 or nearly 7

[1] The PSA is also attached to the Reyes Declaration.

years after the PSA closed. Further, he provides absolutely no evidence that Debtor's loan was timely assigned to the Trust. Deutsche Bank was required to strictly comply with the PSA which had a Cut Off Date of June 1, 2005 and a Closing Date of June 6, 2005. (*See* RJN, **Exhibit "2"**, PSA, pages 20-21.) The PSA is governed by New York law (*see* PSA, page 112). Pursuant to Section 2.01(a), (b), and (c), as of the June 6, 2005 PSA Closing Date, the original endorsed Note, Mortgage (deed of trust) and assignment of Mortgage had to be delivered. (*See* PSA, pages 59-50.) This admittedly did not occur and any purported assignment of the DOT to Deutsche Bank is void.

Pursuant to an extremely important and recent case, the Debtor has standing to challenge a securitized trust's ownership pursuant to the decision of the California Court of Appeal of Glaski v. Bank of America, N.A., 218 Cal. App. 4th 1079 (2013) which held:

> "We conclude that a borrower may challenge the securitized trust's chain of ownership by alleging the attempts to transfer the deed of trust to the securitized trust (which was formed under N.Y. law) occurred after the trust's closing date. Transfers that violate the terms of the trust instrument are void under New York law, and borrowers have standing to challenge void assignments of their loans even though they are not a party to, or a third party beneficiary of, the assignment agreement."

*See* Glaski at 1083 (emphasis added)

Thus, any alleged assignment or transfer to Deutsche Bank is void.

As discussed below, Debtor's DOT has allegedly been assigned at least five (5) times through either recorded or unrecorded assignments. As stated, there has never been a timely assignment to the Trust. In fact, unbelievably, after the Reyes Declaration was filed and after Deutsche Bank filed numerous pleadings opposing confirmation, on January 23, 2013 JP Morgan Chase Bank ("JPMorgan") executed a "Corporate Assignment of Deed of Trust" ("1/23/13 Assignment") assigning Debtor's DOT to OneWest Bank ("Onewest"). A true and correct copy of the 1/23/13 Assignment is attached to the RJN as **Exhibit "11"**. How did JP Morgan acquire Debtor's DOT, which purportedly was owned by Deutsche Bank through the Trust that closed in June 2005? For over 2 years in the bankruptcy proceeding Deutsche Bank claimed it held the DOT and filed the Claim. The break in chain of title and failure to comply with the Trust is admitted.

There is no valid assignment to Deutsche Bank recorded or unrecorded. A chronological history of all the assignment is set forth below.

The Claim should be disallowed and the Court should issue an order that Deutsche Bank has no lien on the Property.

## II. STATEMENT OF FACTS

1. In January 2005, Debtor obtained a loan from Commercial.

2. In June 2005, the Trust closes and Debtor's DOT was admittedly never delivered to Deutsche Bank until May 3, 2012, if ever. (*See* Reyes Declaration, the PSA, and 1/23/13 Assignment.)

3. On July 7, 2011, the Debtor filed for protection under Chapter 11 of the Bankruptcy Code.

4. On August 2, 2011, Deutsche Bank through its agent Michael B. Shaw (an attorney at the Brice Firm) filed the Claim (*See* RJN, **Exhibit "1"**.)

5. Deutsche Bank included with the Claim a copy of the Note with a certification stamp on the page 1 of the Note and a copy of the DOT from Commercial. There were no endorsements to the Note.

6. Not only did the Claim fail to attach the allonge/endorsement which later surfaced, there were also no assignments to the DOT, which also magically were produced both recorded and unrecorded. In fact, notwithstanding Deutsche Bank having claimed all along that it had standing in this case, there was no assignment of the DOT to Deutsche Bank until allegedly June 12, 2013, over eight (8) years after the Trust closing, nearly two (2) years after it filed the Claim, and over a year after it filed its stay motion. Here is a history of the DOT and alleged assignments of the DOT:

(i) January 27, 2005, DOT in favor of Commercial (**Exhibit "4"** to the RJN);

(ii) March 16, 2005, unrecorded assignment from Commercial to IndyMac Bank, FSB ("IndyMac") (**Exhibit "8"** to the RJN);

(iii) March 30, 2005, unrecorded assignment from IndyMac Bank, FSB ("IndyMac Fed") to unknown creditor (**Exhibit "9"** to the RJN). IndyMac Fed had no ability to assign the DOT to Deutsche Bank as there was never any assignment from Commercial to IndyMac Fed;

(iv) April 5, 2011, recorded assignment from IndyMac Fed to Deutsche Bank (**Exhibit "10"** to the RJN). In addition to being nearly six (6) years after the Trust closing, IndyMac Fed had no ability to execute an assignment to Deutsche Bank;

(v) 1/23/13 Assignment from JPMorgan Chase Bank to Onewest (**Exhibit "11"** to the RJN). JPMorgan was never assigned the DOT and had no ability to assign to Onewest. Debtor propounded written discovery on JPMorgan which include a request for all assignments of Debtor's DOT (RFP No. 3). JPMorgan provided its "Response to Subpoena by Debtor Trudy Kalush" stating it had no documents (RJN, **Exhibit "13"**);

(vi) June 12, 2013, Assignment of Deed of Trust from Onewest to Deutsche Bank (RJN, **Exhibit "12"**).

The breaks in the chain are obvious, but what is most appalling is that nearly a decade after the PSA closed on June 6, 2005, years after the bankruptcy filing and months after Debtor's Plan was confirmed, on June 12, 2013, the DOT is allegedly assigned to Deutsche Bank.

7. Deutsche Bank has never amended the Claim.

8. On May 1, 2013, the Court entered its Order Confirming Debtor's Third Amended Chapter 11 Plan of Reorganization, dated March 21, 2013, which provided for the Court to retain jurisdiction over the Deutsche Bank Claim objection and AP.

9. The PSA in Section 2.2 Acceptance by the Trustee of the Mortgage Loans, provides:

> If a substitution or purchase of a Mortgage Loan pursuant to this provision is required because of a delay in delivery of any documents by the appropriate recording office, or there is a dispute between either the Master Servicer or the Seller and the Trustee over the location or status of the recorded document, then the substitution or purchase shall occur within 720 days from the Closing Date. In no other case may a substitution or purchase occur more than 540 days from the Closing Date.

*(See* RJN, **Exhibit "2"**, PSA, pages 52-53.)

10. Pursuant to the PSA, Exhibit H-1-1, entitled *Form of Final Certification of Trustee*, it provides:

> In accordance with section 2.02 of the above Captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), the undersigned, as Trustee, hereby certifies that as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or listed on the attached Document Exception Report it has received:
>
> (i) The original Mortgage Note, endorsed in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement, with all intervening endorsements showing a complete chain of endorsement from the originator to the Seller.

(ii) The original recorded Mortgage.

(iii) ....

(iv) The original or duplicate original recorded assignment or assignments of the Mortgage showing a complete chain of assignment from the originator to the Seller.

(*See*, RJN, **Exhibit "2"**, PSA Exhibit H1-1, 2) (emphasis added)

None of the above were accomplished by the June 6, 2005 Cut-Off and, therefore, the Claim of Deutsche Bank is void and its alleged lien invalid.

## III. ISSUES PRESENTED

Whether Debtor's objection to Deutsche Bank's Claim raises no triable issue of fact, and the Motion should be granted disallowing the Claim and invalidating the lien.

## IV. AUTHORITY & ARGUMENT

### A. LEGAL STANDARD FOR SUMMARY JUDGMENT PURSUANT TO F.R.C.P. 56.

Pursuant to Federal Rule of Civil Procedure 56 (which is incorporated in the Federal Rules of Bankruptcy Procedure by Rule 7056), and a series of United States Supreme Court cases interpreting the same, a party can properly move for summary judgment as to every cause of action, where it does not have the burden of proof, without submitting supporting affidavits. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548 (1986); *Anderson v. Liberty Lobby. Inc.,* 477 U.S. 242, 248 (1986). Under these facts, the moving party need only inform the court of the basis for the motion. In contrast, to withstand such a motion, the responding party must introduce sufficient admissible evidence, as to every single element of its case, to convince a reasonable jury that a judgment could be rendered in its favor. *Celotex, at 324; British Motor Car Distrib. v. San Francisco Art*, 882 F. 2d 371, 374 (9th Cir. 1989) ("To withstand summary judgment the non-moving party must make a showing sufficient to establish a genuine issue of fact with respect to every element for which it bears the burden of proof").

A fact is material if it might affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby. Inc.,* 477 U.S. 242, 248 (1986). Indeed, "the moving party may simply point to the absence of evidence to support the nonmoving party's case." *In re Brazier Forest*

*Prod. Inc.*, 921 F.2d 221, 223 (9th Cir. 1990). Conclusory statements, speculation, personal beliefs, and unsupported assertions cannot withstand a summary judgment motion, and the court will not "presume [ ]" "missing facts." *Lujan v. Nat'l Wildlife Fed'n, 497 U.S.* 871, 888-89 (1990). Objections to proofs of claims are governed by FRBP 3007 and 9014. Deutsche Bank bears the burden of proof.

**B. DEUTSCHE BANK CARRIES THE BURDEN OF PROOF AS TO THE ALLOWANCE OF THE CLAIM.**

Pursuant to §502 of the Bankruptcy Code, this Court may determine the allowance or disallowance of claims after an objection is made. Section 502 of the Bankruptcy Code, provides in relevant part: "a claim. . . proof of which is filed under [11 U.S.C. §501] is deemed allowed, unless a party in interest . . . objects." A properly filed proof of claim is prima facie evidence of the validity and amount of the claim. Federal Rule of Bankruptcy Procedure Rule 3001(f) provides in relevant part "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity of the amount of the claim." Fed. R. Bankr. P. 3001(f).

Bankruptcy Rule 3001(f) however "operates merely as an evidentiary presumption that is rebuttable." In re Garvida, 347 B.R. 697, 706 (9th Cir. BAP 2006). If the Debtor rebuts this presumption with counter-evidence, the burden going forward shifts to the claimant. *In re Lundell*, 223 F.3d 1035, 1039 (9th Cir. 2000). While the "burden of going forward is primarily a procedural matter pertaining to the order of presenting evidence," the substantive burden remains upon the claimant. *Garvida*, 347 B.R. at 706; *see Lundell*, 223 F.3d at 1039 (ultimate burden of persuasion remains at all times on the claimant); *So.Cal. Plastics*, 165 F.3d at 1248 (same); *In re Fidelity Mortgage Holding Company, Ltd.*, 837 F.2d 696,698 (5th Cir. 1988).

As such, Deutsche Bank has the ultimate burden of persuasion as to the allowance of the Claim and its alleged lien.

**C. THERE WAS NO ALLONGE PROPERLY AFFIXED TO THE NOTE ON THE CLAIM AND, THUS, THE CLAIM MUST BE DISALLOWED.**

The Note is payable to the original lender, Commercial, and the Note is all that was attached to the Claim (RJN, **Exhibit "1"**). No endorsements or allonge was attached to the Note or Claim, which unequivocally established that the allonge was not firmly affixed to the Note. Further, no assignments of the DOT (recorded or unrecorded) were attached to the Claim.

Furthermore, the Brice Firm filed the Claim and its own Collateral Filing Image Checklist stated that as of April 23, 2012 (8 months after the Claim was filed) there was no allonge (RJN, **Exhibit "7"**.)

At his Deposition, Reyes admitted Deutsche Bank did not have Shaw file the Claim.

> Q. Let's take a look at what's marked Exhibit #3.
> This is the proof of claim that was filed in Ms. Kalush's bankruptcy proceeding on or about August 2, 2011.
> Have you ever seen this document before?
> A. No.
> Q. Now, at the bottom it's got a signature from Michael Shaw, as creditor's authorized agent. Did Deutsche hire Mr. Shaw?
> MS. RHIM: Objection. Vague.
> THE WITNESS: No.
> Q. Now, this document was signed on August 2, 2011. And Mr. Shaw attached a promissory note and deed of trust. Do you see that?
> A. Yes, I see those documents.
> Q. Did Deutsche give those document to Mr. Shaw?
> MS. RHIM: Objection. Vague.
> THE WITNESS: No.

(*See* RJN, **Exhibit "6"**, Reyes Deposition, page 28, lines 10-25 and page 29, lines 1-6)

The instructions provided on the Claim Form clearly indicates that the claimant is required to attach copies of any documents that show the debt exists and a lien secures the debt, as well as evidence of perfection of any security interest. [POC Form B-10, ¶7]. The Claim Form further indicates that the party signing the form is doing so under penalty of perjury that the information provided is true and correct. [POC Form B-10].

The Note attached to the Claim under penalty of perjury does not evidence that Deutsche Bank is the holder of the Note. It shows that the Noteholder is Commercial. The DOT attached to the Claim, which was recorded January 27, 2005, shows Commercial as the beneficiary of the DOT. There is no evidence that Deutsche Bank has an interest in the Note or DOT.

Deutsche Bank in response to discovery taken in connection with the Debtor's AP produced an allonge allegedly showing the Note transferred to Indymac (which does not even evidence Deutsche Bank's interest). Again, this allonge was clearly not attached to the Note as required under the Cal. Commercial Code and California case law, and is therefore ineffective. Had the allonge existed at the time Deutsche Bank filed the Claim, and it was properly affixed to the Note, it would have been copied and included with the Note and Claim. In fact, its own attorneys at the Brice Firm admitted no allonge existed.

*Cal. Commercial Code,* §3204 defines an "Indorsement" as a "signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (1) negotiating the instrument, (2) restricting payment of the instrument, or (3) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a <u>paper affixed to the instrument is a part of the instrument</u>." [Emphasis added].

### 1. Practice Regarding the Indorsement of Notes Through Allonges

Deutsche Bank alleges that the Note and DOT were transferred to the Trust. Trusts were commonly used as the owners of pools of mortgages so that the mortgages could be securitized and mortgage-backed instruments could be issued based on the pools of mortgages. The transfer of mortgage notes that typically accompanies the securitization of mortgages is governed by applicable state law as well as any requirements built into the securitization transaction documents, or, for loans purchased or guaranteed by them, any requirements by the Government

Sponsored Entities (GSEs) such as Fannie Mae and Freddie Mac. See Elizabeth Renuart, *Property Title Trouble in Non-Judicial Foreclosure States: The Ibanez Time Bomb?* (February 21, 2012). Albany Law School Research Paper No. 38 of 2011-2012. At. P. 6. Available at SSRN: http://ssrn.com/abstract=1968504.

Fannie Mae's guides for servicers and document custodians provide guidance in the treatment of allonges in several places. In Fannie Mae's Document Custodian Certification Job Aids, which "provide additional detailed information regarding what is required for institutions that are providing document certification and custody services on behalf of Fannie Mae," the Job Aids direct that an "Allonge is acceptable to complete the Chain of Endorsements when: (1) the form and manner of Allonge used complies with applicable state, local, and federal laws governing the use of Allonges; (2) it results in a valid and enforceable endorsement to the Note; (3) it is permanently affixed to the Note; and, (4) it clearly identifies the Note." *See* Fannie Mae's Document Custodian Certification Job Aids, at p. 17, found at https://www.efanniemae.com/is/doccustodians/pdf/doccustjobaid.pdf.

The Fannie Mae Seller's Guide repeats this admonition of permanent affixing regarding an allonge, stating, "The allonge must be permanently affixed to the related note . . ." Fannie Mae Selling Guide for Single Family, at p. 921, available at https://www.efanniemae.com/sf/guides/ssg/sg/pdf/sel022812.pdf.

Freddie Mac's Servicer Guide also states that the allonge must be permanently affixed and must abide by law, stating, "Seller may use an Allonge to endorse a Note if the following conditions are met: . . .The Allonge is permanently affixed to the Note . . .The form of the Allonge, and its use, complies with all applicable laws. . ." Freddie Mac Servicer Guide, 16.4 e): Endorsement of Notes (02/26/10), Available http://www.allregs.com/tpl/main.aspx. Freddie Mac's Document Custody Procedures Handbook provides Document Custodians with the following direction, "You may certify a Note that has an Allonge attached if:

• The Allonge is permanently affixed to the Note (taping or pasting the Allonge to the Note are not acceptable), and

• The Allonge references the Borrower's name, the address of the Mortgaged Premises, and the original principal balance of the Note." Freddie Mac's Document Custody Procedures Handbook, Chapter 3, p. 17, available at: http://www.freddiemac.com/cim/pdf/2011_chapter_3.pdf.

**2. State Law Regarding the Indorsement of Notes Through Allonges**

In California, as noted, that law is contained in the *Cal. Commercial Code* §3204. There are several California cases regarding the requirement that allonges be affixed to notes. The first case, decided by the California Supreme Court in *Hays v. Plummer*, 126 Cal. 107 (1899), where the court held that a separate document not attached to a note could not provide an indorsement to the note, stating:

> "[S]uch indorsement can be made only by the writing of the indorser's name on the back of the instrument, if there be room to do so, and, if not, then on a paper so attached to it as in effect to become part of it,—called sometimes an 'allonge. . . At all events, the name must be so written as to become in effect a part of the instrument. This is not only the rule under the general authorities, but it is so declared by our Code. Civ. Code, § 3110. In the case at bar there was merely an assignment of the mortgage and note made on a separate writing without indorsement on the note."

*Id.*, at 109.

The *Hays* decision was relied on in the case, *Lopez v. Puzina*, 239 Cal.App.2d 708, 49 Cal.Rptr. 122 (1966). There, the court noted that though a few courts in other states had espoused a minority view that an allonge does not have to be attached to the note in order to constitute an indorsement, the rule in California is otherwise. The Court stated, "the general rule followed by most jurisdictions, including California, being that an endorsement must be written on the instrument itself or on a paper attached or annexed thereto in order to effectively charge one with the liability of an endorser, or to give rights of an endorsee." *Id.* at 712.

Another California decision to discuss this issue was *Security Pac. Nat'l Bank v. Chess*, 58 Cal.App.3d 555, 129 Cal.Rptr. 852 (1976), in which the plaintiff argued that the notes should be read in conjunction with separate documents of transfer. The court again found that because the supposed indorsements were not written on the notes themselves or on "a paper so firmly affixed thereto as to become a part thereof," the separate documents did not constitute indorsements to the notes. *Id.* at 562.

It should be noted that in 1992, California adopted the 1990 revision of the UCC, which changed the language of the provision regarding the affixing of allonges. Under the pre-1990 version, then contained in § 3–202 an indorsement on an allonge must be on a paper "so firmly affixed thereto as to become a part thereof." The post-1990 version of the UCC moved this provision to §3204 and changed the language to "a paper affixed to the instrument is a part of the instrument." However, this did not change the requirements of affixing. In *In re Shapoval*, 441 B.R. 392, 394 (Bankr.D.Mass.2010), the court stated "Nevertheless, it is well-settled that the 1998 amendment maintained the requirement that an allonge be affixed to the original instrument. *See Dyck–O'Neal v. Pungitore, No. 01–P–1775*, 60 Mass.App.Ct. 1109, 800 N.E.2d 727, 2003 WL 22998879, at *2, n. 6 (Mass.App.Ct. Dec.22, 2003) (applying the pre-1998 statute but suggesting, under those facts, the result would be identical under the amendments); *In re Weisband*, 427 B.R. 13, 19 (Bankr.D.Ariz.2010) (finding under an identical Arizona provision that an unattached allonge that was not included with a proof of claim and later submitted did not sufficiently prove a creditor's holder in due course status required to obtain relief from the automatic stay); *Big Builders, Inc. v. Israel*, 709 A. 2d 74, 76 ( D.C. 1998) (finding under an identical District of Columbia provision that the language change from "firmly affix" to "affix" still requires physical attachment)."

A recent California case regarding whether allonges have to be physically attached to notes to constitute indorsements is *Multibank 2009-1 RES-ADC Venture, LLC v. San Diego Community Housing Corporation, et al.* (DC SD CA March, 2011) 2011 U.S. Dist. LEXIS 28721. In that case, the court explicitly held that where there is no evidence that an allonge was stapled to a note or otherwise attached to it, the allonge does not constitute an indorsement of the note. The court stated:

> "Plaintiff has failed to demonstrate that it is the holder of the note because, although it is in possession of the note, it has failed to demonstrate that the note is properly payable to Plaintiff. An allonge purporting to make the note payable to Plaintiff accompanies the Mr. Yaffe's declaration. (Yaffe Decl. Ex. B, at 1.) However, for the allonge to constitute part of the note, it must be on 'a paper

> affixed to the instrument.' Cal. Com.Code § 3204. Here, the evidence does not demonstrate that the allonge is affixed to the note. The allonge is on a separate sheet of paper; there is no evidence that it is stapled or otherwise attached to the note."

The *Multibank* decision cited with approval two cases from outside California that have analyzed similar situations, *Adams v. Madison Realty & Dev., Inc.*, 853 F.2d 163, 166 (3d Cir.1988) and *In re Weisband*, 427 B.R. 13, 18-20 (Bankr.D.Ariz.2010). *Adams* is one of the most cited cases regarding the standards of affixing an allonge to a note. In *Adams*, two promissory notes were folded, with indorsements "[i]nserted loosely within the fold, lacking any physical attachment to the note. . ." *Id.* at 165. The *Adams* Court noted that the Official Comment to the UCC then stated that the Code "follows decisions holding that a purported indorsement on a mortgage or other separate paper pinned or clipped to an instrument is not sufficient for negotiation. The indorsement must be on the instrument itself or on a paper intended for the purpose which is so firmly affixed to the instrument as to become an extension or part of it. Such a paper is called an allonge." (Citing U.C.C. § 3-202 Official Code Comment (3) to the pre-1990 UCC). *Id.* In *Adams*, the court outlined some of the policy reasons for requiring that allonges be physically affixed to notes in order to provide an indorsement.

> "The affixation requirement has also been cited for its utility in preserving a traceable chain of title, thus furthering the Code's goal of free and unimpeded negotiability of instruments. Nearly a century ago, the Supreme Court of Georgia declared it 'indispensably necessary' that negotiable instruments 'should carry within them the indicia by which their ownership is to be determined; otherwise, their value as a circulating medium would be largely curtailed, if not entirely destroyed.' *Haug v. Riley*, 101 Ga. 372, 29 S.E. 44, 46 (1897). *See also Crosby*, 16 Wis. at 627 (permanently attached indorsements to instrument 'travel with it wherever it might go')."

*Id.* at 167.

According to *Adams*, the physical attachment of the allonge is also necessary so that a borrower for a note can determine who can enforce the note based on the indorsements either on the note or on allonges affixed to it.

> "From the maker's standpoint, therefore, it becomes essential to establish that the person who demands payment of a negotiable note, or to whom payment is made, is the duly qualified holder. Otherwise, the obligor is exposed to the risk of double

> payment, or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument. These risks provide makers with a recognizable interest in demanding proof of the chain of title. Consequently, plaintiffs here, as makers of the notes, may properly press defendant to establish its holder status."
> *Id.* at 168.

The decision in *Adams* also provides strong guidance to other courts not to relax the requirements of allonges for the benefit of banks and other sophisticated dealers in notes, stating:

> "[The bank] is not in a strong position to justify equitable relaxation of a settled formality in the Code. That longstanding provision was enacted, after all, for the benefit of parties in [the bank's] position, commercial sophisticates that trade in the secondary market for negotiable instruments. The provision is not ambiguous, nor can [the bank] assert excusable ignorance of an unusual local technicality, given the rule's universal application. The flaws in the notes should have been perceived quickly and readily cured. Instead, the record suggests that the failure to observe that Code formality was caused by nothing short of sheer carelessness. Financial institutions, noted for insisting on their customers' compliance with numerous ritualistic formalities, are not sympathetic petitioners in urging relaxation of an elementary business practice. It is a tenet of commercial law that '[h]oldership and the potential for becoming holders in due course should only be accorded to transferees that observe the historic protocol.' (Cites omitted.) In sum, we are not persuaded that defendant presents a credible case for nonapplication of the plain wording of the state statutes."

*Id.* at 169 (footnotes omitted).

*In re Weisband*, 427 B.R. 13, 18-20 (Bankr.D.Ariz.2010), also cited by the *Multibank* decision is on all fours with the present situation where *GMAC* filed a proof of claim that did not include an allonge but later in connection with *GMAC's* stay motion produced a special endorsement.

Judge Hollowell said not so fast and ruled:

> "Under Arizona law, a holder is defined as 'the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.' *A.R.S. §47-1201(B)(21)(a)*. *GMAC* has failed to demonstrate that it is the holder of the Note because, <u>while it was in possession of the Note at the evidentiary hearing, it failed to demonstrate that the Note is properly payable to *GMAC*</u>. A special endorsement to *GMAC* was admitted into evidence with the Note. <u>However, for the Endorsement to constitute part of the Note, it must be on 'a paper affixed to the instrument.' *A.R.S. §47-3204; see also In re Nash, 49 B.R. 254, 261 (Bankr. D. Ariz. 1985)*</u>. Here, the evidence did not demonstrate

> that the Endorsement was affixed to the Note. The Endorsement is on a separate sheet of paper; there was no evidence that it was stapled or otherwise attached to the rest of the Note. Furthermore, when *GMAC* filed its proof of claim, the Endorsement was not included, which is a further indication that the allonge containing the Endorsement was not affixed to the Note." (emphasis added)

*Id.* at 18.

Judge Hollowell further ruled:

> "Thus, ownership of the note never transferred to the defendant. Applying that principle to the facts here, *GMAC* did not become a holder of the Note due to the improperly affixed special endorsement. (emphasis added)

*Id.* at 18.

Other cases requiring that an allonge be physically attached to a note to provide an indorsement include *Big Builders, Inc. v. Israel*, 709 A.2d 74, 76 (D.C.1998), where the court stated, "The primary obstacle to this contention is that, as the [purported holders of the note] concede, the assignment was never physically affixed to the note. 'Affix' in its literal meaning is 'to attach physically.'" *Id.* at 76, citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 36 (1971).

The bottom line is that the certified Note attached under penalty of perjury to the Claim did not have the allonge. The Brice Firm who filed the Claim and had possession of the loan file also confirmed there was no allonge. Mysteriously, after its claim is objected to by Debtor, Deutsche Bank produces an uncertified copy of the Note with an allonge. The allonge was clearly not affixed to the Note as required by law or it would have been part of the certified Note and copied and attached to the Claim as part of the Note and, therefore, the Claim must be disallowed.

**D. PURSUANT TO *GLASKI,* ANY ALLEGED ASSIGNMENT OF DEBTOR'S LOAN TO DEUTSCHE BANK IS VOID AS IN VIOLATION OF THE TRUST AND PSA.**

In addition to the Reyes Declaration, at his Deposition, Reyes confirmed the DOT was not delivered by the Trust Closing Date:

Q. So is there a document that says that the Kalush Deed of Trust was not delivered as of the closing of the PSA?

A. That the Kalush mortgage was not delivered or that the – that's what you're asking?

Q. It says the original recorded mortgage, which you say you received on May 3, 2012?

A. Right.

Q. You did not have it as of the closing – Deutsche did not have it as of the closing of this trust; correct?

A. That's correct based on our business records, that's correct.

*See* RJN **Exhibit "6"**, Reyes Deposition Page 22, Line 15-25, and page 23, lines 1-2)

On July 31, 2013, California Court of Appeals handed down their landmark decision in *Glaski* and Bank of America's petition for rehearing was denied. In sum, Debtor has standing to challenge whether her loan was timely transferred to the Trust and if it was not, Deutsche Bank's Claim is void. Here, the undisputed evidence in the Reyes Declaration and the assignments of the DOT, evidence that Debtor's loan was not transferred to the Trust by the PSA's June 6, 2005 Closing Date.

The *Glaski* decision is rooted in two basis and related inquiries that clarify and simplify the "authority to foreclose" question in California. First, does the borrower allege that the foreclosing party was not the beneficiary based on specific facts? Second, if borrower's claim is based on a failed assignment was the assignment void?

The facts in *Glaski* are on "all-fours" with Debtor's case.

In July 2005, *Glaski* purchased a home in Fresno and executed a promissory note and a deed of trust that granted WaMu a security interest in his property. The *Glaski* deed of trust identified WaMu as the lender and the beneficiary, defendant California Reconveyance as the trustee, and *Glaski* the borrower. *Id.* at 1083.

In late 2005, the WaMu Mortgage Pass-Through Certificates Series 2005-AR12 Trust was formed as a common law trust ("WaMu Trust") under New York law. The corpus of the WaMu Trust consisted of a pool of residential mortgage notes purportedly secured by liens on residential real estate. The closing date for the WaMu Trust was December 2, 2005, or 90 days thereafter. *Id.* at 1084. This is exactly like the Trust formed here, which had a June 6, 2005 Closing Date.

Just like our case, years after the WaMu Trust closed on December 9, 2008, JP Morgan recorded an assignment of deed of trust. *Id.* at 1083.

As in *Glaski* where the "chain of title was broken", the Appellate Court found the assignments void. Here the chain of title is completely lacking. Not only were any assignment and deliveries done years after the Trust closed but there are numerous intervening parties (e.g., JP Morgan).

The *Glaski* Court made it clear that a borrower can challenge standing in a securitized transaction by holding:

> "We reject the view that a borrower's challenge to an assignment must fail once it is determined that the borrower was not a party to, or third party beneficiary of, the assignment agreement. Cases adopting that position "paint with too broad a brush." (*Culhane v. Aurora Loan Services of Nebraska, supra,* 708 F. 3d at p. 290.) Instead, courts shoud proceed to the question whether the assignment was void."

*Id.* at 1095.

The *Glaski* Court then addressed the void act of the WaMu Trust attempting to accept a loan after the closing date by stating:

> "Because the WaMu Securitized Trust was created by the pooling and servicing agreement and that agreement establishes a closing date after which the trust may no longer accept loans, this statutory provision provides a legal basis for concluding that the trustee's attempt to accept a loan after the closing date would be void as an act in contravention of the trust document."

*Id.* at 1096

The *Glaski* Court also addressed certain District Court rulings (none binding on this Court) that dealt with post-closing transfer arguments and distinguished them as follows:

> "We are aware that some federal district courts sitting in California have rejected the postclosing date theory of invalidity on the grounds that the borrower does not have standing to challenge an assignment between two other parties. *(Aniel v. GMAC Mortgage, LLC* (N.D.Cal., Nov. 2, 2012, No. C 12-04201 SBA) 2012 WL 5389706 [joining courts that held borrowers lack standing to assert the loan transfer occurred outside the temporal bounds prescribed by the pooling and servicing agreement]; *Almutarreb v. Bank of New York Trust Co., N.A.* (N.D.Cal., Sept. 24, 2012, No. C 12-3061 EMC) 2012 WL 4371410.) These cases are not persuasive because they do not address the principle that a borrower may challenge an assignment that is void and they do not apply New York trust law to the operation of the securitized trusts in question."

*Id.* at 1099.

In sum, *Glaski* is the precise same situation as here (i.e., a trust with a closing date and efforts by the lender to assign the deed of trust years after the trust closed). Based on *Glaski,* the Deutsche Bank Claim is void and must be disallowed.

## IV. CONCLUSION

The Motion should be granted, and Claim disallowed, and the lien invalidated. There is no allonge attached to the Note, there is no valid assignment of the DOT to Deutsche Bank, and Debtor's loan was never transferred to the Trust. Deutsche Bank must rely on the PSA and pursuant to *Glaski* failure to abide by the PSA renders the Claim void.

Dated: September 24, 2013

**GOE & FORSYTHE, LLP**

By: /s/Robert P. Goe
Robert P. Goe, Attorneys for Reorganized Debtor/Plaintiff Trudy Kalush

# REQUEST FOR JUDICIAL NOTICE

Plaintiff Trudy Kalush, individually and as Reorganized Debtor ("Debtor") hereby requests the Court take judicial notice pursuant to *Federal Rule of Evidence 201* of the following documents in support of her Motion for Partial Summary Judgment pursuant to FRBP Rule 7056 and FRBP 3007 on (1) Objection to Proof of Claim 6 ("Claim") of Deutsche Bank National Trust Company, and (2) First Claim for Relief to Invalidate Lien ("Motion").

1. A true and correct copy of Deutsche Bank's Claim 6 filed on August 2, 2011 is attached hereto as **Exhibit "1"**.

2. True and correct copies of pertinent pages of the PSA dated June 1, 2005 are attached hereto as **Exhibit "2"**.

3. A true and correct copy of the Note dated January 20, 2005 is attached hereto as **Exhibit "3"**.

4. A true and correct copy of the DOT recorded January 27, 2005 is attached hereto as **Exhibit "4"**.

5. A true and correct copy of the Reyes Declaration filed on August 21, 2013 is attached hereto as **Exhibit "5"** [Docket No. 272].

6. True and correct copies of pertinent pages of the Reyes Deposition dated December 3, 2012 are attached hereto as **Exhibit "6"**.

7. A true and correct copy of the Brice Firm's Collateral File Imaging Checklist dated April 23, 2012 is attached hereto as **Exhibit "7"**.

8. A true and correct copy of the Assignment of Deed of Trust, unrecorded and dated March 16, 2005, is attached hereto as **Exhibit "8"**.

9. A true and correct copy of the Assignment and Deed of Trust/Mortgage, unrecorded and dated March 30, 2005, is attached hereto as **Exhibit "9"**.

10. A true and correct copy of the Assignment of Deed of Trust, recorded April 5, 2011, is attached hereto as **Exhibit "10"**.

11. A true and correct copy of the Corporate Assignment of Deed of Trust, recorded on January 23, 2013, is attached hereto as **Exhibit "11"**.

12. A true and correct copy of the Assignment of Deed of Trust, recorded on June 12, 2013, is attached hereto as **Exhibit "12".**

///

13. A true and correct copy of JPMorgan's Responses to Subpoena, served on December 27, 2012, is attached hereto as **Exhibit "13"**.

Dated: September 24, 2013

**GOE & FORSYTHE, LLP**

By: /s/Robert P. Goe
Robert P. Goe, Attorneys for Reorganized Debtor/Plaintiff Trudy Kalush

# EXHIBIT 1

EXHIBIT 1

B 10 (Official Form 10) (04/10)

**UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA SANTA ANA DIVISION** | **PROOF OF CLAIM**

Name of Debtor: Trudy Kalush | **Case Number:SA11-19563-ES**

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property):
Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 under the Pooling and Servicing Agreement dated June 1, 2005

☐ Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:
OneWest Bank, FSB
6900 Beatrice Drive
Kalamazoo, Michigan 49009

**Court Claim Number:**______________
(*If known*)

Filed on:

Name and address where payment should be sent (if different from above):
OneWest Bank, FSB
Bankruptcy Department
6900 Beatrice Drive
Kalamazoo, Michigan 49009

Telephone Number: (800) 669-2300

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check this box if you are the debtor or trustee in this case.

**1. Amount of Claim as of Date Case Filed**: $1,944,856.06

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☒ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

**2. Basis for Claim: Money Loaned**
(See instruction #2 on reverse side.)

**3. Last four digits of any number by which creditor identifies debtor: xxxxxx9495**

**3a. Debtor may have scheduled account as:** ____________________
(See instruction #3a on reverse side.)

**4. Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

**Nature of property or right of setoff:** ☒ Real Estate ☐ Motor Vehicle ☐ Other: _______
**Describe:** 16625 S Pacific Coast Highway, Sunset Beach, California 90742

**Value of Property: $**__________ **Annual Interest Rate:**

**Amount of arrearage and other charges as of time case filed included in secured claim,**

**if any**: **$207,431.80** **Basis for perfection: Recordation of Lien**

**Amount of Secured Claim**: $1,944,856.06 **Amount Unsecured:** $0.00

**5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ Wages, salaries, or commissions (up to $11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ Up to $2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

**Amount entitled to priority:**

**Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

**6. Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

**7. Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction7 and definition of "redacted" on reverse side.)*

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date:
*August 2, 2011*

**Signature:** The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

/s/ Michael B. Shaw as Creditor's Authorized Agent
972.643.6600

P. O. Box 829009
Dallas, Texas 75382-9009

**FOR COURT USE ONLY**

*Penalty for presenting fraudulent claim:* Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**
**SANTA ANA DIVISION**

| | | |
|---|---|---|
| **IN RE:** | § | |
| | § | **CASE NO. SA11-19563-ES** |
| **TRUDY KALUSH** | § | |
| | § | **CHAPTER 11** |
| | § | |
| | § | **JUDGE ERITHE SMITH** |

**EXHIBIT A**

ITEMIZATION OF CLAIM AND SUMMARY OF SUPPORTING DOCUMENTS FOR CLAIM OF ONEWEST BANK, FSB, AS SERVICING AGENT FOR DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE INDYMAC INDX MORTGAGE LOAN TRUST 2005-AR12, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR12 UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005
REGARDING CERTAIN COLLATERAL DESCRIBED AS:
16625 S PACIFIC COAST HIGHWAY, SUNSET BEACH, CALIFORNIA 90742

**SECTION 1. ITEMIZATION OF CLAIM**

| | | | |
|---|---|---|---|
| • | **Total Debt (As of July 07, 2011)** | | **$1,944,856.06** |
| • | **Interest Rate as of July 07, 2011** | | **4.49%** |
| • | **Interest from Last Paid Installment** | | **$89,841.22** |
| • | **Detail of Pre-Petition Arrearage through July 07, 2011** | | |
| | 8 Payments from July 2010 to February 2011 at $12,537.39 each: | | $100,299.12 |
| | 5 Payments from March 2011 to July 2011 at $12,487.27 each: | | $62,436.35 |
| | **LATE CHARGES | | $7,244.37 |
| | **PRE-PETITIONBANKRUPTCY ATTORNEY FEES & COSTS | | $200.00 |
| | Bankruptcy Attorney Fees | $200.00 | |
| | **ESCROW SHORTAGE | | $36,906.96 |
| | **OTHER PRE-PETITION AMOUNTS | | $345.00 |
| | BPO/Appraisal Costs | $235.00 | |
| | Inspection Fee | $110.00 | |
| | TOTAL PRE-PETITION ARREARAGE: | | $207,431.80 |

## TOTAL ARREARAGE $207,431.80

Your monthly payment amount may change due to an escrow requirement and/or interest rate adjustment. Your current payment amount and any upcoming changes are provided below:

| Effective Date | Effective Amount |
|---|---|
| 08/01/2011 | $12,485.40 |

NOTICE TO BORROWER: THIS NOTE CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE AND A BALLOON PAYMENT MAY BE DUE AT MATURITY.

**PROMISSORY NOTE**
**ADJUSTABLE RATE MORTGAGE LOAN**

| | | | | | |
|---|---|---|---|---|---|
| **PRINCIPAL (Loan Amount):** | **$1,725,500.00** | | | **LOAN NO:** | [redacted] |
| | | | | **DATE:** | **January 20, 2005** |
| Initial Interest Rate: | **1.990%** | Initial Monthly Installment: | **$6,369.16** | Commencement Date: | **March 1, 2005** |
| Margin: | **2.600%** | Installment Due Date: | **1st Day of Each Month** | Maturity Date: | **February 1, 2035** |
| Minimum Rate: | **4.487%** | First Installment Adjustment Date: | **March 1, 2006** | Fixed Payment Interval: | **12** |
| Maximum Rate*: | **10.200%** | Rate Adjustment Frequency: | **Monthly** | | |
| Amortization Period: | **360** Months | | | | |
| Prepayment Penalty Term: | 1 Year(s) | | | | |

Prepayment Penalty Amount: 6 month(s) advance interest on the amount prepaid in any 12 month period during the Prepayment Penalty Term in excess of 20% of the original Loan Amount.

If the Loan has a Release Price Addendum which permits release of any Property securing the Loan, any principal reduction made in accordance with said Release Price Addendum shall not be subject to this prepayment provision.

Late Charge: **6.000%** of monthly installments if not received within **15** days of due date.

* Subject to Paragraph 8 below.

Those signing below (the "undersigned") promise to pay in lawful money of the United States to Commercial Capital Bank, FSB, a federally chartered savings bank, ("Holder"), or order, at Holder's office at P.O. Box 25035, Santa Ana, California 92799-9998 or at such other address Holder designates, the Principal shown above with interest from date of disbursement of funds on unpaid principal at the initial adjustable interest rate per annum ("Initial Interest Rate") shown above, payable in Initial Monthly Installments in the amount shown above (subject to adjustment as provided below), commencing on the Commencement Date shown above and continuing on the Installment Due Date of each and every month thereafter until the Maturity Date, when all sums then remaining unpaid shall immediately become due and payable. Each installment shall be credited first to interest which became due during the month for which installment is being made, then to any unpaid interest which became due previously, and the remainder to principal; interest shall then cease on the portion of principal credited. Monthly interest will be computed at 1/12th of the annual rate and any partial month's interest at 1/30th of the monthly calculation per day. To the extent that any scheduled monthly installment due is insufficient to pay all interest required for the period for which installment is being made, the amount of such unpaid interest ("Deferred Interest") shall be added to and become a part of the unpaid principal as of the due date of any such monthly installment, and shall bear interest thereafter as provided in this Note. In the event any sum has not been paid at the Maturity Date, interest shall be due from the Maturity Date on such unpaid sums, without extending the Maturity Date or waiving such default, at the default interest rate described in Paragraph 8 below.

**1. DEFINITIONS. As used in this Note:** (a) "Index" shall mean the Twelve-Month Average, determined as set forth below, of the monthly yields ("Monthly Yields") on United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board. The Twelve-Month Average is determined by adding together the Federal Reserve Board published Monthly Yields for the most recent 12 months immediately preceeding the month prior to each Rate Adjustment Date and dividing the sum by 12. In the event the Index or the alternate index selected by the Holder is no longer published, the Holder may, in its sole discretion, choose an alternate index to permit interest rate adjustments and that alternate index shall be the Index; (b) "Current Index" shall mean that Twelve-Month Average of the 12 months immediately preceding the month prior to the effective date of an interest rate adjustment; and (c) "Margin" shall mean the number of percentage points specified above or, in the event an alternate index is selected by the Holder, the term "Margin" shall mean the positive or negative difference (expressed in percentage points) between the adjusted interest rate in effect on the day immediately preceding the day on which the alternate index is to become applicable to this Note and the level of the alternate index on such date; and (d) "Fixed Payment Interval" means each successive increment of the number of monthly installments due under the terms of this Note shown above, provided, however, the final such increment may include fewer monthly installments.

**2. ADJUSTABLE INTEREST RATE TERMS.** The Initial Interest Rate shall be adjusted as follows: (a) the first rate adjustment will be effective with the Installment Due Date of the **2nd** monthly installment and subsequent rate changes will be effective on the Installment Due Date of each monthly installment thereafter; (b) Holder will increase or decrease the interest rate of this Note each month by adding the margin to the Current Index which sum shall be the adjusted rate; (It is understood that the Current Index is calculated for each calendar month, but publication of the Index may be delayed. The Index will be deemed to have been published once each successive calendar month for purpose of rate adjustments.); (c) Holder may elect at its sole option but shall not be required to forgo all or any part of a rate adjustment that would result in an increase of that rate. No prior notification of interest rate adjustment shall be required.

**3. INSTALLMENT ADJUSTMENT.** The Initial Monthly Installment amount shall be adjusted commencing on the First Installment Adjustment Date and at the end of each Fixed Payment Interval thereafter as follows. Within approximately sixty (60) days prior to each Installment Adjustment Date a review of the loan shall be made for the purpose of calculating the installment adjustment. The loan balance as of the time of the review shall be projected to the Installment Adjustment Date without regard to any delinquent or prepaid installments to calculate the installment adjustment. The interest rate in effect at the time of review shall be used for calculation of the adjustment. The monthly installment shall be adjusted to an amount which would be sufficient to then amortize the projected loan balance at said rate over the remainder of the Amortization Period. Subsequent adjustments to the interest rate and actual changes to the loan balance that may occur between the time of the installment review and the effective date of the installment adjustment shall not be considered.

**3A. INSTALLMENT ADJUSTMENT LIMITATION.** Any monthly installment increase or decrease required under the provisions of Paragraph 3 shall not exceed 7 1/2% of the most recent monthly installment due prior to the effective date of an installment adjustment except as follows, when installments will be adjusted without the 7 1/2% limitation: (a) at the end of the fifth (5th) year from the Commencement Date of the monthly installments due on this Note (if the Maturity Date is more than 5 years) and on each Installment Adjustment Date that occurs every five (5) years thereafter; (b) on the last Installment Adjustment Date prior to the Maturity Date; and (c) whenever Holder determines the loan balance has reached **110%** of the original principal balance.

**3B. LIMIT ON UNPAID PRINCIPAL LOAN BALANCE; INCREASE IN MONTHLY INSTALLMENT.** The unpaid principal balance of this Note may never exceed a maximum amount equal to **110%** of the original principal balance of this Note (the "**110%** Limitation"). In the event that the unpaid principal balance of this Note would otherwise exceed that **110%** limit, the undersigned will, starting on the next Installment Due Date, begin paying a new monthly installment. The new monthly installment will be an amount sufficient to pay off the unpaid principal balance of this Note that is projected to be owed on that Installment Due Date, together with interest at the interest rate in effect during the month prior to that Installment Due Date, in full at the Maturity Date in substantially equal monthly payments. The new monthly installment will be determined without regard to the 7.5% installment adjustment limitation described in Section 3A of this Note. The undersigned will continue to pay this monthly installment until the next regularly scheduled Installment Adjustment Date, when the new monthly installment will be determined as provided in this Note, except that the monthly installment will increase again whenever the **110%** Limitation is reached.

The monthly installments due under this Note shall also be increased as set forth in Section 3B of this Note.

**4. LATE CHARGES.** The undersigned promises to pay a Late Charge equal to the above specified percentage of the monthly principal and interest of any installment or portion thereof which is not received within the above stated number of days after its due date. Holder is under no obligation to accept a partial installment. The undersigned acknowledges that it would be extremely difficult or impractical to determine Holder's actual damages resulting from any late installment and this Late Charge is a reasonable estimate of those damages. Holder agrees to accept this Late Charge as its sole right to damages for any late installments. Acceptance of any Late Charge shall not limit any of Holder's other rights under this Note, Deed of Trust or other documents executed to induce Holder to make the loan evidenced by this Note.

**5. COLLECTION STEPS WAIVED.** The undersigned waives the taking of any formal steps to collect this Note after a default on undersigned's part. Such steps include, among others, giving notice that an installment is about to become due, giving notice that amounts due have not been paid, and demanding payment of amounts due.

**6. COLLECTION COSTS.** The undersigned promises to pay Holder all its costs, expenses, and reasonable attorneys' fees incurred in connection with or arising from this Note.

**7. DEFAULT AND ACCELERATION.** Upon failure to pay any installments when due or to perform when due any obligation, covenant, or agreement in this Note, in the Deed of Trust or other security instruments which secure this Note, or in any other document executed by the undersigned to induce Holder to make the loan evidenced by this Note, or if any statement made by the undersigned in any such document is false or misleading, then all indebtedness will become immediately due at Holder's option.

**8. DEFAULT INTEREST RATE.** The failure of the undersigned to make any payment due under the terms of this Note, or the Deed of Trust securing this Note, shall result in an adjustment of the interest rate to a sum equal to the Index plus the Margin, plus 2.50 percentage points (the "default rate") effective 30 days after the due date of the unpaid payment until the failure to pay has been cured, and in the case of a failure to pay all sums due at the Maturity Date, the default rate shall be in effect from the Maturity Date until all sums have been paid in full. Any limitations on the maximum interest rate that would otherwise apply shall not apply to the default interest rate.

**9. DUE ON SALE PROVISIONS.** Paragraph 13 of the Deed of Trust securing this Note contains provisions which permit Beneficiary, at its option, to declare all principal and accrued interest immediately due and payable if Trustor, without Beneficiary's prior written consent, transfers any interest in the security property by any means of transfer there specifically set forth. Paragraph 13 of the Deed of Trust provides:

13. BENEFICIARY'S CONSENT REQUIRED. Beneficiary may declare all sums secured hereby immediately due and payable except as expressly limited by law, if Trustor without Beneficiary's prior written consent: (a) sells, conveys, contracts to sell by installment land contract, alienates or further encumbers all or any part of the Property; or (b) leases all or any part of the Property for a term, together with all exercisable options, of 3 years or more, or which contains a purchase option; or (c) suffers the title or any interest in the secured Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) is a partnership and any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (f) is a corporation with fewer than 100 stockholders at the date of execution of this Deed of Trust and more than 10% of its capital stock is sold, transferred or assigned during a 12 month period; or (g) is a limited liability company and either (i) any of the managers' interests are transferred or assigned, whether voluntarily or involuntarily, or (ii) more than 10% of the aggregate of its membership interests are sold, transferred or assigned during a 12 month period. Trustor will not create or permit to continue in existence any mortgage, pledge, encumbrance, lien, or charge of any kind (including purchase money and conditional sale liens) on any of the Property except for liens securing the Loan and (a) liens for taxes not yet delinquent, and (b) any other liens or charges that are specifically approved in writing by Beneficiary prior to the recordation of this Deed of Trust.

**10. RIGHT TO PREPAY.** The undersigned shall have no right to prepay all or any portion of the principal balance of this Note unless a period of time is indicated following the heading "Prepayment Penalty Term" shown above. If a term is indicated after the heading "Prepayment Penalty Term", prepayment may be made during such term only upon payment of an amount, in addition to the amount prepaid, equal to the amount shown above after the heading "Prepayment Penalty Amount". There shall be no prepayment penalty for prepayment made after the end of the Prepayment Penalty Term if one is shown above. Said term commences on the date of this Note.

**11. MULTIPLE SIGNERS.** If more than one person signs this Note, their liability is joint and several.

**12. LAW.** This Note and the rights and obligations of the Holder and the undersigned hereunder shall be interpreted, enforced and construed in accordance with the laws of the State in which the real property securing this Note is located, except to the extent the same may be preempted by applicable federal law.

**13. INVALIDITY.** In case any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Note shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included.

(Please sign your name exactly as it appears below.)

Trudy A. Kalush

**Trudy A. Kalush**

**END OF DOCUMENT**

Chicago Title

PREPARED BY AND AFTER RECORDING MAIL TO:

Commercial Capital Bank, FSB
P.O. Box 25035
Santa Ana, California 92799-9998
Attention: Loan Service

[redacted]

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

33.00

2005000068194 11:58am 01/27/05
102 122 D11 10
0.00 0.00 0.00 0.00 27.00 0.00 0.00 0.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

# DEED OF TRUST (ADJUSTABLE INTEREST RATE)

LOAN AMOUNT: **$1,725,500.00** LOAN NO [redacted]

THIS DEED OF TRUST is made and dated as of **January 20, 2005** between **Trudy A. Kalush, A Single Woman**, herein called "Trustor", whose address is **16625 South Pacific Coast Highway, Sunset Beach, California 90742**, Commercial Capital Bancorp, Inc., a Nevada corporation, herein called "Trustee", and Commercial Capital Bank, FSB, a federally chartered savings bank, herein called "Beneficiary". WITNESSETH: That Trustor irrevocably grants, transfers, and assigns to Trustee in trust, with power of sale, that real property, property rights and interest in the County of **Orange**, described in EXHIBIT "A" attached hereto and by this reference made a part hereof.

Assessor's ID/Parcel No.: **178-522-04**

INCLUDING all buildings, structures, improvements, appliances, equipment and appurtenances now or hereafter constructed or placed thereon, including, but not limited to, all apparatus and equipment, whether affixed to the land or building thereon or not affixed thereto, whether single units or centrally controlled, used to provide or supply air-cooling, air-conditioning, heat, gas, water, light and power, refrigeration, ventilation, laundry, clothes drying, dish washing, garbage disposal or other services, waste vent systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor coverings, awnings, ranges and ovens, water heaters, attached cabinets, pumps, pipes, tanks, fire prevention, fire extinguishing and communications apparatus, elevators, escalators, and partitions, and all of the above items are declared to be and are deemed to be things affixed to and a part of the realty for the purposes of this Deed of Trust.

TOGETHER WITH all interest which Trustor now has or may hereafter acquire in or to said property and in and to:

(a) All rents, issues, profits, royalties, tolls, earnings and incomes therefrom and installments of money payable pursuant to any agreement for sale of said Property or any part thereof, subject however to the right, power and authority given to and conferred upon Beneficiary by Paragraph 15 below.
(b) All easements, rights of way and other appurtenances thereto;
(c) All shrubs, trees and plants;
(d) All adjacent lands included in enclosure or occupied by buildings located partly on the above described property;
(e) All crops growing or to be grown on said property;



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(f) All water and water rights (whether or not appurtenant) and shares of stock pertaining to water or water rights ownership of which affects said property;
(g) All claims, demands or causes of action of any kind, including proceeds of settlement of any such claim, demand or cause of action of any kind, including insurance proceeds subject to the right of Beneficiary given by Paragraph 2 below, which Trustor now has or may hereafter acquire, arising out of acquisition or ownership of the property, subject however to the right, power and authority given to and conferred upon Beneficiary by Paragraph 5 below. Trustee shall have no duty to prosecute any such claim, demand or cause of action.

For the purposes of this instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights and interest shall be referred to as "the Property".

THIS DEED OF TRUST SECURES AN ADJUSTABLE RATE NOTE - SEE PARAGRAPH 23.

THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING THE FOLLOWING:

A. Payment of the loan amount above, with interest thereon, according to the terms of a Promissory Note or Notes (herein sometimes referred to as "the Note") of even date herewith, made by Trustor, payable to Beneficiary or order, and any and all modifications and extensions or renewals thereof (see Paragraph 23);

B. Payment of such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary by the then record owner or owners of the Property which are required or permitted by the documents secured by this Deed of Trust and all extensions, modifications and renewals of such additional borrowings;

C. Payment, performance and discharge of and security for every obligation, covenant and agreement of Trustor whether contained or incorporated by reference in this Deed of Trust, or contained in any instrument now or hereafter executed by Trustor in connection with the loan evidenced by the Note, including but not limited to the loan application, any financial statements, escrow instructions, assignment, construction loan agreement, holdback agreement, pledge agreement, security agreement, supplemental agreement, assignment of Lessor's interest in leases, modification agreement or assumption agreement, but expressly excluding any environmental indemnification agreement, (collectively the "Loan Documents");

D. Payment of all sums of money with interest which may be paid out or advanced by, or may otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust.

To Protect the Security of this Deed of Trust, Trustor Agrees:

1. **PRESERVATION OF THE PROPERTY.** Trustor (a) shall keep and maintain the Property in good condition and repair, (b) shall not remove, demolish or substantially alter any building, structure or improvement thereon, (c) shall complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and will pay when due all claims for labor performed and material furnished therefor, (d) shall comply with the provisions of all insurance policies covering and with all laws and regulations affecting the Property or requiring any alterations, repairs or improvements thereon, (e) shall not commit or suffer any waste thereon, (f) shall not commit or suffer any act upon the Property in violation of any provision of any insurance policy or law or regulation, and (g) consistent with the use thereof, shall timely do all other acts which the character or use of the Property may reasonably require.

2. **INSURANCE.** Trustor shall, at Trustor's expense, provide and maintain in force at all times with respect to the Property, fire, flood, earthquake and other types of insurance as may be required by Beneficiary. All of such insurance policies shall have a loss payable endorsement in favor of Beneficiary and shall be for a term and in form, content, amount, and with such insurance companies, as may be satisfactory to Beneficiary. Such policies shall be delivered to Beneficiary whether upon the making of this Deed of Trust or at a subsequent time during the term of the Note. Trustor shall also deliver at such times evidence that the full premium for any such policy has been paid. Beneficiary at its option may retain possession of the original policy or it may release it to the possession of the Trustor. At least thirty (30) days before the expiration of any such insurance policy, a policy or policies renewing, extending or replacing such expiring insurance shall be delivered by Trustor to Beneficiary. If any such insurance policy is not so delivered to Beneficiary or in the event any such insurance policy is canceled, whether the Beneficiary has in its possession the policies or not, and no reinstatement or replacement policy is received prior to termination of insurance, Beneficiary, without notice to or demand upon Trustor, may (but shall not be obligated to) obtain such insurance with such company as Beneficiary may deem satisfactory, and pay the premium therefore, and the amount of any premium so paid shall be charged to and promptly paid by Trustor or at the option of Beneficiary, may be added to the indebtedness secured hereby. Failure to reimburse Beneficiary within 10 days of billing for such premium shall be a default, even if the required policies were in effect if the evidence of such coverage was not timely provided as required to Beneficiary.

Beneficiary may add the premium amount if not timely paid to the principal balance of the Loan without waiving any default. Should any policy thus obtained by Beneficiary thereafter be cancelled, Trustor shall pay to Beneficiary any earned premiums on said policy and a reasonable charge for its services in obtaining such policy.

Neither Trustee nor Beneficiary shall be responsible for the collection of any insurance monies, or for any insolvency of any insurer or insurance underwriter. The right to any unearned premiums under said insurance policies is hereby assigned and shall pass to the purchaser of the Property conveyed at any Trustee's sale held or to the grantee of a deed in lieu of foreclosure if such a conveyance is made. Any part or all of the amount collected under any fire or other insurance policy covering the Property, whether such policy was required by Beneficiary or not, may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust at such time and in the manner and amount as Beneficiary may determine, or at the option of Beneficiary, without reducing the indebtedness secured hereby, may either be used to replace, restore or reconstruct the Property to a condition satisfactory to Beneficiary or be released to Trustor. Any application, use or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Trustor shall pay Beneficiary inspection fees and other costs resulting from or connected with the casualty loss to which such insurance relates.

Trustor hereby assigns to Beneficiary all proceeds of any insurance (including, but not limited to, earthquake insurance) which Trustor may be entitled to receive for loss or damage to the Property, whether or not such insurance is required pursuant to this Deed of Trust or any of the Loan Documents. In the event of any loss or damage to the Property, all insurance proceeds (including, but not limited to, earthquake insurance), whether or not so required, shall be payable to Beneficiary, and Trustor hereby authorizes and instructs any concerned insurance company to pay such insurance proceeds directly to Beneficiary.

3. **LIFE, ACCIDENT OR HEALTH INSURANCE.** If Trustor shall assign or deliver a policy of life, accident or health insurance to Beneficiary as further security hereunder, then if Trustor fails to pay any premium thereon, Beneficiary shall be entitled, but not obligated, to pay any such premium. Any amount so paid shall be charged to and promptly paid by Trustor. Failure to reimburse Beneficiary within 10 days of billing for such premium shall be a default. Beneficiary may add the premium amount if not timely paid to the principal balance of the Loan without waiving any default.

4. **TAXES AND ENCUMBRANCES.** Trustor shall pay (a) at least twenty (20) days before delinquency, all general and special taxes, and assessments now or hereafter affecting the Property, including any assessments on appurtenant water stock; (b) when due, all special assessments for public improvements without permitting any improvement bond to issue for any special assessment; (c) on demand of Beneficiary, all encumbrances, charges and liens on the Property or any part thereof, which are or may be prior or superior hereto; (d) when due, all fees and charges incidental to ownership, occupancy or beneficial use of the Property; and (e) if the Property is or includes a condominium, community apartment or is all or part of a planned development, all payments required of the owner thereof under any declaration of covenants or conditions or restrictions pertaining to such project. Should Trustor fail to make any payment under this Paragraph 4, Beneficiary may, but shall not be obligated to, make such payment and any amount so paid shall be charged to and promptly paid by Trustor or, at the option of Beneficiary, shall be added to the indebtedness secured hereby, without regard to the validity or legality of such assessments, liens or charges.

5. **CLAIMS, DEMANDS AND ACTIONS.** Trustor shall (a) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (b) at the option of Beneficiary, assign to Beneficiary, to the extent of Beneficiary's interest, any claims, demands or causes of action of any kind, including any award, court judgment or proceeds of settlement of any such claim, demand or cause of action of any kind which Trustor now has or may hereafter acquire arising out of acquisition or ownership of the Property. Without limiting the generality of the foregoing, any such claim, demand or cause of action arising out of acquisition or ownership of the Property may include (i) any such injury or damage to the Property or any structure or improvement situated thereon, or (ii) any claim or cause of action in favor of Trustor which shall have arisen out of the transaction financed in whole or in part by the making of the loan secured hereby, or (iii) any claim or cause of action in favor of Trustor (except for bodily injury) which arises as a result of any negligent or improper construction, installation or repair of the Property, including the surface or subsurface thereof, or of any building or structure thereon. Trustor shall at Trustor's expense pursue such claims and shall not permit any award of damages to be subject to a claim of attorneys' fees unless approved in writing by Beneficiary. Beneficiary may apply, use or release such monies received by it in the same manner as Paragraph 2 provides for application, use, or release of insurance proceeds.

6. **DEFENDING TRUST.** Notwithstanding the provisions of Paragraph 5, Beneficiary or Trustee may (a) commence and prosecute or appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (b) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appear to be prior or superior hereto; and (c) in exercising any such right, incur any liability and expend whatever amounts either deems reasonably necessary, including cost of evidence of title and reasonable attorneys' fees and such costs and expenses shall be added to the principal balance of the Loan and shall be paid by Trustor within 30 days or such other period acceptable to Beneficiary.

7. **PROTECTION OF SECURITY BY BENEFICIARY OR TRUSTEE.** Should Trustor fail to make any payment or do any act provided in this Deed of Trust, then Beneficiary or Trustee, but without obligation so to do, and without

notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may make any such payment or do any such act in such manner and to such extent as either deems necessary to protect the security hereof. Beneficiary or Trustee is authorized to enter upon the Property at any time for such purpose. Trustor hereby irrevocably authorizes Beneficiary to apply any and all amounts received by Beneficiary in repayment of the Loan first to amounts which are not guaranteed pursuant to the terms of any guaranty executed in connection with this Loan and then to amounts which are guaranteed pursuant to the terms of any such guaranty. Trustor hereby waives any and all rights it has or may have under Section 2822 of the Civil Code of California, as amended or recodified from time to time, which provides that if a guarantor is "liable upon only a portion of an obligation and the principal provides partial satisfaction of the obligation, the principal may designate the portion of the obligation that is to be satisfied".

8. **REIMBURSEMENT.** Trustor shall pay immediately upon demand all costs, fees or expenses incurred and sums expended or advanced under the terms of this Deed of Trust by Beneficiary or Trustee, with interest thereon at a rate equal to the rate provided for in the Note secured hereby, and the obligation of Trustor to pay such sums and interest as aforesaid shall be secured hereby.

9. **LEASEHOLD ESTATES.** If the security for this Deed of Trust is a leasehold estate, Trustor shall not modify, surrender, or terminate the lease or leases, creating the leasehold estate, and shall comply with all of the covenants and conditions required of the Lessee or his successor in interest to be performed under the lease or leases creating said leasehold estate, including but not limited to paying when due rent and other charges imposed upon such Lessee.

10. **IMPOUND ACCOUNT.** Trustor shall pay to Beneficiary, if Beneficiary shall so demand, in addition to any other payment required hereunder, monthly installments for the purpose of creating and maintaining a fund to provide payment when due of any taxes, encumbrances, assessments, leasehold payments relating to the Property, premiums for any policies of insurance insuring the Property, the Trustor or the loan, more specifically referred to in Paragraphs 2, 3, 4 and 9. Trustor shall deliver promptly to Beneficiary all bills and notices thereof. Said installments shall be in such amounts as Beneficiary shall estimate from time to time to be necessary to provide sufficient monies in said fund to pay such taxes, encumbrances, assessments, leasehold payments and premiums when they become due and shall be payable concurrently with the monthly installment under the Note. If the amounts paid to Beneficiary under the provisions of this paragraph are insufficient to pay such taxes, assessments, leasehold payments and premiums as they become due, Trustor shall pay to Beneficiary promptly upon demand the amount of the deficiency. Failure to timely pay any such insufficient impound amounts shall be a default.

In the event of default of any obligation hereby secured, then any funds in the possession of Beneficiary under the provisions of this paragraph may, at the option of Beneficiary, be applied upon any indebtedness secured hereby.

11. **FINANCIAL STATEMENTS.** Within thirty (30) days after written demand by Beneficiary but not more frequently than annually, Trustor shall deliver to Beneficiary verified financial statements for the Trustor and for any business of Trustor which was a material consideration in Beneficiary granting the Loan, prepared in accordance with acceptable accounting practices, for such annual or other period as Beneficiary may designate. Such financial statements shall include balance sheets, operating statements, and statements of sources and application of funds. In addition, Trustor shall deliver to Beneficiary on demand, copies of all leases, agreements, vouchers, receipts and other documents supporting any of the items shown in such statements. Trustor shall keep and maintain a full and accurate set of books and records showing all the matters above specified, and shall permit Beneficiary at any time to inspect and audit all Trustor's books of account, records, and papers relating to any of the foregoing matters. In the event any such audit is caused to be made by Beneficiary by reason of the failure of Trustor to comply with any of the foregoing provisions, then Trustor shall pay to Beneficiary upon demand all expenses incurred by Beneficiary in connection with such audit.

12. **DAMAGE TO OR CONDEMNATION OF PROPERTY.** Any award of damages or compensation for injury to, or in connection with any condemnation for public use of the Property or any part thereof, or any proceeds of any settlement with respect to a condemnation whether or not eminent domain proceedings have been instituted, shall be and is hereby assigned by Trustor and shall be paid to Beneficiary, who may apply, use or release the amount thereof in the same manner as Paragraph 2 provides for application, use, or release of insurance proceeds.

13. **BENEFICIARY'S CONSENT REQUIRED.** Beneficiary may declare all sums secured hereby immediately due and payable except as expressly limited by law, if Trustor without Beneficiary's prior written consent: (a) sells, conveys, contracts to sell by installment land contract, alienates or further encumbers all or any part of the Property; or (b) leases all or any part of the Property for a term, together with all exercisable options, of 3 years or more, or which contains a purchase option; or (c) suffers the title or any interest in the secured Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) is a partnership and any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (f) is a corporation with fewer than 100 stockholders at the date of execution of this Deed of Trust and more than 10% of its capital stock is sold, transferred or assigned during a 12 month period; or (g) is a limited liability company and either (i) any of the managers' interests are transferred or assigned, whether voluntarily or involuntarily, or (ii) more than 10% of the aggregate of its membership interests are sold, transferred or assigned during a 12 month period. Trustor will not create or permit to continue in

existence any mortgage, pledge, encumbrance, lien, or charge of any kind (including purchase money and conditional sale liens) on any of the Property except for liens securing the Loan and (a) liens for taxes not yet delinquent, and (b) any other liens or charges that are specifically approved in writing by Beneficiary prior to the recordation of this Deed of Trust.

14. **NO WAIVER.** Trustee or Beneficiary by accepting payment of any sum secured hereby after its due date, or by making payment or taking any action which, under the provisions hereof either Trustee or Beneficiary is entitled but not obligated to make or take, or by forbearing from enforcing any of its rights, shall not be deemed to have waived its right to require payment from or action by Trustor and to declare a default for Trustor's failure to do so. In the event either Trustee or Beneficiary shall expressly waive any rights under any provisions of this Deed of Trust, such waiver shall not be deemed a waiver of any rights Trustor or Beneficiary may have subsequently to require payment from or action by Trustor and declare a default for Trustor's failure to do so.

15. **ASSIGNMENT.** Trustor hereby absolutely and unconditionally assigns and transfers all of Trustor's right, title, and interest to Beneficiary, during the continuance of these trusts, in and to all rents, issues, profits, royalties, tolls, earnings and income of the Property including those arising by reason of any oil, gas or mineral lease thereof, and all installments of money payable pursuant to any contract of sale or lease relating to the Property or any part thereof (hereinafter referred to collectively as "income"), together with the right, power and authority to collect and retain all such income as it becomes due and payable. All income received by Beneficiary through the exercise of the foregoing assignment, less all expenses, (including reasonable attorneys' fees) incurred by Beneficiary in collecting such income shall be applied by Beneficiary on any indebtedness secured by this Deed of Trust at such time and in the manner and amount as Beneficiary may determine. Without limiting the generality of the foregoing, such application may include payment of periodic installments of principal and interest, or reduction of the principal balance or reimbursement to Beneficiary as provided in Paragraph 8. The foregoing is an absolute assignment effective upon recordation of this Deed of Trust and is independent of Beneficiary's actual or constructive possession of the Property. Prior to any default, Trustor is hereby granted the right to collect the assigned income first to pay all operating expenses of the Property then to pay any net income to the owners of the Property. Upon default, Trustor's right to collect income terminates automatically.

16. **DEFAULT BY TRUSTOR.** Upon default by Trustor in payment of any indebtedness secured, or in the performance of any obligation imposed upon Trustor by this Deed of Trust, or the other Loan Documents, Beneficiary may, without notice and irrespective of whether declaration of default has been delivered to Trustee and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent, without bringing any action or proceeding, without entering into possession of the Property, or by receiver to be appointed by a court; (a) enter into possession and hold, occupy, possess and enjoy the Property; (b) make, cancel, enforce, modify or terminate leases; (c) obtain and eject tenants; (d) set or modify rents; (e) take, receive and collect all or any part of the income described in Paragraph 15, including income received by the Trustor after the default or before it became due. After paying such costs of maintenance and operation of the Property as it in its judgment may deem proper, Beneficiary may apply the balance upon the entire indebtedness then secured hereby. The acceptance of such income shall not constitute a waiver of any other right which Trustee or Beneficiary may have under this Deed of Trust or under the laws of California. The receipt and application by Beneficiary of such income pursuant thereto, after execution and delivery of declaration of default and demand for sale or during the pendency of a Trustee's sale proceeding hereunder, shall not cure any breach or default, nor affect said sale proceeding or any sale made pursuant thereto, but such income, less all costs of operation and maintenance, when received by Beneficiary, shall be applied in reduction of the entire indebtedness from time to time secured hereby. Trustor shall not in any manner obstruct or interfere with any of Beneficiary's rights under this Paragraph 16.

17. **TRUSTEE AUTHORIZED.** Upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the liability of any person for payment of the indebtedness secured hereby, Trustee may (a) reconvey any part of the Property; (b) execute the title sheet of any map, plat or record of survey thereof; (c) join in granting any easement thereon; or (d) join in any agreement modifying the terms hereof or subordinating the lien or charge hereof. Trustor shall pay to Beneficiary and Trustee a reasonable service charge for any such action.

18. **RECONVEYANCE.** Upon written request of Beneficiary and upon surrender of this Deed of Trust and the Note secured hereby to Trustee for retention, and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Five (5) years after the date of such reconveyance, Trustee may destroy the Deed of Trust and Note, without liability. Notwithstanding anything set forth herein, Trustee may, in its sole discretion, deliver said Note or Deed of Trust or both to the person entitled thereto.

19. **FEES.** Trustor shall pay to Beneficiary the maximum amount as may from time to time be permitted by law for furnishing in connection with the obligations secured hereby, each statement pursuant to any statute at the time then in force. Additionally, Trustor shall pay Beneficiary's and Trustee's fees, charges and expenses for any other statement, information or services furnished by Beneficiary or Trustee in connection with the obligations secured hereby. Said



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services may include, but shall not be limited to, the processing by Beneficiary or Trustee, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owner, recordation of map, plat or record of survey, grants of easements, and full and partial reconveyance, and the obtaining by Beneficiary of any policies of insurance pursuant to any of the provisions contained in this Deed of Trust. Additionally, Trustor shall pay all Trustee's fees, attorneys' fees, costs and expenses incurred in connection with or arising from any of the actions taken by Beneficiary, Trustee, or their agents described in Paragraphs 6, 8, 16 and 20.

**20. SALE BY TRUSTEE.** Upon default by Trustor in payment of any indebtedness, or performance of any obligation secured by this Deed of Trust, Beneficiary, in addition to any other remedy or process available to Beneficiary, may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and causing to be filed for record a written notice of default and election to sell, and shall deposit with Trustee this Deed of Trust and any Note or other evidence of indebtedness secured by this Deed of Trust and all documents evidencing expenditures secured hereby. After the lapse of such time as may be required by law following the filing for record of said notice of default, and after giving all such notice as may be required by law, Trustee, without demand on Trustor, may sell the Property, either as a whole or in separate parcels, and in such order as it may determine, by public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, or for the equivalent of cash, as so determined by Trustee in its sole discretion. If the indebtedness secured hereunder is additionally secured by real property which is not subject to this Deed of Trust, Trustee may sell any property so given as security for Trustor's obligation, which it is authorized to sell, either in whole or in separate parcels and in such order as it may determine. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place fixed for such sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Following sale, Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact shall be conclusive proof of the truth thereof. Any person, including Trustor, Trustee and Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this trust, including cost of evidence of title in connection with the sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale to payment, first, of all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the rate specified in the note secured by this Deed of Trust, and then to all other sums secured by this Deed of Trust, and, if there be any proceeds remaining, shall distribute them to the person or persons legally entitled thereto, upon proof of entitlement being submitted to Trustee.

**21. WAIVER OF STATUTE OF LIMITATIONS.** Trustor hereby waives, to the fullest extent permissible by law, the statute of limitations as a defense to any demand or obligations secured by this Deed of Trust.

**22. SUBSTITUTION OF TRUSTEE.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or action hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county or counties where the Property is situated, shall be conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance, succeed to all the title, estate, right, powers and duties of the predecessor Trustee. Said instrument shall contain the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution may not be exercised unless the then acting Trustee signs an endorsement on such instrument of substitution to the effect that all costs, fees and expenses due to such Trustee have been paid or satisfied.

**23. ADJUSTABLE MORTGAGE LOAN.** The Note secured by this Deed of Trust contains provisions which may result in increases in the interest rate, in the monthly installments, and in the unpaid principal balance. Reference is hereby made to the Promissory Note for the specific provisions relating to such increases.

**24. HAZARDOUS SUBSTANCES.** Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Trustor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 24, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 24, "Environmental Laws" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**25. OCCUPANCY AGREEMENT.** If Trustor was required to execute an Occupancy Agreement as a condition for obtaining the Loan secured by this Deed of Trust, the terms of the Occupancy Agreement, including the provisions which make a violation of its terms an event of default under this Deed of Trust, are incorporated herein by this reference.

**26. WARRANTIES.** Trustor represents and warrants that by signing this Deed of Trust all signers have requisite power and authority to execute this Deed of Trust and any and all other instruments they have executed and delivered to Beneficiary in connection with the Loan secured by this Deed of Trust, that any and all balance sheets, income statements, and financial data of any other kind furnished to Beneficiary by or on behalf of Trustor are true and correct and accurately reflect the present financial condition of the subjects thereof as of the date thereof. These representations and warranties shall survive until all obligations and sums due which are secured by this Deed of Trust have been satisfied in full. Any breach of these warranties shall be a default and Trustor shall indemnify, defend and hold Beneficiary harmless from any loss, fees or costs directly or indirectly related to claims arising out of such breach.

**27. GENERAL PROVISIONS:**

A. The term "Trustor" shall mean all parties executing this Deed of Trust as Trustor, their respective heirs, legatees, devisees, administrators, executors, successors in interest and assigns, provided that Beneficiary shall not be obligated to give Notice of Default or Notice of Sale hereunder to any Trustor other than as shown on the face page hereof.

B. The term "Beneficiary" shall mean the owner and holder (including a pledgee) of the Note secured hereby, whether or not named as Beneficiary herein.

C. Every provision of this Deed of Trust imposing upon Trustor an obligation to perform an act, or embodying an agreement by Trustor to perform an act, shall be construed as obligating Trustor to pay all costs and expenses relating thereto.

D. In the event any provision hereof shall be declared invalid or unenforceable through a final judgment in a court having competent jurisdiction, the validity or enforceability of any of the remaining terms hereof shall not be thereby impaired.

E. In this Deed of Trust, wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa, and if more than one person is named as Trustor, the obligations of Trustor shall be the joint and several obligations of each person.

F. Captions and paragraph headings used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.

The undersigned Trustor(s) request(s) that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to each Trustor named on the face page hereof, at the address set forth thereon.

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE AND CONTAINS PROVISIONS WHICH MAY REQUIRE A BALLOON PAYMENT AT MATURITY.

Trudy A. Kalush

Trudy A. Kalush



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State of California
County of LOS ANGELES

On JAN. 21, ~~2004~~ 2005 before me, VERLYNE VANDERPOOL
DATE — NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared TRUDY A. KALUSH

NAME(S) OF SIGNER(S)

☐ personally known to me - **OR** - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

VERLYNE VANDERPOOL
Commission # 1457434
Notary Public - California
Los Angeles County
My Comm. Expires Dec 21, 2007

WITNESS my hand and official seal.

SIGNATURE OF NOTARY



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GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the Notary Seal on the document to which this Statement is attached reads as follows:

NAME OF THE NOTARY: Verlyne Vanderpool
DATE COMMISSION EXPIRES: 12-21-07
COUNTY WHERE BOND IS FILED: Los Angeles
COMMISSION NUMBER: [redacted] VENDOR#: [redacted]

I certify under penalty of perjury and the laws of the State of California that the illegible portion of this document to which this statement is attached reads as follows:

PLACE OF EXECUTION: LOS ANGELES DATE: 1/24/05

SIGNATURE:

* Personally know to me (or proved to me on the basis of satisfactory evidence) to be the person(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s)acted, executed the instrument.

## EXHIBIT "A"

LOT 1, BLOCK 20, OF SUNSET BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGES 39 AND 40 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

# EXHIBIT 2

EXHIBIT 2

**EXECUTION COPY**

INDYMAC MBS, INC.
Depositor

INDYMAC BANK, F.S.B.
Seller and Master Servicer

DEUTSCHE BANK NATIONAL TRUST COMPANY
Trustee

# POOLING AND SERVICING AGREEMENT
Dated as of June 1, 2005

INDYMAC INDX MORTGAGE LOAN TRUST
2005-AR12

MORTGAGE PASS-THROUGH CERTIFICATES
Series 2005-AR12

NY1 5711467v.4

***Class A-PO-1 Component:*** The principal-only component of the Class A-PO Certificates that relates to the Group 1 Mortgage Loans.

***Class A-PO-2 Component:*** The principal-only component of the Class A-PO Certificates that relates to the Group 2 Mortgage Loans.

***Class A Interest:*** Each of the Class A-1 and Class A-2 Interests.

***Class B Interest:*** Each of the Class B-1 and Class B-2 Interests.

***Class C Interest:*** Each of the Class C-1 and Class C-2 Interests.

***Class D Interest:*** Each of the Class D-1 and Class D-2 Interests.

***Class Certificate Balance:*** For any Class (other than the Notional Amount Certificates) as of any date of determination, the aggregate of the Certificate Balances of all Certificates of the Class as of that date.

***Class Interest Shortfall:*** As to any Distribution Date and Class, the amount by which the amount described in clause (i) of the definition of Class Optimal Interest Distribution Amount for such Class exceeds the amount of interest actually distributed on such Class on such Distribution Date pursuant to such clause (i).

***Class Optimal Interest Distribution Amount:*** With respect to any Distribution Date and interest-bearing Class, the sum of (i) interest accrued during the related Interest Accrual Period at the Pass-Through Rate for such Class, on the related Class Certificate Balance or Notional Amount, as applicable, immediately prior to such Distribution Date, subject to reduction pursuant to Section 4.02(d), and (ii) any Class Unpaid Interest Amounts for such Class, reduced by any Net Deferred Interest on the related Mortgage Loans allocated to such Class of Certificates, as described in Section 4.04.

***Class Subordination Percentage:*** With respect to any Distribution Date and each Class of Subordinated Certificates, the fraction (expressed as a percentage) the numerator of which is the Class Certificate Balance of such Class of Subordinated Certificates immediately prior to such Distribution Date and the denominator of which is the aggregate Class Certificate Balance of all Classes of Certificates immediately prior to such Distribution Date.

***Class Unpaid Interest Amounts:*** As to any Distribution Date and Class of interest-bearing Certificates, the amount by which the aggregate Class Interest Shortfalls for such Class on prior Distribution Dates exceeds the amount distributed on such Class on prior Distribution Dates pursuant to clause (ii) of the definition of Class Optimal Interest Distribution Amount.

***Closing Date:*** June 6, 2005.

***CMT Index:*** Not applicable.

***Code:*** The Internal Revenue Code of 1986, including any successor or amendatory provisions.

***COFI:*** Not applicable.

***COFI Certificates:*** Not applicable.

***Collection Account:*** As defined in Section 3.06(c).

***Commission***: The United States Securities and Exchange Commission.

***Compensating Interest:*** For any Distribution Date, 0.125% multiplied by one-twelfth multiplied by the aggregate Stated Principal Balance of the Mortgage Loans as of the first day of the prior month.

***Component Principal Balance***: As of any date of determination, either the Class A-PO-1 Component Principal Balance on such date or the Class A-PO-2 Component Principal Balance on such date, as applicable. The Class A-PO-1 Component and Class A-PO-2 Component will each have a Component Principal Balance (initially, $50) equal to (i) the aggregate Net Deferred Interest allocated to the Class A-X-2 Certificates prior to the date of determination pursuant to Section 4.04 in respect of the Mortgage Loans related to such Component minus (ii) all amounts actually distributed as principal of such Component and all Realized Losses applied in reduction of principal of such Component prior to such date of determination, plus, any increases in the Component Principal Balance of such Certificate pursuant to Section 4.02 due to the receipt of Subsequent Recoveries.

***Co-op Shares:*** Shares issued by a Cooperative Corporation.

***Cooperative Corporation:*** The entity that holds title (fee or an acceptable leasehold estate) to the real property and improvements constituting the Cooperative Property and that governs the Cooperative Property, which Cooperative Corporation must qualify as a Cooperative Housing Corporation under section 216 of the Code.

***Cooperative Loan:*** Any Mortgage Loan secured by Co-op Shares and a Proprietary Lease.

***Cooperative Property:*** The real property and improvements owned by the Cooperative Corporation, including the allocation of individual dwelling units to the holders of the Co-op Shares of the Cooperative Corporation.

***Cooperative Unit:*** A single family dwelling located in a Cooperative Property.

***Corporate Trust Office:*** The designated office of the Trustee in the State of California at which at any particular time its corporate trust business with respect to this Agreement is administered, which office at the date of the execution of this Agreement is located at 1761 East St. Andrew Place, Santa Ana, California 92705, Attn: Mortgage Administration-IN05AC (IndyMac MBS, Inc., IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12), and which is the address to which notices to and correspondence with the Trustee should be directed.

***Cross-over Situation***: For any Distribution Date and for any Loan Group (after taking into account principal distributions on such Distribution Date) a Cross-Over Situation exists with respect to the Class A and Class B Interests of the Loan Group if such interests in the aggregate are less than 1% of the Subordinated Portion of the related Loan Group.

***Cut-off Date:*** June 1, 2005.

***Cut-off Date Pool Principal Balance***: $1,261,413,917.91.

***Cut-off Date Principal Balance:*** As to any Mortgage Loan, its Stated Principal Balance as of the close of business on the Cut-off Date.

***Debt Service Reduction:*** For any Mortgage Loan, a reduction by a court of competent jurisdiction in a proceeding under the Bankruptcy Code in the Scheduled Payment for the Mortgage Loan

ARTICLE Two

CONVEYANCE OF MORTGAGE LOANS; REPRESENTATIONS AND WARRANTIES

***Section 2.01 Conveyance of Mortgage Loans.***

(a) The Seller, concurrently with the execution and delivery of this Agreement, hereby transfers to the Depositor, without recourse, all the interest of the Seller in each Mortgage Loan, including all interest and principal received or receivable by the Seller on each Mortgage Loan after the Cut-off Date and all interest and principal payments on each Mortgage Loan received before the Cut-off Date for installments of interest and principal due after the Cut-off Date but not including payments of principal and interest due by the Cut-off Date. By the Closing Date, the Seller shall deliver to the Depositor or, at the Depositor's direction, to the Trustee or other designee of the Depositor, the Mortgage File for each Mortgage Loan listed in the Mortgage Loan Schedule (except that, in the case of Mortgage Loans that are Delay Delivery Mortgage Loans, such delivery may take place within five Business Days of the Closing Date) as of the Closing Date. The delivery of the Mortgage Files shall be made against payment by the Depositor of the purchase price, previously agreed to by the Seller and Depositor, for the Mortgage Loans. With respect to any Mortgage Loan that does not have a first payment date on or before the Due Date in the month of the first Distribution Date, the Seller shall deposit into the Distribution Account on the first Distribution Account Deposit Date an amount equal to one month's interest at the related Adjusted Mortgage Rate on the Cut-off Date Principal Balance of such Mortgage Loan. Also on the Closing Date the Depositor shall deposit $2,599,459.16 into the Carryover Shortfall Reserve Fund.

(b) The Depositor, concurrently with the execution and delivery of this Agreement, hereby transfers to the Trustee for the benefit of the Certificateholders, without recourse, all the interest of the Depositor in the Trust Fund, together with the Depositor's right to require the Seller to cure any breach of a representation or warranty made in this Agreement by the Seller or to repurchase or substitute for any affected Mortgage Loan in accordance with this Agreement. The Depositor hereby directs the Trustee to execute the Yield Maintenance Agreements.

(c) In connection with the transfer and assignment of each Mortgage Loan, the Depositor has delivered (or, in the case of the Delay Delivery Mortgage Loans, will deliver to the Trustee within the time periods specified in the definition of Delay Delivery Mortgage Loans), for the benefit of the Certificateholders the following documents or instruments with respect to each Mortgage Loan so assigned:

(i) The original Mortgage Note, endorsed by manual or facsimile signature in blank in the following form: "Pay to the order of ______________ ______________without recourse," with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage Note (each endorsement being sufficient to transfer all interest of the party so endorsing, as noteholder or assignee thereof, in that Mortgage Note) or a lost note affidavit for any Lost Mortgage Note from the Seller stating that the original Mortgage Note was lost or destroyed, together with a copy of the Mortgage Note.

(ii) except as provided below and for each Mortgage Loan that is not a MERS Mortgage Loan, the original recorded Mortgage or a copy of such Mortgage certified by the Seller as being a true and complete copy of the Mortgage (or, in the case of a Mortgage for which the related Mortgaged Property is located in the Commonwealth of Puerto Rico, a true copy of the Mortgage certified as such by the applicable notary) and in the case of each MERS Mortgage Loan, the original Mortgage, noting the presence of the MIN of the Mortgage Loans and either language indicating that the Mortgage Loan is a MOM Loan if the Mortgage Loan is a MOM

Loan or if the Mortgage Loan was not a MOM Loan at origination, the original Mortgage and the assignment thereof to MERS, with evidence of recording indicated thereon, or a copy of the Mortgage certified by the public recording office in which such Mortgage has been recorded;

(iii) A duly executed assignment of the Mortgage (which may be included in a blanket assignment or assignments), together with, except as provided below, all interim recorded assignments of the mortgage (each assignment, when duly and validly completed, to be in recordable form and sufficient to effect the assignment of and transfer to its assignee of the Mortgage to which the assignment relates). If the related Mortgage has not been returned from the applicable public recording office, the assignment of the Mortgage may exclude the information to be provided by the recording office. The assignment of Mortgage need not be delivered in the case of a Mortgage for which the related Mortgage Property is located in the Commonwealth of Puerto Rico.

(iv) The original or copies of each assumption, modification, written assurance, or substitution agreement.

(v) Except as provided below, the original or duplicate original lender's title policy and all its riders.

(vi) The originals of the following documents for each Cooperative Loan:

(A) the Co-op Shares, together with a stock power in blank;

(B) the executed Security Agreement;

(C) the executed Proprietary Lease;

(D) the executed Recognition Agreement;

(E) the executed UCC-1 financing statement that has been filed in all places required to perfect the Seller's interest in the Co-op Shares and the Proprietary Lease with evidence of recording on it; and

(F) executed UCC-3 financing statements or other appropriate UCC financing statements required by state law, evidencing a complete and unbroken line from the mortgagee to the Trustee with evidence of recording thereon (or in a form suitable for recordation). If in connection with any Mortgage Loan the Depositor cannot deliver

(a) the original recorded Mortgage,

(b) all interim recorded assignments, or

(c) the lender's title policy (together with all its riders).

In addition, in connection with the assignment of any MERS Mortgage Loan, the Seller agrees that it will cause, at the Seller's expense, the MERS® System to indicate that the Mortgage Loans sold by the Seller to the Depositor have been assigned by the Seller to the Trustee in accordance with this Agreement for the benefit of the Certificateholders by including (or deleting, in the case of Mortgage Loans that are repurchased in accordance with this Agreement) in such computer files the information

Seller (at the Seller's expense) to the Trustee, recording the assignment is not necessary to protect the Trustee's and the Certificateholders' interest in the related Mortgage Loan. The Seller shall deliver such Opinion of Counsel within 90 days of the Closing Date.

If any Mortgage Loans have been prepaid in full as of the Closing Date, the Depositor, in lieu of delivering the above documents to the Trustee, will deposit in the Certificate Account the portion of the prepayment that is required to be deposited in the Certificate Account pursuant to Section 3.06.

Notwithstanding anything to the contrary in this Agreement, within five Business Days after the Closing Date, the Seller shall either

(x) deliver to the Trustee the Mortgage File as required pursuant to this Section 2.01 for each Delay Delivery Mortgage Loan or

(y) (A) repurchase the Delay Delivery Mortgage Loan or (B) substitute the Substitute Mortgage Loan for a Delay Delivery Mortgage Loan, which repurchase or substitution shall be accomplished in the manner and subject to the conditions in Section 2.03 (treating each such Delay Delivery Mortgage Loan as a Deleted Mortgage Loan for purposes of such Section 2.03);

provided, however, that if the Seller fails to deliver a Mortgage File for any Delay Delivery Mortgage Loan within the period specified herein, the Seller shall use its best reasonable efforts to effect a substitution, rather than a repurchase of, such Deleted Mortgage Loan and provided further that the cure period provided for in Section 2.02 or in Section 2.03 shall not apply to the initial delivery of the Mortgage File for such Delay Delivery Mortgage Loan, but rather the Seller shall have five (5) Business Days to cure such failure to deliver. At the end of such period, the Trustee shall send a Delay Delivery Certification for the Delay Delivery Mortgage Loans delivered during such period in accordance with the provisions of Section 2.02.

(d) The Seller agrees to treat the transfer of the Mortgage Loans to the Depositor as a sale for all tax, accounting, and regulatory purposes.

***Section 2.02 Acceptance by the Trustee of the Mortgage Loans.***

The Trustee acknowledges receipt of the documents identified in the Initial Certification in the form of Exhibit G-1, and declares that it holds and will hold such documents and the other documents delivered to it constituting the Mortgage Files for the Mortgage Loans, and that it holds or will hold such other assets as are included in the Trust Fund, in trust for the exclusive use and benefit of all present and future Certificateholders.

The Trustee acknowledges that it will maintain possession of the related Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies. The Trustee agrees to execute and deliver on the Closing Date to the Depositor, the Master Servicer and the Seller an Initial Certification in the form of Exhibit G-1. Based on its review and examination, and only as to the documents identified in such Initial Certification, the Trustee acknowledges that such documents appear regular on their face and relate to such Mortgage Loans. The Trustee shall be under no duty or obligation to inspect, review or examine said documents, instruments, certificates or other papers to determine that the same are genuine, enforceable or appropriate for the represented purpose or that they have actually been recorded in the real estate records or that they are other than what they purport to be on their face.

By the thirtieth day after the Closing Date (or if that day is not a Business Day, the succeeding Business Day), the Trustee shall deliver to the Depositor, the Master Servicer, and the Seller a Delay Delivery Certification with respect to the Mortgage Loans substantially in the form of Exhibit G-3, with any applicable exceptions noted thereon.

By the ninetieth day after the Closing Date (or if that day is not a Business Day, the succeeding Business Day), the Trustee shall deliver to the Depositor, the Master Servicer and the Seller a Final Certification with respect to the Mortgage Loans in the form of Exhibit H-1, with any applicable exceptions noted thereon.

If, in the course of its review, the Trustee finds any document constituting a part of a Mortgage File that does not meet the requirements of Section 2.01, the Trustee shall list such as an exception in the Final Certification. The Trustee shall not make any determination as to whether (i) any endorsement is sufficient to transfer all interest of the party so endorsing, as noteholder or assignee thereof, in that Mortgage Note or (ii) any assignment is in recordable form or is sufficient to effect the assignment of and transfer to the assignee thereof under the mortgage to which the assignment relates. The Seller shall promptly correct any defect that materially and adversely affects the interests of the Certificateholders within 90 days from the date it was so notified of the defect and, if the Seller does not correct the defect within that period, the Seller shall either (a) substitute for the related Mortgage Loan a Substitute Mortgage Loan, which substitution shall be accomplished in the pursuant Section 2.03, or (b) purchase the Mortgage Loan at its Purchase Price from the Trustee within 90 days from the date the Seller was notified of the defect in writing.

If a substitution or purchase of a Mortgage Loan pursuant to this provision is required because of a delay in delivery of any documents by the appropriate recording office, or there is a dispute between either the Master Servicer or the Seller and the Trustee over the location or status of the recorded document, then the substitution or purchase shall occur within 720 days from the Closing Date. In no other case may a substitution or purchase occur more than 540 days from the Closing Date.

The Trustee shall deliver written notice to each Rating Agency within 270 days from the Closing Date indicating each Mortgage Loan (a) that has not been returned by the appropriate recording office or (b) as to which there is a dispute as to location or status of the Mortgage Loan. The notice shall be delivered every 90 days thereafter until the related Mortgage Loan is returned to the Trustee. Any substitution pursuant to (a) above or purchase pursuant to (b) above shall not be effected before the delivery to the Trustee of the Opinion of Counsel required by Section 2.05, and any substitution pursuant to (a) above shall not be effected before the additional delivery to the Trustee of a Request for Release substantially in the form of Exhibit N. No substitution is permitted to be made in any calendar month after the Determination Date for the month.

The Purchase Price for any Mortgage Loan shall be deposited by the Seller in the Certificate Account by the Distribution Account Deposit Date for the Distribution Date in the month following the month of repurchase and, upon receipt of the deposit and certification with respect thereto in the form of Exhibit O, the Trustee shall release the related Mortgage File to the Seller and shall execute and deliver at the Seller's request any instruments of transfer or assignment prepared by the Seller, in each case without recourse, necessary to vest in the Seller, or a designee, the Trustee's interest in any Mortgage Loan released pursuant hereto.

If pursuant to the foregoing provisions the Seller repurchases a Mortgage Loan that is a MERS Mortgage Loan, the Master Servicer shall either (i) cause MERS to execute and deliver an assignment of the Mortgage in recordable form to transfer the Mortgage from MERS to the Seller and shall cause such Mortgage to be removed from registration on the MERS® System in accordance with MERS' rules and

For the purpose of facilitating the recordation of this Agreement as herein provided and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument.

***Section 10.03 Governing Law.***

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HERETO AND THE CERTIFICATEHOLDERS SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

***Section 10.04 Intention of Parties.***

It is the express intent of the parties hereto that the conveyance (i) of the Mortgage Loans by the Seller to the Depositor and (ii) of the Trust Fund by the Depositor to the Trustee each be, and be construed as, an absolute sale thereof. It is, further, not the intention of the parties that such conveyances be deemed a pledge thereof. However, if, notwithstanding the intent of the parties, the assets are held to be the property of the Seller or Depositor, as the case may be, or if for any other reason this Agreement is held or deemed to create a security interest in either such assets, then (i) this Agreement shall be deemed to be a security agreement within the meaning of the UCC and (ii) the conveyances provided for in this Agreement shall be deemed to be an assignment and a grant (i) by the Seller to the Depositor or (ii) by the Depositor to the Trustee, for the benefit of the Certificateholders, of a security interest in all of the assets transferred, whether now owned or hereafter acquired.

The Seller and the Depositor for the benefit of the Certificateholders shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Trust Fund, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of the Agreement. The Depositor shall arrange for filing any Uniform Commercial Code continuation statements in connection with any security interest granted or assigned to the Trustee for the benefit of the Certificateholders.

***Section 10.05 Notices.***

(a) The Trustee shall use its best efforts to promptly provide notice to each Rating Agency with respect to each of the following of which it has actual knowledge:

1. Any material change or amendment to this Agreement;

2. The occurrence of any Event of Default that has not been cured;

3. The resignation or termination of the Master Servicer or the Trustee and the appointment of any successor;

4. The repurchase or substitution of Mortgage Loans pursuant to Section 2.03; and

5. The final payment to Certificateholders.

In addition, the Trustee shall promptly furnish to each Rating Agency copies of the following:

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

INDYMAC MBS, INC.,
as Depositor

By: ______________________
Name: Isaac Carrillo
Title: Vice President

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: ______________________
Name:
Title:

By: ______________________
Name:
Title:

INDYMAC BANK, F.S.B.,
as Seller and Master Servicer

By: ______________________
Name: Isaac Carrillo
Title: Vice President

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

INDYMAC MBS, INC.,
as Depositor

By: ____________________
Name:
Title:

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: ____________________
Name: BRENT HOYLER
Title: ASSOCIATE

By: ____________________
Name: Jennifer Hermansader
Title: Associate

INDYMAC BANK, F.S.B.,
as Seller and Master Servicer

By: ____________________
Name:
Title:

EXHIBIT H-1

FORM OF FINAL CERTIFICATION OF TRUSTEE

[date]

[Depositor]

[Master Servicer]

[Seller]

______________________

______________________

Re: Pooling and Servicing Agreement among IndyMac MBS, Inc., as Depositor, IndyMac Bank, F.S.B., as Seller and Master Servicer, and Deutsche Bank National Trust Company, as Trustee, Mortgage Pass-Through Certificates, Series 200 -

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), the undersigned, as Trustee, hereby certifies that as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or listed on the attached Document Exception Report) it has received:

(i) The original Mortgage Note, endorsed in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement, with all intervening endorsements showing a complete chain of endorsement from the originator to the Seller.

(ii) The original recorded Mortgage.

(iii) A duly executed assignment of the Mortgage in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement; provided, however, that it has received no assignment with respect to any Mortgage for which the Mortgaged Property is located in the Commonwealth of Puerto Rico, or, if the Depositor has certified or the Trustee otherwise knows that the Mortgage has not been returned from the applicable recording office, a copy of the assignment of the Mortgage (excluding information to be provided by the recording office).

(iv) The original or duplicate original recorded assignment or assignments of the Mortgage showing a complete chain of assignment from the originator to the Seller.

(v) The original or duplicate original lender's title policy and all riders thereto or, any one of an original title binder, an original preliminary title report or an original title commitment, or a copy thereof certified by the title company.

Based on its review and examination and only as to the foregoing documents, (a) such documents appear regular on their face and related to such Mortgage Loan, and (b) the information set forth in items (i), (ii), (iii), (iv), (vi) and (xi) of the definition of the "Mortgage Loan Schedule" in Section 1.01 of the Pooling and Servicing Agreement accurately reflects information set forth in the Mortgage File.

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review specifically required in the Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan. Notwithstanding anything herein to the contrary, the Trustee has made no determination and makes no representations as to whether (i) any endorsement is sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note or (ii) any assignment is in recordable form or sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which the assignment relates.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By:________________________________________
Name:
Title:

# EXHIBIT 3

EXHIBIT 3

NOTICE TO BORROWER: THIS NOTE CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE AND A BALLOON PAYMENT MAY BE DUE AT MATURITY.

# PROMISSORY NOTE
## ADJUSTABLE RATE MORTGAGE LOAN

| | | | | | |
|---|---|---|---|---|---|
| PRINCIPAL (Loan Amount): | $1,725,500.00 | | | LOAN NO: | 0910718-6 |
| | | | | DATE: | January 20, 2005 |
| Initial Interest Rate: | 1.990% | Initial Monthly Installment: | $6,369.16 | Commencement Date: | March 1, 2005 |
| Margin: | 2.600% | Installment Due Date: | 1st Day of Each Month | Maturity Date: | February 1, 2035 |
| Minimum Rate: | 4.487% | First Installment Adjustment Date: | March 1, 2006 | Fixed Payment Interval: | 12 |
| Maximum Rate*: | 10.200% | Rate Adjustment Frequency: | Monthly | | |
| Amortization Period: | 360 | Months | | | |

Prepayment Penalty Term: 1 Year(s)

Prepayment Penalty Amount: 6 month(s) advance interest on the amount prepaid in any 12 month period during the Prepayment Penalty Term in excess of 20% of the original Loan Amount.

If the Loan has a Release Price Addendum which permits release of any Property securing the Loan, any principal reduction made in accordance with said Release Price Addendum shall not be subject to this prepayment provision.

Late Charge: 6.000% of monthly installments if not received within 15 days of due date.

* Subject to Paragraph 8 below.

Those signing below (the "undersigned") promise to pay in lawful money of the United States to Commercial Capital Bank, FSB, a federally chartered savings bank, ("Holder"), or order, at Holder's office at P.O. Box 25035, Santa Ana, California 92799-9998 or at such other address Holder designates, the Principal shown above with interest from date of disbursement of funds on unpaid principal at the initial adjustable interest rate per annum ("Initial Interest Rate") shown above, payable in Initial Monthly Installments in the amount shown above (subject to adjustment as provided below), commencing on the Commencement Date shown above and continuing on the Installment Due Date of each and every month thereafter until the Maturity Date, when all sums then remaining unpaid shall immediately become due and payable. Each installment shall be credited first to interest which became due during the month for which installment is being made, then to any unpaid interest which became due previously, and the remainder to principal; interest shall then cease on the portion of principal credited. Monthly interest will be computed at 1/12th of the annual rate and any partial month's interest at 1/30th of the monthly calculation per day. To the extent that any scheduled monthly installment due is insufficient to pay all interest required for the period for which installment is being made, the amount of such unpaid interest ("Deferred Interest") shall be added to and become a part of the unpaid principal as of the due date of any such monthly installment, and shall bear interest thereafter as provided in this Note. In the event any sum has not been paid at the Maturity Date, interest shall be due from the Maturity Date on such unpaid sums, without extending the Maturity Date or waiving such default, at the default interest rate described in Paragraph 8 below.

1. **DEFINITIONS. As used in this Note:** (a) "Index" shall mean the Twelve-Month Average, determined as set forth below, of the monthly yields ("Monthly Yields") on United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board. The Twelve-Month Average is determined by adding together the Federal Reserve Board published Monthly Yields for the most recent 12 months immediately preceeding the month prior to each Rate Adjustment Date and dividing the sum by 12. In the event the Index or the alternate index selected by the Holder is no longer published, the Holder may, in its sole discretion, choose an alternate index to permit interest rate adjustments and that alternate index shall be the Index; (b) "Current Index" shall mean that Twelve-Month Average of the 12 months immediately preceding the month prior to the effective date of an interest rate adjustment; and (c) "Margin" shall mean the number of percentage points specified above or, in the event an alternate index is selected by the Holder, the term "Margin" shall mean the positive or negative difference (expressed in percentage points) between the adjusted interest rate in effect on the day immediately preceding the day on which the alternate index is to become applicable to this Note and the level of the alternate index on such date; and (d) "Fixed Payment Interval" means each successive increment of the number of monthly installments due under the terms of this Note shown above, provided, however, the final such increment may include fewer monthly installments.

2. **ADJUSTABLE INTEREST RATE TERMS.** The Initial Interest Rate shall be adjusted as follows: (a) the first rate adjustment will be effective with the Installment Due Date of the 2nd monthly installment and subsequent rate changes will be effective on the Installment Due Date of each monthly installment thereafter; (b) Holder will increase or decrease the interest rate of this Note each month by adding the margin to the Current Index which sum shall be the adjusted rate; (It is understood that the Current Index is calculated for each calendar month, but publication of the Index may be delayed. The Index will be deemed to have been published once each successive calendar month for purpose of rate adjustments.); (c) Holder may elect at its sole option but shall not be required to forgo all or any part of a rate adjustment that would result in an increase of that rate. No prior notification of interest rate adjustment shall be required.

3. **INSTALLMENT ADJUSTMENT.** The Initial Monthly Installment amount shall be adjusted commencing on the First Installment Adjustment Date and at the end of each Fixed Payment Interval thereafter as follows. Within approximately sixty (60) days prior to each Installment Adjustment Date a review of the loan shall be made for the purpose of calculating the installment adjustment. The loan balance as of the time of the review shall be projected to the Installment Adjustment Date without regard to any delinquent or prepaid installments to calculate the installment adjustment. The interest rate in effect at the time of review shall be used for calculation of the adjustment. The monthly installment shall be adjusted to an amount which would be sufficient to then amortize the projected loan balance at said rate over the remainder of the Amortization Period. Subsequent adjustments to the interest rate and actual changes to the loan balance that may occur between the time of the installment review and the effective date of the installment adjustment shall not be considered.

3A. **INSTALLMENT ADJUSTMENT LIMITATION.** Any monthly installment increase or decrease required under the provisions of Paragraph 3 shall not exceed 7 1/2% of the most recent monthly installment due prior to the effective date of an installment adjustment except as follows, when installments will be adjusted without the 7 1/2% limitation: (a) at the end of the fifth (5th) year from the Commencement Date of the monthly installments due on this Note (if the Maturity Date is more than 5 years) and on each Installment Adjustment Date that occurs every five (5) years thereafter; (b) on the last Installment Adjustment Date prior to the Maturity Date; and (c) whenever Holder determines the loan balance has reached 110% of the original principal balance.

3B. **LIMIT ON UNPAID PRINCIPAL LOAN BALANCE; INCREASE IN MONTHLY INSTALLMENT.** The unpaid principal balance of this Note may never exceed a maximum amount equal to 110% of the original principal balance of this Note (the "110% Limitation"). In the event that the unpaid principal balance of this Note would otherwise exceed that 110% limit, the undersigned will, starting on the next Installment Due Date, begin paying a new monthly installment. The new monthly installment will be an amount sufficient to pay off the unpaid principal balance of this Note that is projected to be owed on that Installment Due Date, together with interest at the interest rate in effect during the month prior to that Installment Due Date, in full at the Maturity Date in substantially equal monthly payments. The new monthly installment will be determined without regard to the 7.5% installment adjustment limitation described in Section 3A of this Note. The undersigned will continue to pay this monthly installment until the next regularly scheduled Installment Adjustment Date, when the new monthly installment will be determined as provided in this Note, except that the monthly installment will increase again whenever the 110% Limitation is reached.

The monthly installments due under this Note shall also be increased as set forth in Section 3B of this Note.

4. **LATE CHARGES.** The undersigned promises to pay a Late Charge equal to the above specified percentage of the monthly principal and interest of any installment or portion thereof which is not received within the above stated number of days after its due date. Holder is under no obligation to accept a partial installment. The undersigned acknowledges that it would be extremely difficult or impractical to determine Holder's actual damages resulting from any late installment and this Late Charge is a reasonable estimate of those damages. Holder agrees to accept this Late Charge as its sole right to damages for any late installments. Acceptance of any Late Charge shall not limit any of Holder's other rights under this Note, Deed of Trust or other documents executed to induce Holder to make the loan evidenced by this Note.

5. **COLLECTION STEPS WAIVED.** The undersigned waives the taking of any formal steps to collect this Note after a default on undersigned's part. Such steps include, among others, giving notice that an installment is about to become due, giving notice that amounts due have not been paid, and demanding payment of amounts due.

6. **COLLECTION COSTS.** The undersigned promises to pay Holder all its costs, expenses, and reasonable attorneys' fees incurred in connection with or arising from this Note.

7. **DEFAULT AND ACCELERATION.** Upon failure to pay any installments when due or to perform when due any obligation, covenant, or agreement in this Note, in the Deed of Trust or other security instruments which secure this Note, or in any other document executed by the undersigned to induce Holder to make the loan evidenced by this Note, or if any statement made by the undersigned in any such document is false or misleading, then all indebtedness will become immediately due at Holder's option.

8. **DEFAULT INTEREST RATE.** The failure of the undersigned to make any payment due under the terms of this Note, or the Deed of Trust securing this Note, shall result in an adjustment of the interest rate to a sum equal to the Index plus the Margin, plus 2.50 percentage points (the "default rate") effective 30 days after the due date of the unpaid payment until the failure to pay has been cured, and in the case of a failure to pay all sums due at the Maturity Date, the default rate shall be in effect from the Maturity Date until all sums have been paid in full. Any limitations on the maximum interest rate that would otherwise apply shall not apply to the default interest rate.

9. **DUE ON SALE PROVISIONS.** Paragraph 13 of the Deed of Trust securing this Note contains provisions which permit Beneficiary, at its option, to declare all principal and accrued interest immediately due and payable if Trustor, without Beneficiary's prior written consent, transfers any interest in the security property by any means of transfer there specifically set forth. Paragraph 13 of the Deed of Trust provides:

13. BENEFICIARY'S CONSENT REQUIRED. Beneficiary may declare all sums secured hereby immediately due and payable except as expressly limited by law, if Trustor without Beneficiary's prior written consent: (a) sells, conveys, contracts to sell by installment and contract, alienates or further encumbers all or any part of the Property; or (b) leases all or any part of the Property for a term, together with all exercisable options, of 3 years or more, or which contains a purchase option; or (c) suffers the title or any interest in the secured Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) is a partnership and any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (f) is a corporation with fewer than 100 stockholders at the date of execution of this Deed of Trust and more than 10% of its capital stock is sold, transferred or assigned during a 12 month period; or (g) is a limited liability company and either (i) any of the managers' interests are transferred or assigned, whether voluntarily or involuntarily, or (ii) more than 10% of the aggregate of its membership interests are sold, transferred or assigned during a 12 month period. Trustor will not create or permit to continue in existence any mortgage, pledge, encumbrance, lien, or charge of any kind (including purchase money and conditional sale liens) on any of the Property except for liens securing the Loan and (a) liens for taxes not yet delinquent, and (b) any other liens or charges that are specifically approved in writing by Beneficiary prior to the recordation of this Deed of Trust.

10. **RIGHT TO PREPAY.** The undersigned shall have no right to prepay all or any portion of the principal balance of this Note unless a period of time is indicated following the heading "Prepayment Penalty Term" shown above. If a term is indicated after the heading "Prepayment Penalty Term", prepayment may be made during such term only upon payment of an amount, in addition to the amount prepaid, equal to the amount shown above after the heading "Prepayment Penalty Amount". There shall be no prepayment penalty for prepayment made after the end of the Prepayment Penalty Term if one is shown above. Said term commences on the date of this Note.

11. **MULTIPLE SIGNERS.** If more than one person signs this Note, their liability is joint and several.

12. **LAW.** This Note and the rights and obligations of the Holder and the undersigned hereunder shall be interpreted, enforced and construed in accordance with the laws of the State in which the real property securing this Note is located, except to the extent the same may be preempted by applicable federal law.

13. **INVALIDITY.** In case any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Note shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included.

(Please sign your name exactly as it appears below.)

Trudy A. Kalush

**END OF DOCUMENT**

# EXHIBIT 4

EXHIBIT 4

Chicago Title

PREPARED BY AND AFTER RECORDING MAIL TO:

Commercial Capital Bank, FSB
P.O. Box 25035
Santa Ana, California 92799-9998
Attention: Loan Service

4464017-A01

178-522-04

This Document was electronically recorded by Chi go Title Glendale

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

33.00
2005000068194 11:58am 01/27/05
102 122 D11 10
0.00 0.00 0.00 0.00 27.00 0.00 0.00 0.00

12038742

SPACE ABOVE THIS LINE FOR RECORDER'S USE

# DEED OF TRUST
# (ADJUSTABLE INTEREST RATE)

LOAN AMOUNT: **$1,725,500.00**

LOAN NO: **0910718-6**

THIS DEED OF TRUST is made and dated as of **January 20, 2005** between **Trudy A. Kalush, A Single Woman**, herein called "Trustor", whose address is **16625 South Pacific Coast Highway, Sunset Beach, California 90742**, Commercial Capital Bancorp, Inc., a Nevada corporation, herein called "Trustee", and Commercial Capital Bank, FSB, a federally chartered savings bank, herein called "Beneficiary". WITNESSETH: That Trustor irrevocably grants, transfers, and assigns to Trustee in trust, with power of sale, that real property, property rights and interest in the County of **Orange**, described in EXHIBIT "A" attached hereto and by this reference made a part hereof.

Assessor's ID/Parcel No.: **178-522-04**

INCLUDING all buildings, structures, improvements, appliances, equipment and appurtenances now or hereafter constructed or placed thereon, including, but not limited to, all apparatus and equipment, whether affixed to the land or building thereon or not affixed thereto, whether single units or centrally controlled, used to provide or supply air-cooling, air-conditioning, heat, gas, water, light and power, refrigeration, ventilation, laundry, clothes drying, dish washing, garbage disposal or other services, waste vent systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor coverings, awnings, ranges and ovens, water heaters, attached cabinets, pumps, pipes, tanks, fire prevention, fire extinguishing and communications apparatus, elevators, escalators, and partitions, and all of the above items are declared to be and are deemed to be things affixed to and a part of the realty for the purposes of this Deed of Trust.

TOGETHER WITH all interest which Trustor now has or may hereafter acquire in or to said property and in and to:

(a) All rents, issues, profits, royalties, tolls, earnings and incomes therefrom and installments of money payable pursuant to any agreement for sale of said Property or any part thereof, subject however to the right, power and authority given to and conferred upon Beneficiary by Paragraph 15 below.
(b) All easements, rights of way and other appurtenances thereto;
(c) All shrubs, trees and plants;
(d) All adjacent lands included in enclosure or occupied by buildings located partly on the above described property;
(e) All crops growing or to be grown on said property;



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(f) All water and water rights (whether or not appurtenant, and shares of stock pertaining to water or water rights ownership of which affects said property;

(g) All claims, demands or causes of action of any kind including proceeds of settlement of any such claim, demand or cause of action of any kind, including insurance proceeds subject to the right of Beneficiary given by Paragraph 2 below, which Trustor now has or may hereafter acquire, arising out of acquisition or ownership of the property, subject however to the right, power and authority given to and conferred upon Beneficiary by Paragraph 5 below. Trustee shall have no duty to prosecute any such claim, demand or cause of action.

For the purposes of this instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights and interest shall be referred to as "the Property".

THIS DEED OF TRUST SECURES AN ADJUSTABLE RATE NOTE - SEE PARAGRAPH 23.

THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING THE FOLLOWING:

A. Payment of the loan amount above, with interest thereon, according to the terms of a Promissory Note or Notes (herein sometimes referred to as "the Note") of even date herewith, made by Trustor, payable to Beneficiary or order, and any and all modifications and extensions or renewals thereof (see Paragraph 23);

B. Payment of such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary by the then record owner or owners of the Property which are required or permitted by the documents secured by this Deed of Trust and all extensions, modifications and renewals of such additional borrowings;

C. Payment, performance and discharge of and security for every obligation, covenant and agreement of Trustor whether contained or incorporated by reference in this Deed of Trust, or contained in any instrument now or hereafter executed by Trustor in connection with the loan evidenced by the Note, including but not limited to the loan application, any financial statements, escrow instructions, assignment, construction loan agreement, holdback agreement, pledge agreement, security agreement, supplemental agreement, assignment of Lessor's interest in leases, modification agreement or assumption agreement, but expressly excluding any environmental indemnification agreement, (collectively the "Loan Documents");

D. Payment of all sums of money with interest which may be paid out or advanced by, or may otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust.

To Protect the Security of this Deed of Trust, Trustor Agrees:

1. **PRESERVATION OF THE PROPERTY.** Trustor (a) shall keep and maintain the Property in good condition and repair, (b) shall not remove, demolish or substantially alter any building, structure or improvement thereon, (c) shall complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and will pay when due all claims for labor performed and material furnished therefor, (d) shall comply with the provisions of all insurance policies covering and with all laws and regulations affecting the Property or requiring any alterations, repairs or improvements thereon, (e) shall not commit or suffer any waste thereon, (f) shall not commit or suffer any act upon the Property in violation of any provision of any insurance policy or law or regulation, and (g) consistent with the use thereof, shall timely do all other acts which the character or use of the Property may reasonably require.

2. **INSURANCE.** Trustor shall, at Trustor's expense, provide and maintain in force at all times with respect to the Property, fire, flood, earthquake and other types of insurance as may be required by Beneficiary. All of such insurance policies shall have a loss payable endorsement in favor of Beneficiary and shall be for a term and in form, content, amount, and with such insurance companies, as may be satisfactory to Beneficiary. Such policies shall be delivered to Beneficiary whether upon the making of this Deed of Trust or at a subsequent time during the term of the Note. Trustor shall also deliver at such times evidence that the full premium for any such policy has been paid. Beneficiary at its option may retain possession of the original policy or it may release it to the possession of the Trustor. At least thirty (30) days before the expiration of any such insurance policy, a policy or policies renewing, extending or replacing such expiring insurance shall be delivered by Trustor to Beneficiary. If any such insurance policy is not so delivered to Beneficiary or in the event any such insurance policy is canceled, whether the Beneficiary has in its possession the policies or not, and no reinstatement or replacement policy is received prior to termination of insurance, Beneficiary, without notice to or demand upon Trustor, may (but shall not be obligated to) obtain such insurance with such company as Beneficiary may deem satisfactory, and pay the premium therefore, and the amount of any premium so paid shall be charged to and promptly paid by Trustor or at the option of Beneficiary, may be added to the indebtedness secured hereby. Failure to reimburse Beneficiary within 10 days of billing for such premium shall be a default, even if the required policies were in effect if the evidence of such coverage was not timely provided as required to Beneficiary.

Beneficiary may add the premium an    t if not timely paid to the principal balance    the Loan without waiving any default. Should any policy thus obtained by Beneficiary thereafter be cancelled, Trustor shall pay to Beneficiary any earned premiums on said policy and a reasonable charge for its services in obtaining such policy.

Neither Trustee nor Beneficiary shall be responsible for the collection of any insurance monies, or for any insolvency of any insurer or insurance underwriter. The right to any unearned premiums under said insurance policies is hereby assigned and shall pass to the purchaser of the Property conveyed at any Trustee's sale held or to the grantee of a deed in lieu of foreclosure if such a conveyance is made. Any part or all of the amount collected under any fire or other insurance policy covering the Property, whether such policy was required by Beneficiary or not, may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust at such time and in the manner and amount as Beneficiary may determine, or at the option of Beneficiary, without reducing the indebtedness secured hereby, may either be used to replace, restore or reconstruct the Property to a condition satisfactory to Beneficiary or be released to Trustor. Any application, use or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Trustor shall pay Beneficiary inspection fees and other costs resulting from or connected with the casualty loss to which such insurance relates.

Trustor hereby assigns to Beneficiary all proceeds of any insurance (including, but not limited to, earthquake insurance) which Trustor may be entitled to receive for loss or damage to the Property, whether or not such insurance is required pursuant to this Deed of Trust or any of the Loan Documents. In the event of any loss or damage to the Property, all insurance proceeds (including, but not limited to, earthquake insurance), whether or not so required, shall be payable to Beneficiary, and Trustor hereby authorizes and instructs any concerned insurance company to pay such insurance proceeds directly to Beneficiary.

3. **LIFE, ACCIDENT OR HEALTH INSURANCE.** If Trustor shall assign or deliver a policy of life, accident or health insurance to Beneficiary as further security hereunder, then if Trustor fails to pay any premium thereon, Beneficiary shall be entitled, but not obligated, to pay any such premium. Any amount so paid shall be charged to and promptly paid by Trustor. Failure to reimburse Beneficiary within 10 days of billing for such premium shall be a default. Beneficiary may add the premium amount if not timely paid to the principal balance of the Loan without waiving any default.

4. **TAXES AND ENCUMBRANCES.** Trustor shall pay (a) at least twenty (20) days before delinquency, all general and special taxes, and assessments now or hereafter affecting the Property, including any assessments on appurtenant water stock; (b) when due, all special assessments for public improvements without permitting any improvement bond to issue for any special assessment; (c) on demand of Beneficiary, all encumbrances, charges and liens on the Property or any part thereof, which are or may be prior or superior hereto; (d) when due, all fees and charges incidental to ownership, occupancy or beneficial use of the Property; and (e) if the Property is or includes a condominium, community apartment or is all or part of a planned development, all payments required of the owner thereof under any declaration of covenants or conditions or restrictions pertaining to such project. Should Trustor fail to make any payment under this Paragraph 4, Beneficiary may, but shall not be obligated to, make such payment and any amount so paid shall be charged to and promptly paid by Trustor or, at the option of Beneficiary, shall be added to the indebtedness secured hereby, without regard to the validity or legality of such assessments, liens or charges.

5. **CLAIMS, DEMANDS AND ACTIONS.** Trustor shall (a) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (b) at the option of Beneficiary, assign to Beneficiary, to the extent of Beneficiary's interest, any claims, demands or causes of action of any kind, including any award, court judgment or proceeds of settlement of any such claim, demand or cause of action of any kind which Trustor now has or may hereafter acquire arising out of acquisition or ownership of the Property. Without limiting the generality of the foregoing, any such claim, demand or cause of action arising out of acquisition or ownership of the Property may include (i) any such injury or damage to the Property or any structure or improvement situated thereon, or (ii) any claim or cause of action in favor of Trustor which shall have arisen out of the transaction financed in whole or in part by the making of the loan secured hereby, or (iii) any claim or cause of action in favor of Trustor (except for bodily injury) which arises as a result of any negligent or improper construction, installation or repair of the Property, including the surface or subsurface thereof, or of any building or structure thereon. Trustor shall at Trustor's expense pursue such claims and shall not permit any award of damages to be subject to a claim of attorneys' fees unless approved in writing by Beneficiary. Beneficiary may apply, use or release such monies received by it in the same manner as Paragraph 2 provides for application, use, or release of insurance proceeds.

6. **DEFENDING TRUST.** Notwithstanding the provisions of Paragraph 5, Beneficiary or Trustee may (a) commence and prosecute or appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (b) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appear to be prior or superior hereto; and (c) in exercising any such right, incur any liability and expend whatever amounts either deems reasonably necessary, including cost of evidence of title and reasonable attorneys' fees and such costs and expenses shall be added to the principal balance of the Loan and shall be paid by Trustor within 30 days or such other period acceptable to Beneficiary.

7. **PROTECTION OF SECURITY BY BENEFICIARY OR TRUSTEE.** Should Trustor fail to make any payment or do any act provided in this Deed of Trust, then Beneficiary or Trustee, but without obligation so to do, and without

notice to or demand upon Trustor, a. /ithout releasing Trustor from any obligat. ıereof, may make any such payment or do any such act in such manner and to such extent as either deems necessary to protect the security hereof. Beneficiary or Trustee is authorized to enter upon the Property at any time for such purpose. Trustor hereby irrevocably authorizes Beneficiary to apply any and all amounts received by Beneficiary in repayment of the Loan first to amounts which are not guaranteed pursuant to the terms of any guaranty executed in connection with this Loan and then to amounts which are guaranteed pursuant to the terms of any such guaranty. Trustor hereby waives any and all rights it has or may have under Section 2822 of the Civil Code of California, as amended or recodified from time to time, which provides that if a guarantor is "liable upon only a portion of an obligation and the principal provides partial satisfaction of the obligation, the principal may designate the portion of the obligation that is to be satisfied".

8. **REIMBURSEMENT.** Trustor shall pay immediately upon demand all costs, fees or expenses incurred and sums expended or advanced under the terms of this Deed of Trust by Beneficiary or Trustee, with interest thereon at a rate equal to the rate provided for in the Note secured hereby, and the obligation of Trustor to pay such sums and interest as aforesaid shall be secured hereby.

9. **LEASEHOLD ESTATES.** If the security for this Deed of Trust is a leasehold estate, Trustor shall not modify, surrender, or terminate the lease or leases, creating the leasehold estate, and shall comply with all of the covenants and conditions required of the Lessee or his successor in interest to be performed under the lease or leases creating said leasehold estate, including but not limited to paying when due rent and other charges imposed upon such Lessee.

10. **IMPOUND ACCOUNT.** Trustor shall pay to Beneficiary, if Beneficiary shall so demand, in addition to any other payment required hereunder, monthly installments for the purpose of creating and maintaining a fund to provide payment when due of any taxes, encumbrances, assessments, leasehold payments relating to the Property, premiums for any policies of insurance insuring the Property, the Trustor or the loan, more specifically referred to in Paragraphs 2, 3, 4 and 9. Trustor shall deliver promptly to Beneficiary all bills and notices thereof. Said installments shall be in such amounts as Beneficiary shall estimate from time to time to be necessary to provide sufficient monies in said fund to pay such taxes, encumbrances, assessments, leasehold payments and premiums when they become due and shall be payable concurrently with the monthly installment under the Note. If the amounts paid to Beneficiary under the provisions of this paragraph are insufficient to pay such taxes, assessments, leasehold payments and premiums as they become due, Trustor shall pay to Beneficiary promptly upon demand the amount of the deficiency. Failure to timely pay any such insufficient impound amounts shall be a default.

In the event of default of any obligation hereby secured, then any funds in the possession of Beneficiary under the provisions of this paragraph may, at the option of Beneficiary, be applied upon any indebtedness secured hereby.

11. **FINANCIAL STATEMENTS.** Within thirty (30) days after written demand by Beneficiary but not more frequently than annually, Trustor shall deliver to Beneficiary verified financial statements for the Trustor and for any business of Trustor which was a material consideration in Beneficiary granting the Loan, prepared in accordance with acceptable accounting practices, for such annual or other period as Beneficiary may designate. Such financial statements shall include balance sheets, operating statements, and statements of sources and application of funds. In addition, Trustor shall deliver to Beneficiary on demand, copies of all leases, agreements, vouchers, receipts and other documents supporting any of the items shown in such statements. Trustor shall keep and maintain a full and accurate set of books and records showing all the matters above specified, and shall permit Beneficiary at any time to inspect and audit all Trustor's books of account, records, and papers relating to any of the foregoing matters. In the event any such audit is caused to be made by Beneficiary by reason of the failure of Trustor to comply with any of the foregoing provisions, then Trustor shall pay to Beneficiary upon demand all expenses incurred by Beneficiary in connection with such audit.

12. **DAMAGE TO OR CONDEMNATION OF PROPERTY.** Any award of damages or compensation for injury to, or in connection with any condemnation for public use of the Property or any part thereof, or any proceeds of any settlement with respect to a condemnation whether or not eminent domain proceedings have been instituted, shall be and is hereby assigned by Trustor and shall be paid to Beneficiary, who may apply, use or release the amount thereof in the same manner as Paragraph 2 provides for application, use, or release of insurance proceeds.

13. **BENEFICIARY'S CONSENT REQUIRED.** Beneficiary may declare all sums secured hereby immediately due and payable except as expressly limited by law, if Trustor without Beneficiary's prior written consent: (a) sells, conveys, contracts to sell by installment land contract, alienates or further encumbers all or any part of the Property; or (b) leases all or any part of the Property for a term, together with all exercisable options, of 3 years or more, or which contains a purchase option; or (c) suffers the title or any interest in the secured Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) is a partnership and any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (f) is a corporation with fewer than 100 stockholders at the date of execution of this Deed of Trust and more than 10% of its capital stock is sold, transferred or assigned during a 12 month period; or (g) is a limited liability company and either (i) any of the managers' interests are transferred or assigned, whether voluntarily or involuntarily, or (ii) more than 10% of the aggregate of its membership interests are sold, transferred or assigned during a 12 month period. Trustor will not create or permit to continue in

existence any mortgage, pledge, enc )rance, lien, or charge of any kind (includ. purchase money and conditional sale liens) on any of the Property except for liens securing the Loan and (a) liens for taxes not yet delinquent, and (b) any other liens or charges that are specifically approved in writing by Beneficiary prior to the recordation of this Deed of Trust.

14. **NO WAIVER.** Trustee or Beneficiary by accepting payment of any sum secured hereby after its due date, or by making payment or taking any action which, under the provisions hereof either Trustee or Beneficiary is entitled but not obligated to make or take, or by forbearing from enforcing any of its rights, shall not be deemed to have waived its right to require payment from or action by Trustor and to declare a default for Trustor's failure to do so. In the event either Trustee or Beneficiary shall expressly waive any rights under any provisions of this Deed of Trust, such waiver shall not be deemed a waiver of any rights Trustor or Beneficiary may have subsequently to require payment from or action by Trustor and declare a default for Trustor's failure to do so.

15. **ASSIGNMENT.** Trustor hereby absolutely and unconditionally assigns and transfers all of Trustor's right, title, and interest to Beneficiary, during the continuance of these trusts, in and to all rents, issues, profits, royalties, tolls, earnings and income of the Property including those arising by reason of any oil, gas or mineral lease thereof, and all installments of money payable pursuant to any contract of sale or lease relating to the Property or any part thereof (hereinafter referred to collectively as "income"), together with the right, power and authority to collect and retain all such income as it becomes due and payable. All income received by Beneficiary through the exercise of the foregoing assignment, less all expenses, (including reasonable attorneys' fees) incurred by Beneficiary in collecting such income shall be applied by Beneficiary on any indebtedness secured by this Deed of Trust at such time and in the manner and amount as Beneficiary may determine. Without limiting the generality of the foregoing, such application may include payment of periodic installments of principal and interest, or reduction of the principal balance or reimbursement to Beneficiary as provided in Paragraph 8. The foregoing is an absolute assignment effective upon recordation of this Deed of Trust and is independent of Beneficiary's actual or constructive possession of the Property. Prior to any default, Trustor is hereby granted the right to collect the assigned income first to pay all operating expenses of the Property then to pay any net income to the owners of the Property. Upon default, Trustor's right to collect income terminates automatically.

16. **DEFAULT BY TRUSTOR.** Upon default by Trustor in payment of any indebtedness secured, or in the performance of any obligation imposed upon Trustor by this Deed of Trust, or the other Loan Documents, Beneficiary may, without notice and irrespective of whether declaration of default has been delivered to Trustee and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent, without bringing any action or proceeding, without entering into possession of the Property, or by receiver to be appointed by a court; (a) enter into possession and hold, occupy, possess and enjoy the Property; (b) make, cancel, enforce, modify or terminate leases; (c) obtain and eject tenants; (d) set or modify rents; (e) take, receive and collect all or any part of the income described in Paragraph 15, including income received by the Trustor after the default or before it became due. After paying such costs of maintenance and operation of the Property as it in its judgment may deem proper, Beneficiary may apply the balance upon the entire indebtedness then secured hereby. The acceptance of such income shall not constitute a waiver of any other right which Trustee or Beneficiary may have under this Deed of Trust or under the laws of California. The receipt and application by Beneficiary of such income pursuant thereto, after execution and delivery of declaration of default and demand for sale or during the pendency of a Trustee's sale proceeding hereunder, shall not cure any breach or default, nor affect said sale proceeding or any sale made pursuant thereto, but such income, less all costs of operation and maintenance, when received by Beneficiary, shall be applied in reduction of the entire indebtedness from time to time secured hereby. Trustor shall not in any manner obstruct or interfere with any of Beneficiary's rights under this Paragraph 16.

17. **TRUSTEE AUTHORIZED.** Upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the liability of any person for payment of the indebtedness secured hereby, Trustee may (a) reconvey any part of the Property; (b) execute the title sheet of any map, plat or record of survey thereof; (c) join in granting any easement thereon; or (d) join in any agreement modifying the terms hereof or subordinating the lien or charge hereof. Trustor shall pay to Beneficiary and Trustee a reasonable service charge for any such action.

18. **RECONVEYANCE.** Upon written request of Beneficiary and upon surrender of this Deed of Trust and the Note secured hereby to Trustee for retention, and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Five (5) years after the date of such reconveyance, Trustee may destroy the Deed of Trust and Note, without liability. Notwithstanding anything set forth herein, Trustee may, in its sole discretion, deliver said Note or Deed of Trust or both to the person entitled thereto.

19. **FEES.** Trustor shall pay to Beneficiary the maximum amount as may from time to time be permitted by law for furnishing in connection with the obligations secured hereby, each statement pursuant to any statute at the time then in force. Additionally, Trustor shall pay Beneficiary's and Trustee's fees, charges and expenses for any other statement, information or services furnished by Beneficiary or Trustee in connection with the obligations secured hereby. Said

services may include, but shall not limited to, the processing by Beneficiary or Trustee, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owner, recordation of map, plat or record of survey, grants of easements, and full and partial reconveyance, and the obtaining by Beneficiary of any policies of insurance pursuant to any of the provisions contained in this Deed of Trust. Additionally, Trustor shall pay all Trustee's fees, attorneys' fees, costs and expenses incurred in connection with or arising from any of the actions taken by Beneficiary, Trustee, or their agents described in Paragraphs 6, 8, 16 and 20.

**20. SALE BY TRUSTEE.** Upon default by Trustor in payment of any indebtedness, or performance of any obligation secured by this Deed of Trust, Beneficiary, in addition to any other remedy or process available to Beneficiary, may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and causing to be filed for record a written notice of default and election to sell, and shall deposit with Trustee this Deed of Trust and any Note or other evidence of indebtedness secured by this Deed of Trust and all documents evidencing expenditures secured hereby. After the lapse of such time as may be required by law following the filing for record of said notice of default, and after giving all such notice as may be required by law, Trustee, without demand on Trustor, may sell the Property, either as a whole or in separate parcels, and in such order as it may determine, by public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, or for the equivalent of cash, as so determined by Trustee in its sole discretion. If the indebtedness secured hereunder is additionally secured by real property which is not subject to this Deed of Trust, Trustee may sell any property so given as security for Trustor's obligation, which it is authorized to sell, either in whole or in separate parcels and in such order as it may determine. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place fixed for such sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Following sale, Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact shall be conclusive proof of the truth thereof. Any person, including Trustor, Trustee and Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this trust, including cost of evidence of title in connection with the sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale to payment, first, of all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the rate specified in the note secured by this Deed of Trust, and then to all other sums secured by this Deed of Trust, and, if there be any proceeds remaining, shall distribute them to the person or persons legally entitled thereto, upon proof of entitlement being submitted to Trustee.

**21. WAIVER OF STATUTE OF LIMITATIONS.** Trustor hereby waives, to the fullest extent permissible by law, the statute of limitations as a defense to any demand or obligations secured by this Deed of Trust.

**22. SUBSTITUTION OF TRUSTEE.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or action hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county or counties where the Property is situated, shall be conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance, succeed to all the title, estate, right, powers and duties of the predecessor Trustee. Said instrument shall contain the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution may not be exercised unless the then acting Trustee signs an endorsement on such instrument of substitution to the effect that all costs, fees and expenses due to such Trustee have been paid or satisfied.

**23. ADJUSTABLE MORTGAGE LOAN.** The Note secured by this Deed of Trust contains provisions which may result in increases in the interest rate, in the monthly installments, and in the unpaid principal balance. Reference is hereby made to the Promissory Note for the specific provisions relating to such increases.

**24. HAZARDOUS SUBSTANCES.** Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Trustor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 24, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 24, "Environmental Laws" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**25. OCCUPANCY AGREEMENT.** If Trustor was required to execute a Occupancy Agreement as a condition for obtaining the Loan secured by this Deed of Trust, the terms of the Occupancy Agreement, including the provisions which make a violation of its terms an event of default under this Deed of Trust, are incorporated herein by this reference.

**26. WARRANTIES.** Trustor represents and warrants that by signing this Deed of Trust all signers have requisite power and authority to execute this Deed of Trust and any and all other instruments they have executed and delivered to Beneficiary in connection with the Loan secured by this Deed of Trust, that any and all balance sheets, income statements, and financial data of any other kind furnished to Beneficiary by or on behalf of Trustor are true and correct and accurately reflect the present financial condition of the subjects thereof as of the date thereof. These representations and warranties shall survive until all obligations and sums due which are secured by this Deed of Trust have been satisfied in full. Any breach of these warranties shall be a default and Trustor shall indemnify, defend and hold Beneficiary harmless from any loss, fees or costs directly or indirectly related to claims arising out of such breach.

**27. GENERAL PROVISIONS:**

A. The term "Trustor" shall mean all parties executing this Deed of Trust as Trustor, their respective heirs, legatees, devisees, administrators, executors, successors in interest and assigns, provided that Beneficiary shall not be obligated to give Notice of Default or Notice of Sale hereunder to any Trustor other than as shown on the face page hereof.

B. The term "Beneficiary" shall mean the owner and holder (including a pledgee) of the Note secured hereby, whether or not named as Beneficiary herein.

C. Every provision of this Deed of Trust imposing upon Trustor an obligation to perform an act, or embodying an agreement by Trustor to perform an act, shall be construed as obligating Trustor to pay all costs and expenses relating thereto.

D. In the event any provision hereof shall be declared invalid or unenforceable through a final judgment in a court having competent jurisdiction, the validity or enforceability of any of the remaining terms hereof shall not be thereby impaired.

E. In this Deed of Trust, wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa, and if more than one person is named as Trustor, the obligations of Trustor shall be the joint and several obligations of each person.

F. Captions and paragraph headings used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.

The undersigned Trustor(s) request(s) that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to each Trustor named on the face page hereof, at the address set forth thereon.

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE AND CONTAINS PROVISIONS WHICH MAY REQUIRE A BALLOON PAYMENT AT MATURITY.

Trudy A. Kalush



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WEPAT

State of California
County of LOS ANGELES

On JAN. 21, ~~2004~~ 2005 before me, VERLYNE VANDERPOOL
DATE NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC"

personally
appeared TRUDY A. KALUSH

NAME(S) OF SIGNER(S)

☐ personally known to me - **OR** - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

VERLYNE VANDERPOOL
Commission # 1457434
Notary Public - California
Los Angeles County
My Comm. Expires Dec 21, 2007

WITNESS my hand and official seal.

Verlyne Vanderpool
SIGNATURE OF NOTARY



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WEPA1

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the Notary Seal on the document to which this Statement is attached reads as follows:

NAME OF THE NOTARY: Verlyne Vanderpool

DATE COMMISSION EXPIRES: 12-21-07

COUNTY WHERE BOND IS FILED: Los Angeles

COMMISSION NUMBER: 1457434 VENDOR#: NNA1

I certify under penalty of perjury and the laws of the State of California that the illegible portion of this document to which this statement is attached reads as follows:

PLACE OF EXECUTION: **LOS ANGELES** **DATE:** 1/24/05

SIGNATURE:

* Personally know to me (or proved to me on the basis of satisfactory evidence) to be the person(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s)acted, executed the instrument.

# EXHIBIT "A"

LOT 1, BLOCK 20, OF SUNSET BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGES 39 AND 40 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

# EXHIBIT 5

EXHIBIT 5

**DYKEMA GOSSETT LLP**
Lewis R. Landau, SBN: 143391
llandau@dykema.com
Walead Esmail, SBN: 266632
wesmail@dykema.com
333 South Grand Avenue, Suite 2100
Los Angeles, California 90071
Telephone: (213) 457-1800
Facsimile: (213) 457-1850

Attorneys for Creditor Deutsche Bank National Trust Company, as Trustee for Indymac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12, Under the Pooling and Servicing Agreement Dated as of June 1, 2005 by servicing agent OneWest Bank, FSB

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

| | |
|---|---|
| In re<br><br>TRUDY KALUSH,<br><br>Debtor and Debtor in Possession. | Case No. 8:11-bk-19563-ES<br><br>Chapter 11<br><br>**DECLARATION OF RONALDO REYES IN SUPPORT OF CREDITOR STANDING AND NOTE OWNERSHIP**<br><br>Hearing Date: August 28, 2012<br>Time: 9:30 & 10:30 a.m.<br>Place: Courtroom 5A<br>411 W. Fourth Street,<br>Santa Ana, CA |

**DYKEMA GOSSETT LLP**
333 SOUTH GRAND AVENUE, SUITE 2100
LOS ANGELES, CALIFORNIA 90071

I, Ronaldo Reyes, declare as follows:

1. I am a Vice President of Deutsche Bank National Trust Company ("DBNTC"). This affidavit is based on my personal knowledge obtained from my review of records regularly maintained by DBNTC in the ordinary course of its business. If called as witness, I could and would testify competently as to the facts stated herein based upon my personal knowledge.

2 Pursuant to the Pooling and Servicing Agreement dated as of June 1, 2005 ("PSA"), DBNTC is the trustee and custodian ("Trustee") for IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 ("Trust"). Attached hereto as **Exhibit A** is a true and correct copy of the PSA.

3. Pursuant to the PSA, DBNTC as Trustee became the owner of a mortgage loan to borrower Trudy A. Kalush ("Borrower") for real property located at 16625 South Pacific Coast Highway, Sunset Beach, California 90742 ("Subject Loan") on behalf of the certificateholders of the Trust as of the Trust's closing date, which was June 6, 2005. Pursuant to the PSA, the Subject Loan was conveyed to DBNTC from the Depositor, IndyMac MBS, Inc. Attached hereto as **Exhibit B** is a redacted copy of the Mortgage Loan Schedule (Schedule I to the PSA), which identifies the Subject Loan as part of the Trust.

4. According to DBNTC's business records, on or about April 5, 2005, DBNTC received the Borrower's original note endorsed in blank ("Note") for the Subject Loan. Attached hereto as **Exhibit C** is a true and correct copy of the Note with endorsements.

5. On or about May 3, 2012, DBNTC received the Borrower's original recorded January 20, 2005 deed of trust ("Deed of Trust") that secured the Note. Attached hereto as **Exhibit D** is a true and correct copy of the original Deed of Trust.

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

6. The Note and Deed of Trust are maintained in what DBNTC commonly refers to as its custody file, which is kept in a secure file room for safekeeping.

7. DBNTC shipped the custody file to the current loan servicer for the Subject Loan, OneWest Bank, FSB, on or about May 3, 2012. On or about July 6, 2012, DBNTC received back into its possession the custody file, which I personally reviewed for the purposes of this affidavit.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 6, 2012 at Santa Ana, California.

FURTHER THE AFFIANT SAYETH NOT.

AFFIANT, Ronaldo Reyes

STATE OF CALIFORNIA )
)
COUNTY OF ORANGE )

Subscribed and sworn to (or affirmed) before me on this 6th day of July 2012, by Ronaldo Reyes, who proved to me on the basis of satisfactory evidence to be the person who appeared before me.

NOTARY PUBLIC

TUAN QUACH
Commission # 1838344
Notary Public - California
Orange County
My Comm. Expires Feb 26, 2013

PAS01\334741.3
ID\WE - 105636/0377

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071



[redacted]

# EXHIBIT A

EXECUTION COPY

# INDYMAC MBS, INC.
Depositor

# INDYMAC BANK, F.S.B.
Seller and Master Servicer

# DEUTSCHE BANK NATIONAL TRUST COMPANY
Trustee

---

# POOLING AND SERVICING AGREEMENT
Dated as of June 1, 2005

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# INDYMAC INDX MORTGAGE LOAN TRUST
2005-AR12

# MORTGAGE PASS-THROUGH CERTIFICATES
Series 2005-AR12

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SCHEDULES



EXHIBITS

THIS POOLING AND SERVICING AGREEMENT, dated as of June 1, 2005, among INDYMAC MBS, INC., a Delaware corporation, as depositor (the "***Depositor***"), IndyMac Bank, F.S.B. ("***IndyMac***"), a federal savings bank, as seller (in that capacity, the "***Seller***") and as master servicer (in that capacity, the "***Master Servicer***"), and Deutsche Bank National Trust Company, a national banking association, as trustee (the "***Trustee***"),

**WITNESSETH THAT**

In consideration of the mutual agreements set forth in this Agreement, the parties agree as follows:

PRELIMINARY STATEMENT

The Depositor is the owner of the Trust Fund that is hereby conveyed to the Trustee in return for the Certificates. As provided in this Agreement, the Trustee shall elect that the Trust Fund (exclusive of the Yield Maintenance Agreements, the Yield Maintenance Reserve Funds and the Carryover Shortfall Reserve Fund) be treated for federal income tax purposes as comprising four real estate mortgage investment conduits (each, a "***REMIC***" or, in the alternative, "***REMIC 1***", "***REMIC 2***," "***REMIC 3***" and the "***Master REMIC***"). Each Certificate, other than the Class A-R Certificate, will represent ownership of one or more regular interests in the Master REMIC for purposes of the REMIC Provisions. The Class A-R represents ownership of the sole class of residual interest in each REMIC created under this Agreement. The Master REMIC will hold as assets the several classes of uncertificated REMIC 3 Interests (other than the Class R-3 Interest). REMIC 3 will hold as assets the several classes of uncertificated REMIC 2 Interests (other than the Class R-2 Interest). REMIC 2 will hold as assets the several classes of uncertificated REMIC 1 Interests (other than the Class R-1 Interest). REMIC 1 will hold as assets all property of the Trust Fund other than the Yield Maintenance Agreements, the Yield Maintenance Reserve Funds and the Carryover Shortfall Reserve Fund. Each REMIC 3 Interest (other than the Class R-3 Interest) is hereby designated as a regular interest in REMIC 3. Each REMIC 2 Interest (other than the Class R-2 Interest) is hereby designated as a regular interest in REMIC 2. Each REMIC 1 Interest (other than the Class R-1 Interest) is hereby designated as a regular interest in REMIC 1. The latest possible maturity date of all REMIC regular interests created in this Agreement shall be the Latest Possible Maturity Date.

**REMIC 1**

The REMIC 1 Interests will have the initial principal balances, Pass-Through Rates and corresponding Loan Groups as set forth in the following table:

| REMIC 1 Interests | Initial Principal Balance | Pass-Through Rate | Corresponding Loan Group |
|---|---|---|---|
| A-1 (0.9% of SP Loan Group 1) | (1) | (3) | 1 |
| B-1 (0.1% of SP Loan Group 1) | (1) | (3) | 1 |
| C-1 (0.9% of SP Loan Group 1) | (1) | (3) | 1 |
| D-1 (0.1% of SP Loan Group 1) | (1) | (3) | 1 |
| E-1 (Excess of 50% of Loan Group 1) | (1) | (3) | 1 |
| A-2 (0.9% of SP Loan Group 2) | (1) | (3) | 2 |
| B-2 (0.1% of SP Loan Group 2) | (1) | (3) | 2 |
| C-2 (0.9% of SP Loan Group 2) | (1) | (3) | 2 |
| D-2 (0.1% of SP Loan Group 2) | (1) | (3) | 2 |
| E-2 (Excess of 50% of Loan Group 2) | (1) | (3) | 2 |

| | | | |
|---|---|---|---|
| X-1 (0.5% of Loan Group 1) | (2) | (3) | N/A |
| Y-1 (0.5% of Loan Group 1) | (2) | (3) | N/A |
| Z-1 (Excess of 50% of Loan Group 1) | (2) | (3) | N/A |
| X-2 (0.5% of Loan Group 2) | (2) | (3) | N/A |
| Y-2 (0.5% of Loan Group 2) | (2) | (3) | N/A |
| Z-2 (Excess of 50% of Loan Group 2) | (2) | (3) | N/A |
| R-1 | (4) | (4) | N/A |

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(1) Each Class A and Class C Interest will have a principal balance initially equal to 0.9% of the Subordinated Portion ("***SP***") of its corresponding Loan Group. Each Class B and Class D Interest will have a principal balance initially equal to 0.1% of the SP of its corresponding Loan Group. The initial principal balance of each Class E Interest will equal the excess of 50% of the initial aggregate principal balance of its corresponding Loan Group over the initial aggregate principal balances of the Class A, Class B, Class C and Class D Interests corresponding to such Loan Group.

(2) Each Class X and Class Y REMIC 2 Interest will have an Initial Principal Balance equal to 0.5% of the principal balance of the Mortgage Loans in its Corresponding Loan Group. Each Class Z REMIC 2 Interest will have an Initial Principal Balance equal to the excess of 50% of the initial aggregate Stated Principal Balance of the Mortgage Loans in its Corresponding Loan Group over the initial aggregate principal balances of the Class A and Class B REMIC 1 Interests corresponding to such Loan Group.

(3) The Net WAC Cap of the Mortgage Loans in the corresponding Loan Group.

(4) The Class R-1 Interest is the sole class of residual interest in REMIC 1. It has no principal balance and pays no principal or interest.

On each Distribution Date, the Available Funds shall be distributed with respect to the REMIC 1 Interests in the following manner:

(1) Interest is to be distributed with respect to each REMIC 1 Interest according to the formulas described above;

(2) If no Cross-Over Situation exists with respect to any Class of Interests, then Principal Amounts, Deferred Interest and Realized Losses arising with respect to each Loan Group will be allocated: first to cause the Loan Group's corresponding Class A Interests to equal 0.9% of the SP and the Loan Group's corresponding Class B Interests to equal 0.1% of the SP; second, to the Loan Group's Class C and Class D Interests as provided in Note (4) below; and third, to the Loan Group's Class E Interests.

(3) If a Cross-Over Situation exists with respect to the Class A and Class B Interests then:

> (a) if the Calculation Rate in respect of the outstanding Class A and Class B Interests is less than the Subordinate WAC Cap, Principal Relocation Payments will be made proportionately to the outstanding Class A Interests prior to any other distributions of principal from each such Loan Group; and
>
> (b) if the Calculation Rate in respect of the outstanding Class A and Class B Interests is greater than the Subordinate WAC Cap, Principal Relocation Payments will be made proportionately to the outstanding Class B Interests prior to any other distributions of principal from each such Loan Group.

In case of either (a) or (b), Principal Relocation Payments will be made so as to cause the Calculation Rate in respect of the outstanding Class A and Class B Interests to equal the Subordinate WAC Cap. With respect to each Loan Group, if (and to the extent that) the sum of (a) the principal payments comprising the Principal Amount received during the Due Period and (b) the Realized Losses, are insufficient to make the necessary reductions of principal on the Class A and Class B Interests, then interest will be added to the Loan Group's other REMIC 1 Interests that are not receiving Principal Relocation Payments, in proportion to their principal balances.

(c) The outstanding aggregate Class A and Class B Interests for all Loan Groups will not be reduced below 1% of the excess of (i) the aggregate Stated Principal Balances of the Mortgage Loans as of the end of any Due Period (excluding any accruals of Deferred Interest) over (ii) the Certificate Balance of the Senior Certificates (excluding the Class A-R Certificates) for all Loan Groups as of the related Distribution Date (after taking into account distributions of principal on such Distribution Date).

If (and to the extent that) the limitation in paragraph (c) prevents the distribution of principal to the Class A and Class B Interests of a Loan Group, and if the Loan Group's Class C Interest has already been reduced to zero, then the excess principal from that Loan Group will be paid to the Class C Interests of the other Loan Group, the aggregate Class A and Class B Interests of which are less than 1% of the SP. If the Mortgage Loans in the Loan Group of the Class C Interest that receives such payment have a Net WAC Cap below the Net WAC Cap of the Mortgage Loans in the Loan Group making the payment, then the payment will be treated by the REMIC 1 as a Realized Loss. Conversely, if the Mortgage Loans in the Loan Group of the Class C Interest that receives such payment has a Net WAC Cap above the Net WAC Cap of the Mortgage Loans in the Loan Group making the payment, then the payment will be treated by the REMIC 1 as a reimbursement for prior Realized Losses.

(4) With respect to the Class C and Class D Interests then:

(a) if the Calculation Rate in respect of the outstanding Class C and Class D Interests is less than the Subordinate Tax Adjusted Rate Cap, Principal Relocation Payments will be made proportionately to the outstanding Class C Interests prior to any other distributions of principal from each such Loan Group; and

(b) if the Calculation Rate in respect of the outstanding Class C and Class D Interests is greater than the Subordinate Tax Adjusted Rate Cap, Principal Relocation Payments will be made proportionately to the outstanding Class  Interests prior to any other distributions of principal from each such Loan Group.

In case of either (a) or (b), Principal Relocation Payments will be made so as to cause the Calculation Rate in respect of the outstanding Class C and Class D Interests to equal the Subordinate Tax Adjusted Rate Cap. With respect to each Loan Group, if (and to the extent that) the sum of (a) the principal payments comprising the Principal Amount received during the Due Period and (b) the Realized Losses, are insufficient to make the necessary reductions of principal on the Class C and Class D Interests, then interest will be added to the Loan Group's other REMIC 1 Interests that are not receiving Principal Relocation Payments, in proportion to their principal balances.

(c) The outstanding aggregate Class C and Class D Interests for all Loan Groups will not be reduced below 1% of the excess of (i) the aggregate Stated Principal Balances of the Mortgage Loans as of the end of any Due Period (excluding any accruals of Deferred Interest) over (ii) the Certificate Balance of the Senior Certificates (excluding the Class A-R Certificates) for all Loan

Groups as of the related Distribution Date (after taking into account distributions of principal on such Distribution Date).

If (and to the extent that) the limitation in paragraph (c) prevents the distribution of principal to the Class C and Class D Interests of a Loan Group, and if the Loan Group's Class E Interest has already been reduced to zero, then the excess principal from that Loan Group will be paid to the Class E Interests of the other Loan Group, the aggregate Class C and Class D Interests of which are less than 1% of the SP. If the Mortgage Loans in the Loan Group of the Class E Interest that receives such payment have a Net WAC Cap below the Net WAC Cap of the Mortgage Loans in the Loan Group making the payment, then the payment will be treated by the REMIC 1 as a Realized Loss. Conversely, if the Mortgage Loans in the Loan Group of the Class C Interest that receives such payment has a Net WAC Cap above the Net WAC Cap of the Mortgage Loans in the Loan Group making the payment, then the payment will be treated by the REMIC 1 as a reimbursement for prior Realized Losses.

(5) For each Distribution Date: Scheduled and unscheduled principal and Realized Losses from Loan Group 1 shall be allocated to: (a) the Class 1-X-1 Interest, if the Class 1-X-1 Target Principal Balance (as calculated for the Distribution Date) is exceeded by the principal balance of such Interest for the prior Distribution Date, in such an amount as to cause the principal balance of the Class 1-X-1 Interest to equal the Class 1-X-1 Target Principal Balance (as calculated for the Distribution Date), or (b) the Class 1-Y-1 Interest, if the the Class 1-Y-1 Target Principal Balance (as calculated for the Distribution Date) is exceeded by the principal balance of such Interest for the prior Distribution Date, in such an amount as to cause the principal balance of the Class 1-Y-1 Interest to equal the Class 1-Y-1 Target Principal Balance (as calculated for the Distribution Date). If there are insufficient scheduled and unscheduled principal collections and Realized Losses from Loan Group 1 for such Distribution Date to make the allocations to the Class 1-X-1 or Class 1-Y-1 Interest required in the immediately preceding sentence, interest accrued in respect of the Class 1-Z-1 Interest will be paid as principal to the Class 1-X-1 or Class 1-Y-1 Interest as required in the immediately preceding sentence. Any remaining scheduled and unscheduled principal and Realized Losses from Loan Group 1 shall be allocated pro rata to the Class 1-X-1 Interest, Class 1-Y-1 Interest and 1-Z-1 Interest based on their principal balances following the allocations made in the immediately preceding two sentences.

Scheduled and unscheduled principal and Realized Losses from Loan Group 2 shall be allocated to: (a) the Class 1-X-2 Interest, if the Class 1-X-2 Target Principal Balance (as calculated for the Distribution Date) is exceeded by the principal balance of such Interest for the prior Distribution Date, in such an amount as to cause the principal balance of the Class 1-X-2 Interest to equal the Class 1-X-2 Target Principal Balance (as calculated for the Distribution Date), or (b) the Class 1-Y-2 Interest, if the the Class 1-Y-2 Principal Balance (as calculated for the Distribution Date) is exceeded by the principal balance of such Interest for the prior Distribution Date, in such an amount as to cause the principal balance of the Class 1-Y-2 Interest to equal the Class 1-Y-2 Principal Balance. If there are insufficient scheduled and unscheduled principal collections and Realized Losses from Loan Group 2 for such Distribution Date to make the allocations to the Class 1-X-2 or Class 1-Y-2 Interest required in the immediately preceding sentence, interest accrued in respect of the Class 1-Z-2 Interest will be paid as principal to the Class 1-X-2 or Class 1-Y-2 Interest as required in the immediately preceding sentence. Any remaining scheduled and unscheduled principal and Realized Losses from Loan Group 2 shall be allocated pro rata to the Class 1-X-2 Interest, Class 1-Y-2 Interest and 1-Z-2 Interest based on their principal balances following the allocations made in the immediately preceding two sentences.

**REMIC 2**

The REMIC 2 Interests will have the initial Class Certificate Balances, Pass-Through Rates and Corresponding Certificate Classes as set forth in the following table:

| REMIC 1 Interests | Initial Class Certificate Balances(1) | Pass-Through Rate | Corresponding Certificates Classes |
|---|---|---|---|
| 2-1-A-1-1 | $10,970,449.42 | (2) | 1-A-1 |
| 2-1-A-1-2 | $10,244,372.85 | (2) | 1-A-1 |
| 2-1-A-1-3 | $ 9,896,458.68 | (2) | 1-A-1 |
| 2-1-A-1-4 | $ 9,560,404.04 | (2) | 1-A-1 |
| 2-1-A-1-5 | $ 9,235,803.28 | (2) | 1-A-1 |
| 2-1-A-1-6 | $ 8,922,264.67 | (2) | 1-A-1 |
| 2-1-A-1-7 | $ 8,619,409.89 | (2) | 1-A-1 |
| 2-1-A-1-8 | $ 8,327,246.60 | (2) | 1-A-1 |
| 2-1-A-1-9 | $ 8,044,651.45 | (2) | 1-A-1 |
| 2-1-A-1-10 | $ 7,771,995.80 | (2) | 1-A-1 |
| 2-1-A-1-11 | $ 7,511,010.61 | (2) | 1-A-1 |
| 2-1-A-1-12 | $ 7,287,798.61 | (2) | 1-A-1 |
| 2-1-A-1-13 | $ 7,053,905.25 | (2) | 1-A-1 |
| 2-1-A-1-14 | $ 6,813,147.36 | (2) | 1-A-1 |
| 2-1-A-1-15 | $ 6,580,634.46 | (2) | 1-A-1 |
| 2-1-A-1-16 | $ 6,356,083.31 | (2) | 1-A-1 |
| 2-1-A-1-17 | $ 6,139,220.42 | (2) | 1-A-1 |
| 2-1-A-1-18 | $ 5,929,781.76 | (2) | 1-A-1 |
| 2-1-A-1-19 | $ 5,727,512.36 | (2) | 1-A-1 |
| 2-1-A-1-20 | $ 5,532,426.64 | (2) | 1-A-1 |
| 2-1-A-1-21 | $ 5,343,748.47 | (2) | 1-A-1 |
| 2-1-A-1-22 | $ 4,722,273.20 | (2) | 1-A-1 |
| 2-1-A-1-23 | $ 4,555,521.05 | (2) | 1-A-1 |
| 2-1-A-1-24 | $ 4,412,997.68 | (2) | 1-A-1 |
| 2-1-A-1-25 | $ 4,263,748.38 | (2) | 1-A-1 |
| 2-1-A-1-26 | $ 4,110,269.41 | (2) | 1-A-1 |
| 2-1-A-1-27 | $ 3,962,195.70 | (2) | 1-A-1 |
| 2-1-A-1-28 | $ 3,819,338.63 | (2) | 1-A-1 |
| 2-1-A-1-29 | $ 3,681,516.08 | (2) | 1-A-1 |
| 2-1-A-1-30 | $ 3,548,552.33 | (2) | 1-A-1 |
| 2-1-A-1-31 | $ 3,420,277.70 | (2) | 1-A-1 |
| 2-1-A-1-32 | $ 3,296,692.11 | (2) | 1-A-1 |
| 2-1-A-1-33 | $ 3,177,298.81 | (2) | 1-A-1 |
| 2-1-A-1-34 | $ 3,062,257.78 | (2) | 1-A-1 |
| 2-1-A-1-35 | $ 2,952,318.88 | (2) | 1-A-1 |
| 2-1-A-1-36 | $ 2,858,827.33 | (2) | 1-A-1 |
| 2-1-A-1-37 | $ 2,416,817.59 | (2) | 1-A-1 |
| 2-1-A-1-38 | $ 2,333,419.44 | (2) | 1-A-1 |
| 2-1-A-1-39 | $ 2,252,906.18 | (2) | 1-A-1 |
| 2-1-A-1-40 | $ 2,175,177.79 | (2) | 1-A-1 |
| 2-1-A-1-41 | $ 2,100,137.73 | (2) | 1-A-1 |
| 2-1-A-1-42 | $58,947,630.39 | (2) | 1-A-1 |
| 2-2-A-1-1 | $11,024,188.21 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-2 | $10,373,061.41 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-3 | $10,019,943.16 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-4 | $ 9,678,887.19 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-5 | $ 9,349,480.14 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |

| REMIC 1 Interests | Initial Class Certificate Balances(1) | Pass-Through Rate | Corresponding Certificates Classes |
|---|---|---|---|
| 2-2-A-1-6 | $ 9,031,322.88 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-7 | $ 8,724,029.94 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-8 | $ 8,427,856.52 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-9 | $ 8,141,834.87 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-10 | $ 7,865,736.39 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-11 | $ 7,601,699.51 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-12 | $ 7,376,370.88 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-13 | $ 7,135,262.14 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-14 | $ 6,891,140.36 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-15 | $ 6,655,396.69 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-16 | $ 6,427,742.76 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-17 | $ 6,207,900.19 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-18 | $ 5,995,600.16 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-19 | $ 5,790,583.18 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-20 | $ 5,593,037.02 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-21 | $ 5,402,294.72 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-22 | $ 4,773,072.84 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-23 | $ 4,604,561.03 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-24 | $ 4,460,864.20 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-25 | $ 4,307,192.67 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-26 | $ 4,151,747.55 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-27 | $ 4,001,789.27 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-28 | $ 3,857,125.95 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-29 | $ 3,717,572.42 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-30 | $ 3,582,949.94 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-31 | $ 3,453,086.00 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-32 | $ 3,328,089.27 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-33 | $ 3,207,530.58 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-34 | $ 3,091,306.42 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-35 | $ 2,980,344.84 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-36 | $ 2,886,223.13 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-37 | $ 2,437,241.66 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-38 | $ 2,352,924.63 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-39 | $ 2,271,530.85 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-40 | $ 2,192,958.78 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-41 | $ 2,117,110.40 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-2-A-1-42 | $59,245,909.36 | (3) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 2-B-1 | (1) | (4) | B-1 |
| 2-B-2 | (1) | (4) | B-2 |
| 2-B-3 | (1) | (4) | B-3 |
| 2-B-4 | (1) | (4) | B-4 |
| 2-B-5 | (1) | (4) | B-5 |
| 2-B-6 | (1) | (4) | B-6 |
| 2-B-7 | (1) | (4) | B-7 |
| 2-B-8 | (1) | (4) | B-8 |
| 2-Accrual-1 | (1) | (2) | N/A |
| 2-Accrual-2 | (1) | (3) | N/A |
| 2-PO-1 | $50 | (5) | N/A |

| REMIC 1 Interests | Initial Class Certificate Balances(1) | Pass-Through Rate | Corresponding Certificates Classes |
|---|---|---|---|
| 2-PO-2 | $50 | (5) | N/A |
| R-1 | (6) | (6) | N/A |

(1) On each Distribution Date, Principal Amounts, Net Deferred Interest and Realized Losses will be allocated to the REMIC 2 Interests in such a manner that, following such allocations: (i) the principal balances of the Class 2-B Interests will equal 50% of the Certificate Balance of their Corresponding Certificates for such Distribution Date, (ii) the principal balances of the Interests designated "Class 2-1-A-1-" and "Class 2-2-A-1-" will equal in the aggregate 50% of the Certificate Balance of their Corresponding Certificates for such Distribution Date, (iii) the Class 2-Accrual-1 Interest will have a principal balance equal to 50% of the aggregate of the Stated Principal Balances of the Group 1 Mortgage Loans (excluding any Net Deferred Interest) plus 100% of all Net Deferred Interest in respect of the Group 1 Mortgage Loans, and (iv) the Class 2-Accrual-2 Interest will have a principal balance equal to 50% of the aggregate of the Stated Principal Balances of the Group 2 Mortgage Loans (excluding any Net Deferred Interest) plus 100% of all Net Deferred Interest in respect of the Group 2 Mortgage Loans. On each Distribution Date, 50% of the Principal Amounts, Net Deferred Interest and Realized Losses allocated to: (i) the Class 1-A-1 Certificates will be allocated to each of the Classes designated "2-1-A-1-" sequentially to the Class having the lowest cardinal number following such designation, in each case until reduced to zero, and (ii) the Class 2-A-1A, Class 2-A-1B, 2-A-1C and Class 2-A-2 Certificates will be allocated to each of the Classes designated "2-2-A-1-" sequentially to the class having the lowest cardinal number following such designation, in each case until reduced to zero.

(2) The Group 1 Tax Adjusted rate Cap.

(3) The Group 2 Tax Adjusted Rate Cap.

(4) The Subordinate Tax Adjusted Rate Cap. For federal income tax purposes, the Pass-Through Rate will be the Calculation Rate in respect of the REMIC 1 Class A and Class B Interests.

(5) On each Distribution Date, each Class PO Interest will accrue interest at a rate equal to the excess of the Weighted Average Adjusted Net Mortgage Rate over the Tax Adjusted Rate Cap for the related Loan Group for such Distribution Date. Any amount accrued and unpaid for such Distribution Date will not accrue interest.

(6) The Class R-2 Interest is the sole class of residual interest in REMIC 2. It has no principal balance and pays no principal or interest.

**REMIC 3**

The REMIC 3 Interests will have the initial Class Certificate Balances, Pass-Through Rates and Corresponding Certificate Classes as set forth in the following table:

| REMIC 3 Interests | Initial Class Certificate Balance (1) | Pass-Through Rate | Corresponding Master REMIC Classes |
|---|---|---|---|
| 3-1-A-1-1 | 21,940,898.84 | (2) | 1-A-1 |
| 3-1-A-1-2 | 20,488,745.70 | (2) | 1-A-1 |

| REMIC 3 Interests | Initial Class Certificate Balance (1) | Pass-Through Rate | Corresponding Master REMIC Classes |
|---|---|---|---|
| 3-1-A-1-3 | 19,792,917.35 | (2) | 1-A-1 |
| 3-1-A-1-4 | 19,120,808.07 | (2) | 1-A-1 |
| 3-1-A-1-5 | 18,471,606.55 | (2) | 1-A-1 |
| 3-1-A-1-6 | 17,844,529.33 | (2) | 1-A-1 |
| 3-1-A-1-7 | 17,238,819.78 | (2) | 1-A-1 |
| 3-1-A-1-8 | 16,654,493.19 | (2) | 1-A-1 |
| 3-1-A-1-9 | 16,089,302.90 | (2) | 1-A-1 |
| 3-1-A-1-10 | 15,543,991.60 | (2) | 1-A-1 |
| 3-1-A-1-11 | 15,022,021.21 | (2) | 1-A-1 |
| 3-1-A-1-12 | 14,575,597.22 | (2) | 1-A-1 |
| 3-1-A-1-13 | 14,107,810.50 | (2) | 1-A-1 |
| 3-1-A-1-14 | 13,626,294.72 | (2) | 1-A-1 |
| 3-1-A-1-15 | 13,161,268.91 | (2) | 1-A-1 |
| 3-1-A-1-16 | 12,712,166.61 | (2) | 1-A-1 |
| 3-1-A-1-17 | 12,278,440.84 | (2) | 1-A-1 |
| 3-1-A-1-18 | 11,859,563.52 | (2) | 1-A-1 |
| 3-1-A-1-19 | 11,455,024.71 | (2) | 1-A-1 |
| 3-1-A-1-20 | 11,064,853.27 | (2) | 1-A-1 |
| 3-1-A-1-21 | 10,687,496.94 | (2) | 1-A-1 |
| 3-1-A-1-22 | 9,444,546.39 | (2) | 1-A-1 |
| 3-1-A-1-23 | 9,111,042.09 | (2) | 1-A-1 |
| 3-1-A-1-24 | 8,825,995.36 | (2) | 1-A-1 |
| 3-1-A-1-25 | 8,527,496.75 | (2) | 1-A-1 |
| 3-1-A-1-26 | 8,220,538.81 | (2) | 1-A-1 |
| 3-1-A-1-27 | 7,924,391.40 | (2) | 1-A-1 |
| 3-1-A-1-28 | 7,638,677.25 | (2) | 1-A-1 |
| 3-1-A-1-29 | 7,363,032.16 | (2) | 1-A-1 |
| 3-1-A-1-30 | 7,097,104.65 | (2) | 1-A-1 |
| 3-1-A-1-31 | 6,840,555.40 | (2) | 1-A-1 |
| 3-1-A-1-32 | 6,593,384.21 | (2) | 1-A-1 |
| 3-1-A-1-33 | 6,354,597.61 | (2) | 1-A-1 |
| 3-1-A-1-34 | 6,124,515.55 | (2) | 1-A-1 |
| 3-1-A-1-35 | 5,904,637.75 | (2) | 1-A-1 |
| 3-1-A-1-36 | 5,717,654.65 | (2) | 1-A-1 |
| 3-1-A-1-37 | 4,833,635.18 | (2) | 1-A-1 |
| 3-1-A-1-38 | 4,666,838.87 | (2) | 1-A-1 |
| 3-1-A-1-39 | 4,505,812.36 | (2) | 1-A-1 |
| 3-1-A-1-40 | 4,350,355.57 | (2) | 1-A-1 |
| 3-1-A-1-41 | 4,200,275.45 | (2) | 1-A-1 |
| 3-1-A-1-42 | 117,895,260.78 | (2) | 1-A-1 |
| 3-2-A-1-1 | 22,048,376.41 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-2 | 20,746,122.81 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-3 | 20,039,886.31 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-4 | 19,357,774.37 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-5 | 18,698,960.28 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-6 | 18,062,645.76 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-7 | 17,448,059.88 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-8 | 16,855,713.03 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |

| REMIC 3 Interests | Initial Class Certificate Balance (1) | Pass-Through Rate | Corresponding Master REMIC Classes |
|---|---|---|---|
| 3-2-A-1-9 | 16,283,669.74 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-10 | 15,731,472.77 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-11 | 15,203,399.02 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-12 | 14,752,741.75 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-13 | 14,270,524.27 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-14 | 13,782,280.71 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-15 | 13,310,793.37 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-16 | 12,855,485.52 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-17 | 12,415,800.37 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-18 | 11,991,200.32 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-19 | 11,581,166.35 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-20 | 11,186,074.04 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-21 | 10,804,589.44 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-22 | 9,546,145.68 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-23 | 9,209,122.06 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-24 | 8,921,728.40 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-25 | 8,614,385.34 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-26 | 8,303,495.10 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-27 | 8,003,578.53 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-28 | 7,714,251.90 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-29 | 7,435,144.84 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-30 | 7,165,899.88 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-31 | 6,906,171.99 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-32 | 6,656,178.53 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-33 | 6,415,061.15 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-34 | 6,182,612.84 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-35 | 5,960,689.68 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-36 | 5,772,446.25 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-37 | 4,874,483.31 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-38 | 4,705,849.25 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-39 | 4,543,061.70 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-40 | 4,385,917.55 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-41 | 4,234,220.79 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-2-A-1-42 | 118,491,818.71 | (2) | 2-A-1A, 2-A-1B, 2-A-1C, 2-A-2 |
| 3-B-1 | (1) | (2) | B-1 |
| 3-B-2 | (1) | (2) | B-2 |
| 3-B-3 | (1) | (2) | B-3 |
| 3-B-4 | (1) | (2) | B-4 |
| 3-B-5 | (1) | (2) | B-5 |
| 3-B-6 | (1) | (2) | B-6 |
| 3-PO-1 | $50 | (3) | N/A |
| 3-PO-2 | $50 | (3) | N/A |
| 3-A-X-2 | (4) | (5) | N/A |
| 3-P | $100 | (6) | P |
| R-3 | (7) | (7) | N/A |

(1) On each Distribution Date, Principal Amounts, Net Deferred Interest and Realized Losses will be allocated to the REMIC 3 Interests in such a manner so that, following such allocations, their principal

balances will equal the Certificate Balance of their Corresponding Certificates for such Distribution Date, except that: (i) Principal Amounts and Realized Losses allocated to the Class 1-A-1, Class 1-A-2 and Class 1-A-3 Certificates will be allocated to each of the Classes designated "3-1-A-1-" sequentially to the Class having the lowest cardinal number following such designation, in each case until reduced to zero, and (ii) Principal Amounts and Realized Losses allocated to the Class 2-A-1 and Class 2-A-2 Certificates will be allocated to each of the Classes designated "3-2-A-1-" sequentially to the class having the lowest cardinal number following such designation, in each case until reduced to zero.

(2) For each Distribution Date, the Pass-Through Rate in respect of its class of Corresponding Master REMIC Classes, adding to the Pass-Through Rate of each Class designated "3-1-A-1-" or 3-2-A-1-", 0.80% until the first Distribution Date upon which the cardinal number following such designation (e.g. –1, -2, -3,..) is exceeded by the ordinal number of the Distribution Date following the Closing Date (e.g. first, second, third,…).

(3) On each Distribution Date, each Class PO Interest will accrue interest at a rate equal to the excess of the Weighted Average Adjusted Net Mortgage Rate over the Tax Adjusted Rate Cap for the related Loan Group for such Distribution Date. Any amount accrued and unpaid for such Distribution Date will not accrue interest.

(4) For each Distribution Date, a notional balance equal to the sum of the Stated Principal Balances of the Mortgage Loans plus 100% of the Net Deferred Interest in respect of the Mortgage Loans.

(5) The excess of the Tax adjusted Rate Cap over the product of two and the weighted average of the Pass-Through Rates in respect of the REMIC 2 Regular Interests (excluding the Class 2-P and Class R-2 Interests), (i) subjecting each such Class (other than the Class 2-Accrual-1 Interest and the Class 2-Accrual-2 Interest) to a cap and a floor equal to the sum of: (a) the Pass-Through Rate in respect of their Corresponding Master REMIC Classes (or the weighted average of their Pass-Through Rates as of the Closing Date, in the case of the Classes designated "2-1-A-1-" and "2-2-A-1-"), and (b) for each Class designated "2-1-A-1-" or 2-2-A-1-", 0.80% until the first Distribution Date upon which the cardinal number following such designation (e.g. –1, -2, -3,..) is exceeded by the ordinal number of the Distribution Date following the Closing Date (e.g. first, second, third,…), and (ii) capping each of the Class 2-Accrual-1 Interest and the Class 2-Accrual-2 Interests at zero.

(6) The Class 3-P will not bear interest and will be entitled to all Prepayment Charges collected in respect of the Mortgage Loans.

(7) The Class R-3 Interest is the sole class of residual interest in REMIC 3. It has no principal balance and pays no principal or interest.

**The Master REMIC**

The following table sets forth the Class Designation, Initial Class Certificate Balance, Pass-Through Rate, Minimum Denominations and Integral Multiples in excess thereof in respect of the Certificates, each of which (other than the Class A-R Certificates) is hereby designated a regular interest in the Master REMIC, in which such Classes shall be issuable (except that one Certificate of each Class of Certificates may be issued in a different amount):

| Class Designation | Initial Class Certificate Balance | Pass-Through Rate | Minimum Denomination | Integral Multiples in Excess of Minimum |
|---|---|---|---|---|
| Class 1-A-1 | $575,877,000.00 | Variable(1) | $ 25,000 | $1,000 |
| Class 2-A-1A | $310,489,000.00 | Variable(1) | $ 25,000 | $1,000 |
| Class 2-A-1B, 2-A-1C | $129,370,000.00 | Variable(1) | $ 25,000 | $1,000 |
| Class 2-A-1C | $77,623,000.00 | Variable(1) | $ 25,000 | $1,000 |
| Class 2-A-2 | $63,987,000.00 | Variable(1) | $ 25,000 | $1,000 |
| Class A-X-1 | Notional(2) | (3) | $ 25,000(4) | $1,000(4) |
| Class A-X-2 | Notional(5) | Variable(6) | $ 25,000(4) | $1,000(4) |
| Class A-PO | $100.00(7) | N/A | (8) | N/A |
| Class A-R | $100.00 | Variable(9) | $ 100 | N/A |
| Class B-1 | $32,167,000.00 | Variable(10) | $ 25,000 | $1,000 |
| Class B-2 | $25,228,000.00 | Variable(10) | $ 25,000 | $1,000 |
| Class B-3 | $17,659,000.00 | Variable(10) | $ 25,000 | $1,000 |
| Class B-4 | $4,414,000.00 | Variable(10) | $ 25,000 | $1,000 |
| Class B-5 | $6,937,000.00 | Variable(10) | $ 25,000 | $1,000 |
| Class B-6 | $5,676,000.00 | Variable(10) | $100,000 | $1,000 |
| Class B-7 | $6,937,000.00 | Variable(10) | $100,000 | $1,000 |
| Class B-8 | $5,049,845.00 | Variable(10) | $100,000 | $1,000 |

1. The Pass-Through Rate for each Class of Senior LIBOR Certificates for any Interest Accrual Period for any Distribution Date will be the lesser of (i) LIBOR plus the applicable Pass-Through Margin and (ii) the related Net WAC Cap for that Distribution Date. Solely for federal income tax purposes, the Pass-Through Rate on the first Distribution Date will equal the fixed rate produced by the sum of LIBOR and the applicable Pass-Through Margin for such Distribution Date, and any excess of the Pass-Through Rate in respect of such Certificates over the related Tax Adjusted Rate Cap on all subsequent Distribution Dates will be treated as paid pursuant to a limited recourse cap contract as described in Section 8.11.

2. The Class A-X-1 Certificates will be Notional Amount Certificates, will have no Class Certificate Balance and will bear interest on their Notional Amount, which will be $1,157,346,000 for the initial Interest Accrual Period. For federal income tax purposes, on each Distribution Date, the notional amount of the Class A-X-1 Certificates will equal the sum of the principal balances of each REMIC 1 Interest designated "II-1-A-1-" or "II-2-A-1-", whose cardinal number following such designation (e.g. –1, -2, -3,..) is not exceeded by the ordinal number of the Distribution Date following the Closing Date (e.g. first, second, third,…) for such Distribution Date.

3. The Pass-Through Rate of the Class A-X-1 Certificates will be (x) for any Interest Accrual Period related to any Distribution Date on or before the Distribution Date in December 2008, 0.80% per annum and (y) for any Interest Accrual Period related to any Distribution Date after the December 2008 Distribution Date, 0% per annum.

4. Minimum denomination is based on the Notional Amount of such Class.

5. The Class A-X-2 Certificates will be Notional Amount Certificates and will bear interest on their Notional Amount, which will be $1,261,413,944 for the initial Interest Accrual Period.

6. The Pass-Through Rate for the Class A-X-2 Certificates for any Interest Accrual Period for any Distribution Date will be the excess, if any, of (i) the Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans over (ii) the product of (a) the weighted average Pass-Through Rate on the Certificates (other than the Class A-X-2 Certificates) (with the Pass-Through Rate of each Class of LIBOR Certificates for each applicable Interest Accrual Period multiplied by a fraction, the numerator of which is the number of days in the related Interest Accrual Period and the denominator of which is 30) and (b) a fraction, the numerator of which is the aggregate Class Certificate Balance of the Certificates (other than the Class A-PO Certificates) immediately prior to such Distribution Date and the denominator of which is the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the prior month (after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date). For federal income tax purposes, the Class A-X-2 Certificates will be entitled to all distributions received in respect of the Class 3-A-X-2 Interest.

7. The Class A-PO Certificates will be principal-only Certificates. The Class A-PO Certificates will consist of two principal-only Components with each Component Principal Balance initially equal to $50. Solely for federal income tax purposes, the Class PO Certificates will be entitled to 100% of the cash distributions in respect of the Class 3-1-PO and 3-2-PO Interests.

8. As of any date of determination, the minimum denomination with respect to the Class A-PO Certificates is equal to the dollar amount corresponding to a Percentage Interest of 25%.

9. The Pass-Through Rate for this Class of Certificates for any Interest Accrual Period for any Distribution Date will be the Weighted Average Adjusted Net Mortgage Rate of the Group 1 Mortgage Loans for that Distribution Date. The Class A-R Certificates shall represent the sole class of residual interest in the Master REMIC.

10. The Pass-Through Rate of the Class B-1, Class B-2, Class B-3, Class B-4, Class B-5, Class B-6, Class B-7 and Class B-8 Certificates for any Interest Accrual Period for any Distribution Date will be the lesser of (i) LIBOR plus the applicable Pass-Through Margin and (ii) the Subordinate WAC Cap for that Distribution Date. Solely for federal income tax purposes, the Pass-Through Rate on the first Distribution Date will equal the fixed rate produced by the sum of LIBOR and the applicable Pass-Through Margin for such Distribution Date, and any excess of the Pass-Through Rate in respect of such Certificates over the lesser of the Subordinate Tax Adjusted Rate Cap and the Subordinate WAC Cap on all subsequent Distribution Dates will be treated as paid pursuant to a limited recourse cap contract as described in Section 8.11.

The foregoing REMIC structure is intended to cause all of the cash from the Mortgage Loans to flow through to the Master REMIC as cash flow on a REMIC regular interest, without creating any shortfall—actual or potential (other than for credit losses) to any REMIC regular interest. It is not intended that the Class A-R Certificates be entitled to any cash flow pursuant to this Agreement except as provided in Section 4.02(a)(1)(i), 4.02(a)(1)(iii)(B) and 4.02(a)(7) hereunder.

For any purpose for which the Pass-Through Rates are calculated, the interest rate on the Mortgage Loans shall be appropriately adjusted to account for the difference between the monthly day count convention of the Mortgage Loans and the monthly day count convention of the regular interests issued by each of the REMICs. For purposes of calculating the Pass-Through Rates for each of the interests issued by each REMIC (other than the Master REMIC) created hereunder such rates shall be adjusted to equal a monthly day count convention based on a 30 day month for each Due Period and a 360-day year so that the Mortgage Loans and all regular interests will be using the same monthly day count convention.

Set forth below are designations of Classes of Certificates to the categories used herein:

| | |
|---|---|
| Accretion Directed Certificates.................................. | None. |
| Accrual Certificates .................................................... | None. |
| Book-Entry Certificates ............................................. | All Classes of Certificates other than the Physical Certificates. |
| COFI Certificates ....................................................... | None. |
| Components ................................................................ | Class A-X-1 IO-1, Class A-X-1 IO-2 and Class A-PO-1 and Class A-PO-2 Components |
| Component Certificates ............................................. | Class A-X-1 and Class A-PO Certificates. |
| Delay Certificates....................................................... | The Class A-R, Class A-X-1 and Class A-X-2 Certificates. |
| ERISA-Restricted Certificates ................................... | The Residual Certificates and the Private Certificates; and Certificates of any Class that ceases to satisfy the rating requirements of the Underwriter's Exemption. |
| Group 1 Senior Certificates ....................................... | Class 1-A-1 and Class A-R Certificates and Class A-X-1 IO-1 and Class A-PO-1 Components and the portion of the Class A-X-2 Certificates related to Loan Group 1. |
| Group 1 Certificates.................................................... | Group 1 Senior Certificates and the portion of the Subordinated Certificates related to Loan Group 1. |
| Group 2 Senior Certificates ....................................... | Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates and Class A-X-1 IO-2 and Class A-PO-2 Components and the portion of the Class A-X-2 IO Component related to Loan Group 2. |
| Group 2 Certificates.................................................... | Group 2 Senior Certificates and the portion of the Subordinated Certificates related to Loan Group 2. |
| LIBOR Certificates ..................................................... | Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C, Class 2-A-2, Class B-1, Class B-2, Class B-3, Class B-4, Class B-5, Class B-6, Class B-7 and Class B-8 Certificates. |
| Non-Delay Certificates .............................................. | All LIBOR Certificates. |

| | |
|---|---|
| Notional Amount Certificates .................................... | Class A-X-1 and Class A-X-2 Certificates. |
| Notional Amount Components .................................. | Class A-X-1 IO-1 and Class A-X-1 IO-2 Components. |
| Offered Certificates.................................................... | All Classes of Certificates other than the Private Certificates. |
| Physical Certificates.................................................. | Class A-R Certificates and the Private Certificates. |
| Planned Principal Classes .......................................... | None. |
| Principal Only Certificates......................................... | Class A-PO Certificates. |
| Principal Only Components....................................... | Class A-PO-1 and Class A-PO-2 Components. |
| Private Certificates..................................................... | Class B-6, Class B-7 and Class B-8 Certificates. |
| Rating Agencies ......................................................... | Moody’s and S&P. |
| Regular Certificates .................................................... | All Classes of Certificates other than the Class A-R Certificates. |
| Residual Certificate.................................................... | Class A-R Certificates. |
| Senior Certificates...................................................... | Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C, Class 2-A-2, Class A-X-1, Class A-X-2, Class A-PO and Class A-R Certificates. |
| Senior Certificate Group ............................................ | The Group 1 Senior Certificates or the Group 2 Senior Certificates. |
| Subordinated Certificates........................................... | Class B-1, Class B-2, Class B-3, Class B-4, Class B-5, Class B-6, Class B-7 and Class B-8 Certificates. |
| Targeted Principal Classes......................................... | None. |
| Targeted Principal Component .................................. | None. |

With respect to any of the foregoing designations as to which the corresponding reference is “None,” all defined terms and provisions in this Agreement relating solely to such designations shall be of no force or effect, and any calculations in this Agreement incorporating references to such designations shall be interpreted without reference to such designations and amounts. Defined terms and provisions in this Agreement relating to statistical rating agencies not designated above as Rating Agencies shall be of no force or effect.

ARTICLE One

DEFINITIONS

***Section 1.01 Definitions.***

Unless the context requires a different meaning, capitalized terms are used in this Agreement as defined below.

***Accretion Directed Certificates:*** As specified in the Preliminary Statement.

***Accretion Direction Rule:*** Not applicable.

***Accrual Amount:*** With respect to any Accrual Certificates and any Distribution Date prior to the Accrual Termination Date, the amount allocable to interest on such Class of Accrual Certificates with respect to such Distribution Date pursuant to Section 4.02(a)(i).

***Accrual Certificates:*** As specified in the Preliminary Statement.

***Accrual Termination Date:*** Not applicable.

***Accrued Interest Amount:*** For any Distribution Date and an Undercollateralized Group, the sum of (x) the product of (A) the applicable Principal Deficiency Amount and (B) the weighted average Pass-Through Rate for the related Senior Certificates for that Distribution Date, accrued during the related Interest Accrual Period and (y) any such unpaid interest amounts from prior Distribution Dates.

***Adjusted Cap Rate:*** For each Distribution Date and any Class of LIBOR Certificates, an amount equal to the related Net WAC Cap for that Distribution Date, computed by reducing the Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans by (1) the product of (a) the Net Deferred Interest for the Mortgage Loans for such Distribution Date, and (b) 12, divided by (2) the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the prior month (after giving effect to Principal Prepayments in the Prepayment Period related to such prior Due Date). For the Class A-X-2 Certificates for any Distribution Date, the excess, if any, of (i) the Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans minus (1) the product of (a) the Net Deferred Interest for the Mortgage Loans for such Distribution Date, and (b) 12, divided by (2) the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the prior month (after giving effect to Principal Prepayments in the Prepayment Period related to such prior Due Date) over (ii) the product of (1) the weighted average rate at which interest would have accrued on the interest-bearing Classes of Certificates (other than the Class A-X-2 Certificates) if the Pass-Through Rates for such Classes were limited by the applicable Adjusted Cap Rate rather than the applicable Net WAC Cap, adjusted for the related Interest Accrual Period, and (2) a fraction, the numerator of which is the aggregate Class Certificate Balance of the Certificates (other than the Class A-PO Certificates) immediately prior to such Distribution Date and the denominator of which is the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the prior month (after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date).

***Adjusted Mortgage Rate:*** As to each Mortgage Loan and at any time, the per annum rate equal to the Mortgage Rate less the Servicing Fee Rate.

***Adjusted Net Mortgage Rate:*** As to each Mortgage Loan and any Distribution Date, the per annum rate equal to the Mortgage Rate of that Mortgage Loan (as of the Due Date in the month preceding the month in which such Distribution Date occurs) less the Expense Fee Rate for that Mortgage Loan.

***Adjusted Subordinate WAC Cap:*** For any Distribution Date, the weighted average of the Group 1 Tax Adjusted Rate Cap and the Group 2 Tax Adjusted Rate Cap weighted on the basis of the Subordinated Portions of Loan Group 1 and Loan Group 2, such result multiplied by a fraction, the numerator of which is 30 and the denominator of which is the number of days in the related Interest Accrual Period.

***Adjustment Date:*** A date specified in each Mortgage Note as a date on which the Mortgage Rate on the related Mortgage Loan is subject to adjustment.

***Advance:*** As to a Loan Group, the payment required to be made by the Master Servicer with respect to any Distribution Date pursuant to Section 4.01, the amount of any such payment being equal to the aggregate of payments of principal and interest (net of the Servicing Fee) on the Mortgage Loans in such Loan Group that were due during the related Due Period and not received as of the close of business on the related Determination Date, together with an amount equivalent to interest on each REO Property, net of any net income from such REO Property, less the aggregate amount of any such delinquent payments that the Master Servicer has determined would constitute a Nonrecoverable Advance if advanced.

***Advance Notice:*** As defined in Section 4.01(b).

***Advance Deficiency:*** As defined in Section 4.01(b).

***Affiliate***: With respect to any Person, any other Person controlling, controlled or under common control with such Person. For purposes of this definition, “control” means the power to direct the management and policies of a Person, directly or indirectly, whether through ownership of voting securities, by contract, or otherwise and “controlling” and “controlled” shall have meanings correlative to the foregoing. Affiliates also include any entities consolidated with the requirements of generally accepted accounting principles.

***Aggregate Senior Percentage***: With respect to any Distribution Date, the fraction, expressed as a percentage, the numerator of which is equal to the aggregate Class Certificate Balance of the Senior Certificates immediately prior to such Distribution Date and the denominator of which is the aggregate Stated Principal Balance of all the Mortgage Loans as of the Due Date in the month preceding the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date).

***Aggregate Subordinated Percentage***: With respect to any Distribution Date, the fraction, expressed as a percentage, the numerator of which is equal to the aggregate Class Certificate Balance of the Subordinated Certificates immediately prior to such Distribution Date and the denominator of which is the aggregate Stated Principal Balance of all the Mortgage Loans as of the Due Date in the month preceding the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date).

***Agreement:*** This Pooling and Servicing Agreement and all amendments and supplements.

***Amount Held for Future Distribution:*** As to any Distribution Date and the Mortgage Loans in a Loan Group, the aggregate amount held in the Certificate Account at the close of business on the related

Determination Date on account of (i) Principal Prepayments received after the last day of the related Prepayment Period and Liquidation Proceeds and Subsequent Recoveries relating to the Mortgage Loans in such Loan Group received in the month of such Distribution Date and (ii) all Scheduled Payments relating the Mortgage Loans in such Loan Group due after the related Due Date.

***Applicable Credit Support Percentage:*** As defined in Section 4.02(e).

***Appraised Value:*** With respect to any Mortgage Loan, the Appraised Value of the related Mortgaged Property shall be: (i) with respect to a Mortgage Loan other than a Refinance Loan, the lesser of (a) the value of the Mortgaged Property based upon the appraisal made at the time of the origination of such Mortgage Loan and (b) the sales price of the Mortgaged Property at the time of the origination of such Mortgage Loan; (ii) with respect to a Refinance Loan, the value of the Mortgaged Property based upon the appraisal made at the time of the origination of such Refinance Loan.

***Available Funds:*** As to any Distribution Date and the Mortgage Loans in a Loan Group, the sum of (a) the aggregate amount held in the Certificate Account at the close of business on the related Determination Date, including any Subsequent Recoveries with respect to Mortgage Loans in a Loan Group, net of the Amount Held for Future Distribution, net of Prepayment Charges and net of amounts permitted to be withdrawn from the Certificate Account pursuant to clauses (i) - (viii), inclusive, of Section 3.09(a) and amounts permitted to be withdrawn from the Distribution Account pursuant to clauses (i) - (ii), inclusive, of Section 3.09(b), (b) the amount of the related Advance, (c) in connection with Defective Mortgage Loans in such Loan Group, as applicable, the aggregate of the Purchase Prices and Substitution Adjustment Amounts deposited on the related Distribution Account Deposit Date, and (d) any amount deposited on the related Distribution Account Deposit Date pursuant to Section 3.10. The Holders of the Class A-X-2 Certificates will be entitled to all Prepayment Charges received on the Mortgage Loans and such amounts will not be available for distribution to the Holders of any other Class of Certificates.

***Bankruptcy Code:*** The United States Bankruptcy Reform Act of 1978, as amended.

***Bankruptcy Coverage Termination Date:*** Not applicable.

***Bankruptcy Loss:*** Not applicable.

***Bankruptcy Loss Coverage Amount:*** Not applicable.

***Blanket Mortgage:*** The mortgage or mortgages encumbering a Cooperative Property.

***Book-Entry Certificates:*** As specified in the Preliminary Statement.

***Business Day:*** Any day other than (i) a Saturday or a Sunday, or (ii) a day on which banking institutions in the City of New York, New York, the State of California or the city in which the Corporate Trust Office of the Trustee is located are authorized or obligated by law or executive order to be closed.

***Calculation Rate*:** For each Distribution Date and the Class A-1, Class A-2, Class B-1 and Class B-2 Interests, the product of (i) 10 and (ii) the weighted average rate of the outstanding Class A-1, Class A-2, Class B-1 and Class B-2 Interests, treating each of the Class A-1 and Class A-2 Interests as capped at zero or reduced by a fixed percentage of 100% of the interest accruing on such Class. For each Distribution Date and the Class C-1, Class C-2, Class D-1 and Class D-2 Interests, the product of (i) 10 and (ii) the weighted average rate of the outstanding Class C-1, Class C-2, Class D-1 and Class D-2

Interests, treating each of the Class C-1 and Class C-2 Interests as capped at zero or reduced by a fixed percentage of 100% of the interest accruing on such Class.

***Cap Counterparty***: The Bank of New York.

***Carryover Shortfall Amount:*** For the LIBOR Certificates and any Distribution Date, the sum of:

(i) the excess, if any, of the amount of interest to which such Class would have been entitled to if the Pass-Through Rate for such Class were calculated without regard to the applicable Net WAC Cap, over the actual amount of interest to which such Class is entitled for such Distribution Date (in each case prior to any reduction for Net Deferred Interest);

(ii) any excess described in clause (i) above remaining unpaid from prior Distribution Dates; and

(iii) interest for the applicable Interest Accrual Period on the amount described in clause (ii) above based on the Pass-Through Rate for the applicable Class of Certificates, determined without regard to the applicable Net WAC Cap.

***Carryover Shortfall Reserve Fund:*** A fund created as part of the Trust Fund pursuant to Section 4.07 of this Agreement but which is not an asset of any of the REMICs.

***Certificate:*** Any one of the certificates issued by the Trust Fund and executed by the Trustee in substantially the forms attached as exhibits.

***Certificate Account:*** The separate Eligible Account or Accounts created and maintained by the Master Servicer pursuant to Section 3.06(d) with a depository institution in the name of the Master Servicer for the benefit of the Trustee on behalf of Certificateholders and designated "IndyMac Bank, F.S.B., in trust for the registered holders of IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12."

***Certificate Balance:*** With respect to any Certificate (other than the Class A-PO Certificates and the Notional Amount Certificates) at any date, the maximum dollar amount of principal to which the Holder thereof is then entitled under this Agreement, such amount being equal to the Denomination thereof (A) plus any increases in the Certificate Balance of such Certificate pursuant to Section 4.02 due to the receipt of Subsequent Recoveries on the Mortgage Loans in a Loan Group, (B) minus the sum of (i) all distributions of principal previously made with respect thereto and (ii) all Realized Losses allocated to that Certificate and, in the case of any Subordinated Certificates, all other reductions in Certificate Balance previously allocated to that Certificate pursuant to Section 4.05 and (C) in the case of any Class of Accrual Certificates, plus the Accrual Amount added to the Class Certificate Balance of such Class prior to such date, plus the amount of Net Deferred Interest allocated to such Class of Certificates pursuant to Section 4.04 prior to the date of determination. With respect to the Class A-PO Certificates at any date, the sum of the Component Principal Balances of the Class A-PO Components as reduced by the sum of (x) all amounts actually distributed in respect of principal of such Components on all prior Distribution Dates and (y) all Realized Losses allocated to such Components prior to the date of determination, plus any increases in the Component Principal Balance of such Component pursuant to Section 4.02 due to the receipt of Subsequent Recoveries, plus the amount of Net Deferred Interest allocated to the Class A-X-2 Certificates prior to the date of determination as set forth in Section 4.04.

***Certificate Group:*** Either the Group 1 Certificates or the Group 2 Certificates.

***Certificate Owner:*** With respect to a Book-Entry Certificate, the Person who is the beneficial owner of the Book-Entry Certificate. For the purposes of this Agreement, in order for a Certificate Owner to enforce any of its rights under this Agreement, it shall first have to provide evidence of its beneficial ownership interest in a Certificate that is reasonably satisfactory to the Trustee, the Depositor and/or the Master Servicer, as applicable.

***Certificate Register:*** The register maintained pursuant to Section 5.02.

***Certificateholder or Holder:*** The person in whose name a Certificate is registered in the Certificate Register, except that, solely for the purpose of giving any consent pursuant to this Agreement, any Certificate registered in the name of the Depositor or any affiliate of the Depositor is not Outstanding and the Percentage Interest evidenced thereby shall not be taken into account in determining whether the requisite amount of Percentage Interests necessary to effect a consent has been obtained, except that if the Depositor or its affiliates own 100% of the Percentage Interests evidenced by a Class of Certificates, the Certificates shall be Outstanding for purposes of any provision of this Agreement requiring the consent of the Holders of Certificates of a particular Class as a condition to the taking of any action. The Trustee is entitled to rely conclusively on a certification of the Depositor or any affiliate of the Depositor in determining which Certificates are registered in the name of an affiliate of the Depositor.

***Class:*** All Certificates bearing the same class designation as set forth in the Preliminary Statement.

***Class 1-A-1 Target Principal Balance***: The quotient of: (a) product of: (i) the Group 1 Adjusted Cap Rate and (ii) the principal balance of the Class 1-B-1 Interests for the immediately preceding Distribution Date, and (b) two times the Weighted Average Adjusted Net Mortgage Rate for Loan Group 1 less the Group 1 Adjusted Cap Rate.

***Class 1-A-2 Target Principal Balance:*** The quotient of: (a) product of: (i) the Group 2 Adjusted Cap Rate and (ii) the principal balance of the Class 1-B-2 Interests for the immediately preceding Distribution Date, and (b) two times the Weighted Average Adjusted Net Mortgage Rate for Loan Group 2 less the Group 2 Adjusted Cap Rate.

***Class 1-B-1 Target Principal Balance***: The quotient of: (a) product of: (i) two times the Weighted Average Adjusted Net Mortgage Rate for Loan Group 1 less the Group 1 Adjusted Cap Rate and (ii) the principal balance of the Class 1-A-1 Interests for the immediately preceding Distribution Date, and (b) the Group 1 Adjusted Cap Rate.

***Class 1-B-2 Target Principal Balance:*** The quotient of: (a) product of: (i) two times the Weighted Average Adjusted Net Mortgage Rate for Loan Group 2 less the Group 2 Adjusted Cap Rate and (ii) the principal balance of the Class 1-A-2 Interests for the immediately preceding Distribution Date, and (b) the Group 2 Adjusted Cap Rate.

***Class A-X-1 IO-1 Component:*** The interest-only component of the Class A-X-1 Certificates that relates to the Group 1 Mortgage Loans

***Class A-X-1 IO-2 Component:*** The interest-only component of the Class A-X-1 Certificates that relates to the Group 2 Mortgage Loans.

***Class A-PO Component:*** Either of the Class A-PO-1 or Class A-PO-2 Components.

***Class A-PO-1 Component:*** The principal-only component of the Class A-PO Certificates that relates to the Group 1 Mortgage Loans.

***Class A-PO-2 Component:*** The principal-only component of the Class A-PO Certificates that relates to the Group 2 Mortgage Loans.

***Class A Interest:*** Each of the Class A-1 and Class A-2 Interests.

***Class B Interest:*** Each of the Class B-1 and Class B-2 Interests.

***Class C Interest:*** Each of the Class C-1 and Class C-2 Interests.

***Class D Interest:*** Each of the Class D-1 and Class D-2 Interests.

***Class Certificate Balance:*** For any Class (other than the Notional Amount Certificates) as of any date of determination, the aggregate of the Certificate Balances of all Certificates of the Class as of that date.

***Class Interest Shortfall:*** As to any Distribution Date and Class, the amount by which the amount described in clause (i) of the definition of Class Optimal Interest Distribution Amount for such Class exceeds the amount of interest actually distributed on such Class on such Distribution Date pursuant to such clause (i).

***Class Optimal Interest Distribution Amount:*** With respect to any Distribution Date and interest-bearing Class, the sum of (i) interest accrued during the related Interest Accrual Period at the Pass-Through Rate for such Class, on the related Class Certificate Balance or Notional Amount, as applicable, immediately prior to such Distribution Date, subject to reduction pursuant to Section 4.02(d), and (ii) any Class Unpaid Interest Amounts for such Class, reduced by any Net Deferred Interest on the related Mortgage Loans allocated to such Class of Certificates, as described in Section 4.04.

***Class Subordination Percentage:*** With respect to any Distribution Date and each Class of Subordinated Certificates, the fraction (expressed as a percentage) the numerator of which is the Class Certificate Balance of such Class of Subordinated Certificates immediately prior to such Distribution Date and the denominator of which is the aggregate Class Certificate Balance of all Classes of Certificates immediately prior to such Distribution Date.

***Class Unpaid Interest Amounts:*** As to any Distribution Date and Class of interest-bearing Certificates, the amount by which the aggregate Class Interest Shortfalls for such Class on prior Distribution Dates exceeds the amount distributed on such Class on prior Distribution Dates pursuant to clause (ii) of the definition of Class Optimal Interest Distribution Amount.

***Closing Date:*** June 6, 2005.

***CMT Index:*** Not applicable.

***Code:*** The Internal Revenue Code of 1986, including any successor or amendatory provisions.

***COFI:*** Not applicable.

***COFI Certificates:*** Not applicable.

***Collection Account:*** As defined in Section 3.06(c).

***Commission***: The United States Securities and Exchange Commission.

***Compensating Interest:*** For any Distribution Date, 0.125% multiplied by one-twelfth multiplied by the aggregate Stated Principal Balance of the Mortgage Loans as of the first day of the prior month.

***Component Principal Balance***: As of any date of determination, either the Class A-PO-1 Component Principal Balance on such date or the Class A-PO-2 Component Principal Balance on such date, as applicable. The Class A-PO-1 Component and Class A-PO-2 Component will each have a Component Principal Balance (initially, $50) equal to (i) the aggregate Net Deferred Interest allocated to the Class A-X-2 Certificates prior to the date of determination pursuant to Section 4.04 in respect of the Mortgage Loans related to such Component minus (ii) all amounts actually distributed as principal of such Component and all Realized Losses applied in reduction of principal of such Component prior to such date of determination, plus, any increases in the Component Principal Balance of such Certificate pursuant to Section 4.02 due to the receipt of Subsequent Recoveries.

***Co-op Shares:*** Shares issued by a Cooperative Corporation.

***Cooperative Corporation:*** The entity that holds title (fee or an acceptable leasehold estate) to the real property and improvements constituting the Cooperative Property and that governs the Cooperative Property, which Cooperative Corporation must qualify as a Cooperative Housing Corporation under section 216 of the Code.

***Cooperative Loan:*** Any Mortgage Loan secured by Co-op Shares and a Proprietary Lease.

***Cooperative Property:*** The real property and improvements owned by the Cooperative Corporation, including the allocation of individual dwelling units to the holders of the Co-op Shares of the Cooperative Corporation.

***Cooperative Unit:*** A single family dwelling located in a Cooperative Property.

***Corporate Trust Office:*** The designated office of the Trustee in the State of California at which at any particular time its corporate trust business with respect to this Agreement is administered, which office at the date of the execution of this Agreement is located at 1761 East St. Andrew Place, Santa Ana, California 92705, Attn: Mortgage Administration-IN05AC (IndyMac MBS, Inc., IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12), and which is the address to which notices to and correspondence with the Trustee should be directed.

***Cross-over Situation*****:** For any Distribution Date and for any Loan Group (after taking into account principal distributions on such Distribution Date) a Cross-Over Situation exists with respect to the Class A and Class B Interests of the Loan Group if such interests in the aggregate are less than 1% of the Subordinated Portion of the related Loan Group.

***Cut-off Date:*** June 1, 2005.

***Cut-off Date Pool Principal Balance***: $1,261,413,917.91.

***Cut-off Date Principal Balance:*** As to any Mortgage Loan, its Stated Principal Balance as of the close of business on the Cut-off Date.

***Debt Service Reduction:*** For any Mortgage Loan, a reduction by a court of competent jurisdiction in a proceeding under the Bankruptcy Code in the Scheduled Payment for the Mortgage Loan that became final and non-appealable, except a reduction resulting from a Deficient Valuation or a reduction that results in a permanent forgiveness of principal.

***Defective Mortgage Loan:*** Any Mortgage Loan that is required to be repurchased pursuant to Section 2.02 or 2.03.

***Deferred Interest:*** With respect to each Mortgage Loan and each related Due Date, the excess, if any, of the amount of interest accrued on such Mortgage Loan from the preceding Due Date to such Due Date over the monthly payment due or received for such Due Date.

***Deficient Valuation:*** For any Mortgage Loan, a valuation by a court of competent jurisdiction of the Mortgaged Property in an amount less than the then outstanding indebtedness under the Mortgage Loan, or any reduction in the amount of principal to be paid in connection with any Scheduled Payment that results in a permanent forgiveness of principal, which valuation or reduction results from an order of the court that is final and non-appealable in a proceeding under the Bankruptcy Code.

***Definitive Certificates:*** Any Certificate evidenced by a Physical Certificate and any Certificate issued in lieu of a Book-Entry Certificate pursuant to Section 5.02(e).

***Delay Certificates:*** As specified in the Preliminary Statement.

***Delay Delivery Certification:*** A certification substantially in the form of Exhibit G-3.

***Delay Delivery Mortgage Loans:*** The Mortgage Loans identified on the Mortgage Loan Schedule for which all or a portion of a related Mortgage File is not delivered to the Trustee by the Closing Date. The Depositor shall deliver the Mortgage Files to the Trustee:

(A) for at least 70% of the Mortgage Loans in each Loan Group, not later than the Closing Date and

(B) for the remaining 30% of the Mortgage Loans in each Loan Group, not later than five Business Days following the Closing Date.

To the extent that the Seller is in possession of any Mortgage File for any Delay Delivery Mortgage Loan, until delivery of the Mortgage File to the Trustee as provided in Section 2.01, the Seller shall hold the files as Master Servicer, as agent and in trust for the Trustee.

***Deleted Mortgage Loan:*** As defined in Section 2.03(c).

***Delinquent:*** A Mortgage Loan is “Delinquent” if any monthly payment due on a Due Date is not made by the close of business on the next scheduled Due Date for such Mortgage Loan. A Mortgage Loan is “30 days Delinquent” if such monthly payment has not been received by the close of business on the corresponding day of the month immediately succeeding the month in which such monthly payment was due. The determination of whether a Mortgage Loan is “60 days Delinquent”, “90 days Delinquent”, etc. shall be made in a like manner.

***Denomination:*** For each Certificate, the amount on the face of the Certificate as the “Initial Certificate Balance of this Certificate” or the “Initial Notional Amount of this Certificate” or, if neither of the foregoing, the Percentage Interest appearing on the face of the Certificate.

***Depositor:*** IndyMac MBS, Inc., a Delaware corporation, or its successor in interest.

***Depository:*** The initial Depository shall be The Depository Trust Company, the nominee of which is CEDE & Co., as the registered Holder of the Book-Entry Certificates. The Depository shall at all times be a "clearing corporation" as defined in Section 8-102(a)(5) of the UCC.

***Depository Participant:*** A broker, dealer, bank, or other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

***Determination Date:*** As to any Distribution Date, the 18th day of each month or if that day is not a Business Day the next Business Day, except that if the next Business Day is less than two Business Days before the related Distribution Date, then the Determination Date shall be the Business Day preceding the 18th day of the month.

***Distribution Account:*** The separate Eligible Account created and maintained by the Trustee pursuant to Section 3.06(e) in the name of the Trustee for the benefit of the Certificateholders and designated "Deutsche Bank National Trust Company in trust for registered holders of IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12." Funds in the Distribution Account shall be held in trust for the Certificateholders for the uses and purposes set forth in this Agreement.

***Distribution Account Deposit Date:*** As to any Distribution Date, 12:30 P.M. Pacific time on the Business Day preceding the Distribution Date.

***Distribution Date:*** The 25th day of each calendar month after the initial issuance of the Certificates, or if that day is not a Business Day, the next Business Day, commencing in July 2005.

***Due Date:*** For any Mortgage Loan and Distribution Date, the first day of the month in which such Distribution Date occurs.

***Due Period:*** For any Distribution Date, the period commencing on the second day of the month preceding the month in which the Distribution Date occurs and ending on the first day of the month in which the Distribution Date occurs.

***Eligible Account:*** Any of

(i) an account maintained with a federal or state chartered depository institution or trust company the short-term unsecured debt obligations of which (or, in the case of a depository institution or trust company that is the principal subsidiary of a holding company, the debt obligations of the holding company, but only if Moody's is not a Rating Agency) have the highest short-term ratings of each Rating Agency at the time any amounts are held on deposit therein, or

(ii) [reserved], or

(iii) a trust account or accounts maintained with the trust department of a federal or state chartered depository institution or trust company, acting in its fiduciary capacity, or

(iv) any other account acceptable to each Rating Agency.

Eligible Accounts may bear interest, and may include, if otherwise qualified under this definition, accounts maintained with the Trustee.

***ERISA:*** The Employee Retirement Income Security Act of 1974, as amended.

***ERISA-Qualifying Underwriting:*** A best efforts or firm commitment underwriting or private placement that meets the requirements of the Underwriter's Exemption.

***ERISA-Restricted Certificate:*** As specified in the Preliminary Statement.

***Escrow Account:*** The Eligible Account or Accounts established and maintained pursuant to Section 3.07(a).

***Event of Default:*** As defined in Section 7.01.

***Excess Loss:*** Not applicable.

***Excess Proceeds:*** For any Liquidated Mortgage Loan, the excess of

(a) all Liquidation Proceeds from the Mortgage Loan received in the calendar month in which the Mortgage Loan became a Liquidated Mortgage Loan, net of any amounts previously reimbursed to the Master Servicer as Nonrecoverable Advances with respect to the Mortgage Loan pursuant to Section 3.09(a)(iii), over

(b) the sum of (i) the unpaid principal balance of the Liquidated Mortgage Loan as of the Due Date in the month in which the Mortgage Loan became a Liquidated Mortgage Loan plus (ii) accrued interest at the Mortgage Rate from the Due Date for which interest was last paid or advanced (and not reimbursed) to Certificateholders up to the Due Date applicable to the Distribution Date following the calendar month during which the liquidation occurred.

***Exchange Act:*** The Securities Exchange Act of 1934, as amended.

***Expense Fee Rate:*** As to each Mortgage Loan, the sum of (a) the related Servicing Fee Rate and (b) the Trustee Fee Rate.

***FDIC:*** The Federal Deposit Insurance Corporation, or any successor thereto.

***FHLMC:*** The Federal Home Loan Mortgage Corporation, a corporate instrumentality of the United States created and existing under Title III of the Emergency Home Finance Act of 1970, as amended, or any successor thereto.

***Fitch:*** Fitch, Inc., or any successor thereto. If Fitch is designated as a Rating Agency in the Preliminary Statement, for purposes of Section 10.05(b) the address for notices to Fitch shall be Fitch, Inc., One State Street Plaza, New York, NY 10004, Attention: MBS Monitoring - IndyMac 2005-AR12, or any other address Fitch furnishes to the Depositor and the Master Servicer.

***FNMA:*** The Federal National Mortgage Association, a federally chartered and privately owned corporation organized and existing under the Federal National Mortgage Association Charter Act, or any successor thereto.

***Fraud Loan:*** Not applicable.

***Fraud Losses:*** Not applicable.

***Fraud Loss Coverage Amount:*** Not applicable.

***Fraud Loss Coverage Termination Date:*** Not applicable.

***Gross Margin:*** With respect to each Mortgage Loan, the fixed percentage set forth in the related Mortgage Note that is added to the MTA Index on each Adjustment Date in accordance with the terms of the Mortgage Note used to determine the Mortgage Rate for such Mortgage Loan.

***Group 1 Certificates***: As specified in the Preliminary Statement.

***Group 1 Mortgage Loan***: Any Mortgage Loan in Loan Group 1.

***Group 1 Net WAC Cap:*** For any Distribution Date, the Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans for that Distribution Date, *minus* the product of (x) the Pass-Through Rate of the Class A-X-1 Certificates for the Interest Accrual Period for that Distribution Date and (y) a fraction, the numerator of which is the Notional Amount of the Class A-X-1 IO-1 Component immediately prior to that Distribution Date, and the denominator of which is the Class Certificate Balance of the Class 1-A-1 Certificates immediately prior to that Distribution Date, such result multiplied by a fraction, the numerator of which is 30 and the denominator of which is the number of days in the related Interest Accrual Period.

***Group 1 Senior Certificates***: As specified in the Preliminary Statement.

***Group 1 Tax Adjusted Cap Rate:*** The Weighted Average Adjusted Net Mortgage Rate of the Group 1 Mortgage Loans *minus* the product of (x) 12 and (y) the Net Deferred Interest for such Distribution Date from the Group 1 Mortgage Loans that is not allocated to the Group 1 Senior Certificates or the Subordinated Certificates, divided by the aggregate Stated Principal Balance of the Group 1 Mortgage Loans. For federal income tax purposes, the Weighted Average Adjusted Net Mortgage Rate for Loan Group 1 will equal two times the weighted average of the Class 1-A-1 and Class 1-B-1 Interests, treating the Class 1-B-1 as subject to a cap equal to zero

***Group 2 Certificates***: As specified in the Preliminary Statement.

***Group 2 Mortgage Loan***: Any Mortgage Loan in Loan Group 2.

***Group 2 Net WAC Cap***: For any Distribution Date, the Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans for that Distribution Date, *minus* the product of (x) the Pass-Through Rate of the Class A-X-1 Certificates for the Interest Accrual Period for that Distribution Date and (y) a fraction, the numerator of which is the Notional Amount of the Class A-X-1 IO-2 Component immediately prior to that Distribution Date, and the denominator of which is the aggregate Class Certificate Balance of the Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates immediately prior to that Distribution Date, such result multiplied by a fraction, the numerator of which is 30 and the denominator of which is the number of days in the related Interest Accrual Period.

***Group 2 Senior Certificates***: As specified in the Preliminary Statement.

***Group 2 Tax Adjusted Cap Rate:*** The Weighted Average Adjusted Net Mortgage Rate of the Group 2 Mortgage Loans *minus* the product of (x) 12 and (y) the Net Deferred Interest for such Distribution Date from the Group 2 Mortgage Loans that is not allocated to the Group 2 Senior Certificates or the Subordinated Certificates, divided by the aggregate Stated Principal Balance of the Group 2 Mortgage Loans. For federal income tax purposes, the Weighted Average Adjusted Net Mortgage Rate for Loan Group 2 will equal two times the weighted average of the Class 1-A-2 and Class 1-B-2 Interests, treating the Class 1-B-2 as subject to a cap equal to zero

***Hedged Certificates***: Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C, Class 2-A-2 and Class A-X-2 Certificates.

***Index:*** LIBOR.

***Indirect Participant:*** A broker, dealer, bank, or other financial institution or other Person that clears through or maintains a custodial relationship with a Depository Participant.

***Initial Bankruptcy Loss Coverage Amount:*** Not applicable.

***Initial LIBOR Rate***: 3.15% per annum.

***Insurance Policy:*** For any Mortgage Loan included in the Trust Fund, any insurance policy, including all riders and endorsements thereto in effect, including any replacement policy or policies for any Insurance Policies.

***Insurance Proceeds:*** Proceeds paid by an insurer pursuant to any Insurance Policy, in each case other than any amount included in such Insurance Proceeds in respect of Insured Expenses.

***Insured Expenses:*** Expenses covered by an Insurance Policy or any other insurance policy with respect to the Mortgage Loans.

***Interest Accrual Period:*** With respect to each Class of Delay Certificates and any Distribution Date, the calendar month prior to the month of such Distribution Date. The Delay Certificates will accrue interest on the basis of a 360-day year composed of twelve 30-day months. With respect to each Class of Non-Delay Certificates and any Distribution Date, the period commencing on the immediately preceding Distribution Date (or, in the case of the first Distribution Date, the Closing Date) and ending on the day immediately preceding that Distribution Date. The Non-Delay Certificates will accrue interest on the basis of a 360-day year and the actual number of days elapsed during the related Interest Accrual Period.

***Interest Determination Date:*** With respect to (a) any Interest Accrual Period for a Class of LIBOR Certificates and (b) any Interest Accrual Period for the COFI Certificates for which the applicable Index is LIBOR, the second Business Day prior to the first day of such Interest Accrual Period.

***Interest Rate:*** With respect to each REMIC 1 Interest, REMIC 2 Interest, REMIC 3 or REMIC 4 Interest, the applicable rate set forth or calculated in the manner described in the Preliminary Statement.

***Interest Settlement Rate:*** As defined in Section 4.08.

***Last Scheduled Distribution Date:*** The Distribution Date in the month immediately following the month of the latest scheduled maturity date for any of the Mortgage Loans.

***Latest Possible Maturity Date:*** The Distribution Date following the third anniversary of the scheduled maturity date of the Mortgage Loan having the latest scheduled maturity date as of the Cut-off Date.

***Lender PMI Loans:*** Mortgage Loans with respect to which the lender rather than the borrower acquired the primary mortgage guaranty insurance and charged the related borrower an interest premium.

***LIBOR:*** The London interbank offered rate for one month United States dollar deposits calculated in the manner described in Section 4.08.

***LIBOR Determination Date***: For any Interest Accrual Period, the second London Business Day prior to the commencement of such Interest Accrual Period.

***Liquidated Mortgage Loan:*** For any Distribution Date, a defaulted Mortgage Loan (including any REO Property) that was liquidated in the calendar month preceding the month of the Distribution Date and as to which the Master Servicer has certified (in accordance with this Agreement) that it has received all amounts it expects to receive in connection with the liquidation of the Mortgage Loan, including the final disposition of an REO Property.

***Liquidation Proceeds:*** Amounts, including Insurance Proceeds regardless of when received, received in connection with the partial or complete liquidation of defaulted Mortgage Loans, whether through trustee's sale, foreclosure sale, or otherwise or amounts received in connection with any condemnation or partial release of a Mortgaged Property, and any other proceeds received in connection with an REO Property, less the sum of related unreimbursed Servicing Fees, Servicing Advances, and Advances.

***Loan Group:*** Either Loan Group 1 and Loan Group 2, as applicable.

***Loan Group 1:*** All Mortgage Loans identified as Group 1 Mortgage Loans on the Mortgage Loan Schedule.

***Loan Group 2:*** All Mortgage Loans identified as Group 2 Mortgage Loans on the Mortgage Loan Schedule.

***Loan-to-Value Ratio:*** For any Mortgage Loan and as of any date of determination, is the fraction whose numerator is the original principal balance of the related Mortgage Loan at that date of determination and whose denominator is the Appraised Value of the related Mortgaged Property.

***London Business Day:*** Any day on which dealings in deposits of United States dollars are transacted in the London interbank market.

***Lost Mortgage Note:*** Any Mortgage Note the original of which was permanently lost or destroyed and has not been replaced.

***Maintenance:*** For any Cooperative Unit, the rent paid by the Mortgagor to the Cooperative Corporation pursuant to the Proprietary Lease.

***Master Servicer:*** IndyMac Bank, F.S.B., a federal savings bank, and its successors and assigns, in its capacity as master servicer under this Agreement.

***Master Servicer Advance Date:*** As to any Distribution Date, 12:30 P.M. Pacific time on the Business Day preceding the Distribution Date.

***Maximum Mortgage Rate:*** For each Mortgage Loan, the percentage set forth in the related Mortgage Note as the lifetime maximum Mortgage Rate to which such Mortgage Rate may be adjusted.

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

***MERS Mortgage Loan***: Any Mortgage Loan registered with MERS on the MERS® System.

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

***MIN***: The mortgage identification number for any MERS Mortgage Loan.

***MOM Loan***: Any Mortgage Loan as to which MERS is acting as mortgagee, solely as nominee for the originator of such Mortgage Loan and its successors and assigns.

***Moneyline Telerate Page 3750:*** The display page currently so designated on the Moneyline Telerate Information Services, Inc. (or any page replacing that page on that service for the purpose of displaying London inter-bank offered rates of major banks).

***Monthly Statement:*** The statement delivered to the Certificateholders pursuant to Section 4.06.

***Moody's:*** Moody's Investors Service, Inc., or any successor thereto. If Moody's is designated as a Rating Agency in the Preliminary Statement, for purposes of Section 10.05(b) the address for notices to Moody's shall be Moody's Investors Service, Inc., 99 Church Street, New York, New York 10007, Attention: Residential Loan Monitoring Group, or any other address that Moody's furnishes to the Depositor and the Master Servicer.

***Mortgage:*** The mortgage, deed of trust, or other instrument creating a first lien on an estate in fee simple or leasehold interest in real property securing a Mortgage Note.

***Mortgage File:*** The mortgage documents listed in Section 2.01 pertaining to a particular Mortgage Loan and any additional documents delivered to the Trustee to be added to the Mortgage File pursuant to this Agreement.

***Mortgage Loans:*** Such of the mortgage loans transferred and assigned to the Trustee pursuant to this Agreement, as from time to time are held as a part of the Trust Fund (including any REO Property), the Mortgage Loans so held being identified on the Mortgage Loan Schedule, notwithstanding foreclosure or other acquisition of title of the related Mortgaged Property.

***Mortgage Loan Schedule:*** As of any date, the list set forth in Schedule I of Mortgage Loans included in the Trust Fund on that date. The Mortgage Loan Schedule shall be prepared by the Seller and shall set forth the following information with respect to each Mortgage Loan by Loan Group:

(i) the loan number;

(ii) the street address of the Mortgaged Property, including the zip code;

(iii) the maturity date;

(iv) the original principal balance;

(v) the Cut-off Date Principal Balance;

(vi) the first payment date of the Mortgage Loan;

(vii) the Scheduled Payment in effect as of the Cut-off Date;

(viii) the Gross Margin in effect as of the Cut-off Date;

(ix) the Maximum Mortgage Rate in effect as of the Cut-off Date;

(x) the first Payment Adjustment Date after the Cut-off Date;

(xi) a code indicating when the Mortgage Index is determined;

(xii) the Loan-to-Value Ratio at origination;

(xiii) a code indicating whether the residential dwelling at the time of origination was represented to be owner-occupied;

(xiv) a code indicating whether the residential dwelling is either (a) a detached single family dwelling, (b) a dwelling in a PUD, (c) a condominium unit, (d) a two- to four-unit residential property, or (e) a Cooperative Unit;

(xv) the Mortgage Rate in effect as of the Cut-off Date;

(xvi) the purpose for the Mortgage Loan;

(xvii) the type of documentation program pursuant to which the Mortgage Loan was originated;

(xviii) a code indicating whether the Mortgage Loan is a borrower-paid mortgage insurance loan;

(xix) the Servicing Fee Rate;

(xx) a code indicating whether the Mortgage Loan is a Lender PMI Loan;

(xxi) the coverage amount of any mortgage insurance;

(xxii) with respect to the Lender PMI Loans, the interest premium charged by the lender;

(xxiii) a code indicating whether the Mortgage Loan is a Delay Delivery Mortgage Loan; and

(xxiv) a code indicating whether the Mortgage Loan is a MERS Mortgage Loan.

The schedule shall also set forth the total of the amounts described under (v) above for all of the Mortgage Loans and for each Loan Group.

***Mortgage Note:*** The original executed note or other evidence of the indebtedness of a Mortgagor under a Mortgage Loan.

***Mortgage Rate:*** The annual rate of interest borne by a Mortgage Note from time to time (net of the interest premium for any Lender PMI Loan).

***Mortgaged Property:*** The underlying property securing a Mortgage Loan, which, with respect to a Cooperative Loan, is the related Co-op Shares and Proprietary Lease.

***Mortgagor:*** The obligors on a Mortgage Note.

***Mortgage Index:*** The MTA Index.

***MTA Index:*** The twelve-month average of the monthly yields on U.S. Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in Statistical Release H. 15(519).

***National Cost of Funds Index:*** The National Monthly Median Cost of Funds Ratio to SAIF-Insured Institutions published by the OTS.

***Net Deferred Interest:*** With respect to each Loan Group and Distribution Date, the excess, if any, of the amount of Deferred Interest that accrued on the Mortgage Loans in that Loan Group from the preceding Due Date to the Due Date in the month of such Distribution Date, over any Principal Prepayment Amount for those Mortgage Loans during the related Prepayment Period.

***Net Interest Shortfall:*** With respect to any Distribution Date and Loan Group, an amount equal to any Net Prepayment Interest Shortfalls for that Loan Group and Distribution Date and the amount of interest that would otherwise have been received with respect to any Mortgage Loan in that Loan Group that was the subject of a Relief Act Reduction.

***Net Prepayment Interest Shortfall:*** As to any Distribution Date and Loan Group, the amount, if any, by which the aggregate of Prepayment Interest Shortfalls for such Loan Group exceeds an amount equal to the sum of (a) the Compensating Interest for such Loan Group and Distribution Date and (b) the excess, if any, of the Compensating Interest for the other Loan Group for such Distribution Date over Prepayment Interest Shortfalls for such Loan Group and Distribution Date.

***Net Prepayments:*** As to any Distribution Date and Loan Group, the amount equal to the excess, if any, of the (i) Principal Prepayment Amount for that Loan Group over (ii) the aggregate amount of Deferred Interest accrued on the Mortgage Loans in that Loan Group from the preceding Due Date to the Due Date related to that Distribution Date.

***Net WAC Cap***: The Group 1 Net WAC Cap, the Group 2 Net WAC Cap or the Subordinate WAC Cap, as applicable.

***Non-Delay Certificates:*** As specified in the Preliminary Statement.

***Nonrecoverable Advance:*** Any portion of an Advance previously made or proposed to be made by the Master Servicer, that, in the good faith judgment of the Master Servicer, will not be ultimately recoverable by the Master Servicer from the related Mortgagor, related Liquidation Proceeds or otherwise.

***Notice of Final Distribution:*** The notice to be provided pursuant to Section 9.02 to the effect that final distribution on any of the Certificates shall be made only upon presentation and surrender thereof.

***Notional Amount:*** With respect to the Class A-X-1 Certificates immediately prior to any Distribution Date, the sum of the Notional Amounts of each Class A-X-1 Component immediately prior to such Distribution Date. With respect to the Class A-X-1 IO-1 Component and immediately prior to any Distribution Date on or prior to the Distribution Date in December 2008, the lesser of (i) the amount specified for that Distribution Date on the Class A-X-1 IO-1 Component Notional Balance Schedule set forth on Schedule 1 to the Prospectus Supplement and (ii) the Class Certificate Balance of the Class 1-A-1 Certificates immediately prior to that Distribution Date. With respect to the Class A-X-1 IO-2

Component and immediately prior to any Distribution Date on or prior to the Distribution Date in December 2008, the lesser of (i) the amount specified for that Distribution Date on the Class A-X-1 IO-2 Component Notional Balance Schedule set forth on Schedule 1 to the Prospectus Supplement and (ii) the aggregate Class Certificate Balance of the Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates immediately prior to that Distribution Date. With respect to either Component of the Class A-X-1 Certificates and immediately prior to any Distribution Date after the Distribution Date in December 2008, $0. With respect to the Class A-X-2 Certificates and immediately prior to any Distribution Date, the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the prior month after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date.

***Notional Amount Certificates:*** As specified in the Preliminary Statement.

***Notional Amount Components:*** As specified in the Preliminary Statement.

***Offered Certificates:*** As specified in the Preliminary Statement.

***Officer's Certificate:*** A certificate (i) signed by the Chairman of the Board, the Vice Chairman of the Board, the President, a Managing Director, a Vice President (however denominated), an Assistant Vice President, the Treasurer, the Secretary, or one of the Assistant Treasurers or Assistant Secretaries of the Depositor or the Master Servicer, or (ii) if provided for in this Agreement, signed by a Servicing Officer, as the case may be, and delivered to the Depositor and the Trustee as required by this Agreement.

***Opinion of Counsel:*** For the interpretation or application of the REMIC Provisions, a written opinion of counsel who (i) is in fact independent of the Depositor and the Master Servicer, (ii) does not have any direct financial interest in the Depositor or the Master Servicer or in any affiliate of either, and (iii) is not connected with the Depositor or the Master Servicer as an officer, employee, promoter, underwriter, trustee, partner, director, or person performing similar functions. Otherwise, a written opinion of counsel who may be counsel for the Depositor or the Master Servicer, including in-house counsel, reasonably acceptable to the Trustee.

***Optional Termination Date:*** As defined in Section 9.01.

***Original Applicable Credit Support Percentage:*** With respect to each of the following Classes of Subordinated Certificates, the corresponding percentage described below, as of the Closing Date:

| | |
|---|---|
| Class B-1.................................................. | 8.25% |
| Class B-2.................................................. | 5.70% |
| Class B-3.................................................. | 3.70% |
| Class B-4.................................................. | 2.30% |
| Class B-5.................................................. | 1.95% |
| Class B-6.................................................. | 1.40% |
| Class B-7.................................................. | 0.95% |
| Class B-8.................................................. | 0.40% |

***Original Mortgage Loan:*** The Mortgage Loan refinanced in connection with the origination of a Refinance Loan.

***Original Subordinated Principal Balance:*** The aggregate Class Certificate Balance of the Subordinated Certificates as of the Closing Date.

***OTS:*** The Office of Thrift Supervision.

***Outside Reference Date:*** Not applicable.

***Outstanding:*** For the Certificates as of any date of determination, all Certificates theretofore executed and authenticated under this Agreement except:

(i) Certificates theretofore canceled by the Trustee or delivered to the Trustee for cancellation; and

(ii) Certificates in exchange for which or in lieu of which other Certificates have been executed and delivered by the Trustee pursuant to this Agreement.

***Outstanding Mortgage Loan:*** As of any Due Date, a Mortgage Loan with a Stated Principal Balance greater than zero that was not the subject of a Principal Prepayment in Full before the Due Date or during the related Prepayment Period and that did not become a Liquidated Mortgage Loan before the Due Date.

***Overcollateralized Group:*** As defined in Section 4.03.

***Ownership Interest:*** As to any Residual Certificate, any ownership interest in the Certificate including any interest in the Certificate as its Holder and any other interest therein, whether direct or indirect, legal or beneficial.

***Pass-Through Margin***: For each Class of LIBOR Certificates for the Interest Accrual Period related to any Distribution Date, as follows:

| | (1) | (2) |
|---|---|---|
| Class 1-A-1 ....................................... | 0.260% | 0.520% |
| Class 2-A-1A..................................... | 0.240% | 0.480% |
| Class 2-A-1B..................................... | 0.280% | 0.560% |
| Class 2-A-1C..................................... | 0.350% | 0.700% |
| Class 2-A-2 ....................................... | 0.350% | 0.700% |
| Class B-1 ........................................... | 0.480% | 0.720% |
| Class B-2 ........................................... | 0.700% | 1.050% |
| Class B-3 ........................................... | 1.450% | 2.175% |
| Class B-4, Class B-5, Class B-6, Class B-7 and Class B-8.................... | 1.750% | 2.625% |

(1) For the Interest Accrual Period for each Distribution Date occurring on or prior to the Optional Termination Date.
(2) For each other Interest Accrual Period.

***Pass-Through Rate:*** For each Class of Certificates, the per annum rate set forth or calculated in the manner described in the Preliminary Statement.

***Payment Adjustment Date:*** A date specified in each Mortgage Note as a date on which the Scheduled Payment for the related Mortgage Loan is subject to adjustment.

***Payment Cap:*** For each Mortgage Loan, the percentage limit set forth in the related Mortgage Note concerning the maximum permitted increase in a monthly payment.

***Percentage Interest:*** As to any Certificate, the percentage interest evidenced thereby in distributions required to be made on the related Class, the percentage interest being set forth on its face or equal to the percentage obtained by dividing the Denomination of the Certificate by the aggregate of the Denominations of all Certificates of the same Class.

***Permitted Investments:*** At any time, any of the following:

(i) obligations of the United States or any agency thereof backed by the full faith and credit of the United States;

(ii) general obligations of or obligations guaranteed by any state of the United States or the District of Columbia receiving the highest long-term debt rating of each Rating Agency, or any lower rating that will not result in the downgrading, qualification or withdrawal of the ratings then assigned to the Certificates by the Rating Agencies, as evidenced by a signed writing delivered by each Rating Agency;

(iii) commercial or finance company paper that is then receiving the highest commercial or finance company paper rating of each Rating Agency, or any lower rating that will not result in the downgrading, qualification or withdrawal of the ratings then assigned to the Certificates by the Rating Agencies , as evidenced by a signed writing delivered by each Rating Agency;

(iv) certificates of deposit, demand or time deposits, or bankers' acceptances issued by any depository institution or trust company incorporated under the laws of the United States or of any state thereof and subject to supervision and examination by federal or state banking authorities, provided that the commercial paper or long-term unsecured debt obligations of the depository institution or trust company (or in the case of the principal depository institution in a holding company system, the commercial paper or long-term unsecured debt obligations of the holding company, but only if Moody's is not a Rating Agency) are then rated one of the two highest long-term and the highest short-term ratings of each Rating Agency for the securities, or any lower rating that will not result in the downgrading, qualification or withdrawal of the ratings then assigned to the Certificates by the Rating Agencies, as evidenced by a signed writing delivered by each Rating Agency;

(v) demand or time deposits or certificates of deposit issued by any bank or trust company or savings institution to the extent that the deposits are fully insured by the FDIC;

(vi) guaranteed reinvestment agreements issued by any bank, insurance company, or other corporation acceptable to the Rating Agencies at the time of the issuance of the agreements, as evidenced by a signed writing delivered by each Rating Agency;

(vii) repurchase obligations with respect to any security described in clauses (i) and (ii) above, in either case entered into with a depository institution or trust company (acting as principal) described in clause (iv) above; provided that such repurchase obligation would be accounted for as a financing arrangement under generally accepted accounting principles;

(viii) securities (other than stripped bonds, stripped coupons, or instruments sold at a purchase price in excess of 115% of their face amount) bearing interest or sold at a discount issued by any corporation incorporated under the laws of the United States or any state thereof that, at the time of the investment, have one of the two highest ratings of each Rating Agency (except if the Rating Agency is Moody's the rating shall be the highest commercial paper rating of Moody's for the securities), or any lower rating that will not result in the downgrading, qualification or withdrawal of the ratings then assigned to the Certificates by the Rating Agencies, as evidenced by a signed writing delivered by each Rating Agency and that have a maturity date occurring no more than 365 days from their date of issuance;

(ix) units of a taxable money-market portfolio having the highest rating assigned by each Rating Agency (except (i) if Fitch is a Rating Agency and has not rated the portfolio, the highest rating assigned by Moody's and (ii) if S&P is a Rating Agency, "AAAm" or "AAAM-G" by S&P) and restricted to obligations issued or guaranteed by the United States of America or entities whose obligations are backed by the full faith and credit of the United States of America and repurchase agreements collateralized by such obligations; and

(x) any other investments bearing interest or sold at a discount acceptable to each Rating Agency that will not result in the downgrading, qualification or withdrawal of the ratings then assigned to the Certificates by the Rating Agencies, as evidenced by a signed writing delivered by each Rating Agency.

No Permitted Investment may (i) evidence the right to receive interest-only payments with respect to the obligations underlying the instrument, (ii) be sold or disposed of before its maturity or (iii) be any obligation of the Seller or any of its Affiliates. Any Permitted Investment shall be relatively risk free and no options or voting rights shall be exercised with respect to any Permitted Investment. Any Permitted Investment shall be sold or disposed of in accordance with Financial Accounting Standard 140, paragraph 35c(6) in effect as of the Closing Date.

***Permitted Transferee:*** Any person other than

(i) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing,

(ii) a foreign government, International Organization, or any agency or instrumentality of either of the foregoing,

(iii) an organization (except certain farmers' cooperatives described in section 521 of the Code) that is exempt from tax imposed by Chapter 1 of the Code (including the tax imposed by section 511 of the Code on unrelated business taxable income) on any excess inclusions (as defined in section 860E(c)(1) of the Code) with respect to any Residual Certificate,

(iv) a rural electric and telephone cooperatives described in section 1381(a)(2)(C) of the Code,

(v) an "electing large partnership" as defined in section 775 of the Code,

(vi) a Person that is not a U.S. Person, and

(vii) any other Person so designated by the Depositor based on an Opinion of Counsel that the Transfer of an Ownership Interest in a Residual Certificate to the Person may cause any REMIC created under this Agreement to fail to qualify as a REMIC at any time that the Certificates are outstanding.

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

***Physical Certificates:*** As specified in the Preliminary Statement.

***Planned Balance:*** Not applicable.

***Planned Principal Classes:*** As specified in the Preliminary Statement.

***Pool Stated Principal Balance***: The aggregate Stated Principal Balance of the Mortgage Loans.

***Prepayment Charge:*** As to a Mortgage Loan, any charge payable by a Mortgagor in connection with certain partial prepayments and all prepayments in full made within the related Prepayment Charge Period, the Prepayment Charges with respect to each applicable Mortgage Loan so held by the Trust Fund being identified in the Prepayment Charge Schedule.

***Prepayment Charge Period:*** As to any Mortgage Loan, the period of time during which a Prepayment Charge may be imposed.

***Prepayment Charge Schedule:*** As of any date, the list of Prepayment Charges included in the Trust Fund on that date (including the prepayment charge summary attached thereto). The Prepayment Charge Schedule shall set forth the following information with respect to each Prepayment Charge:

- the Mortgage Loan account number;
- a code indicating the type of Prepayment Charge;
- the state of origination in which the related Mortgage Property is located;
- the first date on which a monthly payment is or was due under the related Mortgage Note;
- the term of the Prepayment Charge;
- the original principal amount of the related Mortgage Loan; and
- the Cut-off Date Principal Balance of the related Mortgage Loan.

The Prepayment Charge Schedule shall be amended from time to time by the Master Servicer in accordance with this Agreement.

***Prepayment Interest Excess:*** As to any Principal Prepayment received by the Master Servicer on a Mortgage Loan from the first day through the fifteenth day of any calendar month other than the month of the Cut-off Date, all amounts paid by the related Mortgagor in respect of interest on such Principal Prepayment. All Prepayment Interest Excess shall be retained by the Master Servicer as additional master servicing compensation.

***Prepayment Interest Shortfall:*** As to any Distribution Date, Mortgage Loan and Principal Prepayment received on or after the sixteenth day of the month preceding the month of such Distribution Date (or, in the case of the first Distribution Date, on or after the Cut-off Date) and on or before the last day of the month preceding the month of such Distribution Date, the amount, if any, by which one month's interest at the related Mortgage Rate, net of the Servicing Fee Rate, on such Principal Prepayment exceeds the amount of interest paid in connection with such Principal Prepayment.

***Prepayment Period:*** As to any Distribution Date and related Due Date, the period from and including the 16th day of the month immediately prior to the month of such Distribution Date (or, in the case of the first Distribution Date, from the Cut-off Date) and to and including the 15th day of the month of such Distribution Date.

***Prepayment Shift Percentage:*** Not applicable.

***Primary Insurance Policy:*** Each policy of primary mortgage guaranty insurance or any replacement policy therefor with respect to any Mortgage Loan.

***Principal Amount:*** As to any Distribution Date and each Loan Group, the sum of (a) all monthly payments of principal due on each Mortgage Loan in that Loan Group on the related Due Date, (b) the principal portion of the Purchase Price of each Mortgage Loan in that Loan Group that was repurchased by the Seller pursuant to this Agreement as of such Distribution Date, excluding any Mortgage Loan that was repurchased due to a modification of the Mortgage Rate, (c) the Substitution Adjustment Amount in connection with any Deleted Mortgage Loan in that Loan Group received with respect to such Distribution Date, (d) any Insurance Proceeds or Liquidation Proceeds allocable to recoveries of principal of Mortgage Loans in that Loan Group that are not yet Liquidated Mortgage Loans received during the calendar month preceding the month of such Distribution Date, (e) with respect to each Mortgage Loan in that Loan Group that became a Liquidated Mortgage Loan during the calendar month preceding the month of such Distribution Date, the amount of Liquidation Proceeds allocable to principal received with respect to such Mortgage Loan, (f) all Net Prepayments on the Mortgage Loans in that Loan Group received during the related Prepayment Period and (g) any Subsequent Recoveries with respect to the Mortgage Loans in that Loan Group received during the calendar month preceding the month of such Distribution Date.

***Principal Balance Schedules***: Not applicable.

***Principal Deficiency Amount:*** For any Distribution Date for an Undercollateralized Group, the excess of the aggregate Class Certificate Balance and Component Principal Balance of the Senior Certificates and Principal Only Component related to that Undercollateralized Group on that Distribution Date (after all other distributions have been made on that date) over the aggregate Stated Principal Balance of the Mortgage Loans in that Loan Group as of the Due Date in the month of such Distribution Date after giving effect to Principal Prepayments in the Prepayment Period related to the Due Date in the month of such Distribution Date.

***Principal Only Certificates:*** As specified in the Preliminary Statement.

***Principal Only Components:*** The Class A-PO-1 Component and Class A-PO-2 Component.

***Principal Prepayment:*** Any payment of principal by a Mortgagor on a Mortgage Loan (including the principal portion of the Purchase Price of any Mortgage Loan purchased pursuant to Section 3.12) that is received in advance of its scheduled Due Date and is not accompanied by an amount representing scheduled interest due on any date in any month after the month of prepayment. The Master Servicer shall apply partial Principal Prepayments in accordance with the related Mortgage Note.

***Principal Prepayment Amount:*** As to any Distribution Date and any Loan Group, an amount equal to the sum of all voluntary Principal Prepayments on the Mortgage Loans in that Loan Group received during the related Prepayment Period.

***Principal Prepayment in Full:*** Any Principal Prepayment made by a Mortgagor of the entire principal balance of a Mortgage Loan.

***Principal Relocation Payment:*** A payment from any Loan Group to REMIC 1 Regular Interests other than those of their corresponding Loan Group as provided in the Preliminary Statement. Principal Relocation Payments shall be made of principal allocations comprising the Principal Amount from a Loan Group.

***Private Certificates:*** As specified in the Preliminary Statement.

***Pro Rata Share:*** As to any Distribution Date and any Class of Subordinated Certificates, the portion of the Subordinated Principal Distribution Amount allocable to such Class, equal to the product of the Subordinated Principal Distribution Amount on such Distribution Date and a fraction, the numerator of which is the related Class Certificate Balance thereof and the denominator of which is the aggregate Class Certificate Balance of the Subordinated Certificates, in each case immediately prior to such Distribution Date.

***Proprietary Lease:*** For any Cooperative Unit, a lease or occupancy agreement between a Cooperative Corporation and a holder of related Co-op Shares.

***Prospectus Supplement:*** The Prospectus Supplement dated June 2, 2005, relating to the Offered Certificates, and any supplement thereto.

***PUD:*** Planned Unit Development.

***Purchase Price:*** For any Mortgage Loan required to be purchased by the Seller pursuant to Section 2.02 or 2.03 or purchased by the Master Servicer pursuant to Section 3.12, the sum of

(i) 100% of the unpaid principal balance of the Mortgage Loan on the date of the purchase,

(ii) accrued and unpaid interest on the Mortgage Loan at the applicable Mortgage Rate (or at the applicable Adjusted Mortgage Rate if (x) the purchaser is the Master Servicer or (y) if the purchaser is the Seller and the Seller is the Master Servicer) from the date through which interest was last paid by the Mortgagor to the Due Date in the month in which the Purchase Price is to be distributed to Certificateholders, net of any unreimbursed Advances made by the Master Servicer on the Mortgage Loan, and

(iii) any costs and damages incurred by the Trust Fund in connection with any violation by the Mortgage Loan of any predatory or abusive lending law.

If the Mortgage Loan is purchased pursuant to Section 3.12, (x) the interest component of the Purchase Price shall be computed (i) on the basis of the applicable Adjusted Mortgage Rate before giving effect to the related modification and (ii) from the date to which interest was last paid to the date on which the Mortgage Loan is assigned to the Master Servicer pursuant to Section 3.12 and (y) will include the Prepayment Charge, if any, that would have been payable had the Mortgage Loan been the subject of a voluntary Principal Prepayment in Full at the time.

***Qualified Insurer:*** A mortgage guaranty insurance company duly qualified as such under the laws of the state of its principal place of business and each state having jurisdiction over the insurer in connection with the insurance policy issued by the insurer, duly authorized and licensed in such states to transact a mortgage guaranty insurance business in such states and to write the insurance provided by the insurance policy issued by it, approved as a FNMA- or FHLMC-approved mortgage insurer or having a claims paying ability rating of at least "AA" or equivalent rating by a nationally recognized statistical rating organization. Any replacement insurer with respect to a Mortgage Loan must have at least as high a claims paying ability rating as the insurer it replaces had on the Closing Date.

***Rating Agency:*** Each of the Rating Agencies specified in the Preliminary Statement. If any of them or a successor is no longer in existence, “Rating Agency” shall be the nationally recognized statistical rating organization, or other comparable Person, designated by the Depositor, notice of which designation shall be given to the Trustee. References to a given rating or rating category of a Rating Agency means the rating category without giving effect to any modifiers.

***Realized Loss:*** With respect to each Liquidated Mortgage Loan, an amount (not less than zero or more than the Stated Principal Balance of the Mortgage Loan) as of the date of such liquidation, equal to (i) the Stated Principal Balance of the Liquidated Mortgage Loan as of the date of such liquidation, plus (ii) interest at the Adjusted Net Mortgage Rate from the Due Date as to which interest was last paid or advanced (and not reimbursed) to Certificateholders up to the Due Date in the month in which Liquidation Proceeds are required to be distributed on the Stated Principal Balance of such Liquidated Mortgage Loan from time to time, minus (iii) the Liquidation Proceeds, if any, received during the month in which such liquidation occurred, to the extent applied as recoveries of interest at the Adjusted Net Mortgage Rate and to principal of the Liquidated Mortgage Loan. With respect to each Mortgage Loan that has become the subject of a Deficient Valuation, if the principal amount due under the related Mortgage Note has been reduced, the difference between the principal balance of the Mortgage Loan outstanding immediately prior to such Deficient Valuation and the principal balance of the Mortgage Loan as reduced by the Deficient Valuation. With respect to each Mortgage Loan that has become the subject of a Debt Service Reduction and any Distribution Date, the amount, if any, by which the principal portion of the related Scheduled Payment has been reduced.

To the extent the Master Servicer receives Subsequent Recoveries with respect to any Mortgage Loan, the amount of the Realized Loss with respect to that Mortgage Loan will be reduced by such Subsequent Recoveries.

***Recognition Agreement:*** For any Cooperative Loan, an agreement between the Cooperative Corporation and the originator of the Mortgage Loan that establishes the rights of the originator in the Cooperative Property.

***Record Date:*** With respect to any Distribution Date and any Definitive Certificate and the Delay Certificates, the close of business on the last Business Day of the month preceding the month of that Distribution Date. With respect to any Distribution Date and the LIBOR Certificates as long as they are Book-Entry Certificates, the Business Day immediately prior to such Distribution Date.

***Reference Bank:*** As defined in Section 4.08.

***Refinance Loan:*** Any Mortgage Loan the proceeds of which are used to refinance an Original Mortgage Loan.

***Regular Certificates:*** As specified in the Preliminary Statement.

***Relief Act:*** The Servicemembers Civil Relief Act and any similar state and local laws.

***Relief Act Reductions:*** With respect to any Distribution Date and any Mortgage Loan as to which there has been a reduction in the amount of interest collectible thereon for the most recently ended calendar month as a result of the application of the Relief Act, the amount, if any, by which (i) interest collectible on such Mortgage Loan for the most recently ended calendar month is less than (ii) interest accrued thereon for such month pursuant to the Mortgage Note.

***REMIC:*** A “real estate mortgage investment conduit” within the meaning of section 860D of the Code.

***REMIC Provisions:*** Provisions of the federal income tax law relating to real estate mortgage investment conduits, which appear at sections 860A through 860G of Subchapter M of Chapter 1 of the Code, and related provisions, and regulations promulgated thereunder, as the foregoing may be in effect from time to time as well as provisions of applicable state laws.

***REO Property:*** A Mortgaged Property acquired by the Trust Fund through foreclosure or deed-in-lieu of foreclosure in connection with a defaulted Mortgage Loan.

***Request for Release:*** The Request for Release submitted by the Master Servicer to the Trustee, substantially in the form of Exhibits M and N, as appropriate.

***Required Insurance Policy:*** For any Mortgage Loan, any insurance policy that is required to be maintained from time to time under this Agreement.

***Required Reserve Fund Deposit***: With respect to the Class A-X-2 Certificates and any Distribution Date, an amount equal to the lesser of (i) the amount calculated pursuant to clause (i) of the definition of Class Optimal Interest Distribution Amount for the Class A-X-2 Certificates for such Distribution Date and (ii) the amount, if any, required to bring the balance on deposit in the Carryover Shortfall Reserve Fund up to an amount equal to the greater of (a) the aggregate remaining Carryover Shortfall Amount for such Distribution Date with respect to the LIBOR Certificates (after distributing amounts in the Yield Maintenance Reserve Funds to the Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates) and (b) $1,000.

***Residual Certificates:*** As specified in the Preliminary Statement.

***Responsible Officer:*** When used with respect to the Trustee, any Managing Director, any Director, Vice President, any Assistant Vice President, any Associate, any Assistant Secretary, any Trust Officer, or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers who at such time shall be officers to whom, with respect to a particular matter, the matter is referred because of the officer’s knowledge of and familiarity with the particular subject and who has direct responsibility for the administration of this Agreement.

***Restricted Classes:*** As defined in Section 4.02(e).

***SAIF:*** The Savings Association Insurance Fund, or any successor thereto.

***S&P:*** Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. If S&P is designated as a Rating Agency in the Preliminary Statement, for purposes of Section 10.05(b) the address for notices to S&P shall be Standard & Poor’s, a division of The McGraw-Hill Companies, Inc., 55 Water Street, New York, New York 10041, Attention: Mortgage Surveillance Monitoring, or any other address that S&P furnishes to the Depositor and the Master Servicer.

***Scheduled Balance:*** Not applicable.

***Scheduled Classes:*** As specified in the Preliminary Statement.

***Scheduled Payment:*** The scheduled monthly payment on a Mortgage Loan due on any Due Date allocable to principal and/or interest on such Mortgage Loan which, unless otherwise specified herein, shall give effect to any related Debt Service Reduction and any Deficient Valuation that affects the amount of the monthly payment due on such Mortgage Loan.

***Securities Act:*** The Securities Act of 1933, as amended.

***Security Agreement:*** For any Cooperative Loan, the agreement between the owner of the related Co-op Shares and the originator of the related Mortgage Note that defines the security interest in the Co-op Shares and the related Proprietary Lease.

***Seller:*** IndyMac Bank, F.S.B., a federal savings bank, and its successors and assigns, in its capacity as seller of the Mortgage Loans to the Depositor.

***Senior Certificate Group:*** As specified in the Preliminary Statement.

***Senior Certificates:*** As specified in the Preliminary Statement.

***Senior Credit Support Depletion Date:*** The date on which the Class Certificate Balance of each Class of Subordinated Certificates has been reduced to zero.

***Senior Percentage:*** As to any Senior Certificate Group and Distribution Date, the percentage equivalent of a fraction, the numerator of which is the aggregate of the Class Certificate Balances and Component Principal Balances of each Class of Senior Certificates of such Senior Certificate Group (other than the related Notional Amount Components) immediately before the Distribution Date and the denominator of which is the aggregate Stated Principal Balance of each Mortgage Loan in the related Loan Group as of the Due Date occurring in the month prior to the month of that Distribution Date (after giving effect to Principal Prepayments received on the Mortgage Loans in the Prepayment Period related to such prior Due Date); provided, however, that on any Distribution Date after the Senior Termination Date, the Senior Percentage of the Senior Certificates of the remaining Senior Certificate Group is the percentage equivalent of a fraction, the numerator of which is the aggregate of the Class Certificate Balances and Component Principal Balances of each such Class of Senior Certificates (other than the Notional Amount Components) of such remaining Senior Certificate Group immediately prior to such Distribution Date and the denominator is the aggregate of the Class Certificate Balances and Component Principal Balances of all Classes of Certificates (other than the Notional Amount Certificates or Components) immediately prior to such Distribution Date.

***Senior Prepayment Percentage:*** As to a Senior Certificate Group and any Distribution Date during the ten years beginning on the first Distribution Date, 100%. The related Senior Prepayment Percentage for any Distribution Date occurring on or after the tenth anniversary of the first Distribution Date will, except as provided in this Agreement, be as follows: for any Distribution Date in the first year thereafter, the related Senior Percentage plus 70% of the related Subordinated Percentage for such Distribution Date; for any Distribution Date in the second year thereafter, the related Senior Percentage plus 60% of the related Subordinated Percentage for such Distribution Date; for any Distribution Date in the third year thereafter, the related Senior Percentage plus 40% of the related Subordinated Percentage for such Distribution Date; for any Distribution Date in the fourth year thereafter, the related Senior Percentage plus 20% of the related Subordinated Percentage for such Distribution Date; and for any Distribution Date thereafter, the related Senior Percentage for such Distribution Date (unless on any Distribution Date the Aggregate Senior Percentage exceeds the initial Aggregate Senior Percentage in which case the Senior Prepayment Percentage for each Senior Certificate Group for such Distribution Date will once again equal 100%). Notwithstanding the foregoing, no decrease in the Senior Prepayment

Percentage will occur unless both Senior Step Down Conditions are satisfied with respect to the Mortgage Loans. Notwithstanding the foregoing, if (x) on or before the Distribution Date in June 2008, the Aggregate Subordinated Percentage is at least 200% of the Aggregate Subordinated Percentage as of the Closing Date, the delinquency test set forth in clause (i) of the definition of Senior Step Down Conditions is satisfied and cumulative Realized Losses do not exceed 20% of the Original Subordinated Principal Balance, the Senior Prepayment Percentage will equal the Senior Percentage for that Distribution Date plus 50% of the Subordinated Percentage for that Distribution Date and (y) after the Distribution Date in June 2008, the Aggregate Subordinated Percentage is at least 200% of the Aggregate Subordinated Percentage as of the Closing Date, the delinquency test set forth in clause (i) of the definition of Senior Step Down Conditions is satisfied and cumulative Realized Losses do not exceed 30% of the Original Subordinate Principal Balance, the Senior Prepayment Percentage will equal the Senior Percentage for that Distribution Date.

***Senior Principal Distribution Amount:*** As to any Distribution Date and either Loan Group, the sum of (i) the related Senior Percentage of all amounts described in clauses (a) through (d) of the definition of Principal Amount for that Loan Group and such Distribution Date, (ii) with respect to any Mortgage Loan that became a Liquidated Mortgage Loan during the calendar month preceding the month of such Distribution Date, the lesser of (x) the related Senior Percentage of the Stated Principal Balance of such Mortgage Loan and (y) the related Senior Prepayment Percentage of the amount of the Liquidation Proceeds allocable to principal received on the Mortgage Loan, and (iii) the related Senior Prepayment Percentage of the amounts described in clauses (f) and (g) of the definition of Principal Amount for that Loan Group and such Distribution Date.

***Senior Step Down Conditions:*** As to any Distribution Date: (i) the outstanding principal balance of all the Mortgage Loans 60 days or more Delinquent (averaged over the preceding six month period) (including any Mortgage Loans subject to foreclosure proceedings, REO Property (regardless of whether that Mortgage Loan is 60 days or more Delinquent) and Mortgage Loans the mortgagers of which are in bankruptcy), as a percentage of the aggregate Class Certificate Balance of the Subordinated Certificates, does not equal or exceed 50%, and (ii) cumulative Realized Losses do not exceed: (a) commencing with the Distribution Date on the tenth anniversary of the first Distribution Date, 30% of the Original Subordinated Principal Balance, (b) commencing with the Distribution Date on the eleventh anniversary of the first Distribution Date, 35% of the Original Subordinated Principal Balance, (c) commencing with the Distribution Date on the twelfth anniversary of the first Distribution Date, 40% of the Original Subordinated Principal Balance, (d) commencing with the Distribution Date on the thirteenth anniversary of the first Distribution Date, 45% of the Original Subordinated Principal Balance, and (e) commencing with the Distribution Date on the fourteenth anniversary of the first Distribution Date and thereafter, 50% of the Original Subordinated Principal Balance.

***Senior Termination Date:*** For each Senior Certificate Group, the Distribution Date on which the aggregate Class Certificate Balance and Component Principal Balance of the Classes or Components of the Senior Certificates of such Senior Certificate Group has been reduced to zero.

***Servicing Account:*** The separate Eligible Account or Accounts created and maintained pursuant to Section 3.06(b).

***Servicing Advances:*** All customary, reasonable, and necessary “out of pocket” costs and expenses incurred in the performance by the Master Servicer of its servicing obligations, including the cost of

(a) the preservation, restoration, and protection of a Mortgaged Property,

(b) expenses reimbursable to the Master Servicer pursuant to Section 3.12 and any enforcement or judicial proceedings, including foreclosures,

(c) the maintenance and liquidation of any REO Property;

(d) compliance with the obligations under Section 3.10; and

(e) reasonable compensation to the Master Servicer or its affiliates for acting as broker in connection with the sale of foreclosed Mortgaged Properties and for performing certain default management and other similar services (including appraisal services) in connection with the servicing of defaulted Mortgage Loans. For purposes of this clause (e), only costs and expenses incurred in connection with the performance of activities generally considered to be outside the scope of customary servicing or master servicing duties shall be treated as Servicing Advances.

***Servicing Fee:*** As to each Mortgage Loan and any Distribution Date, one month's interest at the applicable Servicing Fee Rate on the Stated Principal Balance of the Mortgage Loan, or, whenever a payment of interest accompanies a Principal Prepayment in Full made by the Mortgagor, interest at the Servicing Fee Rate on the Stated Principal Balance of the Mortgage Loan for the period covered by the payment of interest, subject to reduction as provided in Section 3.15.

***Servicing Fee Rate:*** For each Mortgage Loan, 0.375% per annum.

***Servicing Officer:*** Any officer of the Master Servicer involved in, or responsible for, the administration and servicing of the Mortgage Loans whose name and facsimile signature appear on a list of servicing officers furnished to the Trustee by the Master Servicer on the Closing Date pursuant to this Agreement, as the list may from time to time be amended.

***Servicing Standard:*** That degree of skill and care exercised by the Master Servicer with respect to mortgage loans comparable to the Mortgage Loans serviced by the Master Servicer for itself or others.

***Shift Percentage***: Not applicable.

***Soft Prepayment Charge***: A Prepayment Charge imposed on a Mortgage Loan that only requires payment of such Prepayment Charge if the Mortgagor prepays the Mortgage Loan for a reason other than as a result of selling the Mortgaged Property.

***Special Hazard Coverage Termination Date:*** Not applicable.

***Special Hazard Loss:*** Not applicable.

***Special Hazard Loss Coverage Amount:*** Not applicable.

***Special Hazard Mortgage Loan:*** Not applicable.

***Startup Day:*** The Closing Date.

***Stated Principal Balance:*** As to any Mortgage Loan and Due Date, the unpaid principal balance of such Mortgage Loan as of such Due Date, as specified in the amortization schedule at the time relating thereto (before any adjustment to such amortization schedule by reason of any moratorium or similar waiver or grace period) after giving effect to the sum of: (i) the payment of principal due on such Due

Date and irrespective of any delinquency in payment by the related Mortgagor and (ii) any Liquidation Proceeds allocable to principal received in the prior calendar month and any Principal Prepayments received through the last day of the related Prepayment Period, in each case, with respect to such Mortgage Loan and increased by any Deferred Interest added to the principal balance of that Mortgage Loan on or prior to such Due Date.

***Subordinate Tax Adjusted Rate Cap:*** For each Distribution Date, the weighted average of the Group 1 Tax Adjusted Rate Cap and the Group 2 Tax Adjusted Rate Cap weighted on the basis of the Subordinated Portion of each Loan Group.

***Subordinate WAC Cap:*** For any Distribution Date, the weighted average of the Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans, such result multiplied by a fraction, the numerator of which is 30 and the denominator of which is the number of days in the related Interest Accrual Period.

***Subordinated Certificates:*** As specified in the Preliminary Statement.

***Subordinated Percentage:*** As to any Distribution Date, 100% minus the related Senior Percentage for such Distribution Date.

***Subordinated Portion***: For any Distribution Date, the aggregate Stated Principal Balance of the Mortgage Loans in the related Loan Group as of the Due Date in the month preceding the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date) *minus* the sum of the Class Certificate Balance and Component Principal Balance of the related Senior Certificates and Components immediately prior to such Distribution Date.

***Subordinated Prepayment Percentage:*** For any Distribution Date and Loan Group, 100% minus the related Senior Prepayment Percentage.

***Subordinated Principal Distribution Amount:*** As to any Distribution Date and Loan Group, the sum of the following with respect to each Loan Group: (i) the Subordinated Percentage of all amounts described in clauses (a) through (d) of the definition of Principal Amount with respect to such Loan Group and such Distribution Date, (ii) with respect to any Mortgage Loan in the related Loan Group that became a Liquidated Mortgage Loan during the calendar month preceding the month of such Distribution Date, the amount of Liquidation Proceeds allocable to principal received with respect thereto remaining after application thereof pursuant to clause (ii) of the definition of Senior Principal Distribution Amount for that Loan Group, up to the related Subordinated Percentage of the Stated Principal Balance of such Mortgage Loan, and (iii) the related Subordinated Prepayment Percentage of the amounts described in clauses (f) and (g) of the definition of Principal Amount with respect to that Loan Group for such Distribution Date. On any Distribution Date after the Senior Termination Date, the Subordinated Principal Distribution Amount will not be calculated by Loan Group but will equal the amount calculated pursuant to the formula set forth above based on the applicable Subordinated Percentage or Subordinated Prepayment Percentage, as applicable, for the Subordinated Certificates for such Distribution Date with respect to all of the Mortgage Loans as opposed to the Mortgage Loans in the related Loan Group.

***Subsequent Recoveries:*** As to any Distribution Date, with respect to a Liquidated Mortgage Loan that resulted in a Realized Loss in a prior calendar month, unexpected amounts received by the Master Servicer (net of any related expenses permitted to be reimbursed pursuant to Section 3.09) specifically related to such Liquidated Mortgage Loan.

***Subservicer:*** As defined in Section 3.02(a).

***Substitute Mortgage Loan:*** A Mortgage Loan substituted by the Seller for a Deleted Mortgage Loan that must, on the date of substitution, as confirmed in a Request for Release, substantially in the form of Exhibit M,

(i) have a Stated Principal Balance, after deduction of the principal portion of the Scheduled Payment due in the month of substitution, not in excess of, and not more than 10% less than, the Stated Principal Balance of the Deleted Mortgage Loan (unless the amount of any shortfall is deposited by the Seller in the Certificate Account and held for distribution to the Certificateholders on the related Distribution Date);

(ii) have a Mortgage Rate no lower than and not more than 1% per annum higher than the Deleted Mortgage Loan;

(iii) have a Maximum Mortgage Rate not more than 1% per annum higher than and not lower than the Maximum Mortgage Rate of the deleted Mortgage Loan,

(iv) have the same negative amortization limit, payment adjustment intervals and recast intervals as that of the deleted Mortgage Loan;

(v) have the same index and Payment Cap as the deleted Mortgage Loan and a Gross Margin not more than 1% per annum higher than, and not lower than that of the deleted Mortgage Loan;

(vi) have a Loan-to-Value Ratio no higher than that of the Deleted Mortgage Loan;

(vii) have a remaining term to maturity no greater than (and not more than one year less than) that of the Deleted Mortgage Loan;

(viii) not be a Cooperative Loan unless the Deleted Mortgage Loan was a Cooperative Loan; and

(ix) comply with each representation and warranty in Section 2.03.

***Substitution Adjustment Amount:*** As defined in Section 2.03.

***Tax Adjusted Rate Cap:*** Weighted Average Adjusted Net Mortgage Rate of the Mortgage Loans *minus* the product of (x) 12 and (y) the Net Deferred Interest for such distribution Date from the Mortgage Loans that is not allocated to the Group 1 Senior Certificates, Group 2 Senior Certificates or the Subordinated Certificates, divided by the aggregate Stated Principal Balance of the Mortgage Loans. For federal income tax purposes, the Tax Adjusted Cap Rate will equal the weighted average of the REMIC 2 Interests other than the Class PO-1, Class PO-2 and Class R-2 Interests.

***Suspension Notification:*** Notification to the Commission of the suspension of the Trust Fund’s obligation to file reports pursuant to Section 15(d) of the Exchange Act.

***Targeted Balance:*** With respect to the Targeted Principal Classes and any Distribution Date appearing in the Principal Balance Schedules, the applicable amount appearing opposite such Distribution Date for such Targeted Principal Classes.

***Targeted Principal Classes:*** As specified in the Preliminary Statement.

***Transfer:*** Any direct or indirect transfer or sale of any Ownership Interest in a Residual Certificate.

***Trust Fund:*** The corpus of the trust created under this Agreement consisting of

(i) the Mortgage Loans and all interest and principal received on them after the Cut-off Date, other than amounts due on the Mortgage Loans by the Cut-off Date;

(ii) the Certificate Account, the Distribution Account, the Yield Maintenance Reserve Fund, the Carryover Shortfall Reserve Fund and all amounts deposited therein pursuant to this Agreement (including amounts received from the Seller on the Closing Date that will be deposited by the Trustee in the Certificate Account pursuant to Section 2.01);

(iii) property that secured a Mortgage Loan and has been acquired by foreclosure, deed-in-lieu of foreclosure, or otherwise;

(iv) the right to collect any amounts under any mortgage insurance policies covering any Mortgage Loan and any collections received under any mortgage insurance policies covering any Mortgage Loan;

(v) all rights to receive amounts under, and to enforce remedies in, the Yield Maintenance Agreements; and

(vi) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing.

***Trustee:*** Deutsche Bank National Trust Company and its successors and, if a successor trustee is appointed under this Agreement, the successor.

***Trustee Fee:*** The fee payable to the Trustee on each Distribution Date for its services as Trustee hereunder, in an amount equal to one-twelfth of the Trustee Fee Rate multiplied by the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the month preceding the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to that prior Due Date).

***Trustee Fee Rate:*** 0.0017% per annum.

The terms "**United States**," "**State**," and "**International Organization**" have the meanings in section 7701 of the Code or successor provisions. A corporation will not be treated as an instrumentality of the United States or of any State or political subdivision thereof for these purposes if all of its activities are subject to tax and, with the exception of the Federal Home Loan Mortgage Corporation, a majority of its board of directors is not selected by such government unit.

***UCC:*** The Uniform Commercial Code for the State of New York.

***Undercollateralized Group:*** As defined in Section 4.03.

***Underwriter's Exemption:*** Prohibited Transaction Exemption 2002-41, 67 Fed. Reg. 54487 (2002) (or any successor thereto), or any substantially similar administrative exemption granted by the U.S. Department of Labor

***United States Person or U.S. Person:***

(i) A citizen or resident of the United States;

(ii) a corporation (or entity treated as a corporation for tax purposes) created or organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia;

(iii) a partnership (or entity treated as a partnership for tax purposes) organized in the United States or under the laws of the United States or of any state thereof, including, for this purpose, the District of Columbia (unless provided otherwise by future Treasury regulations);

(iv) an estate whose income is includible in gross income for United States income tax purposes regardless of its source; or

(v) a trust, if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. Persons have authority to control all substantial decisions of the trust. Notwithstanding the last clause of the preceding sentence, to the extent provided in Treasury regulations, certain trusts in existence on August 20, 1996, and treated as U.S. Persons before that date, may elect to continue to be U.S. Persons.

***U.S.A. Patriot Act:*** The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

***Voting Rights***: The portion of the voting rights of all of the Certificates that is allocated to any Certificate. As of any date of determination, (a) 1% of all Voting Rights shall be allocated to each Class of Notional Amount Certificates (the Voting Rights to be allocated among the holders of Certificates of each Class in accordance with their respective Percentage Interests), (b) 1% of all Voting Rights shall be allocated to the Holder of the Class A-R Certificates and (c) the remaining Voting Rights shall be allocated among Holders of the remaining Classes of Offered Certificates (other than the Class A-R Certificates) in proportion to the Certificate Balances of the respective Certificates on the date.

***Weighted Average Adjusted Net Mortgage Rate:*** For any Distribution Date, the average of the Adjusted Net Mortgage Rate of each Mortgage Loan, weighted on the basis of its Stated Principal Balance as of the Due Date in the prior month (after giving affect to Principal Prepayments in the Prepayment Period related to such prior Due Date).

***Withdrawal Date:*** The 18th day of each month, or if such day is not a Business Day, the next preceding Business Day.

***Yield Maintenance Agreement:*** The interest rate cap agreements between the Trust Fund and the Cap Counterparty relating to (i) the Class 1-A-1 Certificates and (ii) the Class 2-A-1A, Class 2-A-1B and Class 2-A-2 Certificates.

***Yield Maintenance Reserve Fund:*** The separate Eligible Accounts created and maintained by the Trustee pursuant to Section 3.06(f) in the name of the Trustee for the benefit of the Holders of the (a) the Class 1-A-1 Certificates and (b) the Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates, as applicable, and designated "Deutsche Bank National Trust Company in trust for registered holders of IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2." Funds in the Yield Maintenance Reserve Funds shall be held in trust for the Holders of the related Classes of Certificates for the uses and purposes set forth in this Agreement. The Yield Maintenance Reserve Funds will not be assets of any REMIC.

***Section 1.02 Rules of Construction.***

Except as otherwise expressly provided in this Agreement or unless the context clearly requires otherwise

(a) References to designated articles, sections, subsections, exhibits, and other subdivisions of this Agreement, such as "Section 6.12 (a)," refer to the designated article, section, subsection, exhibit, or other subdivision of this Agreement as a whole and to all subdivisions of the designated article, section, subsection, exhibit, or other subdivision. The words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular article, section, exhibit, or other subdivision of this Agreement.

(b) Any term that relates to a document or a statute, rule, or regulation includes any amendments, modifications, supplements, or any other changes that may have occurred since the document, statute, rule, or regulation came into being, including changes that occur after the date of this Agreement.

(c) Any party may execute any of the requirements under this Agreement either directly or through others, and the right to cause something to be done rather than doing it directly shall be implicit in every requirement under this Agreement. Unless a provision is restricted as to time or limited as to frequency, all provisions under this Agreement are implicitly available and things may happen from time to time.

(d) The term "including" and all its variations mean "including but not limited to." Except when used in conjunction with the word "either," the word "or" is always used inclusively (for example, the phrase "A or B" means "A or B or both," not "either A or B but not both").

(e) A reference to "a [thing]" or "any [of a thing]" does not imply the existence or occurrence of the thing referred to even though not followed by "if any," and "any [of a thing]" is any of it. A reference to the plural of anything as to which there could be either one or more than one does not imply the existence of more than one (for instance, the phrase "the obligors on a note" means "the obligor or obligors on a note"). "Until [something occurs]" does not imply that it must occur, and will not be modified by the word "unless." The word "due" and the word "payable" are each used in the sense that the stated time for payment has passed. The word "accrued" is used in its accounting sense, i.e., an amount paid is no longer accrued. In the calculation of amounts of things, differences and sums may generally result in negative numbers, but when the calculation of the excess of one thing over another results in zero or a negative number, the calculation is disregarded and an "excess" does not exist. Portions of things may be expressed as fractions or percentages interchangeably.

(f) All accounting terms used in an accounting context and not otherwise defined, and accounting terms partly defined in this Agreement, to the extent not completely defined, shall be construed in accordance with generally accepted accounting principles. To the extent that the definitions of accounting terms in this Agreement are inconsistent with their meanings under generally accepted accounting principles, the definitions contained in this Agreement shall control. Capitalized terms used in this Agreement without definition that are defined in the Uniform Commercial Code are used in this Agreement as defined in the Uniform Commercial Code.

(g) In the computation of a period of time from a specified date to a later specified date or an open-ended period, the words "from" and "beginning" mean "from and including," the word "after" means "from but excluding," the words "to" and "until" mean "to but excluding," and the word "through" means "to and including." Likewise, in setting deadlines or other periods, "by" means "by." The words "preceding," "following," and words of similar import, mean immediately preceding or following. References to a month or a year refer to calendar months and calendar years.

(h) Any reference to the enforceability of any agreement against a party means that it is enforceable, subject as to enforcement against the party, to applicable bankruptcy, insolvency, reorganization, and other similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

ARTICLE Two

CONVEYANCE OF MORTGAGE LOANS; REPRESENTATIONS AND WARRANTIES

***Section 2.01 Conveyance of Mortgage Loans.***

(a) The Seller, concurrently with the execution and delivery of this Agreement, hereby transfers to the Depositor, without recourse, all the interest of the Seller in each Mortgage Loan, including all interest and principal received or receivable by the Seller on each Mortgage Loan after the Cut-off Date and all interest and principal payments on each Mortgage Loan received before the Cut-off Date for installments of interest and principal due after the Cut-off Date but not including payments of principal and interest due by the Cut-off Date. By the Closing Date, the Seller shall deliver to the Depositor or, at the Depositor's direction, to the Trustee or other designee of the Depositor, the Mortgage File for each Mortgage Loan listed in the Mortgage Loan Schedule (except that, in the case of Mortgage Loans that are Delay Delivery Mortgage Loans, such delivery may take place within five Business Days of the Closing Date) as of the Closing Date. The delivery of the Mortgage Files shall be made against payment by the Depositor of the purchase price, previously agreed to by the Seller and Depositor, for the Mortgage Loans. With respect to any Mortgage Loan that does not have a first payment date on or before the Due Date in the month of the first Distribution Date, the Seller shall deposit into the Distribution Account on the first Distribution Account Deposit Date an amount equal to one month's interest at the related Adjusted Mortgage Rate on the Cut-off Date Principal Balance of such Mortgage Loan. Also on the Closing Date the Depositor shall deposit $2,599,459.16 into the Carryover Shortfall Reserve Fund.

(b) The Depositor, concurrently with the execution and delivery of this Agreement, hereby transfers to the Trustee for the benefit of the Certificateholders, without recourse, all the interest of the Depositor in the Trust Fund, together with the Depositor's right to require the Seller to cure any breach of a representation or warranty made in this Agreement by the Seller or to repurchase or substitute for any affected Mortgage Loan in accordance with this Agreement. The Depositor hereby directs the Trustee to execute the Yield Maintenance Agreements.

(c) In connection with the transfer and assignment of each Mortgage Loan, the Depositor has delivered (or, in the case of the Delay Delivery Mortgage Loans, will deliver to the Trustee within the time periods specified in the definition of Delay Delivery Mortgage Loans), for the benefit of the Certificateholders the following documents or instruments with respect to each Mortgage Loan so assigned:

(i) The original Mortgage Note, endorsed by manual or facsimile signature in blank in the following form: "Pay to the order of ________________ _______________without recourse," with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage Note (each endorsement being sufficient to transfer all interest of the party so endorsing, as noteholder or assignee thereof, in that Mortgage Note) or a lost note affidavit for any Lost Mortgage Note from the Seller stating that the original Mortgage Note was lost or destroyed, together with a copy of the Mortgage Note.

(ii) except as provided below and for each Mortgage Loan that is not a MERS Mortgage Loan, the original recorded Mortgage or a copy of such Mortgage certified by the Seller as being a true and complete copy of the Mortgage (or, in the case of a Mortgage for which the related Mortgaged Property is located in the Commonwealth of Puerto Rico, a true copy of the Mortgage certified as such by the applicable notary) and in the case of each MERS Mortgage Loan, the original Mortgage, noting the presence of the MIN of the Mortgage Loans and either language indicating that the Mortgage Loan is a MOM Loan if the Mortgage Loan is a MOM

Loan or if the Mortgage Loan was not a MOM Loan at origination, the original Mortgage and the assignment thereof to MERS, with evidence of recording indicated thereon, or a copy of the Mortgage certified by the public recording office in which such Mortgage has been recorded;

(iii) A duly executed assignment of the Mortgage (which may be included in a blanket assignment or assignments), together with, except as provided below, all interim recorded assignments of the mortgage (each assignment, when duly and validly completed, to be in recordable form and sufficient to effect the assignment of and transfer to its assignee of the Mortgage to which the assignment relates). If the related Mortgage has not been returned from the applicable public recording office, the assignment of the Mortgage may exclude the information to be provided by the recording office. The assignment of Mortgage need not be delivered in the case of a Mortgage for which the related Mortgage Property is located in the Commonwealth of Puerto Rico.

(iv) The original or copies of each assumption, modification, written assurance, or substitution agreement.

(v) Except as provided below, the original or duplicate original lender's title policy and all its riders.

(vi) The originals of the following documents for each Cooperative Loan:

(A) the Co-op Shares, together with a stock power in blank;

(B) the executed Security Agreement;

(C) the executed Proprietary Lease;

(D) the executed Recognition Agreement;

(E) the executed UCC-1 financing statement that has been filed in all places required to perfect the Seller's interest in the Co-op Shares and the Proprietary Lease with evidence of recording on it; and

(F) executed UCC-3 financing statements or other appropriate UCC financing statements required by state law, evidencing a complete and unbroken line from the mortgagee to the Trustee with evidence of recording thereon (or in a form suitable for recordation). If in connection with any Mortgage Loan the Depositor cannot deliver

(a) the original recorded Mortgage,

(b) all interim recorded assignments, or

(c) the lender's title policy (together with all its riders).

In addition, in connection with the assignment of any MERS Mortgage Loan, the Seller agrees that it will cause, at the Seller's expense, the MERS® System to indicate that the Mortgage Loans sold by the Seller to the Depositor have been assigned by the Seller to the Trustee in accordance with this Agreement for the benefit of the Certificateholders by including (or deleting, in the case of Mortgage Loans that are repurchased in accordance with this Agreement) in such computer files the information required by the MERS® System to identify the series of the Certificates issued in connection with such Mortgage Loans. The Seller further agrees that it will not, and will not permit the Master Servicer to, and the Master Servicer agrees that it will not, alter the information referenced in this paragraph with respect to any Mortgage Loan sold by the Seller to the Depositor during the term of this Agreement unless and until such Mortgage Loan is repurchased in accordance with the terms of this Agreement.

In the event that in connection with any Mortgage Loan that is not a MERS Mortgage Loan the Depositor cannot deliver (a) the original recorded Mortgage, (b) all interim recorded assignments or (c) the lender's title policy (together with all riders thereto) satisfying the requirements of clause (ii), (iii) or (v) above, respectively, concurrently with the execution and delivery of this Agreement because such document or documents have not been returned from the applicable public recording office in the case of clause (ii) or (iii) above, or because the title policy has not been delivered to either the Master Servicer or the Depositor by the applicable title insurer in the case of clause (v) above, then the Depositor shall promptly deliver to the Trustee, in the case of clause (ii) or (iii) above, the original Mortgage or the interim assignment, as the case may be, with evidence of recording indicated on when it is received from the public recording office, or a copy of it, certified, if appropriate, by the relevant recording office and in the case of clause (v) above, the original or a copy of a written commitment or interim binder or preliminary report of title issued by the title insurance or escrow company, with the original or duplicate copy thereof to be delivered to the Trustee upon receipt thereof. The delivery of the original Mortgage Loan and each interim assignment or a copy of them, certified, if appropriate, by the relevant recording office, shall not be made later than one year following the Closing Date, or, in the case of clause (v) above, later than 120 days following the Closing Date. If the Depositor is unable to deliver each Mortgage by that date and each interim assignment because any documents have not been returned by the appropriate recording office, or, in the case of each interim assignment, because the related Mortgage has not been returned by the appropriate recording office, the Depositor shall deliver the documents to the Trustee as promptly as possible upon their receipt and, in any event, within 720 days following the Closing Date.

The Depositor shall forward to the Trustee (a) from time to time additional original documents evidencing an assumption or modification of a Mortgage Loan and (b) any other documents required to be delivered by the Depositor or the Master Servicer to the Trustee. If the original Mortgage is not delivered and in connection with the payment in full of the related Mortgage Loan the public recording office requires the presentation of a "lost instruments affidavit and indemnity" or any equivalent document, because only a copy of the Mortgage can be delivered with the instrument of satisfaction or reconveyance, the Master Servicer shall execute and deliver the required document to the public recording office. If a public recording office retains the original recorded Mortgage or if a Mortgage is lost after recordation in a public recording office, the Seller shall deliver to the Trustee a copy of the Mortgage certified by the public recording office to be a true and complete copy of the original recorded Mortgage.

As promptly as practicable after any transfer of a Mortgage Loan under this Agreement, and in any event within thirty days after the transfer, the Trustee shall (i) affix the Trustee's name to each assignment of Mortgage, as its assignee, and (ii) cause to be delivered for recording in the appropriate public office for real property records the assignments of the Mortgages to the Trustee, except that, if the Trustee has not received the information required to deliver any assignment of a Mortgage for recording, the Trustee shall deliver it as soon as practicable after receipt of the needed information and in any event within thirty days.

The Trustee need not record any assignment that relates to a Mortgage Loan (a) the Mortgaged Property and Mortgage File relating to which are located in California or (b) in any other jurisdiction (including Puerto Rico) under the laws of which, as evidenced by an Opinion of Counsel delivered by the

Seller (at the Seller's expense) to the Trustee, recording the assignment is not necessary to protect the Trustee's and the Certificateholders' interest in the related Mortgage Loan. The Seller shall deliver such Opinion of Counsel within 90 days of the Closing Date.

If any Mortgage Loans have been prepaid in full as of the Closing Date, the Depositor, in lieu of delivering the above documents to the Trustee, will deposit in the Certificate Account the portion of the prepayment that is required to be deposited in the Certificate Account pursuant to Section 3.06.

Notwithstanding anything to the contrary in this Agreement, within five Business Days after the Closing Date, the Seller shall either

(x) deliver to the Trustee the Mortgage File as required pursuant to this Section 2.01 for each Delay Delivery Mortgage Loan or

(y) (A) repurchase the Delay Delivery Mortgage Loan or (B) substitute the Substitute Mortgage Loan for a Delay Delivery Mortgage Loan, which repurchase or substitution shall be accomplished in the manner and subject to the conditions in Section 2.03 (treating each such Delay Delivery Mortgage Loan as a Deleted Mortgage Loan for purposes of such Section 2.03);

provided, however, that if the Seller fails to deliver a Mortgage File for any Delay Delivery Mortgage Loan within the period specified herein, the Seller shall use its best reasonable efforts to effect a substitution, rather than a repurchase of, such Deleted Mortgage Loan and provided further that the cure period provided for in Section 2.02 or in Section 2.03 shall not apply to the initial delivery of the Mortgage File for such Delay Delivery Mortgage Loan, but rather the Seller shall have five (5) Business Days to cure such failure to deliver. At the end of such period, the Trustee shall send a Delay Delivery Certification for the Delay Delivery Mortgage Loans delivered during such period in accordance with the provisions of Section 2.02.

(d) The Seller agrees to treat the transfer of the Mortgage Loans to the Depositor as a sale for all tax, accounting, and regulatory purposes.

***Section 2.02 Acceptance by the Trustee of the Mortgage Loans.***

The Trustee acknowledges receipt of the documents identified in the Initial Certification in the form of Exhibit G-1, and declares that it holds and will hold such documents and the other documents delivered to it constituting the Mortgage Files for the Mortgage Loans, and that it holds or will hold such other assets as are included in the Trust Fund, in trust for the exclusive use and benefit of all present and future Certificateholders.

The Trustee acknowledges that it will maintain possession of the related Mortgage Notes in the State of California, unless otherwise permitted by the Rating Agencies. The Trustee agrees to execute and deliver on the Closing Date to the Depositor, the Master Servicer and the Seller an Initial Certification in the form of Exhibit G-1. Based on its review and examination, and only as to the documents identified in such Initial Certification, the Trustee acknowledges that such documents appear regular on their face and relate to such Mortgage Loans. The Trustee shall be under no duty or obligation to inspect, review or examine said documents, instruments, certificates or other papers to determine that the same are genuine, enforceable or appropriate for the represented purpose or that they have actually been recorded in the real estate records or that they are other than what they purport to be on their face.

By the thirtieth day after the Closing Date (or if that day is not a Business Day, the succeeding Business Day), the Trustee shall deliver to the Depositor, the Master Servicer, and the Seller a Delay Delivery Certification with respect to the Mortgage Loans substantially in the form of Exhibit G-3, with any applicable exceptions noted thereon.

By the ninetieth day after the Closing Date (or if that day is not a Business Day, the succeeding Business Day), the Trustee shall deliver to the Depositor, the Master Servicer and the Seller a Final Certification with respect to the Mortgage Loans in the form of Exhibit H-1, with any applicable exceptions noted thereon.

If, in the course of its review, the Trustee finds any document constituting a part of a Mortgage File that does not meet the requirements of Section 2.01, the Trustee shall list such as an exception in the Final Certification. The Trustee shall not make any determination as to whether (i) any endorsement is sufficient to transfer all interest of the party so endorsing, as noteholder or assignee thereof, in that Mortgage Note or (ii) any assignment is in recordable form or is sufficient to effect the assignment of and transfer to the assignee thereof under the mortgage to which the assignment relates. The Seller shall promptly correct any defect that materially and adversely affects the interests of the Certificateholders within 90 days from the date it was so notified of the defect and, if the Seller does not correct the defect within that period, the Seller shall either (a) substitute for the related Mortgage Loan a Substitute Mortgage Loan, which substitution shall be accomplished in the pursuant Section 2.03, or (b) purchase the Mortgage Loan at its Purchase Price from the Trustee within 90 days from the date the Seller was notified of the defect in writing.

If a substitution or purchase of a Mortgage Loan pursuant to this provision is required because of a delay in delivery of any documents by the appropriate recording office, or there is a dispute between either the Master Servicer or the Seller and the Trustee over the location or status of the recorded document, then the substitution or purchase shall occur within 720 days from the Closing Date. In no other case may a substitution or purchase occur more than 540 days from the Closing Date.

The Trustee shall deliver written notice to each Rating Agency within 270 days from the Closing Date indicating each Mortgage Loan (a) that has not been returned by the appropriate recording office or (b) as to which there is a dispute as to location or status of the Mortgage Loan. The notice shall be delivered every 90 days thereafter until the related Mortgage Loan is returned to the Trustee. Any substitution pursuant to (a) above or purchase pursuant to (b) above shall not be effected before the delivery to the Trustee of the Opinion of Counsel required by Section 2.05, and any substitution pursuant to (a) above shall not be effected before the additional delivery to the Trustee of a Request for Release substantially in the form of Exhibit N. No substitution is permitted to be made in any calendar month after the Determination Date for the month.

The Purchase Price for any Mortgage Loan shall be deposited by the Seller in the Certificate Account by the Distribution Account Deposit Date for the Distribution Date in the month following the month of repurchase and, upon receipt of the deposit and certification with respect thereto in the form of Exhibit O, the Trustee shall release the related Mortgage File to the Seller and shall execute and deliver at the Seller's request any instruments of transfer or assignment prepared by the Seller, in each case without recourse, necessary to vest in the Seller, or a designee, the Trustee's interest in any Mortgage Loan released pursuant hereto.

If pursuant to the foregoing provisions the Seller repurchases a Mortgage Loan that is a MERS Mortgage Loan, the Master Servicer shall either (i) cause MERS to execute and deliver an assignment of the Mortgage in recordable form to transfer the Mortgage from MERS to the Seller and shall cause such Mortgage to be removed from registration on the MERS® System in accordance with MERS' rules and regulations or (ii) cause MERS to designate on the MERS® System the Seller as the beneficial holder of such Mortgage Loan.

The Trustee shall retain possession and custody of each Mortgage File in accordance with and subject to the terms and conditions set forth herein. The Master Servicer shall promptly deliver to the Trustee, upon the execution or receipt thereof, the originals of any other documents or instruments constituting the Mortgage File that come into the possession of the Master Servicer from time to time.

The obligation of the Seller to substitute for or to purchase any Mortgage Loan that does not meet the requirements of Section 2.01 shall constitute the sole remedy respecting the defect available to the Trustee, the Depositor, and any Certificateholder against the Seller.

***Section 2.03 Representations, Warranties, and Covenants of the Seller and the Master Servicer.***

(a) IndyMac, in its capacities as Seller and Master Servicer, makes the representations and warranties in Schedule II, and by this reference incorporated in this Agreement, to the Depositor and the Trustee, as of the Closing Date. Solely with respect to the Group 1 Mortgage Loans, the Master Servicer will fully furnish, in accordance with the Fair Credit Reporting Act and its implementing regulations, accurate and complete information (i.e., favorable and unfavorable) on its credit files for the related Mortgagor for each Group 1 Mortgage Loan to Equifax, Experian and Trans Union Credit Information Company on a monthly basis.

(b) The Seller, in its capacity as Seller, makes the representations and warranties in Schedule III, and by this reference incorporated in this Agreement, to the Depositor and the Trustee, as of the Closing Date, or if so specified in Schedule III, as of the Cut-off Date.

(c) Upon discovery by any of the parties hereto of a breach of a representation or warranty made pursuant to Section 2.03(b) that materially and adversely affects the interests of the Certificateholders in any Mortgage Loan, the party discovering such breach shall give prompt notice thereof to the other parties. With respect to the Group 1 Mortgage Loans, any breach of the representation or warranty made pursuant to clauses (28), (32), (34), (38), (42), (48), (49) and (50) of Schedule III or a breach of the covenant of the Master Servicer made pursuant to clause (a) above will be deemed to materially and adversely affect the interests of the Certificateholder in the related Group 1 Mortgage Loan. The Seller covenants that within 90 days of the earlier of its discovery or its receipt of written notice from any party of a breach of any representation or warranty made pursuant to Section 2.03(b) which materially and adversely affects the interests of the Certificateholders in any Mortgage Loan, it shall cure such breach in all material respects, and if such breach is not so cured, shall, (i) if the 90-day period expires before the second anniversary of the Closing Date, remove the Mortgage Loan (a "***Deleted Mortgage Loan***") from the Trust Fund and substitute in its place a Substitute Mortgage Loan, in accordance with this Section 2.03; or (ii) repurchase the affected Mortgage Loan or Mortgage Loans from the Trustee at the Purchase Price in the manner set forth below. Any substitution pursuant to (i) above shall not be effected before the delivery to the Trustee of the Opinion of Counsel required by Section 2.05 and a Request for Release substantially in the form of Exhibit N, and the Mortgage File for any Substitute Mortgage Loan. The Seller shall promptly reimburse the Master Servicer and the Trustee for any expenses reasonably incurred by the Master Servicer or the Trustee in respect of enforcing the remedies for the breach.

With respect to any Substitute Mortgage Loan or Loans, the Seller shall deliver to the Trustee for the benefit of the Certificateholders the Mortgage Note, the Mortgage, the related assignment of the Mortgage, and such other documents and agreements as are required by Section 2.01, with the Mortgage Note endorsed and the Mortgage assigned as required by Section 2.01. No substitution is permitted to be made in any calendar month after the Determination Date for such month. Scheduled Payments due with respect to Substitute Mortgage Loans in the month of substitution shall not be part of the Trust Fund and will be retained by the Seller on the next succeeding Distribution Date. For the month of substitution, distributions to Certificateholders will include the monthly payment due on any Deleted Mortgage Loan for such month and thereafter the Seller shall be entitled to retain all amounts received in respect of such Deleted Mortgage Loan.

The Master Servicer shall amend the Mortgage Loan Schedule for the benefit of the Certificateholders to reflect the removal of the Deleted Mortgage Loan and the substitution of the Substitute Mortgage Loans and the Master Servicer shall deliver the amended Mortgage Loan Schedule to the Trustee. Upon the substitution, the Substitute Mortgage Loans shall be subject to this Agreement in all respects, and the Seller shall be deemed to have made with respect to the Substitute Mortgage Loans, as of the date of substitution, the representations and warranties made pursuant to Section 2.03(b) with respect to the Mortgage Loan. Upon any substitution and the deposit to the Certificate Account of the amount required to be deposited therein in connection with the substitution as described in the following paragraph, the Trustee shall release the Mortgage File held for the benefit of the Certificateholders relating to the Deleted Mortgage Loan to the Seller and shall execute and deliver at the Seller’s direction such instruments of transfer or assignment prepared by the Seller, in each case without recourse, as shall be necessary to vest title in the Seller, or its designee, the Trustee’s interest in any Deleted Mortgage Loan substituted for pursuant to this Section 2.03.

For any month in which the Seller substitutes one or more Substitute Mortgage Loans for one or more Deleted Mortgage Loans, the Master Servicer will determine the amount (if any) by which the aggregate principal balance of all such Substitute Mortgage Loans as of the date of substitution is less than the aggregate Stated Principal Balance of all such Deleted Mortgage Loans (after application of the scheduled principal portion of the monthly payments due in the month of substitution). The amount of such shortage and interest thereon (the “***Substitution Adjustment Amount***”) plus, if the Seller is not the Master Servicer, an amount equal to the aggregate of any unreimbursed Advances and Servicer Advances with respect to such Deleted Mortgage Loans shall be deposited into the Certificate Account by the Seller by the Distribution Account Deposit Date for the Distribution Date in the month succeeding the calendar month during which the related Mortgage Loan became required to be purchased or replaced hereunder. If the Seller repurchases a Mortgage Loan, the Purchase Price therefor shall be deposited in the Certificate Account pursuant to Section 3.06 by the Distribution Account Deposit Date for the Distribution Date in the month following the month during which the Seller became obligated hereunder to repurchase or replace the Mortgage Loan and upon such deposit of the Purchase Price and receipt of a Request for Release in the form of Exhibit N, the Trustee shall release the related Mortgage File held for the benefit of the Certificateholders to such Person, and the Trustee shall execute and deliver at such Person’s direction such instruments of transfer or assignment prepared by such Person, in each case without recourse, as shall be necessary to transfer title from the Trustee. The obligation under this Agreement of any Person to cure, repurchase, or replace any Mortgage Loan as to which a breach has occurred and is continuing shall constitute the sole remedy against the Person respecting the breach available to Certificateholders, the Depositor, or the Trustee on their behalf.

The representations and warranties made pursuant to this Section 2.03 shall survive delivery of the respective Mortgage Files to the Trustee for the benefit of the Certificateholders.

***Section 2.04 Representations and Warranties of the Depositor as to the Mortgage Loans.***

The Depositor represents and warrants to the Trustee with respect to each Mortgage Loan as of the date of this Agreement or such other date set forth in this Agreement that as of the Closing Date, and following the transfer of the Mortgage Loans to it by the Seller, the Depositor had good title to the Mortgage Loans and the Mortgage Notes were subject to no offsets, defenses, or counterclaims.

The representations and warranties in this Section 2.04 shall survive delivery of the Mortgage Files to the Trustee. Upon discovery by the Depositor or the Trustee of any breach of any of the representations and warranties in this Section that materially and adversely affects the interest of the Certificateholders, the party discovering the breach shall give prompt written notice to the others and to each Rating Agency.

***Section 2.05 Delivery of Opinion of Counsel in Connection with Substitutions.***

(a) Notwithstanding any contrary provision of this Agreement, no substitution pursuant to Section 2.02 or 2.03 shall be made more than 90 days after the Closing Date unless the Seller delivers to the Trustee an Opinion of Counsel, which Opinion of Counsel shall not be at the expense of either the Trustee or the Trust Fund, addressed to the Trustee, to the effect that such substitution will not (i) result in the imposition of the tax on “prohibited transactions” on the Trust Fund or contributions after the Startup Date, as defined in sections 860F(a)(2) and 860G(d) of the Code, respectively or (ii) cause any REMIC created under this Agreement to fail to qualify as a REMIC at any time that any Certificates are outstanding.

(b) Upon discovery by the Depositor, the Seller, the Master Servicer or the Trustee that any Mortgage Loan does not constitute a “qualified mortgage” within the meaning of section 860G(a)(3) of the Code, the party discovering such fact shall promptly (and in any event within five Business Days of discovery) give written notice thereof to the other parties. In connection therewith, the Trustee shall require the Seller, at the Seller’s option, to either (i) substitute, if the conditions in Section 2.03(c) with respect to substitutions are satisfied, a Substitute Mortgage Loan for the affected Mortgage Loan, or (ii) repurchase the affected Mortgage Loan within 90 days of such discovery in the same manner as it would a Mortgage Loan for a breach of representation or warranty made pursuant to Section 2.03. The Trustee shall reconvey to the Seller the Mortgage Loan to be released pursuant hereto in the same manner, and on the same terms and conditions, as it would a Mortgage Loan repurchased for breach of a representation or warranty contained in Section 2.03.

***Section 2.06 Execution and Delivery of Certificates.***

The Trustee acknowledges the transfer and assignment to it of the Trust Fund and, concurrently with such transfer and assignment, has executed and delivered to or upon the order of the Depositor, the Certificates in authorized denominations evidencing directly or indirectly the entire ownership of the Trust Fund. The Trustee agrees to hold the Trust Fund and exercise the rights referred to above for the benefit of all present and future Holders of the Certificates.

***Section 2.07 REMIC Matters.***

The Preliminary Statement sets forth the designations and “latest possible maturity date” for federal income tax purposes of all interests created under this Agreement. The “Startup Day” for purposes of the REMIC Provisions shall be the Closing Date. Each REMIC’s fiscal year shall be the calendar year.

ARTICLE Three

ADMINISTRATION AND SERVICING OF MORTGAGE LOANS

***Section 3.01 Master Servicer to Service Mortgage Loans.***

For and on behalf of the Certificateholders, the Master Servicer shall service and administer the Mortgage Loans in accordance with this Agreement and the Servicing Standard.

The Master Servicer shall not make or permit any modification, waiver, or amendment of any term of any Mortgage Loan that would cause any REMIC created under this Agreement to fail to qualify as a REMIC or result in the imposition of any tax under section 860F(a) or section 860G(d) of the Code.

Without limiting the generality of the foregoing, the Master Servicer, in its own name or in the name of the Depositor and the Trustee, is hereby authorized and empowered by the Depositor and the Trustee, when the Master Servicer believes it appropriate in its reasonable judgment, to execute and deliver, on behalf of the Trustee, the Depositor, the Certificateholders, or any of them, any instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Mortgage Loans, and with respect to the Mortgaged Properties held for the benefit of the Certificateholders. The Master Servicer shall prepare and deliver to the Depositor or the Trustee any documents requiring execution and delivery by either or both of them appropriate to enable the Master Servicer to service and administer the Mortgage Loans to the extent that the Master Servicer is not permitted to execute and deliver such documents pursuant to the preceding sentence. Upon receipt of the documents, the Depositor or the Trustee shall execute the documents and deliver them to the Master Servicer.

The Master Servicer further is authorized and empowered by the Trustee, on behalf of the Certificateholders and the Trustee, in its own name or in the name of the Subservicer, when the Master Servicer or the Subservicer, as the case may be, believes it appropriate in its best judgment to register any Mortgage Loan on the MERS® System, or cause the removal from the registration of any Mortgage Loan on the MERS® System, to execute and deliver, on behalf of the Trustee and the Certificateholders or any of them, any and all instruments of assignment and other comparable instruments with respect to such assignment or re-recording of a Mortgage in the name of MERS, solely as nominee for the Trustee and its successors and assigns.

In accordance with and to the extent of the Servicing Standard, the Master Servicer shall advance funds necessary to effect the payment of taxes and assessments on the Mortgaged Properties, which advances shall be reimbursable in the first instance from related collections from the Mortgagors pursuant to Section 3.07, and further as provided in Section 3.09. The costs incurred by the Master Servicer in effecting the timely payments of taxes and assessments on the Mortgaged Properties and related insurance premiums shall not, for the purpose of calculating monthly distributions to the Certificateholders, be added to the Stated Principal Balances of the related Mortgage Loans, notwithstanding that the Mortgage Loans so permit.

***Section 3.02 Subservicing; Enforcement of the Obligations of Subservicers.***

(a) The Master Servicer may arrange for the subservicing of any Mortgage Loan by a subservicer pursuant to a subservicing agreement (a "***Subservicer***"). The subservicing arrangement and the related subservicing agreement must provide for the servicing of the Mortgage Loans in a manner consistent with the servicing arrangements contemplated hereunder. Unless the context otherwise requires, references in this Agreement to actions taken or to be taken by the Master Servicer in servicing the Mortgage Loans include actions taken or to be taken by a Subservicer on behalf of the Master Servicer. Notwithstanding anything in any subservicing agreement or this Agreement relating to agreements or arrangements between the Master Servicer and a Subservicer or references to actions taken through a Subservicer or otherwise, the Master Servicer shall remain obligated and liable to the Trustee and Certificateholders for the servicing and administration of the Mortgage Loans in accordance with this Agreement without diminution of its obligation or liability by virtue of the subservicing agreements or arrangements or by virtue of indemnification from the Subservicer and to the same extent and under the same terms as if the Master Servicer alone were servicing and administering the Mortgage Loans. All actions of each Subservicer performed pursuant to the related subservicing agreement shall be performed as agent of the Master Servicer with the same effect as if performed directly by the Master Servicer.

(b) For purposes of this Agreement, the Master Servicer shall be deemed to have received any collections, recoveries, or payments with respect to the Mortgage Loans that are received by the Subservicer regardless of whether the payments are remitted by the Subservicer to the Master Servicer.

***Section 3.03 Rights of the Depositor and the Trustee in Respect of the Master Servicer.***

The Depositor may, but is not obligated to, enforce the obligations of the Master Servicer under this Agreement and may, but is not obligated to, perform, or cause a designee to perform, any defaulted obligation of the Master Servicer under this Agreement and in connection with any such defaulted obligation to exercise the related rights of the Master Servicer under this Agreement; provided that the Master Servicer shall not be relieved of any of its obligations under this Agreement by virtue of such performance by the Depositor or its designee. Neither the Trustee nor the Depositor shall have any responsibility or liability for any action or failure to act by the Master Servicer nor shall the Trustee or the Depositor be obligated to supervise the performance of the Master Servicer under this Agreement or otherwise.

***Section 3.04 No Contractual Relationship Between Subservicers and the Trustee.***

Any subservicing arrangement that may be entered into and any other transactions or services relating to the Mortgage Loans involving a Subservicer in its capacity as such and not as an originator shall be deemed to be solely between the Subservicer and the Master Servicer alone, and the Trustee and Certificateholders shall not be deemed parties thereto and shall have no claims, rights, obligations, duties, or liabilities with respect to the Subservicer in its capacity as such except as set forth in Section 3.05.

***Section 3.05 Trustee to Act as Master Servicer.***

If the Master Servicer for any reason is no longer the Master Servicer under this Agreement (including because of the occurrence or existence of an Event of Default), the Trustee or its successor shall assume all of the rights and obligations of the Master Servicer under this Agreement arising thereafter (except that the Trustee shall not be

(i) liable for losses of the Master Servicer pursuant to Section 3.10 or any acts or omissions of the predecessor Master Servicer hereunder,

(ii) obligated to make Advances if it is prohibited from doing so by applicable law,

(iii) obligated to effectuate repurchases or substitutions of Mortgage Loans hereunder, including repurchases or substitutions pursuant to Section 2.02 or 2.03,

(iv) responsible for expenses of the Master Servicer pursuant to Section 2.03, or

(v) deemed to have made any representations and warranties of the Master Servicer hereunder). Any assumption shall be subject to Section 7.02.

Every subservicing agreement entered into by the Master Servicer shall contain a provision giving the successor Master Servicer the option to terminate the agreement if a successor Master Servicer is appointed.

If the Master Servicer is no longer the Master Servicer for any reason (including because the occurrence or existence of any Event of Default), the Trustee (or any other successor Master Servicer) may, at its option, succeed to any rights and obligations of the Master Servicer under any subservicing agreement in accordance with its terms. The Trustee (or any other successor Master Servicer) shall not incur any liability or have any obligations in its capacity as successor Master Servicer under a subservicing agreement arising before the date of succession unless it expressly elects to succeed to the rights and obligations of the Master Servicer thereunder; and the Master Servicer shall not thereby be relieved of any liability or obligations under the subservicing agreement arising before the date of succession.

The Master Servicer shall, upon request of the Trustee, but at the expense of the Master Servicer, deliver to the assuming party all documents and records relating to each subservicing agreement and the Mortgage Loans then being serviced thereunder and an accounting of amounts collected held by it and otherwise use its best efforts to effect the orderly and efficient transfer of the subservicing agreement to the assuming party.

Notwithstanding anything else in this Agreement to the contrary, in no event shall the Trustee be liable for any servicing fee or for any differential in the amount of the Servicing Fee paid under this Agreement and the amount necessary to induce any successor Master Servicer to act as successor Master Servicer under this Agreement and the transactions provided for in this Agreement.

***Section 3.06 Collection of Mortgage Loan Payments; Servicing Accounts; Collection Account; Certificate Account; Distribution Account; Yield Maintenance Reserve Funds.***

(a) In accordance with and to the extent of the Servicing Standard, the Master Servicer shall make reasonable efforts in accordance with the customary and usual standards of practice of prudent mortgage servicers to collect all payments called for under the Mortgage Loans to the extent the procedures are consistent with this Agreement and any related Required Insurance Policy. Consistent with the foregoing, the Master Servicer may in its discretion (i) waive any late payment charge or, subject to Section 3.21, any Prepayment Charge in connection with the prepayment of a Mortgage Loan and (ii) extend the due dates for payments due on a Delinquent Mortgage Loan for a period not greater than 125 days. In connection with a seriously delinquent or defaulted Mortgage Loan, the Master Servicer may, consistent with the Servicing Standard, waive, modify or vary any term of that Mortgage Loan (including modifications that change the Mortgage Rate, forgive the payment of principal or interest or extend the final maturity date of that Mortgage Loan ), accept payment from the related Mortgagor of an amount less than the Stated Principal Balance in final satisfaction of that Mortgage Loan, or consent to the postponement of strict compliance with any such term or otherwise grant indulgence to any Mortgagor if in the Master Servicer's determination such waiver, modification, postponement or indulgence is not materially adverse to the interests of the Certificateholders (taking into account any estimated loss that might result absent such action) and is expected to minimize the loss on such Mortgage Loan; provided, however, the Master Servicer shall not initiate new lending to such Mortgagor through the Trust and cannot, except as provided in the immediately succeeding sentence, extend the maturity of any Mortgage Loan past the date on which the final payment is due on the latest maturing Mortgage Loan as of the Cut-off Date. With respect to no more than 5% of the Mortgage Loans (measured by aggregate Cut-off Date

Principal Balance of the Mortgage Loans), the Master Servicer may extend the maturity of a Mortgage Loan past the date on which the final payment is due on the latest maturing Mortgage Loan as of the Cut-off Date, but in no event more than one year past such date. In the event of any such arrangement, the Master Servicer shall make Advances on the related Mortgage Loan in accordance with Section 4.01 during the scheduled period in accordance with the amortization schedule of the Mortgage Loan without modification thereof because of the arrangements. The Master Servicer shall not be required to institute or join in litigation with respect to collection of any payment (whether under a Mortgage, Mortgage Note, or otherwise or against any public or governmental authority with respect to a taking or condemnation) if it reasonably believes that enforcing the provision of the Mortgage or other instrument pursuant to which the payment is required is prohibited by applicable law. The Master Servicer shall not have the discretion to sell any Delinquent or defaulted Mortgage Loan.

(b) The Master Servicer shall establish and maintain (or, if a Mortgage Loan is subserviced by another Person, cause the related Subservicer to establish and maintain) one or more Servicing Accounts (the "***Servicing Account***") into which the Master Servicer shall deposit on a daily basis within one Business Day of receipt, the following payments and collections received by it or remitted by any Subservicer in respect of Mortgage Loans after the Cut-off Date (other than in respect of principal and interest due on the Mortgage Loans by the Cut-off Date):

(i) all payments on account of principal on the Mortgage Loans, including Principal Prepayments;

(ii) all payments on account of interest on the Mortgage Loans, net of the related Servicing Fee; and

(iii) all Insurance Proceeds, Subsequent Recoveries and Liquidation Proceeds, other than proceeds to be applied to the restoration or repair of the Mortgaged Property or released to the Mortgagor in accordance with the Master Servicer's normal servicing procedures.

By the Withdrawal Date in each calendar month, the Master Servicer shall (a) withdraw from the Servicing Account all amounts on deposit therein pursuant to clauses (i) and (ii) above (other than amounts attributable to a Principal Prepayment in Full) and (b) deposit such amounts in the Collection Account.

By the Business Day in each calendar month following the deposit in the Servicing Account of amounts on deposit therein pursuant to clause (iii) above or pursuant to any Principal Prepayment in Full, the Master Servicer shall (a) withdraw such amounts from the Servicing Account and (b) deposit such amounts in the Collection Account.

(c) The Master Servicer shall establish and maintain a Collection Account (the "***Collection Account***") into which the Master Servicer shall deposit, as and when required by paragraph (b) of this Section 3.06, all amounts required to be deposited into the Collection Account pursuant to that paragraph. The Collection Account shall be an Eligible Account held for the benefit of the Certificateholders.

(d) The Master Servicer shall establish and maintain a Certificate Account into which the Master Servicer shall deposit on a daily basis (i) within one Business Day of deposit in the Collection Account (in the case of items (i) through (iii) below) and (2) within one Business Day of receipt (in the case of all other items), except as otherwise specified herein, the following payments and collections received by it or remitted by any Subservicer in respect of Mortgage Loans after the Cut-off Date (other than in respect of principal and interest due on the Mortgage Loans by the Cut-off Date) and the following amounts required to be deposited hereunder:

(i) all payments on account of principal on the Mortgage Loans, including Principal Prepayments;

(ii) all payments on account of interest on the Mortgage Loans, net of the Servicing Fee and Prepayment Interest Excess;

(iii) all Insurance Proceeds, Subsequent Recoveries and Liquidation Proceeds, other than proceeds to be applied to the restoration or repair of the Mortgaged Property or released to the Mortgagor in accordance with the Master Servicer's normal servicing procedures;

(iv) any amount required to be deposited by the Master Servicer pursuant to Section 3.06(f) in connection with any losses on Permitted Investments;

(v) any amounts required to be deposited by the Master Servicer pursuant to Sections 3.10 and 3.12;

(vi) all Purchase Prices from the Master Servicer or Seller and all Substitution Adjustment Amounts;

(vii) all Advances made by the Master Servicer pursuant to Section 4.01;

(viii) any other amounts required to be deposited under this Agreement; and

(ix) all Prepayment Charges collected.

In addition, with respect to any Mortgage Loan that is subject to a buydown agreement, on each Due Date for the Mortgage Loan, in addition to the monthly payment remitted by the Mortgagor, the Master Servicer shall cause funds to be deposited into the Certificate Account in an amount required to cause an amount of interest to be paid with respect to the Mortgage Loan equal to the amount of interest that has accrued on the Mortgage Loan from the preceding Due Date at the Mortgage Rate net of the Servicing Fee Rate on that date.

The foregoing requirements for remittance by the Master Servicer shall be exclusive, it being understood and agreed that, without limiting the generality of the foregoing, payments in the nature of late payment charges or assumption fees, if collected, need not be remitted by the Master Servicer. If the Master Servicer remits any amount not required to be remitted, it may at any time withdraw that amount from the Certificate Account, any provision in this Agreement to the contrary notwithstanding. The withdrawal or direction may be accomplished by delivering written notice of it to the Trustee or any other institution maintaining the Certificate Account that describes the amounts deposited in error in the Certificate Account. The Master Servicer shall maintain adequate records with respect to all withdrawals made pursuant to this Section 3.06. All funds deposited in the Certificate Account shall be held in trust for the Certificateholders until withdrawn in accordance with Section 3.09.

(e) The Trustee shall establish and maintain the Distribution Account on behalf of the Certificateholders. The Trustee shall, promptly upon receipt, deposit in the Distribution Account and retain in the Distribution Account the following:

(i) the aggregate amount remitted by the Master Servicer to the Trustee pursuant to Section 3.09(a);

(ii) any amount deposited by the Master Servicer pursuant to Section 3.06(f) in connection with any losses on Permitted Investments; and

(iii) any other amounts deposited under this Agreement that are required to be deposited in the Distribution Account.

If the Master Servicer remits any amount not required to be remitted, it may at any time direct the Trustee in writing to withdraw that amount from the Distribution Account, any provision in this Agreement to the contrary notwithstanding. The direction may be accomplished by delivering an Officer's Certificate to the Trustee that describes the amounts deposited in error in the Distribution Account. All funds deposited in the Distribution Account shall be held by the Trustee in trust for the Certificateholders until disbursed in accordance with this Agreement or withdrawn in accordance with Section 3.09. In no event shall the Trustee incur liability for withdrawals from the Distribution Account at the direction of the Master Servicer.

(f) Each institution at which the Certificate Account is maintained shall invest the funds in such account as directed in writing by the Master Servicer in Permitted Investments, which shall mature not later than the second Business Day preceding the related Distribution Account Deposit Date (except that if the Permitted Investment is an obligation of the institution that maintains the account, then the Permitted Investment shall mature not later than the Business Day preceding the Distribution Account Deposit Date) and which shall not be sold or disposed of before its maturity. The funds in the Distribution Account shall remain uninvested. All such Permitted Investments shall be made in the name of the Trustee, for the benefit of the Certificateholders. All income realized from any such investment of funds on deposit in the Certificate Account shall be for the benefit of the Master Servicer as servicing compensation and shall be remitted to it monthly as provided in this Agreement. The amount of any realized losses on Permitted Investments in the Certificate Account shall promptly be deposited by the Master Servicer in the Certificate Account. The Trustee shall not be liable for the amount of any loss incurred in respect of any investment or lack of investment of funds held in the Certificate Account and made in accordance with this Section 3.06.

(g) (i) On the Closing Date, the Trustee shall establish and maintain in its name, in trust for the benefit of the Holders of the applicable Class or Classes of Certificates, a separate Yield Maintenance Reserve Fund for (A) the Class 1-A-1 Certificates and (B) the Class 2-A-1A, the Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates. Each Yield Maintenance Reserve Fund shall be an Eligible Account, and funds on deposit in the account shall be held separate and apart from, and shall not be commingled with, any other moneys, including without limitation, other moneys held by the Trustee pursuant to this Agreement.

(ii) The Trustee shall deposit in a Yield Maintenance Reserve Fund all amounts received from the Cap Counterparty on any Distribution Date pursuant to the related Yield Maintenance Agreement. If the Trustee shall also deposit into a Yield Maintenance Reserve Fund any amount not required to be deposited in that account, it may at any time withdraw such amount from that Yield Maintenance Reserve Fund, any provision in this Agreement to the contrary notwithstanding. Funds in the Yield Maintenance Reserve Funds shall be invested in Permitted Investments, which shall mature on or before the next Distribution Date, by the Trustee at the direction of the Seller. Any investment earnings on such amounts, net of any losses, shall be payable to the Seller. The amount of any realized losses on Permitted Investments in the Yield Maintenance Reserve Funds shall promptly be deposited by the Seller in the related Yield Maintenance Reserve Fund. The Seller shall be the owner of the Yield Maintenance Reserve Funds for federal tax purposes. The Trustee shall have no liability for losses on investments in Permitted Investments made pursuant to this Section (other than as an obligor on such investments). The Trustee shall account for the Yield Maintenance Reserve Funds as outside reserve funds within the meaning of Treasury regulation 1.860G-2(h) and not an asset of any REMIC created pursuant to this Agreement.

(iii) Amounts on deposit in a Yield Maintenance Reserve Fund shall be withdrawn by the Trustee in connection with any Distribution Date on which there exists a Carryover Shortfall Amount for (A) the Class 1-A-1 Certificates or (B) the Class 2-A-1A, the Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates, as applicable, to pay the amount of such Carryover Shortfall Amount (to the extent of funds on deposit in the related Yield Maintenance Reserve Fund) to the related Classes of Certificates, pro rata, based on their respective Class Certificate Balances immediately prior to that Distribution Date. On any Distribution Date, any amounts on deposit in a Yield Maintenance Reserve Fund in excess of the related Carryover Shortfall Amount shall be paid to the Holders of the Class A-X-2 Certificates.

(h) The Master Servicer shall give notice to the Trustee, the Seller, each Rating Agency and the Depositor of any proposed change of the location of the Certificate Account not later than 30 days and not more than 45 days prior to any change of this Agreement. The Trustee shall give notice to the Master Servicer, the Seller, each Rating Agency and the Depositor of any proposed change of the location of the Distribution Account not later than 30 days and not more than 45 days prior to any change of this Agreement.

***Section 3.07 Collection of Taxes, Assessments and Similar Items; Escrow Accounts.***

(a) To the extent required by the related Mortgage Note and not violative of current law, the Master Servicer shall establish and maintain one or more accounts (each, an "***Escrow Account***") and deposit and retain therein all collections from the Mortgagors (or advances) for the payment of taxes, assessments, hazard insurance premiums or comparable items for the account of the Mortgagors. Nothing herein shall require the Master Servicer to compel a Mortgagor to establish an Escrow Account in violation of applicable law.

(b) Withdrawals of amounts so collected from the Escrow Accounts may be made only to effect timely payment of taxes, assessments, hazard insurance premiums, condominium or PUD association dues, or comparable items, to reimburse (without duplication) the Master Servicer out of related collections for any payments made pursuant to Section 3.01 (with respect to taxes and assessments and insurance premiums) and Section 3.10 (with respect to hazard insurance), to refund to any Mortgagors any sums determined to be overages, to pay interest, if required by law or the related Mortgage or Mortgage Note, to Mortgagors on balances in the Escrow Account or to clear and terminate the Escrow Account at the termination of this Agreement in accordance with Section 9.01. The Escrow Accounts shall not be a part of the Trust Fund.

(c) The Master Servicer shall advance any payments referred to in Section 3.07(a) that are not timely paid by the Mortgagors or advanced by the Master Servicer on the date when the tax, premium or other cost for which such payment is intended is due, but the Master Servicer shall be required so to advance only to the extent that such advances, in the good faith judgment of the Master Servicer, will be recoverable by the Master Servicer out of Insurance Proceeds, Liquidation Proceeds or otherwise.

***Section 3.08 Access to Certain Documentation and Information Regarding the Mortgage Loans.***

The Master Servicer shall afford the Depositor and the Trustee reasonable access to all records and documentation regarding the Mortgage Loans and all accounts, insurance information and other matters relating to this Agreement, such access being afforded without charge, but only upon reasonable request and during normal business hours at the office designated by the Master Servicer.

Upon reasonable advance notice in writing, the Master Servicer will provide to each Certificateholder or Certificate Owner that is a savings and loan association, bank, or insurance company certain reports and reasonable access to information and documentation regarding the Mortgage Loans sufficient to permit the Certificateholder or Certificate Owner to comply with applicable regulations of the OTS or other regulatory authorities with respect to investment in the Certificates. The Master Servicer shall be entitled to be reimbursed by each such Certificateholder or Certificate Owner for actual expenses incurred by the Master Servicer in providing the reports and access.

***Section 3.09 Permitted Withdrawals from the Certificate Account, the Distribution Account and the Yield Maintenance Reserve Funds.***

(a) The Master Servicer may (and, in the case of clause (ix) below, shall) from time to time make withdrawals from the Certificate Account for the following purposes:

(i) to pay to the Master Servicer or the related subservicer (to the extent not previously retained) the servicing compensation to which it is entitled pursuant to Section 3.15, and to pay to the Master Servicer, as additional master servicing compensation, earnings on or investment income with respect to funds in or credited to the Certificate Account;

(ii) to reimburse the Master Servicer or successor Master Servicer for the unreimbursed Advances made by it, such right of reimbursement pursuant to this subclause (ii) being limited to amounts received on the Mortgage Loans in respect of which the Advance was made;

(iii) to reimburse the Master Servicer or successor Master Servicer for any Nonrecoverable Advance previously made by it;

(iv) to reimburse the Master Servicer for Insured Expenses from the related Insurance Proceeds;

(v) to reimburse the Master Servicer for (a) unreimbursed Servicing Advances, the Master Servicer’s right to reimbursement pursuant to this clause (a) with respect to any Mortgage Loan being limited to amounts received on the Mortgage Loans that represent late recoveries of the payments for which the advances were made pursuant to Section 3.01 or Section 3.07 and (b) for unpaid Servicing Fees as provided in Section 3.12;

(vi) to pay to the purchaser, with respect to each Mortgage Loan or property acquired in respect of such Mortgage Loan that has been purchased pursuant to Section 2.02, 2.03, or 3.12, all amounts received thereon after the date of such purchase;

(vii) to reimburse the Seller, the Master Servicer, or the Depositor for expenses incurred by any of them and reimbursable pursuant to Section 6.03;

(viii) to withdraw any amount deposited in the Certificate Account and not required to be deposited in the Certificate Account;

(ix) by the Distribution Account Deposit Date, to withdraw (1) the Available Funds and the Trustee Fee for the Distribution Date, to the extent on deposit, and (2) the Prepayment Charges on deposit, and remit such amount to the Trustee for deposit in the Distribution Account; and

(x) to clear and terminate the Certificate Account upon termination of this Agreement pursuant to Section 9.01.

The Master Servicer shall keep and maintain separate accounting, on a Mortgage Loan by Mortgage Loan basis, to justify any withdrawal from the Certificate Account pursuant to subclauses (i), (ii), (iv), (v), and (vi). Before making any withdrawal from the Certificate Account pursuant to subclause (iii), the Master Servicer shall deliver to the Trustee an Officer’s Certificate of a Servicing Officer indicating the amount of any previous Advance determined by the Master Servicer to be a Nonrecoverable Advance and identifying the related Mortgage Loans and their respective portions of the Nonrecoverable Advance.

(b) The Trustee shall withdraw funds from the Distribution Account for distributions to Certificateholders in the manner specified in this Agreement (and to withhold from the amounts so withdrawn the amount of any taxes that it is authorized to withhold pursuant to the last paragraph of Section 8.11). In addition, the Trustee may from time to time make withdrawals from the Distribution Account for the following purposes:

(i) to pay to itself the Trustee Fee for the related Distribution Date;

(ii) to withdraw and return to the Master Servicer any amount deposited in the Distribution Account and not required to be deposited therein; and

(iii) to clear and terminate the Distribution Account upon termination of the Agreement pursuant to Section 9.01.

(c) On each Distribution Date, the Trustee shall make withdrawals from the Yield Maintenance Reserve Funds for deposit in the Distribution Account of the amounts required pursuant to Section 3.06(g). On the earlier of (i) the termination of this Agreement pursuant to Section 9.01, (ii) the Distribution Date on which (x) the Class Certificate Balance of the Class 1-A-1 Certificates or (y) the aggregate Class Certificate Balance of the Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates, is reduced to zero and (iii) the applicable cap contract termination date, any amount remaining on deposit in the related Yield Maintenance Reserve Fund after giving effect to the requirements of the preceding sentence shall be withdrawn by the Trustee and paid to the Class A-X-2 Certificates.

***Section 3.10 Maintenance of Hazard Insurance; Maintenance of Primary Insurance Policies.***

(a) The Master Servicer shall maintain, for each Mortgage Loan, hazard insurance with extended coverage in an amount that is at least equal to the lesser of

(i) the maximum insurable value of the improvements securing the Mortgage Loan and

(ii) the greater of (y) the outstanding principal balance of the Mortgage Loan and (z) an amount such that the proceeds of the policy are sufficient to prevent the Mortgagor or the mortgagee from becoming a co-insurer.

Each policy of standard hazard insurance shall contain, or have an accompanying endorsement that contains, a standard mortgagee clause. Any amounts collected under the policies (other than the amounts to be applied to the restoration or repair of the related Mortgaged Property or amounts released to the Mortgagor in accordance with the Master Servicer’s normal servicing procedures) shall be deposited in the Certificate Account. Any cost incurred in maintaining any insurance shall not, for the purpose of calculating monthly distributions to the Certificateholders or remittances to the Trustee for their benefit, be added to the principal balance of the Mortgage Loan, notwithstanding that the Mortgage Loan so permits. Such costs shall be recoverable by the Master Servicer out of late payments by the related Mortgagor or out of Liquidation Proceeds to the extent permitted by Section 3.09. No earthquake or other additional insurance is to be required of any Mortgagor or maintained on property acquired in respect of a Mortgage other than pursuant to any applicable laws and regulations in force that require additional insurance. If the Mortgaged Property is located at the time of origination of the Mortgage Loan in a federally designated special flood hazard area and the area is participating in the national flood insurance program, the Master Servicer shall maintain flood insurance for the Mortgage Loan. The flood insurance shall be in an amount equal to the least of (i) the original principal balance of the related Mortgage Loan, (ii) the replacement value of the improvements that are part of the Mortgaged Property, and (iii) the maximum amount of flood insurance available for the related Mortgaged Property under the national flood insurance program.

If the Master Servicer obtains and maintains a blanket policy insuring against hazard losses on all of the Mortgage Loans, it shall have satisfied its obligations in the first sentence of this Section 3.10. The policy may contain a deductible clause on terms substantially equivalent to those commercially available and maintained by comparable servicers. If the policy contains a deductible clause and a policy complying with the first sentence of this Section 3.10 has not been maintained on the related Mortgaged Property, and if a loss that would have been covered by the required policy occurs, the Master Servicer shall deposit in the Certificate Account, without any right of reimbursement, the amount not otherwise payable under the blanket policy because of the deductible clause. In connection with its activities as Master Servicer of the Mortgage Loans, the Master Servicer agrees to present, on behalf of itself, the Depositor, and the Trustee for the benefit of the Certificateholders, claims under any blanket policy.

(b) The Master Servicer shall not take any action that would result in non-coverage under any applicable Primary Insurance Policy of any loss that, but for the actions of the Master Servicer, would have been covered thereunder. The Master Servicer shall not cancel or refuse to renew any Primary Insurance Policy that is in effect at the date of the initial issuance of the Certificates and is required to be kept in force hereunder unless the replacement Primary Insurance Policy for the canceled or non-renewed policy is maintained with a Qualified Insurer. The Master Servicer need not maintain any Primary Insurance Policy if maintaining the Primary Insurance Policy is prohibited by applicable law. The Master Servicer agrees, to the extent permitted by applicable law, to effect the timely payment of the premiums on each Primary Insurance Policy, and any costs not otherwise recoverable shall be recoverable by the Master Servicer from the related liquidation proceeds.

In connection with its activities as Master Servicer of the Mortgage Loans, the Master Servicer agrees to present, on behalf of itself, the Trustee and the Certificateholders, claims to the insurer under any Primary Insurance Policies and, in this regard, to take any reasonable action in accordance with the Servicing Standard necessary to permit recovery under any Primary Insurance Policies respecting defaulted Mortgage Loans. Any amounts collected by the Master Servicer under any Primary Insurance Policies shall be deposited in the Certificate Account or the Collection Account (as applicable).

***Section 3.11 Enforcement of Due-On-Sale Clauses; Assumption Agreements.***

(a) Except as otherwise provided in this Section 3.11, when any property subject to a Mortgage has been conveyed by the Mortgagor, the Master Servicer shall to the extent that it has knowledge of the conveyance and in accordance with the Servicing Standard, enforce any due-on-sale clause contained in any Mortgage Note or Mortgage, to the extent permitted under applicable law and governmental regulations, but only to the extent that enforcement will not adversely affect or jeopardize coverage under any Required Insurance Policy. Notwithstanding the foregoing, the Master Servicer is not required to exercise these rights with respect to a Mortgage Loan if the Person to whom the related Mortgaged Property has been conveyed or is proposed to be conveyed satisfies the conditions contained in the Mortgage Note and Mortgage related thereto and the consent of the mortgagee under the Mortgage Note or Mortgage is not otherwise so required under the Mortgage Note or Mortgage as a condition to the transfer.

If (i) the Master Servicer is prohibited by law from enforcing any due-on-sale clause, (ii) coverage under any Required Insurance Policy would be adversely affected, (iii) the Mortgage Note does not include a due-on-sale clause, or (iv) nonenforcement is otherwise permitted hereunder, the Master Servicer is authorized, subject to Section 3.11(b), to take or enter into an assumption and modification agreement from or with the person to whom the property has been or is about to be conveyed, pursuant to which the person becomes liable under the Mortgage Note and, unless prohibited by applicable state law, the Mortgagor remains liable thereon. The Mortgage Loan must continue to be covered (if so covered before the Master Servicer enters into the agreement) by the applicable Required Insurance Policies.

The Master Servicer, subject to Section 3.11(b), is also authorized with the prior approval of the insurers under any Required Insurance Policies to enter into a substitution of liability agreement with the Person, pursuant to which the original Mortgagor is released from liability and the Person is substituted as Mortgagor and becomes liable under the Mortgage Note. Notwithstanding the foregoing, the Master Servicer shall not be deemed to be in default under this Section 3.11 because of any transfer or assumption that the Master Servicer reasonably believes it is restricted by law from preventing, for any reason whatsoever.

(b) Subject to the Master Servicer's duty to enforce any due-on-sale clause to the extent set forth in Section 3.11(a), in any case in which a Mortgaged Property has been conveyed to a Person by a Mortgagor, and the Person is to enter into an assumption agreement or modification agreement or supplement to the Mortgage Note or Mortgage that requires the signature of the Trustee, or if an instrument of release signed by the Trustee is required releasing the Mortgagor from liability on the Mortgage Loan, the Master Servicer shall prepare and deliver to the Trustee for signature and shall direct the Trustee, in writing, to execute the assumption agreement with the Person to whom the Mortgaged Property is to be conveyed, and the modification agreement or supplement to the Mortgage Note or Mortgage or other instruments appropriate to carry out the terms of the Mortgage Note or Mortgage or otherwise to comply with any applicable laws regarding assumptions or the transfer of the Mortgaged Property to the Person. In connection with any such assumption, no material term of the Mortgage Note may be changed.

In addition, the substitute Mortgagor and the Mortgaged Property must be acceptable to the Master Servicer in accordance with its underwriting standards as then in effect. Together with each substitution, assumption, or other agreement or instrument delivered to the Trustee for execution by it, the Master Servicer shall deliver an Officer's Certificate signed by a Servicing Officer stating that the requirements of this subsection have been met in connection with such Officer's Certificate. The Master Servicer shall notify the Trustee that any substitution or assumption agreement has been completed by forwarding to the Trustee the original of the substitution or assumption agreement, which in the case of the original shall be added to the related Mortgage File and shall, for all purposes, be considered a part of the Mortgage File to the same extent as all other documents and instruments constituting a part of the Mortgage File. The Master Servicer will retain any fee collected by it for entering into an assumption or substitution of liability agreement as additional master servicing compensation.

***Section 3.12 Realization Upon Defaulted Mortgage Loans.***

The Master Servicer shall use reasonable efforts in accordance with the Servicing Standard to foreclose on or otherwise comparably convert the ownership of assets securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments. In connection with the foreclosure or other conversion, the Master Servicer shall follow the Servicing Standard and shall follow the requirements of the insurer under any Required Insurance Policy. The Master Servicer shall not be required to expend its own funds in connection with any foreclosure or towards the restoration of any property unless it determines (i) that the restoration or foreclosure will increase the proceeds of liquidation of the Mortgage Loan after reimbursement to itself of restoration expenses and (ii) that restoration expenses will be recoverable to it through Liquidation Proceeds (respecting which it shall have priority for purposes of withdrawals from the Certificate Account). The Master Servicer shall be responsible for all other costs and expenses incurred by it in any foreclosure proceedings. The Master Servicer is entitled to reimbursement of such costs and expenses from the liquidation proceeds with respect to the related Mortgaged Property, as provided in the definition of Liquidation Proceeds. If the Master Servicer has knowledge that a Mortgaged Property that the Master Servicer is contemplating acquiring in foreclosure or by deed in lieu of foreclosure is located within a one mile radius of any site listed in the Expenditure Plan for the Hazardous Substance Clean Up Bond Act of 1984 or other site with environmental or hazardous waste risks known to the Master Servicer, the Master Servicer will, before acquiring the Mortgaged Property, consider the risks and only take action in accordance with its established environmental review procedures.

With respect to any REO Property, the deed or certificate of sale shall be taken in the name of the Trustee for the benefit of the Certificateholders, or its nominee, on behalf of the Certificateholders. The Trustee’s name shall be placed on the title to the REO Property solely as the Trustee hereunder and not in its individual capacity. The Master Servicer shall ensure that the title to the REO Property references the Pooling and Servicing Agreement and the Trustee’s capacity hereunder. Pursuant to its efforts to sell the REO Property, the Master Servicer shall either itself or through an agent selected by the Master Servicer protect and conserve the REO Property in accordance with the Servicing Standard.

The Master Servicer shall perform the tax reporting and withholding required by sections 1445 and 6050J of the Code with respect to foreclosures and abandonments, the tax reporting required by section 6050H of the Code with respect to the receipt of mortgage interest from individuals and, if required by section 6050P of the Code with respect to the cancellation of indebtedness by certain financial entities, by preparing any required tax and information returns, in the form required.

If the Trust Fund acquires any Mortgaged Property as aforesaid or otherwise in connection with a default or imminent default on a Mortgage Loan, the REO Property shall only be held temporarily, shall be actively marketed for sale, and the Master Servicer shall dispose of the Mortgaged Property as soon as practicable, and in any case before the end of the third calendar year following the calendar year in which the Trust Fund acquires the property. Notwithstanding any other provision of this Agreement, no Mortgaged Property acquired by the Trust Fund shall be rented (or allowed to continue to be rented) or otherwise used for the production of income by or on behalf of the Trust Fund.

The decision of the Master Servicer to foreclose on a defaulted Mortgage Loan shall be subject to a determination by the Master Servicer that the proceeds of the foreclosure would exceed the costs and expenses of bringing a foreclosure proceeding. The proceeds received from the maintenance of any REO Properties, net of reimbursement to the Master Servicer for costs incurred (including any property or other taxes) in connection with maintenance of the REO Properties and net of unreimbursed Servicing Fees, Advances, and Servicing Advances, shall be applied to the payment of principal of and interest on the related defaulted Mortgage Loans (with interest accruing as though the Mortgage Loans were still current and adjustments, if applicable, to the Mortgage Rate were being made in accordance with the Mortgage Note) and all such proceeds shall be deemed, for all purposes in this Agreement, to be payments on account of principal and interest on the related Mortgage Notes and shall be deposited into the Certificate Account. To the extent the net proceeds received during any calendar month exceeds the amount attributable to amortizing principal and accrued interest at the related Mortgage Rate on the related Mortgage Loan for the calendar month, the excess shall be considered to be a partial prepayment of principal of the related Mortgage Loan.

The proceeds from any liquidation of a Mortgage Loan, as well as any proceeds from an REO Property, will be applied in the following order of priority: first, to reimburse the Master Servicer for any related unreimbursed Servicing Advances or Servicing Fees or for any related unreimbursed Advances, as applicable; second, to reimburse the Master Servicer, as applicable, and to reimburse the Certificate Account for any Nonrecoverable Advances (or portions thereof) that were previously withdrawn by the Master Servicer pursuant to Section 3.09(a)(iii) that related to the Mortgage Loan; third, to accrued and unpaid interest (to the extent no Advance has been made for such amount or any such Advance has been reimbursed) on the Mortgage Loan or related REO Property, at the Adjusted Net Mortgage Rate to the Due Date occurring in the month in which such amounts are required to be distributed; and fourth, as a recovery of principal of the Mortgage Loan. The Master Servicer will retain any Excess Proceeds from the liquidation of a Liquidated Mortgage Loan as additional servicing compensation pursuant to Section 3.15.

The Master Servicer may agree to a modification of any Mortgage Loan at the request of the related Mortgagor if (i) the modification is in lieu of a refinancing and the Mortgage Rate on the Mortgage Loan, as modified, is approximately a prevailing market rate for newly-originated Mortgage Loans having similar terms and (ii) the Master Servicer purchases that Mortgage Loan from the Trust Fund as described below. Upon the agreement of the Master Servicer to modify a Mortgage Loan in accordance with the preceding sentence, the Master Servicer shall purchase that Mortgage Loan and all interest of the Trustee in that Mortgage Loan shall automatically be deemed transferred and assigned to the Master Servicer and all benefits and burdens of ownership thereof, including the right to accrued interest thereon from the date of purchase and the risk of default thereon, shall pass to the Master Servicer. The Master Servicer shall promptly deliver to the Trustee a certification of a Servicing Officer to the effect that all requirements of this paragraph have been satisfied with respect to a Mortgage Loan to be repurchased pursuant to this paragraph.

The Master Servicer shall deposit the Purchase Price for any Mortgage Loan repurchased pursuant to Section 3.12 in the Certificate Account pursuant to Section 3.06 within one Business Day after the purchase of the Mortgage Loan. Upon receipt by the Trustee of written notification of any such deposit signed by a Servicing Officer, the Trustee shall release to the Master Servicer the related Mortgage File and shall execute and deliver such instruments of transfer or assignment, in each case without recourse, as shall be necessary to vest in the Master Servicer any Mortgage Loan previously transferred and assigned pursuant hereto. The Master Servicer covenants and agrees to indemnify the Trust Fund against any liability for any “prohibited transaction” taxes and any related interest, additions, and penalties imposed on the Trust Fund established hereunder as a result of any modification of a Mortgage Loan effected pursuant to this Section, or any purchase of a Mortgage Loan by the Master Servicer in connection with a modification (but such obligation shall not prevent the Master Servicer or any other appropriate Person from contesting any such tax in appropriate proceedings and shall not prevent the Master Servicer from withholding payment of such tax, if permitted by law, pending the outcome of such proceedings). The Master Servicer shall have no right of reimbursement for any amount paid pursuant to the foregoing indemnification, except to the extent that the amount of any tax, interest, and penalties, together with interest thereon, is refunded to the Trust Fund.

***Section 3.13 Trustee to Cooperate; Release of Mortgage Files.***

Upon the payment in full of any Mortgage Loan, or the receipt by the Master Servicer of a notification that payment in full will be escrowed in a manner customary for such purposes, the Master Servicer will immediately notify the Trustee by delivering a Request for Release substantially in the form of Exhibit N. Upon receipt of the request, the Trustee shall promptly release the related Mortgage File to the Master Servicer, and the Trustee shall at the Master Servicer's direction execute and deliver to the Master Servicer the request for reconveyance, deed of reconveyance, or release or satisfaction of mortgage or such instrument releasing the lien of the Mortgage in each case provided by the Master Servicer, together with the Mortgage Note with written evidence of cancellation thereon. The Master Servicer is authorized to cause the removal from the registration on the MERS System of such Mortgage and to execute and deliver, on behalf of the Trustee and the Certificateholders or any of them, any and all instruments of satisfaction or cancellation or of partial or full release. Expenses incurred in connection with any instrument of satisfaction or deed of reconveyance shall be chargeable to the related Mortgagor.

From time to time and as shall be appropriate for the servicing or foreclosure of any Mortgage Loan, including for such purpose collection under any policy of flood insurance, any fidelity bond or errors or omissions policy, or for the purposes of effecting a partial release of any Mortgaged Property from the lien of the Mortgage or the making of any corrections to the Mortgage Note or the Mortgage or any of the other documents included in the Mortgage File, the Trustee shall, upon delivery to the Trustee of a Request for Release in the form of Exhibit M signed by a Servicing Officer, release the Mortgage File to the Master Servicer or its designee. Subject to the further limitations set forth below, the Master Servicer shall cause the Mortgage File or documents so released to be returned to the Trustee when the need therefor by the Master Servicer no longer exists, unless the Mortgage Loan is liquidated and the proceeds thereof are deposited in the Certificate Account, in which case the Master Servicer shall deliver to the Trustee a Request for Release in the form of Exhibit N, signed by a Servicing Officer.

If the Master Servicer at any time seeks to initiate a foreclosure proceeding in respect of any Mortgaged Property as authorized by this Agreement, the Master Servicer shall deliver to the Trustee, for signature, as appropriate, any court pleadings, requests for trustee's sale, or other documents necessary to effectuate such foreclosure or any legal action brought to obtain judgment against the Mortgagor on the Mortgage Note or the Mortgage or to obtain a deficiency judgment or to enforce any other remedies or rights provided by the Mortgage Note or the Mortgage or otherwise available at law or in equity.

***Section 3.14 Documents, Records and Funds in Possession of the Master Servicer to be Held for the Trustee.***

The Master Servicer shall account fully to the Trustee for any funds it receives or otherwise collects as Liquidation Proceeds or Insurance Proceeds in respect of any Mortgage Loan. All Mortgage Files and funds collected or held by, or under the control of, the Master Servicer in respect of any Mortgage Loans, whether from the collection of principal and interest payments or from Liquidation Proceeds, including any funds on deposit in the Certificate Account, shall be held by the Master Servicer for and on behalf of the Trustee and shall be and remain the sole and exclusive property of the Trustee, subject to the applicable provisions of this Agreement. The Master Servicer also agrees that it shall not create, incur or subject any Mortgage File or any funds that are deposited in the Certificate Account, the Collection Account, Distribution Account, or any Escrow Account, or any funds that otherwise are or may become due or payable to the Trustee for the benefit of the Certificateholders, to any claim, lien, security interest, judgment, levy, writ of attachment, or other encumbrance, or assert by legal action or otherwise any claim or right of setoff against any Mortgage File or any funds collected on, or in connection with, a Mortgage Loan, except, however, that the Master Servicer shall be entitled to set off against and deduct from any such funds any amounts that are properly due and payable to the Master Servicer under this Agreement.

***Section 3.15 Servicing Compensation.***

As compensation for its activities hereunder, the Master Servicer may retain or withdraw from the Servicing Account, the Collection Account, or the Certificate Account the Servicing Fee for each Mortgage Loan for the related Distribution Date. Notwithstanding the foregoing, the Servicing Fee payable to the Master Servicer shall be reduced by the lesser of the aggregate of the Prepayment Interest Shortfalls with respect to the Distribution Date and the aggregate Compensating Interest for the Distribution Date.

The Master Servicer may retain or withdraw from the Servicing Account, the Collection Account, or the Certificate Account the Servicing Fee for each Mortgage Loan for the related Distribution Date. If the Master Servicer directly services a Mortgage Loan, the Master Servicer may retain the Servicing Fee for its own account as compensation for performing services. If a Subservicer directly services a Mortgage Loan, unless the Subservicer retains the Servicing Fee, the Master Servicer shall remit the Servicing Fee to the related Subservicer as compensation for performing services.

Additional master servicing compensation in the form of Excess Proceeds, Prepayment Interest Excess, assumption fees, late payment charges and all income net of any losses realized from Permitted Investments shall be retained by the Master Servicer to the extent not required to be deposited in the Certificate Account pursuant to Section 3.06. The Master Servicer shall be required to pay all expenses incurred by it in connection with its servicing activities hereunder (including the fees of any Subservicer, payment of any premiums for hazard insurance, and any Primary Insurance Policy and maintenance of the other forms of insurance coverage required by this Agreement) and shall not be entitled to reimbursement therefor except as specifically provided in this Agreement.

***Section 3.16 Access to Certain Documentation.***

The Master Servicer shall provide to the OTS and the FDIC and to comparable regulatory authorities supervising Holders of Certificates and Certificate Owners and the examiners and supervisory agents of the OTS, the FDIC, and such other authorities, access to the documentation regarding the Mortgage Loans required by applicable regulations of the OTS and the FDIC. Access shall be afforded without charge, but only upon reasonable prior written request and during normal business hours at the offices designated by the Master Servicer. Nothing in this Section 3.16 shall limit the obligation of the Master Servicer to observe any applicable law prohibiting disclosure of information regarding the Mortgagors and the failure of the Master Servicer to provide access as provided in this Section 3.16 as a result of such obligation shall not constitute a breach of this Section 3.16.

***Section 3.17 Annual Statement as to Compliance.***

By March 1 of each year, commencing with 2006, the Master Servicer shall deliver to the Depositor and the Trustee an Officer's Certificate signed by two Servicing Officers stating, as to each signer thereof, that (i) a review of the activities of the Master Servicer during the preceding calendar year and of the performance of the Master Servicer under this Agreement has been made under such officer's supervision, and (ii) to the best of such officer's knowledge, based on the review, the Master Servicer has fulfilled all its obligations under this Agreement throughout the year, or, if there has been a default in the fulfillment of any obligation, specifying each default known to the officer and the nature and status thereof. The Trustee shall forward a copy of each compliance statement to each Rating Agency.

***Section 3.18 Annual Independent Public Accountants' Servicing Statement; Financial Statements.***

By March 1 of each year, commencing with 2006, the Master Servicer at its expense shall cause a nationally or regionally recognized firm of independent public accountants (who may also render other services to the Master Servicer, the Seller or any affiliate thereof) which is a member of the American Institute of Certified Public Accountants to furnish a statement to the Trustee and the Depositor to the effect that the firm has examined certain documents and records relating to the servicing of the Mortgage Loans under this Agreement or of mortgage loans under pooling and servicing agreements substantially similar to this Agreement (the statement to have attached to it a schedule of the pooling and servicing agreements covered by it) and that, on the basis of its examination, conducted substantially in compliance with the Audit Guide for Audits of HUD Approved Nonsupervised Mortgagees, the Uniform Single Attestation Program for Mortgage Bankers, or the Audit Program for Mortgages serviced for FNMA and FHLMC, such servicing has been conducted in compliance with this Agreement except for any significant exceptions or errors in records that, in the opinion of the firm, the Audit Guide for Audits of HUD Approved Nonsupervised Mortgagees, the Uniform Single Attestation Program for Mortgage Bankers, or the Audit Program for Mortgages serviced for FNMA and FHLMC requires it to report. In rendering the statement, the firm may rely, as to matters relating to direct servicing of Mortgage Loans by the subservicers, upon comparable statements for examinations conducted substantially in compliance with the Audit Guide for Audits of HUD Approved Nonsupervised Mortgagees, the Uniform Single Attestation Program for Mortgage Bankers, or the Audit Program for Mortgages serviced for FNMA and FHLMC (rendered within one year of the statement) of independent public accountants with respect to the related Subservicer. The Master Servicer shall deliver the statement to the Trustee so that the Trustee can provide copies of the statement to any Certificateholder or Certificate Owner on request at the Master Servicer's expense.

***Section 3.19 Errors and Omissions Insurance; Fidelity Bonds.***

The Master Servicer shall obtain and maintain in force (a) policies of insurance covering errors and omissions in the performance of its obligations as Master Servicer hereunder and (b) a fidelity bond covering its officers, employees, and agents. Each policy and bond shall, together, comply with the requirements from time to time of FNMA or FHLMC for persons performing servicing for mortgage loans purchased by FNMA or FHLMC. If any policy or bond ceases to be in effect, the Master Servicer shall obtain a comparable replacement policy or bond from an insurer or issuer meeting the above requirements as of the date of the replacement.

***Section 3.20 Notification of Adjustments.***

On each Adjustment Date and Payment Adjustment Date, the Master Servicer shall make interest rate and payment adjustments, respectively, for each Mortgage Loan in compliance with the requirements of the related Mortgage and Mortgage Note and applicable regulations. The Master Servicer shall execute and deliver the notices required by each Mortgage and Mortgage Note and applicable regulations regarding interest rate adjustments and Scheduled Payment adjustments. The Master Servicer also shall provide timely notification to the Trustee of all applicable data and information regarding such interest rate adjustments and the Master Servicer's methods of implementing such interest rate adjustments and Scheduled Payment adjustments. Upon the discovery by the Master Servicer or the Trustee that the Master Servicer has failed to adjust or has incorrectly adjusted a Mortgage Rate or a Scheduled Payment pursuant to the terms of the related Mortgage Note and Mortgage, the Master Servicer shall immediately deposit in the Certificate Account from its own funds the amount of any loss caused thereby without reimbursement therefor; provided, however, the Master Servicer shall not be liable with respect to any interest rate adjustments or Scheduled Payment adjustments made by any servicer prior to the Master Servicer.

***Section 3.21 Prepayment Charges.***

The Master Servicer will not waive any part of any Prepayment Charge unless the waiver relates to a default or a reasonably foreseeable default, the Prepayment Charge would cause an undue hardship to the related borrower, the collection of any Prepayment Charge would violate any relevant law or regulation, the waiving of the Prepayment Charge would otherwise benefit the Trust Fund, or, with respect to the Mortgage Loans that impose Soft Prepayment Charges, the mortgage property is sold by the Mortgagor. In any case, the Master Servicer will not waive any part of any Prepayment Charge unless it is expected that the waiver would maximize recovery of total proceeds taking into account the value of the Prepayment Charge and related Mortgage Loan and doing so is standard and customary in servicing similar Mortgage Loans (including any waiver of a Prepayment Charge in connection with a refinancing of a Mortgage Loan that is related to a default or a reasonably foreseeable default). The Master Servicer will not waive a Prepayment Charge in connection with a refinancing of a Mortgage Loan that is not related to a default or a reasonably foreseeable default.

# ARTICLE Four

## DISTRIBUTIONS AND ADVANCES BY THE MASTER SERVICER

***Section 4.01 Advances.***

(a) The Master Servicer shall determine on or before each Master Servicer Advance Date whether it is required to make an Advance pursuant to the definition thereof. If the Master Servicer determines it is required to make an Advance, it shall, on or before the Master Servicer Advance Date, either (i) deposit into the Certificate Account an amount equal to the Advance or (ii) make an appropriate entry in its records relating to the Certificate Account that any Amount Held for Future Distribution has been used by the Master Servicer in discharge of its obligation to make any such Advance. Any funds so applied shall be replaced by the Master Servicer by deposit in the Certificate Account no later than the close of business on the next Master Servicer Advance Date. The Master Servicer shall be entitled to be reimbursed from the Certificate Account for all Advances of its own funds made pursuant to this Section 4.01 as provided in Section 3.09. The obligation to make Advances with respect to any Mortgage Loan shall continue if such Mortgage Loan has been foreclosed or otherwise terminated and the Mortgaged Property has not been liquidated. The Master Servicer shall inform the Trustee of the amount of the Advance to be made on each Master Servicer Advance Date no later than the second Business Day before the related Distribution Date.

(b) If the Master Servicer determines that it will be unable to comply with its obligation to make the Advances as and when described in the second sentence of Section 4.01(a), it shall use its best efforts to give written notice thereof to the Trustee (each such notice an "***Advance Notice***"; and such notice may be given by telecopy), not later than 3:00 P.M., New York time, on the Business Day immediately preceding the related Master Servicer Advance Date, specifying the amount that it will be unable to deposit (each such amount an "***Advance Deficiency***") and certifying that such Advance Deficiency constitutes an Advance hereunder and is not a Nonrecoverable Advance. If the Trustee receives a Trustee Advance Notice on or before 3:00 P.M., New York time on a Master Servicer Advance Date, the Trustee is entitled to immediately terminate the Master Servicer under Section 7.01, and shall, not later than 3:00 P.M., New York time, on the related Distribution Date, deposit in the Distribution Account an amount equal to the Advance Deficiency identified in such Trustee Advance Notice unless it is prohibited from so doing by applicable law. Notwithstanding the foregoing, the Trustee shall not be required to make such deposit if the Trustee shall have received written notification from the Master Servicer that the Master Servicer has deposited or caused to be deposited in the Certificate Account an amount equal to such Advance Deficiency by 3:00 P.M. New York time on the related Distribution Date. If the Trustee has not terminated the Master Servicer, the Master Servicer shall reimburse the Trustee for the amount of any Advance (including interest at the Prime Rate on the day of such reimbursement published in *The Wall Street Journal*) on such amount, made by the Trustee pursuant to this Section 4.01(b) not later than the second day following the related Master Servicer Advance Date. In the event that the Master Servicer does not reimburse the Trustee in accordance with the requirements of the preceding sentence, the Trustee shall immediately (a) terminate all of the rights and obligations of the Master Servicer under this Agreement in accordance with Section 7.01 and (b) subject to the limitations set forth in Section 3.05, assume all of the rights and obligations of the Master Servicer hereunder.

(c) The Master Servicer shall, not later than the close of business on the Business Day immediately preceding each Master Servicer Advance Date, deliver to the Trustee a report (in form and substance reasonably satisfactory to the Trustee) that indicates (i) the Mortgage Loans with respect to which the Master Servicer has determined that the related Scheduled Payments should be advanced and (ii) the amount of the related Scheduled Payments. The Master Servicer shall deliver to the Trustee on the related Master Servicer Advance Date an Officer's Certificate of a Servicing Officer indicating the amount of any proposed Advance determined by the Master Servicer to be a Nonrecoverable Advance.

***Section 4.02 Priorities of Distribution.***

(a) (1) On each Distribution Date, the Trustee shall withdraw the Available Funds for Loan Group 1 from the Distribution Account and apply such funds to distributions on the Group 1 Senior Certificates in the following order and priority and, in each case, to the extent of Available Funds remaining:

(i) concurrently, to each interest-bearing Class of Group 1 Senior Certificates, an amount allocable to interest equal to the related Class Optimal Interest Distribution Amount, any shortfall being allocated among such Classes in proportion to the amount of the Class Optimal Interest Distribution Amount that would have been distributed in the absence of such shortfall, provided that the amount otherwise distributable on the related portion of the Class A-X-2 Certificates, up to the amount of the Required Reserve Fund Deposit, shall be deposited in the Carryover Shortfall Reserve Fund to the extent required by Section 4.07;

(ii) [reserved];

(iii) concurrently, to the Classes of Group 1 Senior Certificates as follows:

(A) [reserved]; and

(B) the Principal Amount for Loan Group 1, up to the amount of the related Senior Principal Distribution Amount for such Distribution Date will be distributed, sequentially, to the following Classes and Component of Certificates in the following order of priority:

<u>first</u>, sequentially, to the Class A-R and Class 1-A-1 Certificates, in that order, until their respective Class Certificate Balances are reduced to zero; and

<u>second</u>, to the Class A-PO-1 Component, until its Component Principal Balance is reduced to zero.

(iv) [reserved].

(2) On each Distribution Date, the Trustee shall withdraw the Available Funds for Loan Group 2 from the Distribution Account and apply such funds to distributions on the Group 2 Senior Certificates in the following order and priority and, in each case, to the extent of Available Funds remaining:

(i) concurrently, to each interest-bearing Class of Group 2 Senior Certificates, an amount allocable to interest equal to the related Class Optimal Interest Distribution Amount, any shortfall being allocated among such Classes in proportion to the amount of the Class Optimal Interest Distribution Amount that would have been distributed in the absence of such shortfall, provided that the amount otherwise distributable on the related portion of the Class A-X-2 Certificates, up to the amount of the Required Reserve Fund Deposit, shall be deposited in the Carryover Shortfall Reserve Fund to the extent required by Section 4.07;

(v) [reserved];

(vi) concurrently, to the Classes of Group 2 Senior Certificates as follows:

(A) [reserved].

(B) the Principal Amount for Loan Group 2, up to the amount of the related Senior Principal Distribution Amount for such Distribution Date will be distributed, sequentially, to the following Classes and Component of Certificates in the following order of priority:

first, concurrently, to the Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates, pro rata by outstanding Class Certificate Balance, until their respective Class Certificate Balances are reduced to zero; and

second, to the Class A-PO-2 Component, until its Component Principal Balance is reduced to zero.

(3) On each Distribution Date, after making the distributions described in Section 4.02(a)(1) and Section 4.02(a)(2), to each Class of LIBOR Certificates, any Carryover Shortfall Amounts only to the extent of amounts in the Carryover Shortfall Reserve Fund, as described in Section 4.07 and, with respect to only the Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates, amounts on deposit in the related Yield Maintenance Reserve Fund, as described in Section 3.06.

(4) On each Distribution Date, after making the distributions described in Section 4.02(a)(1), Section 4.02(a)(2) and Section 4.02(a)(3), Available Funds from each Loan Group remaining will be distributed to the Senior Certificates to the extent provided in Section 4.03.

(5) On each Distribution Date, Available Funds from both Loan Groups remaining after making the distributions described in Section 4.02(a)(1), Section 4.02(a)(2), Section 4.02(a)(3) and Section 4.02(a)(4) will be distributed to the Subordinated Certificates, subject to paragraph 4.02(e) below, in the following order of priority:

(A) to the Class B-1 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date;

(B) to the Class B-1 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(C) to the Class B-2 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date;

(D) to the Class B-2 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(E) to the Class B-3 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date;

(F) to the Class B-3 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(G) to the Class B-4 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date;

(H) to the Class B-4 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(I) to the Class B-5 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date;

(J) to the Class B-5 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(K) to the Class B-6 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date;

(L) to the Class B-6 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(M) to the Class B-7 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date; and

(N) to the Class B-7 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(O) to the Class B-8 Certificates, an amount allocable to interest equal to the Class Optimal Interest Distribution Amount for such Class for such Distribution Date; and

(P) to the Class B-8 Certificates, an amount allocable to principal equal to its Pro Rata Share for such Distribution Date until the Class Certificate Balance thereof is reduced to zero;

(6) [reserved]; and

(7) to the Class A-R Certificates, any remaining funds.

On each Distribution Date, all amounts representing Prepayment Charges received during the related Prepayment Period, including in connection with the repurchase of any Mortgage Loan pursuant to Section 3.12, will be distributed to the holders of the Class A-X-2 Certificates.

(b) [reserved].

(c) [reserved].

(d) On each Distribution Date, the amount referred to in clause (i) of the definition of Class Optimal Interest Distribution Amount for each Class of Certificates for such Distribution Date shall be reduced by (i) the related Class' pro rata share of Net Interest Shortfalls in a Loan Group based on (x) with respect to a related Class of Senior Certificates, the related Class Optimal Interest Distribution Amount (for this purpose calculated pursuant to clause (i) only) for such Distribution Date in the absence of such Net Interest Shortfalls and (y) with respect to a Class of Subordinated Certificates on and prior to a Senior Termination Date, the portion of the related Class Optimal Interest Distribution Amount (for this purpose calculated pursuant to clause (i) only) for such Distribution Date based on a principal balance equal to such Class' pro rata share of the Subordinated Portion in the absences of such Net Interest Shortfalls and after the Senior Termination Date, the related Class Optimal Interest Distribution Amount (for this purpose calculated pursuant to clause (i) only) for such Distribution Date in the absence of such Net Interest Shortfalls.

(e) Notwithstanding the priority and allocation contained in Section 4.02(a), if, with respect to any Class of Subordinated Certificates, on any Distribution Date the sum of the related Class Subordination Percentages of such Class and of all Classes of Subordinated Certificates that have a higher numerical Class designation than such Class (the "***Applicable Credit Support Percentage***") is less than the Original Applicable Credit Support Percentage for such Class, no distribution of Net Prepayments on the Mortgage Loans will be made to any such Classes (the "***Restricted Classes***") and the amount of such Net Prepayments otherwise distributable to the Restricted Classes shall be distributed to the Classes of Subordinated Certificates having lower numerical Class designations than such Class, pro rata, based on their respective Class Certificate Balances immediately prior to such Distribution Date and shall be distributed in the sequential order set forth in Section 4.02(a)(5). Notwithstanding the foregoing, the Class of Subordinated Certificates then outstanding with the lowest numerical class designation shall not be a Restricted Class.

(f) If the amount of a Realized Loss on a Mortgage Loan has been reduced by application of Subsequent Recoveries with respect to such Mortgage Loan, the amount of such Subsequent Recoveries will be applied sequentially, in the order of payment priority, to increase the Class Certificate Balance of each Class of Certificates to which Realized Losses have been allocated, but in each case by not more than the amount of Realized Losses previously allocated to that Class of Certificates pursuant to Section 4.05. Holders of such Certificates will not be entitled to any payment in respect of the Class Optimal Interest Distribution Amount on the amount of such increases for any Interest Accrual Period preceding the Distribution Date on which such increase occurs. Any such increases shall be applied to the Certificate Balance of each Certificate of such Class in accordance with its respective Percentage Interest.

(g) Notwithstanding anything to the contrary in this Agreement, for so long as any Hedged Certificates are held by the Seller or its Affiliates the Trustee shall not knowingly distribute any amounts received under a Yield Maintenance Agreement in respect of any Class of Hedged Certificates of which not less than 100% are held by the Seller or any of its Affiliates, and any such amounts shall instead be distributed in accordance with Section 3.06(g) excluding those Certificates held by the Seller or its Affiliates. At least six (6) Business Days prior to the related Distribution Date, the Seller shall make available to the Trustee a statement containing (i) the aggregate Certificate Balances of each Class of Hedged Certificates owned by the Seller or any of its Affiliates during the immediately preceding Interest Accrual Period and/or as of the date of such statement to the Trustee and (ii) the names of the Seller and/or any of its Affiliates that own any Certificates during the immediately preceding Interest Accrual Period and/or as of the date of the such statement to the Trustee. The Seller and its Affiliates hereby agree that (i) if the Seller or any of its Affiliates own any of a Class of Hedged Certificates, the Seller and its Affiliates shall own not less than 100% of any Class of Hedged Certificates and all transfers of

Certificates the Seller and/or its Affiliates may undertake shall be restricted to 100% of such Class and (ii) neither the Seller nor any of its Affiliates shall undertake to sell any Certificates held by such entities or purchase any additional Certificates from the date of such statement to the Trustee until the first day following the related Distribution Date. Any amounts received by the Seller or any of its Affiliates under any of the Yield Maintenance Agreements in respect of any Certificates owned 100% by the Seller or any of its Affiliates, or in error or otherwise, shall be immediately returned by the Seller to the Trustee and then distributed by the Trustee to other entitled Certificateholders of such Class in accordance with Section 3.06(g) and if no such other Certificateholders, to the Cap Counterparty.

***Section 4.03 Cross-Collateralization; Adjustments to Available Funds***

(a) If on each Distribution Date after the date on which the aggregate Class Certificate Balance and Component Principal Balance of the Senior Certificates related to a Loan Group has been reduced to zero, the Trustee shall distribute Available Funds on all the Mortgage Loans assuming there is only one group of Mortgage Loans consisting of all of the Mortgage Loans.

(b) If on any Distribution Date the aggregate Class Certificate Balance and Component Principal Balance of the Senior Certificates and related Principal Only Component (after all other distributions are made on such Distribution Date) in a Loan Group is greater than the aggregate Stated Principal Balance of the Mortgage Loans in such Loan Group as of the Due Date in the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to that Due Date) (the "***Undercollateralized Group***"), then the Trustee shall reduce the Available Funds of the other Loan Group to the extent that it is not undercollateralized (the "***Overcollateralized Group***"), as follows:

(i) to the Senior Certificates of the Undercollateralized Group an amount equal to the lesser of (a) the Accrued Interest Amount and (b) Available Funds of the Overcollateralized Group remaining after making distributions to the Senior Certificates of the Overcollateralized Group on such Distribution Date pursuant to Section 4.02; and

(ii) to the Senior Certificates of the Undercollateralized Group, to the extent of the principal portion of the Available Funds of the Overcollateralized Group remaining after making distributions to the Senior Certificates of the Overcollateralized Group on such Distribution Date pursuant to Section 4.02 and the Accrued Interest Amount pursuant to clause (i) above, until the Class Certificate Balance and Component Principal Balance of the Senior Certificate Group of such Undercollateralized Group equals the aggregate Stated Principal Balance of the Mortgage Loans in the related Loan Group as of the Due Date in the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to that Due Date).

***Section 4.04 Allocation of Net Deferred Interest.***

(a) For any Distribution Date, the Net Deferred Interest on the Mortgage Loans in a Loan Group will be allocated among the Classes of Certificates pursuant to clause (c) below.

(b) On each Distribution Date, any amount of Net Deferred Interest allocable to a Class of Certificates (other than the Class A-X-2 Certificates) on such Distribution Date will be added as principal to the outstanding Class Certificate Principal Balance of such Class of Certificates. With respect to the Class A-X-2 Certificates and each Distribution Date, any amount of Net Deferred Interest in a Loan Group that is allocated to the Class A-X-2 Certificates on such Distribution Date will be added as principal to the outstanding Component Principal Balances of the Class A-PO-1 and Class A-PO-2 Components, as applicable.

(c) For any Distribution Date and Class of Certificates, the Net Deferred Interest on the Mortgage Loans will be allocated to each Class of Certificates (other than the Class A-X-1 Certificates) in an amount equal to the excess, if any of

(i) the interest accrued during the related Interest Accrual Period at the applicable Pass-Through Rate on the related Class Certificate Balance or Notional Amount, as the case may be, immediately prior to the applicable Distribute Date *over*

(ii) the amount of interest to which such Class would have been entitled if the Pass-Through Rate for such Class were equal to the Adjusted Cap Rate for such Class and Distribution Date.

***Section 4.05 Allocation of Realized Losses.***

(a) On or prior to each Determination Date, the Trustee shall determine the total amount of Realized Losses with respect to each related Distribution Date.

Realized Losses with respect to any Distribution Date shall be allocated as follows:

(i) [reserved]; and

(ii) (A) any Realized Loss shall be allocated first to the Subordinated Certificates in reverse order of their respective numerical Class designations (beginning with the Class of Subordinated Certificates then outstanding with the highest numerical Class designation) until the respective Class Certificate Balance of each such Class is reduced to zero. Any remaining Realized Losses on the Group 1 Mortgage Loans will be allocated to the Class 1-A-1 Certificates and Class A-PO-1 Component, pro rata, until their respective Class Certificate Balance and Component Principal Balance are reduced to zero; *provided, however,* that any Realized Losses on the Group 1 Mortgage Loans that would otherwise be allocated to the Class 1-A-1 Certificates will first be allocated to the Class 2-A-2 Certificates, until its Class Certificate Balance is reduced to zero. Any remaining Realized Losses on the Group 2 Mortgage Loans will be allocated to the Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates and Class A-PO-2 Component, pro rata, until their respective Class Certificate Balances and Component Principal Balance have been reduced to zero; *provided, however,* that any Realized Losses on the Group 2 Mortgage Loans that would otherwise be allocated to the Class 2-A-1A and Class 2-A-1B Certificates will first be allocated to the Class 2-A-1C Certificates, until its Class Certificate Balance is reduced to zero, and, after the Class Certificate Balance of the Class 2-A-1C Certificates is reduced to zero, Realized Losses on the Group 2 Mortgage Loans that would otherwise be allocated to the Class 2-A-1A Certificates will instead first be allocated to the Class 2-A-1B Certificates, until its Class Certificate Balance is reduced to zero.

(B) [reserved];

(b) The Class Certificate Balance of the Class of Subordinated Certificates then outstanding with the highest numerical Class designation shall be reduced on each Distribution Date by the amount, if any, by which the aggregate Class Certificate Balance of all outstanding Classes of Certificates (after giving effect to the distribution of principal and the allocation of Realized Losses on such Distribution Date) exceeds the aggregate Stated Principal Balance of the Mortgage Loans as of the Due Date in the month of such Distribution Date (after giving effect to Principal Prepayments in the Prepayment Period related to such Due Date).

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(c) Any Realized Loss allocated to a Class of Certificates or any reduction in the Class Certificate Balance of a Class of Certificates pursuant to Section 4.05(a) or (b) shall be allocated among the Certificates of such Class in proportion to their respective Certificate Balances.

(d) Any allocation of Realized Losses to a Certificate or any reduction in the Certificate Balance of a Certificate pursuant to Section 4.05(a) or (b) shall be accomplished by reducing the Certificate Balance thereof immediately following the distributions made on the related Distribution Date in accordance with the definition of Certificate Balance.

***Section 4.06 Monthly Statements to Certificateholders.***

(a) Not later than each Distribution Date, the Trustee shall prepare and make available on its website at https://www.tss.db.com/invr to each Certificateholder, the Master Servicer and the Depositor a statement for the related distribution of:

(i) the amount of the distribution allocable to principal, separately identifying the aggregate amount of any scheduled principal, Net Prepayments, Principal Prepayments in Full, partial Principal Prepayments and Liquidation Proceeds included therein;

(ii) the amount of the distribution allocable to interest, any Unpaid Interest Shortfall Amounts included in the distribution and any remaining Unpaid Interest Shortfall Amounts after giving effect to the distribution;

(iii) if the distribution to the Holders of any Class of Certificates is less than the full amount that would be distributable to them if sufficient funds were available, the amount of the shortfall and the allocation of the shortfall between principal and interest;

(iv) the Class Certificate Balance (including Component Principal Balances) or Notional Amount of each Class of Certificates after giving effect to the distribution of principal on the Distribution Date;

(v) the Pool Stated Principal Balance for the following Distribution Date;

(vi) each Senior Percentage and each Subordinated Percentage for the following Distribution Date;

(vii) the amount of the Servicing Fees paid to or retained by the Master Servicer or Subservicer (with respect to the Subservicers, in the aggregate) and the amounts of any additional servicing compensation received by the Master Servicer attributable to penalties, fees, excess Liquidation Proceeds or other similar charges or fees and items with respect to the Distribution Date;

(viii) the Pass-Through Rate for each Class of Certificates as of the day before the preceding Distribution Date;

(ix) the Pass-Through Rate for each Class of Certificates, if adjusted from the date of the last monthly statement, expected to be applicable on the next Distribution Date;

(x) the amount of Advances included in the distribution on the Distribution Date and the aggregate amount of Advances outstanding as of the close of business on the Distribution Date;

(xi) the number and aggregate principal amounts of Mortgage Loans (A) delinquent (exclusive of Mortgage Loans in foreclosure) (1) 1 to 30 days, (2) 31 to 60 days, (3) 61 to 90 days, and (4) 91 or more days and (B) in foreclosure and delinquent (1) 1 to 30 days, (2) 31 to 60 days, (3) 61 to 90 days, and (4) 91 or more days, as of the close of business on the last day of the calendar month preceding the Distribution Date;

(xii) for each of the preceding 12 calendar months, or all calendar months since the Cut-off Date, whichever is less, the aggregate dollar amount of the Scheduled Payments

(A) due on all Outstanding Mortgage Loans on each of the Due Dates in each such month and

(B) delinquent 60 days or more on each of the Due Dates in each such month;

(xiii) with respect to any Mortgage Loan that became an REO Property during the preceding calendar month, the loan number and Stated Principal Balance of the Mortgage Loan as of the close of business on the Determination Date preceding the Distribution Date and the date of acquisition thereof;

(xiv) the total number and principal balance of any REO Properties (and market value, if available) as of the close of business on the Determination Date preceding the Distribution Date;

(xv) each Senior Prepayment Percentage for such Distribution Date;

(xvi) the aggregate amount of Realized Losses incurred and Subsequent Recoveries, if any, received during the preceding calendar month and aggregate Realized Losses through such Distribution Date;

(xvii) [reserved];

(xviii) with respect to the second Distribution Date, the number and aggregate balance of any Delay Delivery Mortgage Loans not delivered within the time periods specified in the definition of Delay Delivery Mortgage Loans;

(xix) the aggregate amount of Deferred Interest on the Mortgage Loans for the related Due Date, by Loan Group and in the aggregate, and the cumulative amount of Deferred Interest on the Mortgage Loans through such Distribution Date;

(xx) the aggregate amount of Net Deferred Interest on the Mortgage Loans for the Distribution Date, by Loan Group and in the aggregate, and the amount allocated to each Class of Certificates on such Distribution Date and the cumulative amount of Net Deferred Interest on the Mortgage Loans allocated to each Class of Certificates through such Distribution Date; and

(xxi) the aggregate Stated Principal Balance of the Mortgage Loans that became Liquidated Mortgage Loans in the prior month and since the Cut-off Date (in each case immediately prior to the Stated Principal Balance being reduced to zero).

The Trustee's responsibility for disbursing the above information to the Certificateholders is limited to the availability, timeliness and accuracy of the information derived from the Master Servicer.

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By each Determination Date the Master Servicer shall provide to the Trustee in electronic form the information needed to determine the distributions to be made pursuant to Section 4.02 and any other information on which the Master Servicer and the Trustee mutually agree.

(b) On or before the fifth Business Day following the end of each Prepayment Period (but in no event later than the third Business Day prior to the related Distribution Date), the Master Servicer shall deliver to the Trustee (which delivery may be by electronic data transmission) a report in substantially the form set forth as Schedule IV.

(c) Within a reasonable period of time after the end of each calendar year, the Trustee shall cause to be furnished to each Person who at any time during the calendar year was a Certificateholder, a statement containing the information set forth in clauses (a)(i) and (a)(ii) of this Section 4.06 aggregated for such calendar year or applicable portion thereof during which such Person was a Certificateholder. Such obligation of the Trustee shall be deemed to have been satisfied to the extent that substantially comparable information shall be provided by the Trustee pursuant to any requirements of the Code as from time to time in effect.

***Section 4.07 Carryover Shortfall Reserve Fund.***

(a) On the Closing Date, the Trustee shall establish and maintain in its name, in trust for the benefit of the Holders of the LIBOR Certificates, a Carryover Shortfall Reserve Fund, into which the Depositor shall deposit $2,599,459.16. The Carryover Shortfall Reserve Fund shall be an Eligible Account, and funds on deposit therein shall be held separate and apart from, and shall not be commingled with, any other moneys, including, without limitation, other moneys of the Trustee held pursuant to this Agreement. The Carryover Shortfall Reserve Fund shall not be an asset of any REMIC established by this Agreement.

(b) On each Distribution Date, the Class Optimal Interest Distribution Amount that would otherwise be distributable with respect to the Class A-X-2 Certificates shall instead be deposited in the Carryover Shortfall Reserve Fund to the extent of the Required Reserve Fund Deposit.

(c) On any Distribution Date for which a Carryover Shortfall Amount exists with respect to any Class of LIBOR Certificates (after distributing amounts from the applicable Yield Maintenance Reserve Fund to the Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates), the Trustee shall withdraw from the Carryover Shortfall Reserve Fund, the amount of such Carryover Shortfall Amount for distribution on such Distribution Date pursuant to Section 4.02(a)(3). If on any Distribution Date the amount on deposit in the Carryover Shortfall Reserve Fund is not sufficient to make a full distribution of the Carryover Shortfall Amount with respect to the Classes of the LIBOR Certificates, the Trustee shall withdraw the entire amount on deposit in the Carryover Shortfall Reserve Fund and distribute such amount to such Classes of Certificates on a *pro rata* basis, based on the related remaining Carryover Shortfall Amount due. Any excess of the related Net WAC Cap over LIBOR plus the applicable Pass-Through Margin in respect of any Class of Certificates on the first Distribution Date will be treated as paid from the Carryover Shortfall Reserve Fund to the Master REMIC and from the Master REMIC to such Class of Certificates.

(d) Funds in the Carryover Shortfall Reserve Fund shall not be invested. The Class A-X-2 Certificates shall evidence ownership of the Carryover Shortfall Reserve Fund for federal income tax purposes. For all Federal income tax purposes, amounts transferred by the Master REMIC to the Yield Maintenance Reserve Funds shall be treated as amounts distributed by the Master REMIC to the Class A-X-2 Certificateholders.

(e) Upon termination of the Trust Fund any amounts remaining in the Carryover Shortfall Reserve Fund shall be distributed to the Class A-X-2 Certificateholders.

***Section 4.08 Determination of Pass-Through Rates for LIBOR Certificates.***

On each LIBOR Determination Date so long as the LIBOR Certificates are outstanding, the Trustee will determine LIBOR on the basis of the British Bankers' Association ("***BBA***") "Interest Settlement Rate" for one-month deposits in U.S. dollars as found on Moneyline Telerate Page 3750 as of 11:00 a.m. London time on each LIBOR Determination Date.

(a) If LIBOR cannot be determined as provided in the first paragraph of this Section 4.08, the Trustee shall either (i) request each Reference Bank to inform the Trustee of the quotation offered by its principal London office for making one-month United States dollar deposits in leading banks in the London interbank market, as of 11:00 a.m. (London time) on such LIBOR Determination Date or (ii) in lieu of making any such request, rely on such Reference Bank quotations that appear at such time on the Reuters Screen LIBO Page (as defined in the International Swap Dealers Association Inc. Code of Standard Wording, Assumptions and Provisions for Swaps, 1986 Edition), to the extent available.

(b) LIBOR for the next Interest Accrual Period for a Class of LIBOR Certificates will be established by the Trustee on each LIBOR Determination Date as follows:

(i) If on any LIBOR Determination Date two or more Reference Banks provide such offered quotations, LIBOR for the next Interest Accrual Period for a Class of LIBOR Certificates shall be the arithmetic mean of such offered quotations (rounding such arithmetic mean upwards if necessary to the nearest whole multiple of 1/32%).

(ii) If on any LIBOR Determination Date only one or none of the Reference Banks provides such offered quotations, LIBOR for the next Interest Accrual Period for a Class of LIBOR Certificates shall be whichever is the higher of (i) LIBOR as determined on the previous LIBOR Determination Date or (ii) the Reserve Interest Rate. The "Reserve Interest Rate" shall be the rate per annum which the Trustee determines to be either (i) the arithmetic mean (rounded upwards if necessary to the nearest whole multiple of 1/32%) of the one-month United States dollar lending rates that New York City banks selected by the Trustee are quoting, on the relevant LIBOR Determination Date, to the principal London offices of at least two of the Reference Banks to which such quotations are, in the opinion of the Trustee, being so made, or (ii) in the event that the Trustee can determine no such arithmetic mean, the lowest one-month United States dollar lending rate which New York City banks selected by the Trustee are quoting on such LIBOR Determination Date to leading European banks.

(iii) If on any LIBOR Determination Date the Trustee is required but is unable to determine the Reserve Interest Rate in the manner provided in paragraph (b) above, LIBOR shall be LIBOR as determined on the preceding LIBOR Determination Date, or, in the case of the first LIBOR Determination Date, the Initial LIBOR Rate.

(c) Until all of the LIBOR Certificates are paid in full, the Trustee will at all times retain at least four Reference Banks for the purpose of determining LIBOR with respect to each LIBOR Determination Date. The Master Servicer initially shall designate the Reference Banks. Each "Reference Bank" shall be a leading bank engaged in transactions in Eurodollar deposits in the international Eurocurrency market, shall not control, be controlled by, or be under common control with, the Trustee and shall have an established place of business in London. If any such Reference Bank should be unwilling or unable to act as such or if the Master Servicer should terminate its appointment as Reference

Bank, the Trustee shall promptly appoint or cause to be appointed another Reference Bank. The Trustee shall have no liability or responsibility to any Person for (i) the selection of any Reference Bank for purposes of determining LIBOR or (ii) any inability to retain at least four Reference Banks which is caused by circumstances beyond its reasonable control.

(d) The Pass-Through Rate for each Class of LIBOR Certificates for each related Interest Accrual Period shall be determined by the Trustee on each LIBOR Determination Date so long as the LIBOR Certificates are outstanding on the basis of LIBOR and the respective formulae appearing in footnotes corresponding to the LIBOR Certificates in the table relating to the Certificates in the Preliminary Statement.

(e) In determining LIBOR, any Pass-Through Rate for the LIBOR Certificates, any Interest Settlement Rate, or any Reserve Interest Rate, the Trustee may conclusively rely and shall be protected in relying upon the offered quotations (whether written, oral or on the Dow Jones Markets) from the BBA designated banks, the Reference Banks or the New York City banks as to LIBOR, the Interest Settlement Rate or the Reserve Interest Rate, as appropriate, in effect from time to time. The Trustee shall not have any liability or responsibility to any Person for (i) the Trustee's selection of New York City banks for purposes of determining any Reserve Interest Rate or (ii) its inability, following a good-faith reasonable effort, to obtain such quotations from, the BBA designated banks, the Reference Banks or the New York City banks or to determine such arithmetic mean, all as provided for in this Section 4.08.

(f) The establishment of LIBOR and each Pass-Through Rate for the LIBOR Certificates by the Trustee shall (in the absence of manifest error) be final, conclusive and binding upon each Holder of a Certificate and the Trustee.

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ARTICLE Five

THE CERTIFICATES

***Section 5.01 The Certificates.***

The Certificates shall be substantially in the forms attached hereto as exhibits. The Certificates shall be issuable in registered form, in the minimum denominations, integral multiples of $1,000 in excess thereof (except that one Certificate in each Class may be issued in a different amount which must exceed the applicable minimum denomination) and aggregate denominations per Class set forth in the Preliminary Statement.

Subject to Section 9.02 respecting the final distribution on the Certificates, on each Distribution Date the Trustee shall make distributions to each Certificateholder of record on the preceding Record Date either (x) by wire transfer in immediately available funds to the account of such holder at a bank or other entity having appropriate facilities therefor, if such Holder has so notified the Trustee at least five Business Days before the related Record Date or (y) by check mailed by first class mail to such Certificateholder at the address of such holder appearing in the Certificate Register.

The Trustee shall execute the Certificates by the manual or facsimile signature of an authorized officer. Certificates bearing the manual or facsimile signatures of individuals who were, at the time such signatures were affixed, authorized to sign on behalf of the Trustee shall bind the Trustee, notwithstanding that such individuals or any of them have ceased to be so authorized before the countersignature and delivery of any such Certificates or did not hold such offices at the date of such Certificate. No Certificate shall be entitled to any benefit under this Agreement, or be valid for any purpose, unless countersigned by the Trustee by manual signature, and such countersignature upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly executed and delivered hereunder. All Certificates shall be dated the date of their countersignature. On the Closing Date, the Trustee shall countersign the Certificates to be issued at the direction of the Depositor, or any affiliate thereof.

The Depositor shall provide the Trustee, on a continuous basis with an adequate inventory of Certificates to facilitate transfers.

***Section 5.02 Certificate Register; Registration of Transfer and Exchange of Certificates.***

(a) The Trustee shall maintain, in accordance with Section 5.06, a Certificate Register for the Trust Fund in which, subject to subsections (b) and (c) below and to such reasonable regulations as it may prescribe, the Trustee shall provide for the registration of Certificates and of transfers and exchanges of Certificates as herein provided. Upon surrender for registration of transfer of any Certificate, the Trustee shall execute and deliver, in the name of the designated transferee or transferees, one or more new Certificates of the same Class and aggregate Percentage Interest.

At the option of a Certificateholder, Certificates may be exchanged for other Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest upon surrender of the Certificates to be exchanged at the office or agency of the Trustee. Whenever any Certificates are so surrendered for exchange, the Trustee shall execute, authenticate, and deliver the Certificates that the Certificateholder making the exchange is entitled to receive. A written instrument of transfer in form satisfactory to the Trustee duly executed by the holder of a Certificate or his attorney duly authorized in writing shall accompany every Certificate presented or surrendered for registration of transfer or exchange.

No service charge to the Certificateholders shall be made for any registration of transfer or exchange of Certificates, but payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer or exchange of Certificates may be required.

All Certificates surrendered for registration of transfer or exchange shall be cancelled and subsequently destroyed by the Trustee in accordance with the Trustee's customary procedures.

(b) No transfer of a Private Certificate shall be made unless such transfer is made pursuant to an effective registration statement under the Securities Act and any applicable state securities laws or is exempt from the registration requirements under the Securities Act and such state securities laws. If a transfer is to be made in reliance on an exemption from the Securities Act and such state securities laws, to assure compliance with the Securities Act and such state securities laws, the Certificateholder desiring to effect such transfer and such Certificateholder's prospective transferee shall each certify to the Trustee in writing the facts surrounding the transfer in substantially the form set forth in Exhibit J (the "***Transferor Certificate***") and deliver to the Trustee either (i) a letter in substantially the form of either Exhibit K (the "***Investment Letter***") or Exhibit L (the "***Rule 144A Letter***") or (ii) at the expense of the transferor, an Opinion of Counsel that the transfer may be made without registration under the Securities Act. The Depositor shall provide to any Holder of a Private Certificate and any prospective transferee designated by that Holder, information regarding the related Certificates and the Mortgage Loans and any other information necessary to satisfy the condition to eligibility in Rule 144A(d)(4) for transfer of the Certificate without registration thereof under the Securities Act pursuant to the registration exemption provided by Rule 144A. The Trustee and the Master Servicer shall cooperate with the Depositor in providing the Rule 144A information referenced in the preceding sentence, including providing to the Depositor such information regarding the Certificates, the Mortgage Loans, and other matters regarding the Trust Fund as the Depositor reasonably requests to meet its obligation under the preceding sentence. Each Holder of a Private Certificate desiring to effect a transfer shall, and does hereby agree to, indemnify the Trustee, the Depositor, the Seller, and the Master Servicer against any liability that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws.

No transfer of an ERISA-Restricted Certificate shall be made unless the Trustee shall have received either (i) a representation from the transferee of such Certificate acceptable to and in form and substance satisfactory to the Trustee (if the Certificate is a Private Certificate, the requirement is satisfied only by the Trustee's receipt of a representation letter from the transferee substantially in the form of Exhibit K or Exhibit L, and if the Certificate is a Residual Certificate, the requirement is satisfied only by the Trustee's receipt of a representation letter from the transferee substantially in the form of Exhibit I), to the effect that (x) the transferee is not an employee benefit plan or arrangement subject to section 406 of ERISA or a plan subject to section 4975 of the Code, or a person acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect the transfer, or (y) if the ERISA-Restricted Certificate has been the subject of an ERISA-Qualifying Underwriting, a representation that the transferee is an insurance company that is purchasing such Certificate with funds contained in an "insurance company general account" (as such term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 ("***PTCE 95-60***") and that the purchase and holding of such Certificate satisfy the requirements for exemptive relief under Sections I and III of PTCE 95-60, or (ii) in the case of any ERISA-Restricted Certificate presented for registration in the name of an employee benefit plan subject to ERISA, or a plan or arrangement subject to section 4975 of the Code (or comparable provisions of any subsequent enactments), or a trustee of any such plan or any other person acting on behalf of any such plan or arrangement or using such plan's or arrangement's assets, an Opinion of Counsel satisfactory to the Trustee, which Opinion of Counsel shall not be an expense of the Trustee, the Master Servicer or the Trust Fund, addressed to the Trustee and the Master Servicer, to the effect that the purchase and holding of such ERISA-Restricted Certificate will not result in a non-exempt prohibited transaction under ERISA or section 4975 of the Code and will not subject the Trustee or the Master

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Servicer to any obligation in addition to those expressly undertaken in this Agreement or to any liability. For purposes of the preceding sentence, with respect to an ERISA-Restricted Certificate that is not a Residual Certificate, if the representation letter or Opinion of Counsel referred to in the preceding sentence is not furnished, the appropriate representation in clause (i) shall be deemed to have been made to the Trustee by the transferee's (including an initial acquirer's) acceptance of the ERISA-Restricted Certificates. If the representation is violated, or any attempt is made to transfer to a plan or arrangement subject to section 406 of ERISA or a plan subject to section 4975 of the Code, or a person acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement, without the Opinion of Counsel described above, the attempted transfer or acquisition shall be void.

To the extent permitted under applicable law (including ERISA), the Trustee shall be under no liability to any Person for any registration of transfer of any ERISA-Restricted Certificate that is in fact not permitted by this Section 5.02(b) or for making any payments due on such Certificate to the Holder thereof or taking any other action with respect to such Holder under this Agreement so long as the transfer was registered by the Trustee in accordance with the foregoing requirements.

(c) Each Person who has or who acquires any Ownership Interest in a Residual Certificate shall be deemed by the acceptance or acquisition of such Ownership Interest to have agreed to be bound by the following provisions, and the rights of each Person acquiring any Ownership Interest in a Residual Certificate are expressly subject to the following provisions:

(i) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall be a Permitted Transferee and shall promptly notify the Trustee of any change or impending change in its status as a Permitted Transferee.

(ii) No Ownership Interest in a Residual Certificate may be registered on the Closing Date or thereafter transferred, and the Trustee shall not register the Transfer of any Residual Certificate unless, in addition to the certificates required to be delivered to the Trustee under subparagraph (b) above, the Trustee shall have been furnished with an affidavit (a "***Transfer Affidavit***") of the initial owner or the proposed transferee in the form of Exhibit I.

(iii) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall agree (A) to obtain a Transfer Affidavit from any other Person to whom such Person attempts to Transfer its Ownership Interest in a Residual Certificate, (B) to obtain a Transfer Affidavit from any Person for whom such Person is acting as nominee, trustee or agent in connection with any Transfer of a Residual Certificate and (C) not to Transfer its Ownership Interest in a Residual Certificate or to cause the Transfer of an Ownership Interest in a Residual Certificate to any other Person if it has actual knowledge that such Person is not a Permitted Transferee.

(iv) Any attempted or purported Transfer of any Ownership Interest in a Residual Certificate in violation of this Section 5.02(c) shall be absolutely null and void and shall vest no rights in the purported Transferee. If any purported transferee shall become a Holder of a Residual Certificate in violation of this Section 5.02(c), then the last preceding Permitted Transferee shall be restored to all rights as Holder thereof retroactive to the date of registration of Transfer of such Residual Certificate. The Trustee shall be under no liability to any Person for any registration of Transfer of a Residual Certificate that is in fact not permitted by Section 5.02(b) and this Section 5.02(c) or for making any payments due on such Certificate to the Holder thereof or taking any other action with respect to such Holder under this Agreement so long as the Transfer was registered after receipt of the related Transfer Affidavit, Transferor Certificate and either the Rule 144A Letter or the Investment Letter. The Trustee shall be entitled but not

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obligated to recover from any Holder of a Residual Certificate that was in fact not a Permitted Transferee at the time it became a Holder or, at such subsequent time as it became other than a Permitted Transferee, all payments made on such Residual Certificate at and after either such time. Any such payments so recovered by the Trustee shall be paid and delivered by the Trustee to the last preceding Permitted Transferee of such Certificate.

(v) The Depositor shall use its best efforts to make available, upon receipt of written request from the Trustee, all information necessary to compute any tax imposed under section 860E(e) of the Code as a result of a Transfer of an Ownership Interest in a Residual Certificate to any Holder who is not a Permitted Transferee.

The restrictions on Transfers of a Residual Certificate set forth in this Section 5.02(c) shall cease to apply (and the applicable portions of the legend on a Residual Certificate may be deleted) with respect to Transfers occurring after delivery to the Trustee of an Opinion of Counsel, which Opinion of Counsel shall not be an expense of the Trust Fund, the Trustee, the Seller or the Master Servicer, to the effect that the elimination of such restrictions will not cause any REMIC created under this Agreement to fail to qualify as a REMIC at any time that the Certificates are outstanding or result in the imposition of any tax on the Trust Fund, a Certificateholder or another Person. Each Person holding or acquiring any Ownership Interest in a Residual Certificate hereby consents to any amendment of this Agreement which, based on an Opinion of Counsel furnished to the Trustee, is reasonably necessary (a) to ensure that the record ownership of, or any beneficial interest in, a Residual Certificate is not transferred, directly or indirectly, to a Person that is not a Permitted Transferee and (b) to provide for a means to compel the Transfer of a Residual Certificate which is held by a Person that is not a Permitted Transferee to a Holder that is a Permitted Transferee.

(d) The preparation and delivery of all certificates and opinions referred to above in this Section 5.02 in connection with transfer shall be at the expense of the parties to such transfers.

(e) Except as provided below, the Book-Entry Certificates shall at all times remain registered in the name of the Depository or its nominee and at all times: (i) registration of the Certificates may not be transferred by the Trustee except to another Depository; (ii) the Depository shall maintain book-entry records with respect to the Certificate Owners and with respect to ownership and transfers of such Book-Entry Certificates; (iii) ownership and transfers of registration of the Book-Entry Certificates on the books of the Depository shall be governed by applicable rules established by the Depository; (iv) the Depository may collect its usual and customary fees, charges and expenses from its Depository Participants; (v) the Trustee shall deal with the Depository, Depository Participants and Indirect Participants as representatives of the Certificate Owners of the Book-Entry Certificates for purposes of exercising the rights of holders under this Agreement, and requests and directions for and votes of such representatives shall not be deemed to be inconsistent if they are made with respect to different Certificate Owners; and (vi) the Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its Depository Participants and furnished by the Depository Participants with respect to Indirect Participants and persons shown on the books of such Indirect Participants as direct or indirect Certificate Owners.

All transfers by Certificate Owners of Book-Entry Certificates shall be made in accordance with the procedures established by the Depository Participant or brokerage firm representing the Certificate Owner. Each Depository Participant shall only transfer Book-Entry Certificates of Certificate Owners it represents or of brokerage firms for which it acts as agent in accordance with the Depository's normal procedures.

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If (x) (i) the Depository or the Depositor advises the Trustee in writing that the Depository is no longer willing or able to properly discharge its responsibilities as Depository, and (ii) the Trustee or the Depositor is unable to locate a qualified successor or (y) after the occurrence of an Event of Default, Certificate Owners representing at least 51% of the Certificate Balance of the Book-Entry Certificates together advise the Trustee and the Depository through the Depository Participants in writing that the continuation of a book-entry system through the Depository is no longer in the best interests of the Certificate Owners, the Trustee shall notify all Certificate Owners, through the Depository, of the occurrence of any such event and of the availability of definitive, fully-registered Certificates (the ***"Definitive Certificates"***) to Certificate Owners requesting the same. Upon surrender to the Trustee of the related Class of Certificates by the Depository, accompanied by the instructions from the Depository for registration, the Trustee shall issue the Definitive Certificates. Neither the Master Servicer, the Depositor nor the Trustee shall be liable for any delay in delivery of such instruction and each may conclusively rely on, and shall be protected in relying on, such instructions. The Master Servicer shall provide the Trustee with an adequate inventory of certificates to facilitate the issuance and transfer of Definitive Certificates. Upon the issuance of Definitive Certificates all references herein to obligations imposed upon or to be performed by the Depository shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable with respect to such Definitive Certificates and the Trustee shall recognize the Holders of the Definitive Certificates as Certificateholders hereunder; provided that the Trustee shall not by virtue of its assumption of such obligations become liable to any party for any act or failure to act of the Depository.

***Section 5.03 Mutilated, Destroyed, Lost or Stolen Certificates.***

If (a) any mutilated Certificate is surrendered to the Trustee, or (b) the Trustee receives evidence to its satisfaction of the destruction, loss, or theft of any Certificate and the Master Servicer and the Trustee receive the security or indemnity required by them to hold each of them harmless, then, in the absence of notice to the Trustee that the Certificate has been acquired by a Protected Purchaser, and if the requirements of Section 8-406 of the UCC are met and subject to Section 8-405 of the UCC, the Trustee shall execute, countersign, and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost, or stolen Certificate, a new Certificate of like Class, tenor, and Percentage Interest. In connection with the issuance of any new Certificate under this Section 5.03, the Trustee may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. Any replacement Certificate issued pursuant to this Section 5.03 shall constitute complete and indefeasible evidence of ownership, as if originally issued, whether or not the lost, stolen, or destroyed Certificate is found at any time.

***Section 5.04 Persons Deemed Owners.***

The Master Servicer, the Trustee, and any agent of the Master Servicer or the Trustee may treat the Person in whose name any Certificate is registered as the owner of such Certificate for the purpose of receiving distributions as provided in this Agreement and for all other purposes whatsoever, and neither the Master Servicer, the Trustee nor any agent of the Master Servicer or the Trustee shall be affected by any notice to the contrary.

***Section 5.05 Access to List of Certificateholders' Names and Addresses.***

If three or more Certificateholders and/or Certificate Owners (a) request such information in writing from the Trustee, (b) state that such Certificateholders and/or Certificate Owners desire to communicate with other Certificateholders and/or Certificate Owners with respect to their rights under this Agreement or under the Certificates, and (c) provide a copy of the communication which such

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Certificateholders and/or Certificate Owners propose to transmit, or if the Depositor or Master Servicer shall request such information in writing from the Trustee, then the Trustee shall, within ten Business Days after the receipt of such request, provide the Depositor, the Master Servicer or such Certificateholders and/or Certificate Owners at such recipients' expense the most recent list of the Certificateholders of such Trust Fund held by the Trustee. The Depositor and every Certificateholder and/or Certificate Owner, by receiving and holding a Certificate, agree that the Trustee shall not be held accountable because of the disclosure of any such information as to the list of the Certificateholders hereunder, regardless of the source from which such information was derived.

***Section 5.06 Maintenance of Office or Agency.***

The Trustee will maintain at its expense an office or offices or agency or agencies in New York City located at c/o DTC Transfer Services, 55 Water Street, Jeanette Park Entrance, New York, New York 10041, where Certificates may be surrendered for registration of transfer or exchange. The Trustee will give prompt written notice to the Certificateholders of any change in such location of any such office or agency.

ARTICLE Six

THE DEPOSITOR AND THE MASTER SERVICER

***Section 6.01 Respective Liabilities of the Depositor and the Master Servicer.***

The Depositor and the Master Servicer shall each be liable in accordance with this Agreement only to the extent of the obligations specifically and respectively imposed upon and undertaken by them in this Agreement.

***Section 6.02 Merger or Consolidation of the Depositor or the Master Servicer.***

The Depositor and the Master Servicer will each keep in full effect their existence and their rights and franchises as a corporation and a federal savings bank, respectively, under the laws of the United States or under the laws of one of the states thereof and will each obtain and preserve its qualification to do business as a foreign corporation in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement, or any of the Mortgage Loans and to perform its respective duties under this Agreement.

Any Person into which the Depositor or the Master Servicer may be merged or consolidated, or any Person resulting from any merger or consolidation to which the Depositor or the Master Servicer shall be a party, or any person succeeding to the business of the Depositor or the Master Servicer, shall be the successor of the Depositor or the Master Servicer, as the case may be, hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that the successor or surviving Person to the Master Servicer shall be qualified to sell mortgage loans to, and to service mortgage loans on behalf of, FNMA or FHLMC.

***Section 6.03 Limitation on Liability of the Depositor, the Seller, the Master Servicer, and Others.***

None of the Depositor, the Seller, the Master Servicer or any of the directors, officers, employees or agents of the Depositor, the Seller or the Master Servicer shall be under any liability to the Certificateholders for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement, or for errors in judgment; provided, however, that this provision shall not protect the Depositor, the Seller, the Master Servicer or any such Person against any breach of representations or warranties made by it herein or protect the Depositor, the Seller, the Master Servicer or any such Person from any liability which would otherwise be imposed by reasons of willful misfeasance, bad faith or gross negligence in the performance of duties or because of reckless disregard of obligations and duties hereunder. The Depositor, the Seller, the Master Servicer, and any director, officer, employee or agent of the Depositor, the Seller or the Master Servicer may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising hereunder. The Depositor, the Seller, the Master Servicer, and any director, officer, employee or agent of the Depositor, the Seller or the Master Servicer shall be indemnified by the Trust Fund and held harmless against any loss, liability or expense incurred in connection with any audit, controversy or judicial proceeding relating to a governmental taxing authority or any legal action relating to this Agreement or the Certificates, other than any loss, liability or expense related to any specific Mortgage Loan or Mortgage Loans (except as any such loss, liability or expense shall be otherwise reimbursable pursuant to this Agreement) and any loss, liability or expense incurred because of willful misfeasance, bad faith or gross negligence in the performance of duties hereunder or because of reckless disregard of obligations and duties hereunder. None of the Depositor, the Seller or the Master Servicer shall be under any obligation to appear in, prosecute or defend any legal action that is not incidental to its respective duties hereunder and which in its opinion may involve it in any expense or liability; provided, however, that any of the Depositor, the Seller or the Master Servicer may in its discretion undertake any such action that it may deem appropriate in respect of this Agreement and the rights and duties of the parties hereto and interests of the Trustee and the Certificateholders hereunder. In such event, the legal expenses and costs of such action and any liability resulting therefrom shall be expenses, costs and liabilities of the Trust Fund, and the Depositor, the Seller, and the Master Servicer shall be entitled to be reimbursed therefor out of the Certificate Account.

***Section 6.04 Limitation on Resignation of the Master Servicer.***

The Master Servicer shall not resign from the obligations and duties hereby imposed on it except (a) upon appointment of a successor servicer and receipt by the Trustee of a letter from each Rating Agency that such a resignation and appointment will not result in a downgrading, qualification or withdrawal of the rating of any of the Certificates or (b) upon determination that its duties under this Agreement are no longer permissible under applicable law. Any such determination under clause (b) permitting the resignation of the Master Servicer shall be evidenced by an Opinion of Counsel to such effect delivered to the Trustee. No such resignation shall become effective until the Trustee or a successor master servicer shall have assumed the Master Servicer’s responsibilities, duties, liabilities and obligations under this Agreement.

ARTICLE Seven

DEFAULT

***Section 7.01 Events of Default.***

"***Event of Default***," wherever used in this Agreement, means any one of the following events:

(a) any failure by the Master Servicer to deposit in the Certificate Account or remit to the Trustee any payment required to be made by it under this Agreement, which failure continues unremedied for five days after the date on which written notice of the failure has been given to the Master Servicer by the Trustee or the Depositor or to the Master Servicer and the Trustee by the Holders of Certificates of any Class evidencing not less than 25% of the aggregate Percentage Interests of the Class; or

(b) any failure by the Master Servicer to observe or perform in any material respect any other of the covenants or agreements on the part of the Master Servicer contained in this Agreement, which failure materially affects the rights of Certificateholders and continues unremedied for a period of 60 days after the date on which written notice of such failure shall have been given to the Master Servicer by the Trustee or the Depositor, or to the Master Servicer and the Trustee by the Holders of Certificates of any Class evidencing not less than 25% of the Percentage Interests of the Class; provided that the sixty-day cure period shall not apply to the initial delivery of the Mortgage File for Delay Delivery Mortgage Loans nor the failure to repurchase or substitute in lieu thereof; or

(c) a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a receiver, conservator or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding-up or liquidation of its affairs, shall have been entered against the Master Servicer and such decree or order shall have remained in force undischarged or unstayed for a period of 60 consecutive days; or

(d) the Master Servicer shall consent to the appointment of a receiver, conservator or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Master Servicer or all or substantially all of the property of the Master Servicer; or

(e) the Master Servicer shall admit in writing its inability to pay its debts generally as they become due, file a petition to take advantage of, or commence a voluntary case under, any applicable insolvency or reorganization statute, make an assignment for the benefit of its creditors, or voluntarily suspend payment of its obligations; or

(f) the Master Servicer shall fail (i) to make an Advance on the Master Servicer Advance Date or (ii) to reimburse in full the Trustee within two days of the Master Servicer Advance Date for any Advance made by the Trustee pursuant to Section 4.01(b).

If an Event of Default described in clauses (a) through (f) of this Section 7.01 occurs, then, and in each and every such case, so long as such Event of Default shall not have been remedied, the Trustee may, or at the direction of the Holders of Certificates evidencing Percentage Interests aggregating not less than 66 2/3%, the Trustee shall by notice in writing to the Master Servicer (with a copy to each Rating Agency), terminate all of the rights and obligations of the Master Servicer under this Agreement and in the Mortgage Loans and the proceeds thereof, other than its rights as a Certificateholder hereunder. On and after the receipt by the Master Servicer of such written notice, all authority and power of the Master Servicer hereunder, whether with respect to the Mortgage Loans or otherwise, shall pass to and be vested in the Trustee. The Trustee shall make any Advance that the Master Servicer failed to make subject to

Section 3.05, whether or not the obligations of the Master Servicer have been terminated pursuant to this Section. The Trustee is hereby authorized and empowered to execute and deliver, on behalf of the Master Servicer, as attorney-in-fact or otherwise, any documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate to effect the purposes of such notice of termination, whether to complete the transfer and endorsement or assignment of the Mortgage Loans and related documents, or otherwise. Unless expressly provided in such written notice, no such termination shall affect any obligation of the Master Servicer to pay amounts owed pursuant to Article VIII. The Master Servicer agrees to cooperate with the Trustee in effecting the termination of the Master Servicer's responsibilities and rights hereunder, including the transfer to the Trustee of all cash amounts which shall at the time be credited to the Certificate Account, or thereafter be received with respect to the Mortgage Loans. If the Master Servicer fails to make any Advance required under Section 4.01 of this Agreement, thereby triggering an Event of Default described in clause (f) of this Section 7.01, the Trustee shall make such Advance on that Distribution Date.

Notwithstanding any termination of the activities of the Master Servicer under this Agreement, the Master Servicer shall be entitled to receive, out of any late collection of a Scheduled Payment on a Mortgage Loan which was due before the notice terminating such Master Servicer's rights and obligations as Master Servicer hereunder and received after such notice, that portion thereof to which such Master Servicer would have been entitled pursuant to Sections 3.09(a)(i) through (viii), and any other amounts payable to such Master Servicer hereunder the entitlement to which arose before the termination of its activities hereunder.

***Section 7.02 Trustee to Act; Appointment of Successor.***

On and after the time the Master Servicer receives a notice of termination pursuant to Section 7.01, the Trustee shall, subject to and to the extent provided in Section 3.05, be the successor to the Master Servicer in its capacity as master servicer under this Agreement and the transactions set forth or provided for herein and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Master Servicer by the terms hereof and applicable law including the obligation to make Advances pursuant to Section 4.01. As compensation therefor, the Trustee shall be entitled to all funds relating to the Mortgage Loans that the Master Servicer would have been entitled to charge to the Certificate Account or Distribution Account if the Master Servicer had continued to act hereunder, including, if the Master Servicer was receiving the Servicing Fee, the Servicing Fee. Notwithstanding the foregoing, if the Trustee has become the successor to the Master Servicer in accordance with Section 7.01, the Trustee may, if it shall be unwilling to so act, or shall, if it is prohibited by applicable law from making Advances pursuant to Section 4.01 or if it is otherwise unable to so act, appoint, or petition a court of competent jurisdiction to appoint, any established mortgage loan servicing institution the appointment of which does not adversely affect the then current rating of the Certificates by each Rating Agency, as the successor to the Master Servicer hereunder in the assumption of all or any part of the responsibilities, duties or liabilities of the Master Servicer hereunder. Any successor to the Master Servicer shall be an institution which is a FNMA and FHLMC approved seller/servicer in good standing, which has a net worth of at least $15,000,000, which is willing to service the Mortgage Loans and which executes and delivers to the Depositor and the Trustee an agreement accepting such delegation and assignment, containing an assumption by such Person of the rights, powers, duties, responsibilities, obligations and liabilities of the Master Servicer (other than liabilities of the Master Servicer under Section 6.03 incurred before termination of the Master Servicer under Section 7.01), with like effect as if originally named as a party to this Agreement; provided that each Rating Agency acknowledges that its rating of the Certificates in effect immediately before such assignment and delegation will not be qualified or reduced as a result of such assignment and delegation. Pending appointment of a successor to the Master Servicer hereunder, the Trustee shall act in such capacity as provided above, subject to section 3.03 and unless prohibited by law. In connection with such appointment and assumption, the Trustee may make such arrangements for the compensation of such successor out of payments on Mortgage Loans as it and such successor shall agree; provided, however, that in no case shall the rate of such compensation exceed the Servicing Fee Rate. The Trustee and such successor shall take such action, consistent with this Agreement, as shall be necessary to effectuate any such succession. Neither the Trustee nor any other successor master servicer shall be deemed to be in default hereunder because of any failure to make, or any delay in making, any distribution hereunder or any portion thereof or any failure to perform, or any delay in performing, any duties or responsibilities hereunder, in either case caused by the failure of the Master Servicer to deliver or provide, or any delay in delivering or providing, any cash, information, documents or records to it.

In connection with the termination or resignation of the Master Servicer hereunder, either (i) the successor Master Servicer, including the Trustee if the Trustee is acting as successor Master Servicer, shall represent and warrant that it is a member of MERS in good standing and shall agree to comply in all material respects with the rules and procedures of MERS in connection with the servicing of the Mortgage Loans that are registered with MERS, or (ii) the predecessor Master Servicer shall cooperate with the successor Master Servicer either (x) in causing MERS to execute and deliver an assignment of Mortgage in recordable form to transfer the Mortgage from MERS to the Trustee and to execute and deliver such other notices, documents and other instruments as may be necessary or desirable to effect a transfer of such Mortgage Loan or servicing of such Mortgage Loan on the MERS® System to the successor Master Servicer or (y) in causing MERS to designate on the MERS® System the successor Master Servicer as the servicer of such Mortgage Loan. The predecessor Master Servicer shall file or cause to be filed any such assignment in the appropriate recording office. The successor Master Servicer shall cause such assignment to be delivered to the Trustee promptly upon receipt of the original with evidence of recording thereon or a copy certified by the public recording office in which such assignment was recorded.

Any successor to the Master Servicer as master servicer shall give notice to the Mortgagors of such change of servicer and shall, during the term of its service as master servicer, maintain in force the policy or policies that the Master Servicer is required to maintain pursuant to this Agreement.

***Section 7.03 Notification to Certificateholders.***

(a) Upon any termination of or appointment of a successor to the Master Servicer, the Trustee shall give prompt written notice thereof to Certificateholders and to each Rating Agency.

(b) Within 60 days after the occurrence of any Event of Default, the Trustee shall transmit by mail to all Certificateholders and each Rating Agency notice of each such Event of Default hereunder known to the Trustee, unless such Event of Default shall have been cured or waived.

## ARTICLE Eight

### CONCERNING THE TRUSTEE

***Section 8.01 Duties of the Trustee.***

The Trustee, before the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform such duties and only such duties as are specifically set forth in this Agreement. In case an Event of Default has occurred and remains uncured, the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

The Trustee, upon receipt of all resolutions, certificates, statements, opinions, reports, documents, orders or other instruments furnished to the Trustee that are specifically required to be furnished pursuant to any provision of this Agreement shall examine them to determine whether they are in the form required by this Agreement. The Trustee shall not be responsible for the accuracy or content of any such resolution, certificate, statement, opinion, report, document, order, or other instrument.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct; provided, however, that, unless an Event of Default known to the Trustee has occurred and is continuing,

(a) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, the Trustee shall not be liable except for the performance of the duties and obligations specifically set forth in this Agreement, no implied covenants or obligations shall be read into this Agreement against the Trustee, and the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement which it believed in good faith to be genuine and to have been duly executed by the proper authorities respecting any matters arising hereunder;

(b) the Trustee shall not be liable for an error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it is finally proven that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken, suffered, or omitted to be taken by it in good faith in accordance with the direction of Holders of Certificates evidencing not less than 25% of the Voting Rights of Certificates relating to the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Agreement. As long as any Voting Rights are held by parties other than the Seller, its Affiliates, or its agents, Voting Rights of Certificates held by the Seller, its Affiliates or its agents will, as the Seller shall certify to the Trustee upon any entity obtaining such ownership, be excluded from participating in such voting arrangements, and excluded from determining the 25% threshold.

***Section 8.02 Certain Matters Affecting the Trustee.***

Except as otherwise provided in Section 8.01:

(a) the Trustee may request and rely upon and shall be protected in acting or refraining from acting upon any resolution, Officer's Certificate, certificate of auditors or any other certificate, statement, instrument, opinion, report, notice, request, consent, order, appraisal, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties and the Trustee shall have no responsibility to ascertain or confirm the genuineness of any signature of any such party or parties;

(b) the Trustee may consult with counsel, financial advisers or accountants and the advice of any such counsel, financial advisers or accountants and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond or other paper or document, unless requested in writing so to do by Holders of Certificates evidencing not less than 25% of the Voting Rights allocated to each Class of Certificates;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, accountants or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agents, accountants or attorneys appointed with due care by it hereunder;

(f) the Trustee shall not be required to risk or expend its own funds or otherwise incur any financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it;

(g) the Trustee shall not be liable for any loss on any investment of funds pursuant to this Agreement (other than as issuer of the investment security);

(h) the Trustee shall not be deemed to have knowledge of an Event of Default until a Responsible Officer of the Trustee shall have received written notice thereof;

(i) the Trustee shall be under no obligation to exercise any of the trusts, rights or powers vested in it by this Agreement or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Certificateholders, pursuant to this Agreement, unless such Certificateholders shall have offered to the Trustee reasonable security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred therein or thereby;

(j) the Trustee or its Affiliates are permitted to receive additional compensation that could be deemed to be in the Trustee's economic self-interest for (i) serving as investment adviser, administrator, shareholder servicing agent, custodian or sub-custodian with respect to certain of the Permitted Investments, (ii) using Affiliates to effect transactions in certain Permitted Investments and (iii) effecting transactions in certain Permitted Investments. The Trustee does not guarantee the performance of any Permitted Investment; and

(k) the Trustee shall not knowingly take any action that would cause the Trust Fund to fail to qualify as a qualifying special purpose entity.

In order to comply with its duties under the U.S.A. Patriot Act, the Trustee shall obtain and verify certain information and documentation from the other parties to this Agreement, including, but not limited to, such parties' name, address, and other identifying information.

***Section 8.03 Trustee Not Liable for Certificates or Mortgage Loans.***

The recitals contained herein and in the Certificates shall be taken as the statements of the Depositor or the Seller, as the case may be, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Agreement or of the Certificates or of any Mortgage Loan or related document other than with respect to the Trustee's execution and countersignature of the Certificates. The Trustee shall not be accountable for the use or application by the Depositor or the Master Servicer of any funds paid to the Depositor or the Master Servicer in respect of the Mortgage Loans or deposited in or withdrawn from the Certificate Account by the Depositor or the Master Servicer.

Except as provided in Section 2.01(c), the Trustee shall have no responsibility for filing or recording any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder (unless the Trustee shall have become the successor Master Servicer). The Trustee makes no representations as to the validity or sufficiency of this Agreement or of the Certificates or of any Mortgage Loan or related document or of MERS or the MERS® System other than with respect to the Trustee's execution and counter-signature of the Certificates.

The Trustee executes the Certificates not in its individual capacity but solely as Trustee of the Trust Fund created by this Agreement, in the exercise of the powers and authority conferred and vested in it by this Agreement. Each of the undertakings and agreements made on the part of the Trustee on behalf of the Trust Fund in the Certificates is made and intended not as a personal undertaking or agreement by the Trustee but is made and intended for the purpose of binding only the Trust Fund.

***Section 8.04 Trustee May Own Certificates.***

The Trustee in its individual or any other capacity may become the owner or pledgee of Certificates with the same rights as it would have if it were not the Trustee.

***Section 8.05 Trustee's Fees and Expenses.***

As compensation for its activities under this Agreement, on each Distribution Date the Trustee may withdraw from the Distribution Account the Trustee Fee for that Distribution Date. The Trustee and any director, officer, employee, or agent of the Trustee shall be indemnified by the Master Servicer against any loss, liability, or expense (including reasonable attorney's fees) resulting from any error in any tax or information return prepared by the Master Servicer or incurred in connection with any claim or legal action relating to

(a) this Agreement, (b) the Certificates, or (c) the performance of any of the Trustee's duties under this Agreement, other than any loss, liability or expense incurred because of willful misfeasance, bad faith or negligence in the performance of any of the Trustee's duties hereunder or incurred by reason of any action of the Trustee taken at the direction of the Certificateholders under this Agreement. This indemnity shall survive the termination of this Agreement or the resignation or removal of the Trustee under this Agreement. Without limiting the foregoing, except as otherwise agreed upon in writing by the Depositor and the Trustee, and except for any expense, disbursement, or advance arising from the Trustee's negligence, bad faith, or willful misconduct, the Master Servicer shall pay or reimburse the

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Trustee, for all reasonable expenses, disbursements, and advances incurred or made by the Trustee in accordance with this Agreement with respect to

(A) the reasonable compensation, expenses, and disbursements of its counsel not associated with the closing of the issuance of the Certificates,

(B) the reasonable compensation, expenses, and disbursements of any accountant, engineer, or appraiser that is not regularly employed by the Trustee, to the extent that the Trustee must engage them to perform services under this Agreement, and

(C) printing and engraving expenses in connection with preparing any Definitive Certificates.

Except as otherwise provided in this Agreement, the Trustee shall not be entitled to payment or reimbursement for any routine ongoing expenses incurred by the Trustee in the ordinary course of its duties as Trustee, Registrar, or Paying Agent under this Agreement or for any other expenses.

***Section 8.06 Eligibility Requirements for the Trustee.***

The Trustee hereunder shall at all times be a corporation or association organized and doing business under the laws of a state or the United States of America, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least $50,000,000, subject to supervision or examination by federal or state authority and with a credit rating which would not cause either of the Rating Agencies to reduce their respective then current ratings of the Certificates (or having provided such security from time to time as is sufficient to avoid such reduction) as evidenced in writing by each Rating Agency. If such corporation or association publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.06 the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with this Section 8.06, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.07. The entity serving as Trustee may have normal banking and trust relationships with the Depositor and its affiliates or the Master Servicer and its affiliates; provided, however, that such entity cannot be an affiliate of the Seller, the Depositor or the Master Servicer other than the Trustee in its role as successor to the Master Servicer.

***Section 8.07 Resignation and Removal of the Trustee.***

The Trustee may at any time resign and be discharged from the trusts hereby created by giving written notice of resignation to the Depositor, the Master Servicer, and each Rating Agency not less than 60 days before the date specified in such notice, when, subject to Section 8.08, such resignation is to take effect, and acceptance by a successor trustee in accordance with Section 8.08 meeting the qualifications set forth in Section 8.06. If no successor trustee meeting such qualifications shall have been so appointed and have accepted appointment within 30 days after the giving of such notice or resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee.

If at any time the Trustee shall cease to be eligible in accordance with Section 8.06 and shall fail to resign after written request thereto by the Depositor, or if at any time the Trustee shall become incapable of acting, or shall be adjudged as bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, or a tax is imposed with respect to the Trust Fund by any state in which the Trustee or the Trust Fund is located and the imposition of such tax would be avoided by the appointment of a different trustee, then the Depositor or the Master Servicer may remove the Trustee and appoint a successor trustee by written instrument, in triplicate, one copy of which shall be delivered to the Trustee, one copy to the Master Servicer and one copy to the successor trustee.

The Holders of Certificates entitled to at least 51% of the Voting Rights may at any time remove the Trustee and appoint a successor trustee by written instrument or instruments, in triplicate, signed by such Holders or their attorneys-in-fact duly authorized, one complete set of which shall be delivered by the successor Trustee to the Master Servicer, one complete set to the Trustee so removed and one complete set to the successor so appointed. As long as any Voting Rights are held by parties other than the Seller, its Affiliates, or its agents, Voting Rights of Certificates held by the Seller, its Affiliates or its agents, as the Seller shall certify to the Trustee upon any entity obtaining such ownership, will be excluded from participating in such voting arrangements, and excluded from determining the 51% threshold. The successor trustee shall notify each Rating Agency of any removal of the Trustee.

Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to this Section 8.07 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.08.

***Section 8.08 Successor Trustee.***

Any successor trustee appointed as provided in Section 8.07 shall execute, acknowledge and deliver to the Depositor and to its predecessor trustee and the Master Servicer an instrument accepting such appointment hereunder and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become fully vested with all the rights, powers, duties and obligations of its predecessor hereunder, with the like effect as if originally named as trustee herein. The Depositor, the Master Servicer and the predecessor trustee shall execute and deliver such instruments and do such other things as may reasonably be required for more fully and certainly vesting and confirming in the successor trustee all such rights, powers, duties, and obligations.

No successor trustee shall accept appointment as provided in this Section 8.08 unless, at the time of its acceptance, the successor trustee is eligible under Section 8.06 and its appointment does not adversely affect the then current rating of the Certificates.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.08, the Depositor shall mail notice of the succession of such trustee hereunder to all Holders of Certificates. If the Depositor fails to mail such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Depositor.

***Section 8.09 Merger or Consolidation of the Trustee.***

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the business of the Trustee, shall be the successor of the Trustee hereunder, provided that such corporation shall be eligible under Section 8.06 without the execution or filing of any paper or further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

***Section 8.10 Appointment of Co-Trustee or Separate Trustee.***

Notwithstanding any other provisions of this Agreement, at any time, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Fund or property securing any Mortgage Note may at the time be located, the Master Servicer and the Trustee acting jointly shall have the power and shall execute and deliver all instruments to appoint one or more Persons approved by the Trustee to act as co-trustee or co-trustees jointly with the Trustee, or separate trustee or separate trustees, of all or any part of the Trust Fund, and to vest in such Person or Persons, in such capacity and for the benefit of the Certificateholders, such title to the Trust Fund or any part thereof, whichever is applicable, and, subject to the other provisions of this Section 8.10, such powers, duties, obligations, rights and trusts as the Master Servicer and the Trustee may consider appropriate. If the Master Servicer shall not have joined in such appointment within 15 days after the receipt by it of a request to do so, or in the case an Event of Default shall have occurred and be continuing, the Trustee alone shall have the power to make such appointment. No co-trustee or separate trustee hereunder shall be required to meet the terms of eligibility as a successor trustee under Section 8.06 and no notice to Certificateholders of the appointment of any co-trustee or separate trustee shall be required under Section 8.08.

Every separate trustee and co-trustee shall, to the extent permitted by law, be appointed and act subject to the following provisions and conditions:

(a) To the extent necessary to effectuate the purposes of this Section 8.10, all rights, powers, duties and obligations conferred or imposed upon the Trustee, except for the obligation of the Trustee under this Agreement to advance funds on behalf of the Master Servicer, shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or co-trustee jointly (it being understood that such separate trustee or co-trustee is not authorized to act separately without the Trustee joining in such act), except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (whether as Trustee hereunder or as successor to the Master Servicer hereunder), the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations (including the holding of title to the applicable Trust Fund or any portion thereof in any such jurisdiction) shall be exercised and performed singly by such separate trustee or co-trustee, but solely at the direction of the Trustee;

(b) No trustee hereunder shall be held personally liable because of any act or omission of any other trustee hereunder and such appointment shall not, and shall not be deemed to, constitute any such separate trustee or co-trustee as agent of the Trustee;

(c) The Trustee may at any time accept the resignation of or remove any separate trustee or co-trustee; and

(d) The Master Servicer, and not the Trustee, shall be liable for the payment of reasonable compensation, reimbursement and indemnification to any such separate trustee or co-trustee.

Any notice, request or other writing given to the Trustee shall be deemed to have been given to each of the separate trustees and co-trustees, when and as effectively as if given to each of them. Every instrument appointing any separate trustee or co-trustee shall refer to this Agreement and the conditions of this Article VIII. Each separate trustee and co-trustee, upon its acceptance of the trusts conferred, shall be vested with the estates or property specified in its instrument of appointment, either jointly with the Trustee or separately, as may be provided therein, subject to all the provisions of this Agreement, specifically including every provision of this Agreement relating to the conduct of, affecting the liability of, or affording protection to, the Trustee. Every such instrument shall be filed with the Trustee and a copy thereof given to the Master Servicer and the Depositor.

Any separate trustee or co-trustee may, at any time, constitute the Trustee its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by law, to do any lawful act under or in respect of this Agreement on its behalf and in its name. If any separate trustee or co-trustee shall die, become incapable of acting, resign or be removed, all of its estates, properties, rights, remedies and trusts shall vest in and be exercised by the Trustee, to the extent permitted by law, without the appointment of a new or successor trustee.

***Section 8.11 Tax Matters.***

It is intended that the assets with respect to which one or more REMIC elections pertaining to the Trust Fund is to be made, as set forth in the Preliminary Statement, shall constitute, and that the conduct of matters relating to such assets shall be such as to qualify such assets as, a “real estate mortgage investment conduit” as defined in and in accordance with the REMIC Provisions. In furtherance of such intention, the Trustee covenants and agrees that it shall act as agent (and the Trustee is hereby appointed to act as agent) on behalf of each REMIC created under this Agreement and that in such capacity it shall:

(a) prepare and file in a timely manner, a U.S. Real Estate Mortgage Investment Conduit Income Tax Return (Form 1066 or any successor form adopted by the Internal Revenue Service) with respect to each REMIC created hereunder and prepare and file with the Internal Revenue Service and applicable state or local tax authorities income tax or information returns for each taxable year with respect to each REMIC described in the Preliminary Statement, containing such information and at the times and in the manner as may be required by the Code or state or local tax laws, regulations, or rules, and furnish to Certificateholders the schedules, statements or information at such times and in such manner as may be required thereby;

(b) within thirty days of the Closing Date, furnish to the Internal Revenue Service, on Forms 8811 or as otherwise may be required by the Code, the name, title, address, and telephone number of the person that the holders of the Certificates may contact for tax information relating thereto, together with such additional information as may be required by such Form, and update such information at the time or times in the manner required by the Code;

(c) make an election that each REMIC created under this Agreement be treated as a REMIC on the federal tax return for its first taxable year (and, if necessary, under applicable state law);

(d) prepare and forward to the Certificateholders and to the Internal Revenue Service and, if necessary, state tax authorities, all information returns and reports as and when required to be provided to them in accordance with the REMIC Provisions, including the calculations of any original issue discount and of taxable income or net loss to the holders of the residual interests in each REMIC created hereunder using the Prepayment Assumption (as defined in the Prospectus Supplement). For purposes of calculating taxable income or net loss to the holders of the residual interests in each such REMIC, the Trustee also shall assume that the indices in respect of any floating rate Mortgage Loans are static until the liquidation or purchase of the Mortgage Loans in accordance with Section 9.01;

(e) provide information necessary for the computation of tax imposed on the transfer of a Residual Certificate to a Person that is not a Permitted Transferee, or an agent (including a broker, nominee or other middleman) of a Person that is not a Permitted Transferee, or a pass-through entity in which a Person that is not a Permitted Transferee is the record holder of an interest (the reasonable cost of computing and furnishing such information may be charged to the Person liable for such tax);

(f) to the extent that they are under its control, conduct matters relating to such assets at all times that any Certificates are outstanding so as to maintain the status as any REMIC created under this Agreement under the REMIC Provisions;

(g) not knowingly or intentionally take any action or omit to take any action that would cause the termination of the REMIC status of any REMIC created under this Agreement;

(h) pay, from the sources specified in the last paragraph of this Section 8.11, the amount of any federal or state tax, including prohibited transaction taxes as described below, imposed on any REMIC before its termination when and as the same shall be due and payable (but such obligation shall not prevent the Trustee or any other appropriate Person from contesting any such tax in appropriate proceedings and shall not prevent the Trustee from withholding payment of such tax, if permitted by law, pending the outcome of such proceedings);

(i) ensure that federal, state or local income tax or information returns shall be signed by the Trustee or such other person as may be required to sign such returns by the Code or state or local laws, regulations or rules;

(j) maintain records relating to each REMIC created under this Agreement, including the income, expenses, assets, and liabilities thereof and the fair market value and adjusted basis of the assets determined at such intervals as may be required by the Code, as may be necessary to prepare the foregoing returns, schedules, statements or information; and

(k) as and when necessary and appropriate, represent each REMIC created under this Agreement in any administrative or judicial proceedings relating to an examination or audit by any governmental taxing authority, request an administrative adjustment as to any taxable year of such REMIC, enter into settlement agreements with any governmental taxing agency, extend any statute of limitations relating to any tax item of such REMIC, and otherwise act on behalf of such REMIC in relation to any tax matter or controversy involving it.

To enable the Trustee to perform its duties under this Agreement, the Depositor shall provide to the Trustee within ten days after the Closing Date all information or data that the Trustee requests in writing and determines to be relevant for tax purposes to the valuations and offering prices of the Certificates, including the price, yield, prepayment assumption, and projected cash flows of the Certificates and the Mortgage Loans. Thereafter, the Depositor shall provide to the Trustee promptly upon written request therefor any additional information or data that the Trustee may, from time to time, reasonably request to enable the Trustee to perform its duties under this Agreement. The Depositor hereby indemnifies the Trustee for any losses, liabilities, damages, claims, or expenses of the Trustee arising from any errors or miscalculations of the Trustee that result from any failure of the Depositor to provide, or to cause to be provided, accurate information or data to the Trustee on a timely basis.

If any tax is imposed on “prohibited transactions” (as defined in section 860F(a)(2) of the Code) of any REMIC created under this Agreement, on the “net income from foreclosure property” of any REMIC created under this Agreement as defined in section 860G(c) of the Code, on any contribution to any REMIC created under this Agreement after the Startup Day pursuant to section 860G(d) of the Code, or any other tax is imposed, including any minimum tax imposed on any REMIC created hereunder pursuant to sections 23153 and 24874 of the California Revenue and Taxation Code, if not paid as otherwise provided for herein, the tax shall be paid by (i) the Trustee, if any such other tax arises out of or results from negligence of the Trustee in the performance of any of its obligations under this Agreement, (ii) the Master Servicer or the Seller, in the case of any such minimum tax, if such tax arises out of or results from a breach by the Master Servicer or Seller of any of their obligations under this Agreement,

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(iii) the Seller, if any such tax arises out of or results from the Seller's obligation to repurchase a Mortgage Loan pursuant to Section 2.02 or 2.03, or (iv) in all other cases, or if the Trustee, the Master Servicer, or the Seller fails to honor its obligations under the preceding clauses (i), (ii), or (iii), any such tax will be paid with amounts otherwise to be distributed to the Certificateholders, as provided in Section 3.09(b).

The Trustee shall treat the Yield Maintenance Reserve Funds and Carryover Shortfall Reserve Fund as outside reserve funds within the meaning of Treasury Regulation 1.860G-2(h) that are owned by the holders of the Class A-X-2 Certificates, and that are not an asset of any REMIC created under this Agreement. The Trustee shall treat the rights of the holders of the Class 1-A-1, 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates and Subordinated Certificates to receive payments from their respective Yield Maintenance Reserve Fund or the Carryover Shortfall Reserve Fund on the second and all subsequent Distribution Dates, as applicable, as rights in an interest rate cap contract written by the Holders of the Class A-X-2 Certificates in respect of any Carryover Shortfall Amounts distributed in favor of the Holders of the Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates and the Subordinated Certificates. Thus, the Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C and Class 2-A-2 Certificates and Subordinated Certificates shall be treated as representing ownership of not only a Master REMIC regular interest, but also ownership of an interest in an interest rate cap contract. For purposes of determining the issue price of the Master REMIC regular interests, the Trustee shall assume that the cap contracts entered into by each of the Class 1-A-1, Class 2-A-1A, Class 2-A-1B, Class 2-A-1C, Class 2-A-2 and Subordinated Certificates, have values of $308,620, $166,390, $69,330, $41,600, $34,290 and $55,770, respectively.

***Section 8.12 Periodic Filings.***

Beginning with the first Distribution Date, the Trustee, pursuant to written instructions of the Depositor (which instructions shall be deemed to be this Section 8.12), shall prepare and file all periodic reports required under the Exchange Act in conformity with the terms of the relief granted to issuers similar to the Trust Fund. The Trustee shall execute the Form 8-Ks pursuant to a limited power of attorney from the Depositor which shall terminate upon written notice from the Depositor or the termination of this Agreement. In connection with the preparation and filing of such periodic reports, the Depositor and the Master Servicer shall timely provide to the Trustee all material information available to them that is required to be included in such reports and not known to them to be in the possession of the Trustee and such other information as the Trustee reasonably may request from either of them (including any certification required pursuant to Section 3.02(a) of the Sarbanes-Oxley Act of 2002 and any regulations promulgated thereunder (the "***Required Certifications***")) and otherwise reasonably shall cooperate with the Trustee. The Depositor shall execute the Form 10-Ks and the Required Certifications. The Trustee shall have no responsibility for making any of the Required Certifications; provided, however, that upon the request of the Master Servicer or the Depositor in connection with the delivery of the Required Certifications on behalf of the Trust Fund, the Trustee shall furnish to the Master Servicer or the Depositor, as applicable, a certificate signed by an officer of the Trustee (the "***Trustee Certification***"), which is attached as Exhibit O to this Agreement. The Trustee shall indemnify and hold harmless the Master Servicer and the Depositor, their respective officers and directors from and against any and all losses, claims, expenses, damages or liabilities, as and when such losses, claims, expenses, damages or liabilities are incurred, insofar as such losses, claims, expenses, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement of any material fact contained in the Trustee Certification. The Trustee shall prepare the Form 10-K and provide such to the Depositor by March 10th of each year, commencing in 2006. The Depositor shall execute such Form 10-K upon its receipt and shall provide the original of such executed Form 10-K to the Trustee no later than five Business Days following its receipt from the Trustee.

Prior to January 30th of the first year in which the Trustee is able to do so under applicable law, the Trustee shall file under the Exchange Act a Suspension Notification with respect to the Trust Fund. The Trustee shall have no liability with respect to any failure to properly prepare or file such periodic reports resulting from or relating to the Trustee's inability or failure to obtain any information not resulting from its own negligence or willful misconduct.

The Trustee and any director, officer, employee, or agent of the Trustee shall be indemnified by the Master Servicer against any loss, liability, or expense (including reasonable attorney's fees) incurred in connection with any claim or legal action relating to the preparation of the Required Certification, other than any loss, liability or expense incurred because of willful misfeasance, bad faith or negligence in the performance of any of the Trustee's duties under this Agreement or incurred by reason of any action of the Trustee taken at the direction of the Certificateholders under this Agreement. This indemnity shall survive the termination of this Agreement or the resignation or removal of the Trustee under this Agreement.

ARTICLE Nine

TERMINATION

***Section 9.01 Termination upon Liquidation or Purchase of the Mortgage Loans.***

Subject to Section 9.03, the obligations and responsibilities of the Depositor, the Master Servicer, and the Trustee created hereby shall terminate upon the earlier of

(a) the purchase by the Master Servicer of all Mortgage Loans (and REO Properties) at the price equal to the sum of

(i) 100% of the Stated Principal Balance of each Mortgage Loan (other than in respect of a Delinquent Mortgage Loan or REO Property) plus one month's accrued interest thereon at the applicable Adjusted Mortgage Rate less any amounts collected by the Master Servicer representing principal and interest due after the related Due Date,

(ii) the lesser of (x) the appraised value of any Delinquent Mortgage Loan or REO Property as determined by the higher of two appraisals completed by two independent appraisers selected by the Master Servicer at the expense of the Master Servicer and (y) the Stated Principal Balance of each such Delinquent Mortgage Loan or Mortgage Loan related to such REO Property, in each case plus accrued and unpaid interest thereon at the applicable Adjusted Net Mortgage Rate, and

(iii) any costs and damages incurred by the Trust Fund in connection with any violation by each Mortgage Loan of any predatory or abusive lending law, and

(b) the later of

(i) the maturity or other liquidation (or any Advance with respect thereto) of the last Mortgage Loan and the disposition of all REO Property and

(ii) the distribution to Certificateholders of all amounts required to be distributed to them pursuant to this Agreement. In no event shall the trusts created hereby continue beyond the expiration of 21 years from the death of the survivor of the descendants of Joseph P. Kennedy, the late Ambassador of the United States to the Court of St. James's, living on the date of this Agreement.

The right to purchase all Mortgage Loans and REO Properties pursuant to clause (a) above shall be conditioned upon the aggregate Stated Principal Balance of those Mortgage Loans, at the time of any such repurchase, aggregating less than ten percent (10%) of the aggregate Stated Principal Balance of the Mortgage Loans as of the Cut-off Date. The first Distribution Date on which the right to purchase all Mortgage Loans and REO Properties pursuant to clause (a) above first becomes exercisable is referred to as the "***Optional Termination Date.***" The Master Servicer shall effect any such repurchase by depositing the purchase price, as calculated above, as of the month preceding the date on which such purchase price shall be distributed to Certificateholders into the Certificate Account.

***Section 9.02 Final Distribution on the Certificates.***

If on any Determination Date the Master Servicer determines that there are no Outstanding Mortgage Loans and no other funds or assets in the Trust Fund other than the funds in the Certificate

Account, the Master Servicer shall direct the Trustee promptly to send a final distribution notice to each Certificateholder. If the Master Servicer elects to terminate the Trust Fund pursuant to clause (a) of Section 9.01, no later than the 15th day of the month preceding the month of the final Distribution Date the Master Servicer shall notify the Depositor and the Trustee of the date the Master Servicer intends to terminate the Trust Fund and of the applicable repurchase price of the Mortgage Loans and REO Properties.

Notice of any termination of the Trust Fund specifying the Distribution Date on which Certificateholders may surrender their Certificates for payment of the final distribution and cancellation shall be given promptly by the Trustee by letter to Certificateholders mailed not earlier than the 15th day and not later than the last day of the month next preceding the month of such final distribution. Any such notice shall specify (a) the Distribution Date upon which final distribution on the Certificates will be made upon presentation and surrender of Certificates at the office therein designated, (b) the amount of such final distribution, (c) the location of the office or agency at which such presentation and surrender must be made, and (d) that the Record Date otherwise applicable to the Distribution Date is not applicable, distributions being made only upon presentation and surrender of the Certificates at the office therein specified. The Master Servicer will give such notice to each Rating Agency at the time such notice is given to Certificateholders.

If this notice is given, the Master Servicer shall cause all funds in the Certificate Account to be remitted to the Trustee for deposit in the Distribution Account on the Business Day before the applicable Distribution Date in an amount equal to the final distribution in respect of the Certificates. Upon such final deposit with respect to the Trust Fund and the receipt by the Trustee of a Request for Release therefor, the Trustee shall promptly release to the Master Servicer the Mortgage Files for the Mortgage Loans.

Upon presentation and surrender of the Certificates, the Trustee shall cause to be distributed to the Certificateholders of each Class, in each case on the final Distribution Date and in the order set forth in Section 4.02, in proportion to their respective Percentage Interests, with respect to Certificateholders of the same Class, an amount equal to (i) as to each Class of Regular Certificates (other than the Class A-PO Certificates), its Certificate Balance plus for each such Class accrued interest thereon (or on their Notional Amount, if applicable) in the case of an interest-bearing Certificate, (ii) as to the Class A-PO Certificates, the principal balance of both Class A-PO Components for the immediately preceding Distribution Date plus interest accrued on its Notional Amount, and (iii) as to the Residual Certificates, any amount remaining on deposit in the Distribution Account (other than the amounts retained to meet claims) after application pursuant to clause (i) above. Notwithstanding the reduction of the Certificate Balance of any Class of Certificates to zero, such Class will be outstanding hereunder solely for the purpose of receiving distributions and for no other purpose until the termination of the respective obligations and responsibilities of the Depositor, the Master Servicer and the Trustee hereunder in accordance with Article Nine. The foregoing provisions are intended to distribute to each Class of Regular Certificates any accrued and unpaid interest and principal to which they are entitled based on the Pass-Through Rates and actual Class Certificate Balances or Notional Amounts set forth in the Preliminary Statement upon liquidation of the Trust Fund.

If any affected Certificateholder does not surrender its Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. If within six months after the second notice all the applicable Certificates shall not have been surrendered for cancellation, the Trustee may take appropriate steps, or may appoint an agent to take appropriate steps, to contact the remaining Certificateholders concerning surrender of their Certificates, and the cost thereof shall be paid out of the funds and other assets which remain a part of the Trust Fund. If within one year after the second notice all Certificates shall not have been surrendered for cancellation, then the Holders of the Class A-R Certificates shall be entitled to all unclaimed funds and other assets of the Trust Fund which remain subject hereto.

***Section 9.03 Additional Termination Requirements.***

(a) If the Master Servicer exercises its purchase option with respect to the Mortgage Loans as provided in Section 9.01, the Trust Fund shall be terminated in accordance with the following additional requirements, unless the Trustee has been supplied with an Opinion of Counsel, at the expense of the Master Servicer, to the effect that the failure to comply with the requirements of this Section 9.03 will not (i) result in the imposition of taxes on “prohibited transactions” on any REMIC created hereunder as defined in section 860F of the Code, or (ii) cause any REMIC created under this Agreement to fail to qualify as a REMIC at any time that any Certificates are outstanding:

(b) The Trustee shall sell all of the assets of the Trust Fund to the Master Servicer, and, within 90 days of such sale, shall distribute to the Certificateholders the proceeds of such sale in complete liquidation of each REMIC created under this Agreement.

(c) The Trustee shall attach a statement to the final federal income tax return for each REMIC created under this Agreement stating that pursuant to Treasury Regulation § 1.860F-1, the first day of the 90-day liquidation period for such REMIC was the date on which the Trustee sold the assets of the Trust Fund to the Master Servicer.

ARTICLE Ten

MISCELLANEOUS PROVISIONS

***Section 10.01 Amendment.***

This Agreement may be amended from time to time by the Depositor, the Master Servicer and the Trustee without the consent of any of the Certificateholders (i) to cure any ambiguity or mistake, (ii) to correct any defective provision in this Agreement or to supplement any provision in this Agreement which may be inconsistent with any other provision in this Agreement, (iii) to conform this Agreement to the Prospectus Supplement, (iv) to add to the duties of the Depositor, the Seller or the Master Servicer, (v) to modify, alter, amend, add to or rescind any of the terms or provisions contained in this Agreement to comply with any rules or regulations promulgated by the Commission from time to time, (vi) to add any other provisions with respect to matters or questions arising under this Agreement, or (vii) to modify, alter, amend, add to, or rescind any of the terms or provisions contained in this Agreement.

No action pursuant to clauses (v), (vi) or (vii) above may, as evidenced by an Opinion of Counsel (which Opinion of Counsel shall not be an expense of the Trustee or the Trust Fund), adversely affect in any material respect the interests of any Certificateholder. The amendment shall not be deemed to adversely affect in any material respect the interests of the Certificateholders if the Person requesting the amendment obtains a letter from each Rating Agency stating that the amendment would not result in the downgrading, qualification or withdrawal of the respective ratings then assigned to the Certificates. Any such letter in and of itself will not represent a determination as to the materiality of any amendment and will represent a determination only as to the credit issues affecting any rating. Each party to this Agreement agrees that it will cooperate with each other party in amending this Agreement pursuant to clause (v) above.

The Trustee, the Depositor, and the Master Servicer also may at any time and from time to time amend this Agreement without the consent of the Certificateholders to modify, eliminate or add to any of its provisions to the extent necessary or helpful to (i) maintain the qualification of any REMIC created under this Agreement as a REMIC under the Code, (ii) avoid or minimize the risk of the imposition of any tax on any REMIC created under this Agreement pursuant to the Code that would be a claim at any time before the final redemption of the Certificates, or (iii) comply with any other requirements of the Code, if the Trustee has been provided an Opinion of Counsel, which opinion shall be an expense of the party requesting such opinion but in any case shall not be an expense of the Trustee or the Trust Fund, to the effect that the action is necessary or helpful for one of the foregoing purposes.

This Agreement may also be amended from time to time by the Depositor, the Master Servicer, and the Trustee with the consent of the Holders of Certificates evidencing Percentage Interests aggregating not less than 51% of each Class of Certificates adversely affected thereby for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of modifying in any manner the rights of the Holders of Certificates. As long as any Voting Rights are held by parties other than the Seller, its Affiliates, or its agents, Voting Rights of Certificates held by the Seller, its Affiliates or its agents, as the Seller shall certify to the Trustee upon any entity obtaining such ownership, will be excluded from participating in such voting arrangements, and excluded from determining the 51% threshold. No amendment shall

(i) reduce in any manner the amount of, or delay the timing of, payments required to be distributed on any Certificate without the consent of the Holder of such Certificate,

(ii) amend, modify, add to, rescind, or alter in any respect Section 10.13, notwithstanding any contrary provision of this Agreement, without the consent of the Holders of Certificates evidencing Percentage Interests aggregating not less than 66 2/3% (provided, however, that no Certificates held by the Seller, the Depositor or any Affiliate thereby shall be given effect for the purpose of calculating any such aggregation of Percentage Interests), or

(iii) reduce the aforesaid percentages of Certificates the Holders of which are required to consent to any such amendment, without the consent of the Holders of all such Certificates then outstanding.

Notwithstanding any contrary provision of this Agreement, the Trustee shall not consent to any amendment to this Agreement unless (i) it shall have first received an Opinion of Counsel, which opinion shall not be an expense of the Trustee or the Trust Fund, to the effect that such amendment will not cause the imposition of any tax on any REMIC created under this Agreement or the Certificateholders or cause any REMIC created hereunder to fail to qualify as a REMIC at any time that any Certificates are outstanding and (ii) because the Trust Fund is required to be a Qualifying Special Purpose Entity (as that term is defined in Statement of Financial Accounting Standards No. 140 (“SFAS 140”), in order for the Seller to continue to account for the transfer of the Mortgage Loans under this Agreement as a sale under SFAS 140, prior to the parties hereto entering into such an amendment, the Trustee shall receive an Officer’s Certificate, which shall not be an expense of the Trustee or the Trust Fund, to the effect that such amendment would not “significantly change” (within the meaning of SFAS 140) the permitted activities of the Trust Fund so as to cause the Trust Fund to fail to qualify as a Qualifying Special Purpose Entity.

Promptly after the execution of any amendment to this Agreement requiring the consent of Certificateholders, the Trustee shall furnish written notification of the substance or a copy of such amendment to each Certificateholder and each Rating Agency.

It shall not be necessary for the consent of Certificateholders under this Section 10.01 to approve the particular form of any proposed amendment, but it shall be sufficient if such consent shall approve the substance thereof. The manner of obtaining such consents and of evidencing the authorization of the execution thereof by Certificateholders shall be subject to such reasonable regulations as the Trustee may prescribe.

Nothing in this Agreement shall require the Trustee to enter into an amendment without receiving an Opinion of Counsel (which Opinion shall not be an expense of the Trustee or the Trust Fund), satisfactory to the Trustee that (i) such amendment is permitted and is not prohibited by this Agreement and that all requirements for amending this Agreement have been complied with; and (ii) either (A) the amendment does not adversely affect in any material respect the interests of any Certificateholder or (B) the conclusion set forth in the preceding clause (A) is not required to be reached pursuant to this Section 10.01.

***Section 10.02 Recordation of Agreement; Counterparts.***

This Agreement is subject to recordation in all appropriate public offices for real property records in all the counties or other comparable jurisdictions in which any or all of the properties subject to the Mortgages are situated, and in any other appropriate public recording office or elsewhere, such recordation to be effected by the Master Servicer at its expense, but only upon receipt of an Opinion of Counsel to the effect that such recordation materially and beneficially affects the interests of the Certificateholders.

For the purpose of facilitating the recordation of this Agreement as herein provided and for other purposes, this Agreement may be executed simultaneously in any number of counterparts, each of which counterparts shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument.

***Section 10.03 Governing Law.***

THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HERETO AND THE CERTIFICATEHOLDERS SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

***Section 10.04 Intention of Parties.***

It is the express intent of the parties hereto that the conveyance (i) of the Mortgage Loans by the Seller to the Depositor and (ii) of the Trust Fund by the Depositor to the Trustee each be, and be construed as, an absolute sale thereof. It is, further, not the intention of the parties that such conveyances be deemed a pledge thereof. However, if, notwithstanding the intent of the parties, the assets are held to be the property of the Seller or Depositor, as the case may be, or if for any other reason this Agreement is held or deemed to create a security interest in either such assets, then (i) this Agreement shall be deemed to be a security agreement within the meaning of the UCC and (ii) the conveyances provided for in this Agreement shall be deemed to be an assignment and a grant (i) by the Seller to the Depositor or (ii) by the Depositor to the Trustee, for the benefit of the Certificateholders, of a security interest in all of the assets transferred, whether now owned or hereafter acquired.

The Seller and the Depositor for the benefit of the Certificateholders shall, to the extent consistent with this Agreement, take such actions as may be necessary to ensure that, if this Agreement were deemed to create a security interest in the Trust Fund, such security interest would be deemed to be a perfected security interest of first priority under applicable law and will be maintained as such throughout the term of the Agreement. The Depositor shall arrange for filing any Uniform Commercial Code continuation statements in connection with any security interest granted or assigned to the Trustee for the benefit of the Certificateholders.

***Section 10.05 Notices.***

(a) The Trustee shall use its best efforts to promptly provide notice to each Rating Agency with respect to each of the following of which it has actual knowledge:

1. Any material change or amendment to this Agreement;

2. The occurrence of any Event of Default that has not been cured;

3. The resignation or termination of the Master Servicer or the Trustee and the appointment of any successor;

4. The repurchase or substitution of Mortgage Loans pursuant to Section 2.03; and

5. The final payment to Certificateholders.

In addition, the Trustee shall promptly furnish to each Rating Agency copies of the following:

1. Each report to Certificateholders described in Section 4.06;

2. Each annual statement as to compliance described in Section 3.17;

3. Each annual independent public accountants' servicing report described in Section 3.18; and

4. Any notice of a purchase of a Mortgage Loan pursuant to Section 2.02, 2.03 or 3.11.

(b) All directions, demands and notices hereunder shall be in writing and shall be deemed to have been duly given when delivered to (a) in the case of the Depositor, IndyMac MBS, Inc., 155 North Lake Avenue, Pasadena, California 91101, Attention: John Olinski; (b) in the case of the Master Servicer, IndyMac Bank, F.S.B., 155 North Lake Avenue, Pasadena, California 91101, Attention: Michael W. Perry or such other address as may be hereafter furnished to the Depositor and the Trustee by the Master Servicer in writing; (c) in the case of the Trustee to the Corporate Trust Office, Deutsche Bank National Trust Company, 1761 East St. Andrew Place, Santa Ana, California 92705-4934, Attention: Mortgage Administration IN05AC, Series 2005-AR12, or such other address as the Trustee may hereafter furnish to the Depositor or Master Servicer and (d) in the case of each of the Rating Agencies, the address specified therefor in the definition corresponding to the name of such Rating Agency. Notices to Certificateholders shall be deemed given when mailed, first class postage prepaid, to their respective addresses appearing in the Certificate Register.

***Section 10.06 Severability of Provisions.***

If any one or more of the covenants, agreements, provisions or terms of this Agreement shall be for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement or of the Certificates or the rights of the Holders thereof.

***Section 10.07 Assignment***

Notwithstanding anything to the contrary contained in this Agreement, except as provided in Section 6.02, this Agreement may not be assigned by the Master Servicer without the prior written consent of the Trustee and Depositor.

***Section 10.08 Limitation on Rights of Certificateholders.***

The death or incapacity of any Certificateholder shall not operate to terminate this Agreement or the trust created by this Agreement, nor entitle such Certificateholder's legal representative or heirs to claim an accounting or to take any action or commence any proceeding in any court for a petition or winding up of the trust created hereby, or otherwise affect the rights, obligations and liabilities of the parties to this Agreement or any of them.

No Certificateholder shall have any right to vote (except as provided in this Agreement) or in any manner otherwise control the operation and management of the Trust Fund, or the obligations of the parties to this Agreement, nor shall anything herein set forth or contained in the terms of the Certificates be construed so as to constitute the Certificateholders from time to time as partners or members of an association; nor shall any Certificateholder be under any liability to any third party because of any action taken by the parties to this Agreement pursuant to any provision of this Agreement.

No Certificateholder shall have any right by virtue or by availing itself of any provisions of this Agreement to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Agreement, unless such Holder previously shall have given to the Trustee a written notice of an Event of Default and of the continuance thereof, as provided in this Agreement, and unless the Holders of Certificates evidencing not less than 25% of the Voting Rights evidenced by the Certificates shall also have made written request to the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after its receipt of such notice, request and offer of indemnity shall have neglected or refused to institute any such action, suit or proceeding; it being understood and intended, and being expressly covenanted by each Certificateholder with every other Certificateholder and the Trustee, that no one or more Holders of Certificates shall have any right in any manner whatever by virtue or by availing itself or themselves of any provisions of this Agreement to affect, disturb or prejudice the rights of the Holders of any other of the Certificates, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this Agreement, except in the manner herein provided and for the common benefit of all Certificateholders. For the protection and enforcement of this Section 10.08, each Certificateholder and the Trustee shall be entitled to any relief that can be given either at law or in equity. As long as any Voting Rights are held by parties other than the Seller, its Affiliates, or its agents, Voting Rights of Certificates held by the Seller, its Affiliates or its agents, as the Seller shall certify to the Trustee upon any entity obtaining such ownership, will be excluded from participating in such voting arrangements, and excluded from determining the 25% threshold.

***Section 10.09 Inspection and Audit Rights.***

The Master Servicer agrees that, on reasonable prior notice, it will permit any representative of the Depositor or the Trustee during the Master Servicer's normal business hours, to examine all the books of account, records, reports and other papers of the Master Servicer relating to the Mortgage Loans, to make copies and extracts therefrom, to cause such books to be audited by independent certified public accountants selected by the Depositor or the Trustee and to discuss its affairs, finances and accounts relating to the Mortgage Loans with its officers, employees and independent public accountants (and by this provision the Master Servicer hereby authorizes said accountants to discuss with such representative such affairs, finances and accounts), all at such reasonable times and as often as may be reasonably requested. Any out-of-pocket expense incident to the exercise by the Depositor or the Trustee of any right under this Section 10.09 shall be borne by the party requesting such inspection; all other such expenses shall be borne by the Master Servicer or the Subservicer.

***Section 10.10 Certificates Nonassessable and Fully Paid.***

It is the intention of the Depositor that Certificateholders shall not be personally liable for obligations of the Trust Fund, that the interests in the Trust Fund represented by the Certificates shall be nonassessable for any reason whatsoever, and that the Certificates, upon due authentication thereof by the Trustee pursuant to this Agreement, are and shall be deemed fully paid.

***Section 10.11 Official Record.***

The Seller agrees that this Agreement is and shall remain at all times before the time at which this Agreement terminates an official record of the Seller as referred to in Section 13(e) of the Federal Deposit Insurance Act.

***Section 10.12 Protection of Assets.***

(a) Except for transactions and activities entered into in connection with the securitization that is the subject of this Agreement, the trust created by this Agreement is not authorized and has no power to:

(1) borrow money or issue debt;

(2) merge with another entity, reorganize, liquidate or sell assets;

(3) engage in any business or activities.

(b) Each party to this Agreement agrees that it will not file an involuntary bankruptcy petition against the Trustee or the Trust Fund or initiate any other form of insolvency proceeding until after the Certificates have been paid in full.

***Section 10.13 Qualifying Special Purpose Entity.***

Notwithstanding any contrary provision of this Agreement, the Trust Fund shall not hold any property or engage in any activity that would disqualify the Trust Fund from being a qualifying special purpose entity under generally accepted accounting principles.

* * * * * *

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

INDYMAC MBS, INC.,
as Depositor

By: ____________________
Name: Isaac Carrillo
Title: Vice President

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: ____________________
Name:
Title:

By: ____________________
Name:
Title:

INDYMAC BANK, F.S.B.,
as Seller and Master Servicer

By: ____________________
Name: Isaac Carrillo
Title: Vice President

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

INDYMAC MBS, INC.,
as Depositor

By: ________________________
Name:
Title:

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By: ________________________
Name: BRENT HOYLER
Title: ASSOCIATE

By: ________________________
Name: Jennifer Hermansader
Title: Associate

INDYMAC BANK, F.S.B.,
as Seller and Master Servicer

By: ________________________
Name:
Title:

STATE OF CALIFORNIA )
: ss.:
COUNTY OF Los Angeles )

On this 6th day of June, 2005, before me, personally appeared Isaac Carrillo, known to me to be a Vice President of IndyMac MBS, Inc., one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[NOTARIAL SEAL]

REBECCA LEE
Commission # 1429631
Notary Public - California
Los Angeles County
My Comm. Expires Jul 10, 2007

STATE OF CALIFORNIA )
: ss.:
COUNTY OF Orange )

On this 3 day of June, 2005, before me, personally appeared Brent Hoyler and Jennifer Hermansader, known to me to be a Associate and a Associate, respectively, of Deutsche Bank National Trust Company, one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[NOTARIAL SEAL]

AMY LYNN STODDARD
Commission # 1466995
Notary Public - California
Orange County
My Comm. Expires Jan 31, 2008

STATE OF CALIFORNIA )
: ss.:
COUNTY OF Los Angeles )

On this 6th day of June, 2005, before me, personally appeared Isaac Carrillo, known to me to be a Vice President of IndyMac Bank, F.S.B., one of the entities that executed the within instrument, and also known to me to be the person who executed it on behalf of said entity, and acknowledged to me that such entity executed the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public

[NOTARIAL SEAL]

REBECCA LEE
Commission # 1429631
Notary Public - California
Los Angeles County
My Comm. Expires Jul 10, 2007

Schedule I

MORTGAGE LOAN SCHEDULE [DELIVERED AT CLOSING TO TRUSTEE]

Schedule II

INDYMAC MBS, INC. MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-AR12

***Representations and Warranties of the Seller/Master Servicer***

Indy Mac Bank, F.S.B. (“***IndyMac***”) hereby makes the representations and warranties set forth in this Schedule II to the Depositor and the Trustee, as of the Closing Date. Capitalized terms used but not otherwise defined in this Schedule II shall have the meanings assigned thereto in the Pooling and Servicing Agreement (the “***Pooling and Servicing Agreement***”) relating to the above-referenced Series, among IndyMac, as seller and master servicer, IndyMac MBS, Inc., as depositor, and Deutsche Bank National Trust Company, as trustee.

(1) IndyMac is duly organized as a federally insured savings bank and is validly existing and in good standing under the laws of the United States of America and is duly authorized and qualified to transact any business contemplated by the Pooling and Servicing Agreement to be conducted by IndyMac in any state in which a Mortgaged Property is located or is otherwise not required under applicable law to effect such qualification and, in any event, is in compliance with the doing business laws of any such state, to the extent necessary to ensure its ability to enforce each Mortgage Loan, to service the Mortgage Loans in accordance with the Pooling and Servicing Agreement and to perform any of its other obligations under the Pooling and Servicing Agreement in accordance with the terms thereof.

(2) IndyMac has the full corporate power and authority to sell and service each Mortgage Loan, and to execute, deliver and perform, and to enter into and consummate the transactions contemplated by the Pooling and Servicing Agreement and has duly authorized by all necessary corporate action on the part of IndyMac the execution, delivery and performance of the Pooling and Servicing Agreement; and the Pooling and Servicing Agreement, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes a legal, valid and binding obligation of IndyMac, enforceable against IndyMac in accordance with its terms, except that (a) the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, receivership and other similar laws relating to creditors’ rights generally and (b) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

(3) The execution and delivery of the Pooling and Servicing Agreement by IndyMac, the sale and servicing of the Mortgage Loans by IndyMac under the Pooling and Servicing Agreement, the consummation of any other of the transactions contemplated by the Pooling and Servicing Agreement, and the fulfillment of or compliance with the terms thereof are in the ordinary course of business of IndyMac and will not (A) result in a material breach of any term or provision of the charter or by-laws of IndyMac or (B) materially conflict with, result in a material breach, violation or acceleration of, or result in a material default under, any other material agreement or instrument to which IndyMac is a party or by which it may be bound, or (C) constitute a material violation of any statute, order or regulation applicable to IndyMac of any court, regulatory body, administrative agency or governmental body having jurisdiction over IndyMac (including the OTS, the Federal Deposit Insurance Corporation or any other governmental entity having regulatory authority over IndyMac); and IndyMac is not in breach or violation of any material indenture or other material agreement or instrument, or in violation of any statute, order or regulation of any court, regulatory body, administrative agency or

governmental body having jurisdiction over it (including the OTS, the Federal Deposit Insurance Corporation or any other governmental entity having regulatory authority over IndyMac) which breach or violation may materially impair IndyMac's ability to perform or meet any of its obligations under the Pooling and Servicing Agreement.

(4) IndyMac is an approved servicer of conventional mortgage loans for FNMA or FHLMC or is a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act.

(5) No litigation is pending or, to the best of IndyMac's knowledge, threatened against IndyMac that would prohibit the execution or delivery of, or performance under, the Pooling and Servicing Agreement by IndyMac.

(6) IndyMac is a member of MERS in good standing, and will comply in all material respects with the rules and procedures of MERS in connection with the servicing of the MERS Mortgage Loans for as long as such Mortgage Loans are registered with MERS.

(7) Notwithstanding any federal or state law to the contrary, the Master Servicer shall not impose such Prepayment Charge at any time when the mortgage is accelerated as a result of the borrower's default in making the scheduled payments.

(8) The Master Servicer will transmit full-file credit reporting data for each Mortgage Loan pursuant to Fannie Mae Guide Announcement 95-19 and that for each Mortgage Loan, Servicer agrees it shall report one of the following statuses each month as follows: new origination, current, delinquent (30-, 60-, 90-days, etc.), foreclosed, or charged-off.

Schedule III

INDYMAC MBS, INC.
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-AR12

***Representations and Warranties as to the Mortgage Loans***

IndyMac Bank, F.S.B. ("***IndyMac***") hereby makes the representations and warranties set forth in this Schedule III to the Depositor and the Trustee, as of the Closing Date or if so specified in this Schedule III, as of the Cut-off Date with respect to each Mortgage Loan. Capitalized terms used but not otherwise defined in this Schedule III shall have the meanings assigned to them in the Pooling and Servicing Agreement (the "***Pooling and Servicing Agreement***") relating to the above-referenced Series, among IndyMac, as seller and master servicer, IndyMac MBS, Inc., as depositor, and Deutsche Bank National Trust Company, as trustee.

(1) The information set forth on Schedule I to the Pooling and Servicing Agreement with respect to each Mortgage Loan is true and correct in all material respects as of the Closing Date.

(2) All regularly scheduled monthly payments due with respect to each Mortgage Loan up to and including the Due Date before the Cut-off Date have been made; and as of the Cut-off Date, no Mortgage Loan had a regularly scheduled monthly payment that was 60 or more days Delinquent during the twelve months before the Cut-off Date.

(3) With respect to any Mortgage Loan that is not a Cooperative Loan, each Mortgage is a valid and enforceable first lien on the Mortgaged Property subject only to (a) the lien of nondelinquent current real property taxes and assessments and liens or interests arising under or as a result of any federal, state or local law, regulation or ordinance relating to hazardous wastes or hazardous substances and, if the related Mortgaged Property is a unit in a condominium project or planned unit development, any lien for common charges permitted by statute or homeowner association fees, (b) covenants, conditions and restrictions, rights of way, easements and other matters of public record as of the date of recording of such Mortgage, such exceptions appearing of record being generally acceptable to mortgage lending institutions in the area wherein the related Mortgaged Property is located or specifically reflected in the appraisal made in connection with the origination of the related Mortgage Loan, and (c) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by such Mortgage.

(4) Immediately before the assignment of the Mortgage Loans to the Depositor, the Seller had good title to, and was the sole owner of, each Mortgage Loan free and clear of any pledge, lien, encumbrance or security interest and had full right and authority, subject to no interest or participation of, or agreement with, any other party, to sell and assign the same pursuant to the Pooling and Servicing Agreement.

(5) There was no delinquent tax or assessment lien against the related Mortgaged Property.

(6) There is no valid offset, defense or counterclaim to any Mortgage Note or Mortgage, including the obligation of the Mortgagor to pay the unpaid principal of or interest on such Mortgage Note.

(7) There are no mechanics' liens or claims for work, labor or material affecting any Mortgaged Property which are or may be a lien prior to or equal with, the lien of such Mortgage, except those which are insured against by the title insurance policy referred to in item (11) below.

(8) No Mortgaged Property has been materially damaged by water, fire, earthquake, windstorm, flood, tornado or similar casualty (excluding casualty from the presence of hazardous wastes or hazardous substances, as to which the Seller makes no representation) so as to affect adversely the value of the related Mortgaged Property as security for the Mortgage Loan.

(9) Each Mortgage Loan and Prepayment Charge, if any, associated with each Mortgage Loan at origination complied in all material respects with applicable local, state and federal laws and regulations, including usury, equal credit opportunity, real estate settlement procedures, truth-in-lending, and disclosure laws, or any noncompliance does not have a material adverse effect on the value of the related Mortgage Loan.

(10) The Seller has not modified the Mortgage in any material respect (except that a Mortgage Loan may have been modified by a written instrument which has been recorded or submitted for recordation, if necessary, to protect the interests of the Certificateholders and which has been delivered to the Trustee); satisfied, cancelled or subordinated such Mortgage in whole or in part; released the related Mortgaged Property in whole or in part from the lien of such Mortgage; or executed any instrument of release, cancellation, modification or satisfaction with respect thereto.

(11) A lender's policy of title insurance together with a condominium endorsement and extended coverage endorsement, if applicable, and negative amortization endorsement in an amount at least equal to the Cut-off Date Principal Balance of each such Mortgage Loan or a commitment (binder) to issue the same was effective on the date of the origination of each Mortgage Loan and each such policy is valid and remains in full force and effect.

(12) Each Mortgage Loan was originated (within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934, as amended) by an entity that satisfied at the time of origination the requirements of Section 3(a)(41) of the Securities Exchange Act of 1934, as amended.

(13) To the best of the Seller's knowledge, all of the improvements which were included for the purpose of determining the Appraised Value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of such property, and no improvements on adjoining properties encroach upon the Mortgaged Property, unless such failure to be wholly within such boundaries and restriction lines or such encroachment, as the case may be, does not have a material effect on the value of the Mortgaged Property.

(14) To the best of the Seller's knowledge, as of the date of origination of each Mortgage Loan, no improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning law or regulation unless such violation would not have a material adverse effect on the value of the related Mortgaged Property. To the best of the Seller's knowledge, all inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities, unless the lack thereof would not have a material adverse effect on the value of the Mortgaged Property.

(15) The Mortgage Note and the related Mortgage are genuine, and each is the legal, valid and binding obligation of the maker thereof, enforceable in accordance with its terms and under applicable law.

(16) The proceeds of the Mortgage Loan have been fully disbursed and there is no requirement for future advances thereunder.

(17) The related Mortgage contains customary and enforceable provisions which render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure.

(18) With respect to each Mortgage constituting a deed of trust, a trustee, duly qualified under applicable law to serve as such, has been properly designated and currently so serves and is named in such Mortgage, and no fees or expenses are or will become payable by the Certificateholders to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

(19) At the Cut-off Date, the improvements upon each Mortgaged Property are covered by a valid and existing hazard insurance policy with a generally acceptable carrier that provides for fire and extended coverage and coverage for such other hazards as are customarily required by institutional single family mortgage lenders in the area where the Mortgaged Property is located, and the Seller has received no notice that any premiums due and payable thereon have not been paid; the Mortgage obligates the Mortgagor thereunder to maintain all such insurance including flood insurance at the Mortgagor's cost and expense. Anything to the contrary in this item (19) notwithstanding, no breach of this item (19) shall be deemed to give rise to any obligation of the Seller to repurchase or substitute for such affected Mortgage Loan or Loans so long as the Master Servicer maintains a blanket policy pursuant to the second paragraph of Section 3.10(a) of the Pooling and Servicing Agreement.

(20) If at the time of origination of each Mortgage Loan, the related Mortgaged Property was in an area then identified in the Federal Register by the Federal Emergency Management Agency as having special flood hazards, a flood insurance policy in a form meeting the then-current requirements of the Flood Insurance Administration is in effect with respect to the Mortgaged Property with a generally acceptable carrier.

(21) To the best of the Seller's knowledge, there is no proceeding pending or threatened for the total or partial condemnation of any Mortgaged Property, nor is such a proceeding currently occurring.

(22) To the best of the Seller's knowledge, there is no material event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a material non-monetary default, breach, violation or event of acceleration under the Mortgage or the related Mortgage Note; and the Seller has not waived any material non-monetary default, breach, violation or event of acceleration.

(23) Each Mortgage File contains an appraisal of the related Mortgaged Property in a form acceptable to FNMA or FHLMC. Appraisal Form 1004 or Form 2055 has been obtained.

(24) Any leasehold estate securing a Mortgage Loan has a stated term at least as long as the term of the related Mortgage Loan.

(25) Each Mortgage Loan was selected from among the outstanding one- to four-family mortgage loans in the Seller's portfolio at the Closing Date as to which the representations and warranties made with respect to the Mortgage Loans set forth in this Schedule III can be made. No such selection was made in a manner intended to adversely affect the interests of the Certificateholders.

(26) None of the Mortgage Loans are Cooperative Loans.

(27) [Reserved].

(28) None of the Mortgage Loans is a "high cost" loan, "covered" loan (excluding home loans defined as "covered home loans" in the New Jersey Home Ownership Security Act of 2002 that were originated between November 26, 2003 and July 7, 2004), "high risk home" or "predatory" loan or any other similarly designated loan as defined under any state, local or federal law, as defined by applicable predatory and abusing lending laws.

(29) Each Mortgage Loan at the time it was made complied in all material respects with applicable local, state, and federal laws, including, but not limited to, all applicable predatory and abusive lending laws.

(30) The information set forth in the Prepayment Charge Schedule is complete, true and correct in all material respects at the date or dates on which such information is furnished, and each Prepayment Charge is permissible and enforceable in accordance with its terms upon the Mortgagor's full and voluntary Principal Prepayment under applicable law, except to the extent that (x) the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, receivership and other similar laws relating to creditors' rights; (y) the collectability thereof may be limited due to acceleration in connection with a foreclosure or other involuntary prepayment; or (z) subsequent changes in applicable law may limit or prohibit enforceability thereof;

(31) No proceeds from any Mortgage Loan underlying the Certificates were used to finance single-premium credit insurance policies.

(32) None of the Mortgage Notes related to the Mortgage Loans impose a Prepayment Charge on the related Mortgage Loan for a term in excess of three years from the origination of the Mortgage Loan.

(33) [Reserved].

(34) No Mortgage Loan is subject to the requirements of the Home Ownership and Equity Protection Act of 1994.

(35) No borrower was encouraged or required to select a Mortgage Loan product offered by the Mortgage Loan's originator that is a higher cost product designed for less creditworthy borrowers, unless at the time of the Mortgage Loan's origination, such borrower did not qualify taking into account credit history and debt-to-income ratios, for a lower-cost credit product then offered by the Seller or any affiliate of the Seller. If, at the time of loan application, the borrower may have qualified for a lower-cost credit product then offered by any mortgage lending affiliate of the Seller, the Seller referred the borrower's application to such affiliate for underwriting consideration.

(36) The methodology used in underwriting the extension of credit for each Mortgage Loan employs objective mathematical principles that relate the borrower's income, assets and liabilities to the proposed payment and such underwriting methodology does not rely on the extent of the borrower's equity in the collateral as the principal determining factor in approving such credit extension. Such underwriting methodology confirmed that at the time of origination (application/approval) the borrower had a reasonable ability to make timely payments on the Mortgage Loan.

(37) With respect to any Mortgage Loan that contains a provision permitting imposition of a premium upon a prepayment prior to maturity: (i) prior to the Mortgage Loan's origination, the borrower agreed to such premium in exchange for a monetary benefit, including but not limited to an interest rate or fee reduction, (ii) prior to the Mortgage Loan's origination, the borrower was offered the option of obtaining a mortgage loan that did not require payment of such a premium, (iii) the Prepayment Charge is disclosed to the borrower in the loan documents pursuant to applicable state and federal law and (iv) for Mortgage Loans originated on or after September 1, 2004, the duration of the prepayment period shall not exceed three years from the date of the Mortgage Note, unless the Mortgage Loan was modified to reduce the prepayment period to no more than three years from the date of the Mortgage Note and the borrower was notified in writing of such reduction in the prepayment period.

(38) No borrower was required to purchase any credit life, disability, accident or health insurance product as a condition of obtaining the extension of credit. No borrower obtained a prepaid single-premium credit life, credit disability, credit unemployment, credit property, disability, accident or health insurance policy in connection with the origination of the Mortgage Loan; no proceeds from any Mortgage Loan were used to purchase single premium credit insurance policies as part of the origination of, or as a condition to closing, such Mortgage Loan.

(39) All points and fees related to each Mortgage Loan were disclosed in writing to the borrower in accordance with applicable state and federal law and regulation. Except in the case of a Mortgage Loan in an original principal amount of less than $60,000 that would have resulted in an unprofitable origination, no borrower was charged "points and fees" (whether or not financed) in an amount greater than 5% of the principal amount of such loan, such 5% limitation calculated in accordance with Fannie Mae's anti-predatory lending requirements as set forth in the Fannie Mae Selling Guide.

(40) All fees and charges (including finance charges), whether or not financed, assessed, collected or to be collected in connection with the origination and servicing of each Mortgage Loan has been disclosed in writing to the borrower in accordance with applicable state and federal law and regulation.

(41) Each Mortgage Loan was in compliance with the anti-predatory lending eligibility for purchase requirements of Fannie Mae's Selling Guide.

(42) No Mortgage Loan is a "High-Cost Home Loan" as defined in any of the following statutes: the Georgia Fair Lending Act, as amended (the "***Georgia Act***"), the New York Banking Law 6-1, the Arkansas Home Loan Protection Act effective July 16, 2003 (Act 1340 of 2003), the Kentucky high-cost home loan statute effective June 24, 2003 (Ky. Rev. Stat. Section 360.100), the New Jersey Home Ownership Act effective November 27, 2003 (N.J.S.A. 46:10B-22 et seq.), or the New Mexico Home Loan Protection Act effective January 1, 2004 (N.M. Stat. Ann §§ 58-21A-1 et seq.). With respect to any Mortgage Loan subject to the Georgia Act and secured by owner occupied real property or an owner occupied manufactured home located in the

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Part 2 of 2 Page 58 of 174

state of Georgia and originated (or modified) on or after October 1, 2002 through and including March 7, 2003, such Mortgage Loan was originated by IndyMac. No Mortgage Loan is a “High-Risk Home Loan” as defined in the Illinois High-Risk Home Loan Act effective January 1, 2004 (815 Ill. Comp. Stat. 137/1 et seq.). No Mortgage Loan is a “High-Cost Home Mortgage Loan” as defined in Massachusetts Predatory Home Loan Practices Act, effective November 6, 2004 (Mass. Ann. Laws Ch. 183C). None of the Mortgage Loans that are secured by property located in the State of Illinois are in violation of the provisions of the Illinois Interest Act (815 Ill. Comp. Stat. 205/1 et. seq.).

(43) Each Group 1 Mortgage Loan had a principal balance at origination that conformed to Fannie Mae and Freddie Mac guidelines.

(44) Each Mortgage Loan has been underwritten and serviced substantially in accordance with the Seller’s guidelines, subject to such variances as are reflected on the Mortgage Loan Schedule or that the Seller has approved.

(45) No Mortgage Loan is a High Cost Loan or Covered Loan, as applicable (as such terms are defined in the then-current version of Standard & Poor's LEVELS® Glossary, which is now Version 5.6 Revised, Appendix E) and no Mortgage Loan originated on or after Oct. 1, 2002 through March 6, 2003 is governed by the Georgia Fair Lending Act.

(46) The Pooling and Servicing Agreement creates a valid and continuing “security interest” (as defined in Section 1-201(37) of the UCC) in each Mortgage Note in favor of the Trustee, which security interest is prior to all other liens and is enforceable as such against creditors of and purchasers from the Depositor. Each Mortgage Note constitutes “promissory notes” (as defined in Section 9-102(a)(65) of the UCC). Immediately before the assignment of each Mortgage Note to the Trustee, the Depositor had good and marketable title to such Mortgage Note free and clear of any lien, claim, encumbrance of any Person. All original executed copies of each Mortgage Note have been or shall be delivered to the Trustee within five Business Days following the Closing Date. Other than the security interest granted to the Trustee, the Depositor has not pledged, assigned, sold, granted a security interest in, or otherwise conveyed any Mortgage Note. The Depositor has not authorized the filing of and is not aware of any financing statements against the Depositor that include a description of any of the Mortgage Notes. The Depositor is not aware of any judgment or tax liens filed against the Depositor. None of the Mortgage Notes has any marks or notations indicating that they have been pledged, assigned or otherwise conveyed to any Person other than the Trustee.

(47) To the best of seller’s knowledge, there was no fraud involved in the origination of any Mortgage Loan by the mortgagee or by the Mortgagor, any appraiser or any other party involved in the origination of the Mortgage Loan.

(48) The Master Servicer has fully furnished, in accordance with the Fair Credit Reporting Act and its implement regulations, accurate and complete information (i.e., favorable and unfavorable) on the credit files for the related Mortgagor for each Group 1 Mortgage Loan to Equifax, Experian and Trans Union Credit Information Company on a monthly basis.

(49) Each Group 1 Mortgage Loan is a “qualified mortgage” under Section 860G(a)(3) of the Code.

(50) With respect to any Group 1 Mortgage Loan originated on or after August 1, 2004, neither the related Mortgage nor the related Mortgage Note requires the borrower to submit

to arbitration to resolve any dispute arising out of or relating in any way to the Group 1 Mortgage Loan transaction.

Schedule IV

INDYMAC MBS, INC.
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2005-AR12

***Form of Monthly Report***

EXHIBIT A

[FORM OF SENIOR CERTIFICATE (other than Notional Amount Certificates)]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A “REGULAR INTEREST” IN A “REAL ESTATE MORTGAGE INVESTMENT CONDUIT,” AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”).

| | | |
|---|---|---|
| Certificate No. | : | |
| Cut-off Date | : | |
| First Distribution Date | : | |
| Initial Certificate Balance of this Certificate (“Denomination”) | : | $ |
| Initial Certificate Balances of all Certificates of this Class | : | $ |
| CUSIP | : | |
| Interest Rate | : | % |
| Maturity Date | : | |

INDYMAC MBS, INC.
IndyMac INDX Mortgage Loan Trust 200_-_
Mortgage Pass-Through Certificates, Series 200_-_
Class [__]

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class with respect to a Trust Fund consisting primarily of a pool of conventional mortgage loans (the “Mortgage Loans”) secured by first liens on one- to four-family residential properties.

IndyMac MBS, Inc., as Depositor

Principal in respect of this Certificate is distributable monthly as set forth herein or in the Agreement (defined below). Accordingly, the Certificate Balance at any time may be less than the Certificate Balance as set forth herein. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Seller, the Master Servicer or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that ________________ is the registered owner of the Percentage Interest evidenced by this Certificate (obtained by dividing the denomination of this Certificate by the aggregate Initial Certificate Balances of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions with respect to a Trust Fund consisting primarily of the Mortgage Loans deposited by IndyMac MBS, Inc. (the “Depositor”). The Trust Fund was created pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the “Agreement”) among the Depositor, IndyMac Bank, F.S.B., as seller (in such capacity, the “Seller”) and as master servicer (in such capacity, the “Master Servicer”), and Deutsche Bank National Trust Company, as trustee (the “Trustee”). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: ____________, 20__

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By ______________________

Countersigned:

By ____________________________
Authorized Signatory of
DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

EXHIBIT B

[FORM OF SUBORDINATED CERTIFICATE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A “REGULAR INTEREST” IN A “REAL ESTATE MORTGAGE INVESTMENT CONDUIT,” AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”).

THIS CERTIFICATE IS SUBORDINATED IN RIGHT OF PAYMENT TO CERTAIN CERTIFICATES AS DESCRIBED IN THE AGREEMENT REFERRED TO HEREIN.

[THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”). ANY RESALE OR TRANSFER OF THIS CERTIFICATE WITHOUT REGISTRATION THEREOF UNDER THE ACT MAY ONLY BE MADE IN A TRANSACTION EXEMPTED FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN.]

[NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE TRANSFEREE REPRESENTS TO THE TRUSTEE THAT SUCH TRANSFEREE IS NOT AND IS NOT INVESTING ON BEHALF OF OR WITH PLAN ASSETS OF AN EMPLOYEE BENEFIT PLAN SUBJECT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), OR A PLAN SUBJECT TO SECTION 4975 OF THE CODE, OR, IF THE CERTIFICATE HAS BEEN THE SUBJECT OF AN ERISA-QUALIFYING UNDERWRITING, DELIVERS A REPRESENTATION IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN, OR DELIVERS TO THE TRUSTEE AN OPINION OF COUNSEL IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, ANY PURPORTED TRANSFER OF THIS CERTIFICATE TO OR ON BEHALF OF AN EMPLOYEE BENEFIT PLAN SUBJECT TO ERISA OR TO SECTION 4975 OF THE CODE WITHOUT THE OPINION OF COUNSEL SATISFACTORY TO THE TRUSTEE AS DESCRIBED ABOVE SHALL BE VOID AND OF NO EFFECT.]

| | | |
|---|---|---|
| Certificate No. | : | |
| Cut-off Date | : | |
| First Distribution Date | : | |
| Initial Certificate Balance of this Certificate (“Denomination”) | : | $ |
| Initial Certificate Balances of all Certificates of this Class | : | $ |
| CUSIP | : | |

INDYMAC MBS, INC.
IndyMac INDX Mortgage Loan Trust 200_-_
Mortgage Pass-Through Certificates, Series 200_-_
Class [___]

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class with respect to a Trust Fund consisting primarily of a pool of conventional mortgage loans (the “Mortgage Loans”) secured by first liens on one- to four-family residential properties.

IndyMac MBS, Inc., as Depositor

Principal in respect of this Certificate is distributable monthly as set forth herein or in the Agreement (defined below). Accordingly, the Certificate Balance at any time may be less than the Certificate Balance as set forth herein. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Seller, the Master Servicer or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that _________________ is the registered owner of the Percentage Interest evidenced by this Certificate (obtained by dividing the denomination of this Certificate by the aggregate Initial Certificate Balances of the denominations of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions with respect to a Trust Fund consisting primarily of the Mortgage Loans deposited by IndyMac MBS, Inc. (the “Depositor”). The Trust Fund was created pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the “Agreement”) among the Depositor, IndyMac Bank, F.S.B., as seller (in such capacity, the “Seller”), and as master servicer (in such capacity, the “Master Servicer”), and Deutsche Bank National Trust Company, as trustee (the “Trustee”). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

[No transfer of a Certificate of this Class shall be made unless such transfer is made pursuant to an effective registration statement under the Securities Act and any applicable state securities laws or is exempt from the registration requirements under said Act and such laws. In the event that a transfer is to be made in reliance upon an exemption from the Securities Act and such laws, in order to assure compliance with the Securities Act and such laws, the Certificateholder desiring to effect such transfer and such Certificateholder's prospective transferee shall each certify to the Trustee in writing the facts surrounding the transfer. In the event that such a transfer is to be made within three years from the date of the initial issuance of Certificates pursuant hereto, there shall also be delivered (except in the case of a transfer pursuant to Rule 144A of the Securities Act) to the Trustee an Opinion of Counsel that such transfer may be made pursuant to an exemption from the Securities Act and such state securities laws, which Opinion of Counsel shall not be obtained at the expense of the Trustee, the Seller, the Master Servicer or the Depositor. The Holder hereof desiring to effect such transfer shall, and does hereby agree to, indemnify the Trustee and the Depositor against any liability that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws.]

[No transfer of a Certificate of this Class shall be made unless the Trustee shall have received either (i) a representation [letter] from the transferee of such Certificate, acceptable to and in form and substance satisfactory to the Trustee, to the effect that such transferee is not an employee benefit plan or other benefit plan subject to Section 406 of ERISA or Section 4975 of the Code, or a person acting on behalf of or investing plan assets of any such plan, which representation letter shall not be an expense of the Trustee or the Master Servicer, (ii) if the Certificate has been the subject of an ERISA-Qualifying Underwriting, a representation that the transferee is an insurance company which is purchasing such Certificate with funds contained in an "insurance company general account" (as such term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 ("PTCE 95-60")) and that the purchase and holding of such Certificate are covered under Sections I and III of PTCE 95-60 or (iii) in the case of any such Certificate presented for registration in the name of an employee benefit plan subject to ERISA or Section 4975 of the Code (or comparable provisions of any subsequent enactments), or a trustee of any such plan or any other person acting on behalf of any such plan, an Opinion of Counsel satisfactory to the Trustee and addressed to the Trustee and the Master Servicer to the effect that the purchase and holding of such Certificate will not result in a nonexempt prohibited transaction under ERISA or Section 4975 of the Code and will not subject the Trustee or the Master Servicer to any obligation in addition to those undertaken in the Agreement, which Opinion of Counsel shall not be an expense of the Trustee, the Master Servicer or the Trust Fund. Notwithstanding anything else to the contrary herein, any purported transfer of a Certificate of this Class to or on behalf of an employee benefit plan subject to ERISA or to Section 4975 of the Code without the opinion of counsel satisfactory to the Trustee as described above shall be void and of no effect.]

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: ____________, 20__

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By ______________________

Countersigned:

By ____________________________
Authorized Signatory of
DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

EXHIBIT C

[FORM OF CLASS A-R CERTIFICATE]

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A "RESIDUAL INTEREST" IN A "REAL ESTATE MORTGAGE INVESTMENT CONDUIT," AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE").

NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE PROPOSED TRANSFEREE DELIVERS TO THE TRUSTEE A TRANSFER AFFIDAVIT IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN.

NEITHER THIS CERTIFICATE NOR ANY INTEREST HEREIN MAY BE TRANSFERRED UNLESS THE TRANSFEREE REPRESENTS TO THE TRUSTEE THAT SUCH TRANSFEREE IS NOT AND IS NOT INVESTING ON BEHALF OF OR WITH PLAN ASSETS OF AN EMPLOYEE BENEFIT PLAN SUBJECT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR A PLAN SUBJECT TO SECTION 4975 OF THE CODE, OR, IF SUCH PURCHASER IS AN INSURANCE COMPANY, DELIVERS A REPRESENTATION IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN, OR DELIVERS TO THE TRUSTEE AN OPINION OF COUNSEL IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT REFERRED TO HEREIN. NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, ANY PURPORTED TRANSFER OF THIS CERTIFICATE TO OR ON BEHALF OF AN EMPLOYEE BENEFIT PLAN SUBJECT TO ERISA OR TO SECTION 4975 OF THE CODE WITHOUT THE OPINION OF COUNSEL SATISFACTORY TO THE TRUSTEE AS DESCRIBED ABOVE SHALL BE VOID AND OF NO EFFECT.

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| | | |
|---|---|---|
| Certificate No. | : | |
| Cut-off Date | : | |
| First Distribution Date | : | |
| Initial Certificate Balance of this Certificate (“Denomination”) | : | $ |
| Initial Certificate Balances of all Certificates of this Class | : | $ |
| CUSIP | : | |

INDYMAC MBS, INC.
IndyMac INDX Mortgage Loan Trust 200_-_
Mortgage Pass-Through Certificates, Series 200_-_

evidencing the distributions allocable to the Class A-R Certificates with respect to a Trust Fund consisting primarily of a pool of conventional mortgage loans (the “Mortgage Loans”) secured by first liens on one- to four-family residential properties.

IndyMac MBS, Inc., as Depositor

Principal in respect of this Certificate is distributable monthly as set forth herein or in the Agreement (defined below). Accordingly, the Certificate Balance at any time may be less than the Certificate Balance as set forth herein. This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Seller, the Master Servicer or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

This certifies that ________________ is the registered owner of the Percentage Interest (obtained by dividing the denomination of this Certificate by the aggregate Initial Certificate Balances of the denominations of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions with respect to a Trust Fund consisting of the Mortgage Loans deposited by IndyMac MBS, Inc. (the “Depositor”). The Trust Fund was created pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the “Agreement”) among the Depositor, IndyMac Bank, F.S.B., as seller (in such capacity, the “Seller”) and as master servicer (in such capacity, the “Master Servicer”), and Deutsche Bank National Trust Company, as trustee (the “Trustee”). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

Any distribution of the proceeds of any remaining assets of the Trust Fund will be made only upon presentment and surrender of this Class A-R Certificate at the Corporate Trust Office or the office or agency maintained by the Trustee in New York, New York.

No transfer of a Class A-R Certificate shall be made unless the Trustee shall have received either (i) a representation letter from the transferee of such Certificate, acceptable to and in form and substance satisfactory to the Trustee, to the effect that such transferee is not an employee benefit plan or other benefit plan subject to Section 406 of ERISA or Section 4975 of the Code, or a person investing on behalf of or with plan assets of any such plan, which representation letter shall not be an expense of the Trustee or the Master Servicer, (ii) a representation that the purchaser is an insurance company which is purchasing such Certificate with funds contained in an “insurance company general account” (as such term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 (“PTCE 95-60”)) and that the purchase and holding of such Certificate are covered under Sections I and III of PTCE 95-60 or (iii) in the case of any such Certificate presented for registration in the name of an employee benefit plan subject to ERISA or Section 4975 of the Code (or comparable provisions of any subsequent enactments), or a trustee of any such plan or any other person acting on behalf of any such plan, an Opinion of Counsel satisfactory to the Trustee and addressed to the Trustee and the Master Servicer to the effect that the purchase and holding of such Class A-R Certificate will not result in a nonexempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code and will not subject the Trustee or the Master Servicer to any obligation in addition to those undertaken in the Agreement, which Opinion of Counsel shall not be an expense of the Trustee, the Master Servicer or the Trust Fund. Notwithstanding anything else to the contrary herein, any purported transfer of a Class A-R Certificate to or on behalf of an employee benefit plan subject to ERISA or to the Code without the opinion of counsel satisfactory to the Trustee as described above shall be void and of no effect.

Each Holder of this Class A-R Certificate will be deemed to have agreed to be bound by the restrictions of the Agreement, including but not limited to the restrictions that (i) each person holding or acquiring any Ownership Interest in this Class A-R Certificate must be a Permitted Transferee, (ii) no Ownership Interest in this Class A-R Certificate may be transferred without delivery to the Trustee of (a) a transfer affidavit of the proposed transferee and (b) a transfer certificate of the transferor, each of such documents to be in the form described in the Agreement, (iii) each person holding or acquiring any Ownership Interest in this Class A-R Certificate must agree to require a transfer affidavit and to deliver a transfer certificate to the Trustee as required pursuant to the Agreement, (iv) each person holding or acquiring an Ownership Interest in this Class A-R Certificate must agree not to transfer an Ownership Interest in this Class A-R Certificate if it has actual knowledge that the proposed transferee is not a Permitted Transferee and (v) any attempted or purported transfer of any Ownership Interest in this Class A-R Certificate in violation of such restrictions will be absolutely null and void and will vest no rights in the purported transferee.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: ____________, 20__

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By ______________________

Countersigned:

By ___________________________
Authorized Signatory of
DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

EXHIBIT D

[FORM OF NOTIONAL AMOUNT CERTIFICATE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES, THIS CERTIFICATE IS A “REGULAR INTEREST” IN A “REAL ESTATE MORTGAGE INVESTMENT CONDUIT,” AS THOSE TERMS ARE DEFINED, RESPECTIVELY, IN SECTIONS 860G AND 860D OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”).

THIS CERTIFICATE HAS NO PRINCIPAL BALANCE AND IS NOT ENTITLED TO ANY DISTRIBUTIONS IN RESPECT OF PRINCIPAL.

| | | |
|---|---|---|
| Certificate No. | : | |
| Cut-off Date | : | |
| First Distribution Date | : | |
| Initial Notional Amount of this Certificate (“Denomination”) | : | |
| Initial Notional Amount of all Certificates of this Class | : | |
| CUSIP | : | |
| Interest Rate | : | % |
| Maturity Date | : | |

INDYMAC MBS, INC.
IndyMac INDX Mortgage Loan Trust 200_-_
Mortgage Pass-Through Certificates, Series 200_-_
Class [__]

evidencing a percentage interest in the distributions allocable to the Certificates of the above-referenced Class with respect to a Trust Fund consisting primarily of a pool of conventional mortgage loans (the “Mortgage Loans”) secured by first liens on one- to four-family residential properties.

IndyMac MBS, Inc., as Depositor

This Certificate does not evidence an obligation of, or an interest in, and is not guaranteed by the Depositor, the Seller, the Master Servicer or the Trustee referred to below or any of their respective affiliates. Neither this Certificate nor the Mortgage Loans are guaranteed or insured by any governmental agency or instrumentality.

Case 8:11-bk-19506-ES Doc 272-1 Filed 08/21/12 Entered 08/21/12 12:32:28 Desc
Part 2 of 2 Page 25 of 170

This certifies that __________ is the registered owner of the Percentage Interest evidenced by this Certificate (obtained by dividing the denomination of this Certificate by the aggregate Initial Notional Amounts of all Certificates of the Class to which this Certificate belongs) in certain monthly distributions with respect to a Trust Fund consisting primarily of the Mortgage Loans deposited by IndyMac MBS, Inc. (the “Depositor”). The Trust Fund was created pursuant to a Pooling and Servicing Agreement dated as of the Cut-off Date specified above (the “Agreement”) among the Depositor, IndyMac Bank, F.S.B., as seller (in such capacity, the “Seller”) and as master servicer (in such capacity, the “Master Servicer”), and Deutsche Bank National Trust Company, as trustee (the “Trustee”). To the extent not defined herein, the capitalized terms used herein have the meanings assigned in the Agreement. This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

This Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose unless manually countersigned by an authorized signatory of the Trustee.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be duly executed.

Dated: ____________, 20__

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By ______________________

Countersigned:

By ___________________________
Authorized Signatory of
DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

EXHIBIT E

[Form of Reverse of Certificates]

INDYMAC MBS, INC.
IndyMac INDX Mortgage Loan Trust 200_-_
Mortgage Pass-Through Certificates, Series 200_-_

This Certificate is one of a duly authorized issue of Certificates designated as IndyMac MBS, Inc. Mortgage Pass-Through Certificates, of the Series specified on the face hereof (herein collectively called the "Certificates"), and representing a beneficial ownership interest in the Trust Fund created by the Agreement.

The Certificateholder, by its acceptance of this Certificate, agrees that it will look solely to the funds on deposit in the Distribution Account for payment hereunder and that the Trustee is not liable to the Certificateholders for any amount payable under this Certificate or the Agreement or, except as expressly provided in the Agreement, subject to any liability under the Agreement.

This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for the interests, rights and limitations of rights, benefits, obligations and duties evidenced thereby, and the rights, duties and immunities of the Trustee.

Pursuant to the terms of the Agreement, a distribution will be made on the 25th day of each month or, if such 25th day is not a Business Day, the Business Day immediately following (the "Distribution Date"), commencing on the first Distribution Date specified on the face hereof, to the Person in whose name this Certificate is registered at the close of business on the applicable Record Date in an amount equal to the product of the Percentage Interest evidenced by this Certificate and the amount required to be distributed to Holders of Certificates of the Class to which this Certificate belongs on such Distribution Date pursuant to the Agreement. The Record Date applicable to each Distribution Date is the last Business Day of the month next preceding the month of such Distribution Date.

Distributions on this Certificate shall be made by wire transfer of immediately available funds to the account of the Holder hereof at a bank or other entity having appropriate facilities therefor, if such Certificateholder shall have so notified the Trustee in writing at least five Business Days prior to the Record Date and such Certificateholder shall satisfy the conditions to receive such form of payment set forth in the Agreement, or, if not, by check mailed by first class mail to the address of such Certificateholder appearing in the Certificate Register. The final distribution on each Certificate will be made in like manner, but only upon presentment and surrender of such Certificate at the Corporate Trust Office or such other location specified in the notice to Certificateholders of such final distribution.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Trustee and the rights of the Certificateholders under the Agreement at any time by the Depositor, the Master Servicer and the Trustee with the consent of the Holders of Certificates affected by such amendment evidencing the requisite Percentage Interest, as provided in the Agreement. Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in exchange therefor or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Certificate Register of the Trustee upon surrender of this Certificate for registration of transfer at the Corporate Trust Office or the office or agency maintained by the Trustee in New York, New York, accompanied by a written instrument of transfer in form satisfactory to the Trustee and the Certificate Registrar duly executed by the holder hereof or such holder's attorney duly authorized in writing, and thereupon one or more new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest in the Trust Fund will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in denominations specified in the Agreement. As provided in the Agreement and subject to certain limitations therein set forth, Certificates are exchangeable for new Certificates of the same Class in authorized denominations and evidencing the same aggregate Percentage Interest, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Depositor, the Master Servicer, the Seller and the Trustee and any agent of the Depositor or the Trustee may treat the Person in whose name this Certificate is registered as the owner hereof for all purposes, and neither the Depositor, the Trustee, nor any such agent shall be affected by any notice to the contrary.

On any Distribution Date on which the aggregate Stated Principal Balance of the Mortgage Loans is less than ten percent (10%) of the Cut-off Date Pool Principal Balance, the Master Servicer will have the option to repurchase, in whole, from the Trust Fund all remaining Mortgage Loans and all property acquired in respect of the Mortgage Loans at a purchase price determined as provided in the Agreement. In the event that no such optional termination occurs, the obligations and responsibilities created by the Agreement will terminate upon the later of the maturity or other liquidation (or any advance with respect thereto) of the last Mortgage Loan remaining in the Trust Fund or the disposition of all property in respect thereof and the distribution to Certificateholders of all amounts required to be distributed pursuant to the Agreement. In no event, however, will the trust created by the Agreement continue beyond the expiration of 21 years from the death of the last survivor of the descendants living at the date of the Agreement of a certain person named in the Agreement.

Any term used herein that is defined in the Agreement shall have the meaning assigned in the Agreement, and nothing herein shall be deemed inconsistent with that meaning.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto
______________________________________________________________________________
______________________________________________________________________________
__________________________________________________________
(Please print or typewrite name and address including postal zip code of assignee)

the Percentage Interest evidenced by the within Certificate and hereby authorizes the transfer of registration of such Percentage Interest to assignee on the Certificate Register of the Trust Fund.

I (We) further direct the Trustee to issue a new Certificate of a like denomination and Class, to the above named assignee and deliver such Certificate to the following address:

______________________________________________________________________________.

Dated:

______________________________
Signature by or on behalf of assignor

DISTRIBUTION INSTRUCTIONS

The assignee should include the following for purposes of distribution:

Distributions shall be made, by wire transfer or otherwise, in immediately available funds to___
______________________________________________________________________________,
for the account of _____________________________________________________________,
account number , or, if mailed by check, to___________________________________
______________________________________________________________________________
______________________________________________________________________________.
Applicable statements should be mailed to ______________________________________
______________________________________________________________________________
______________________________________________________________________________

This information is provided by ____________________________________________,
the assignee named above, or ______________________________________________,

as its agent.

STATE OF CALIFORNIA )
: ss.:
COUNTY OF ______________ )

On the _th day of _______, 20__ before me, a notary public in and for said State, personally appeared _________________, known to me who, being by me duly sworn, did depose and say that he executed the foregoing instrument.

______________________________________
Notary Public

[Notarial Seal]

EXHIBIT F

[Reserved]

EXHIBIT G-1

FORM OF INITIAL CERTIFICATION OF TRUSTEE

[date]

[Depositor]

[Master Servicer]

[Seller]

______________________

______________________

Re: Pooling and Servicing Agreement among IndyMac MBS, Inc., as Depositor, IndyMac Bank, F.S.B., as Seller and Master Servicer, and Deutsche Bank National Trust Company, as Trustee, Mortgage Pass-Through Certificates, Series 200 - ____________

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the “Pooling and Servicing Agreement”), the undersigned, as Trustee, hereby certifies that, as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan listed in the attached schedule), it has received:

(i) the original Mortgage Note, endorsed as provided in the following form: “Pay to the order of ________, without recourse”; and

(ii) a duly executed assignment of the Mortgage (which may be included in a blanket assignment or assignments); provided, however, that it has received no assignment with respect to any Mortgage for which the Mortgaged Property is located in the Commonwealth of Puerto Rico.

Based on its review and examination and only as to the foregoing documents, such documents appear regular on their face and to such Mortgage Loan.

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review specifically required in the Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By:_______________________________________________
Name:
Title:



NY1 5711467v.4

EXHIBIT G-2

[RESERVED

EXHIBIT G-3

FORM OF DELAY DELIVERY CERTIFICATION

[date]

[Depositor]

[Master Servicer]

[Seller]
______________________
______________________

Re: Pooling and Servicing Agreement among IndyMac MBS, Inc., as Depositor, IndyMac Bank, F.S.B., as Seller and Master Servicer, and Deutsche Bank National Trust Company, as Trustee, Mortgage Pass-Through Certificates, Series 200  -

Gentlemen:

Reference is made to the Initial Certification of Trustee relating to the above-referenced series, with the schedule of exceptions attached thereto (the "Schedule A"), delivered by the undersigned, as Trustee, on the Closing Date in accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"). The undersigned hereby certifies that, as to each Mortgage Loan that is a Delay Delivery Mortgage Loan listed on Schedule A attached hereto (other than any Mortgage Loan paid in full or listed on Schedule B attached hereto) it has received:

(i) the original Mortgage Note, endorsed by the Seller or the originator of such Mortgage Loan, without recourse in the following form: "Pay to the order of _______________ without recourse", with all intervening endorsements that show a complete chain of endorsement from the originator to the Seller, or, if the original Mortgage Note has been lost or destroyed and not replaced, an original lost note affidavit from the Seller, stating that the original Mortgage Note was lost or destroyed, together with a copy of the Mortgage Note;

(ii) the original recorded Mortgage;

(iii) a duly executed assignment of the Mortgage to "Deutsche Bank National Trust Company, as trustee under the Pooling and Servicing Agreement dated as of January 1, 2005, without recourse" (each such assignment, when duly and validly completed, to be in recordable form and sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which such assignment relates);

(iv) the original recorded assignment or assignments of the Mortgage together with all interim recorded assignments of such Mortgage;

(v) the original or copies of each assumption, modification, written assurance or substitution agreement, if any, with evidence of recording thereon if recordation thereof is permissible under applicable law; and

(vi) the original or duplicate original lender's title policy and all riders, if any, thereto or, in the event such original title policy has not been received from the insurer, any one of an original title binder, an original preliminary title report or an original title commitment, or a copy thereof certified by the title company, with the original policy of title insurance to be delivered within one year of the Closing Date.

In the event that in connection with any Mortgage Loan for which the Seller cannot deliver the original recorded Mortgage or all interim recorded assignments of the Mortgage satisfying the requirements of clause (ii), (iii) or (iv), as applicable, the Trustee has received, in lieu thereof, a true and complete copy of such Mortgage and/or such assignment or assignments of the Mortgage, as applicable, each certified by the Seller, the applicable title company, escrow agent or attorney, or the originator of such Mortgage Loan, as the case may be, to be a true and complete copy of the original Mortgage or assignment of Mortgage submitted for recording.

Based on its review and examination and only as to the foregoing documents, (i) such documents appear regular on their face and related to such Mortgage Loan, and (ii) the information set forth in items (i), (iv), (vi) and (xv) (solely as of origination, not as of the Cut-off Date) of the definition of the "Mortgage Loan Schedule" in Section 1.01 of the Pooling and Servicing Agreement accurately reflects information set forth in the Mortgage File.

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review specifically required in the above-referenced Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the [Mortgage Loan Schedule][Loan Number and Borrower Identification Mortgage Loan Schedule] or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By:________________________________________
Name:
Title:

EXHIBIT G-4

[RESERVED]

EXHIBIT H-1

FORM OF FINAL CERTIFICATION OF TRUSTEE

[date]

[Depositor]

[Master Servicer]

[Seller]

______________________

______________________

Re: Pooling and Servicing Agreement among IndyMac MBS, Inc., as Depositor, IndyMac Bank, F.S.B., as Seller and Master Servicer, and Deutsche Bank National Trust Company, as Trustee, Mortgage Pass-Through Certificates, Series 200 -

Gentlemen:

In accordance with Section 2.02 of the above-captioned Pooling and Servicing Agreement (the "Pooling and Servicing Agreement"), the undersigned, as Trustee, hereby certifies that as to each Mortgage Loan listed in the Mortgage Loan Schedule (other than any Mortgage Loan paid in full or listed on the attached Document Exception Report) it has received:

(i) The original Mortgage Note, endorsed in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement, with all intervening endorsements showing a complete chain of endorsement from the originator to the Seller.

(ii) The original recorded Mortgage.

(iii) A duly executed assignment of the Mortgage in the form provided in Section 2.01(c) of the Pooling and Servicing Agreement; provided, however, that it has received no assignment with respect to any Mortgage for which the Mortgaged Property is located in the Commonwealth of Puerto Rico, or, if the Depositor has certified or the Trustee otherwise knows that the Mortgage has not been returned from the applicable recording office, a copy of the assignment of the Mortgage (excluding information to be provided by the recording office).

(iv) The original or duplicate original recorded assignment or assignments of the Mortgage showing a complete chain of assignment from the originator to the Seller.

(v) The original or duplicate original lender's title policy and all riders thereto or, any one of an original title binder, an original preliminary title report or an original title commitment, or a copy thereof certified by the title company.

Based on its review and examination and only as to the foregoing documents, (a) such documents appear regular on their face and related to such Mortgage Loan, and (b) the information set forth in items (i), (ii), (iii), (iv), (vi) and (xi) of the definition of the "Mortgage Loan Schedule" in Section 1.01 of the Pooling and Servicing Agreement accurately reflects information set forth in the Mortgage File.

The Trustee has made no independent examination of any documents contained in each Mortgage File beyond the review specifically required in the Pooling and Servicing Agreement. The Trustee makes no representations as to: (i) the validity, legality, sufficiency, enforceability or genuineness of any of the documents contained in each Mortgage File of any of the Mortgage Loans identified on the Mortgage Loan Schedule, or (ii) the collectability, insurability, effectiveness or suitability of any such Mortgage Loan. Notwithstanding anything herein to the contrary, the Trustee has made no determination and makes no representations as to whether (i) any endorsement is sufficient to transfer all right, title and interest of the party so endorsing, as noteholder or assignee thereof, in and to that Mortgage Note or (ii) any assignment is in recordable form or sufficient to effect the assignment of and transfer to the assignee thereof, under the Mortgage to which the assignment relates.

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the Pooling and Servicing Agreement.

DEUTSCHE BANK NATIONAL TRUST COMPANY,
as Trustee

By:____________________________________________
Name:
Title:

EXHIBIT H-2

[RESERVED]

EXHIBIT I

TRANSFER AFFIDAVIT

IndyMac MBS, Inc.
Mortgage Pass-Through Certificates
Series 200_-_

STATE OF CALIFORNIA )
: ss.:
COUNTY OF _____________ )

The undersigned, being first duly sworn, deposes and says as follows:

1. The undersigned is an officer of __________, the proposed Transferee of an Ownership Interest in a Class A-R Certificate (the “Certificate”) issued pursuant to the Pooling and Servicing Agreement, (the “Agreement”), relating to the above-referenced Series, by and among IndyMac MBS, Inc., as depositor (the “Depositor”), IndyMac Bank, F.S.B., as seller and master servicer and Deutsche Bank National Trust Company, as Trustee. Capitalized terms used, but not defined herein or in Exhibit 1 hereto, shall have the meanings ascribed to such terms in the Agreement. The Transferee has authorized the undersigned to make this affidavit on behalf of the Transferee.

2. The Transferee is, as of the date hereof, and will be, as of the date of the Transfer, a Permitted Transferee. The Transferee is acquiring its Ownership Interest in the Certificate for its own account.

3. The Transferee has been advised of, and understands that (i) a tax will be imposed on Transfers of the Certificate to Persons that are not Permitted Transferees; (ii) such tax will be imposed on the transferor, or, if such Transfer is through an agent (which includes a broker, nominee or middleman) for a Person that is not a Permitted Transferee, on the agent; and (iii) the Person otherwise liable for the tax shall be relieved of liability for the tax if the subsequent Transferee furnished to such Person an affidavit that such subsequent Transferee is a Permitted Transferee and, at the time of Transfer, such Person does not have actual knowledge that the affidavit is false.

4. The Transferee has been advised of, and understands that a tax will be imposed on a “pass-through entity” holding the Certificate if at any time during the taxable year of the pass-through entity a Person that is not a Permitted Transferee is the record holder of an interest in such entity. The Transferee understands that such tax will not be imposed for any period with respect to which the record holder furnishes to the pass-through entity an affidavit that such record holder is a Permitted Transferee and the pass-through entity does not have actual knowledge that such affidavit is false. (For this purpose, a “pass-through entity” includes a regulated investment company, a real estate investment trust or common trust fund, a partnership, trust or estate, and certain cooperatives and, except as may be provided in Treasury Regulations, persons holding interests in pass-through entities as a nominee for another Person.)

5. The Transferee has reviewed the provisions of Section 5.02(c) of the Agreement (attached hereto as Exhibit 2 and incorporated herein by reference) and understands the legal consequences of the acquisition of an Ownership Interest in the Certificate including, without limitation, the restrictions on subsequent Transfers and the provisions regarding voiding the Transfer and mandatory sales. The Transferee expressly agrees to be bound by and to abide by the provisions of Section 5.02(c)

of the Agreement and the restrictions noted on the face of the Certificate. The Transferee understands and agrees that any breach of any of the representations included herein shall render the Transfer to the Transferee contemplated hereby null and void.

6. The Transferee agrees to require a Transfer Affidavit from any Person to whom the Transferee attempts to Transfer its Ownership Interest in the Certificate, and in connection with any Transfer by a Person for whom the Transferee is acting as nominee, trustee or agent, and the Transferee will not Transfer its Ownership Interest or cause any Ownership Interest to be Transferred to any Person that the Transferee knows is not a Permitted Transferee. In connection with any such Transfer by the Transferee, the Transferee agrees to deliver to the Trustee a certificate substantially in the form set forth as Exhibit J to the Agreement (a "Transferor Certificate") to the effect that such Transferee has no actual knowledge that the Person to which the Transfer is to be made is not a Permitted Transferee.

7. The Transferee does not have the intention to impede the assessment or collection of any tax legally required to be paid with respect to the Certificate.

8. The Transferee's taxpayer identification number is ______.

9. The Transferee is a U.S. Person as defined in Code Section 7701(a)(30).

10. The Transferee is aware that the Certificate may be a "noneconomic residual interest" within the meaning of proposed Treasury regulations promulgated pursuant to the Code and that the transferor of a noneconomic residual interest will remain liable for any taxes due with respect to the income on such residual interest, unless no significant purpose of the transfer was to impede the assessment or collection of tax.

11. The Transferee is not a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of a U.S. taxpayer.

12. The Transferee will not transfer the Certificates, directly or indirectly, to a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of the Transferee or another U.S. taxpayer.

13. The Transferee will not cause income from the Certificates to be attributable to a foreign permanent establishment or fixed base (within the meaning of an applicable income tax treaty) of the Transferee or another U.S. taxpayer.

14. Either:

(a) (i) At the time of the transfer, and at the close of each of the Transferee's two fiscal years preceding the Transferee's fiscal year of transfer, the Transferee's gross assets for financial reporting purposes exceed $100 million and its net assets for financial reporting purposes exceed $10 million. For purposes of the preceding sentence, the gross assets and net assets of a Transferee do not include any obligation of any Related Person, as defined below, or any other asset if a principal purpose for holding or acquiring the other asset is to permit the Transferee to satisfy the conditions of this paragraph 15(a); (ii) The Transferee is an Eligible Corporation, as defined below, and hereby agrees that any subsequent transfer of the interest will be to another Eligible Corporation in a transaction that satisfies this Transfer Affidavit, including this paragraph 15(a); and (iii) The Transferee has not given the Transferor any reason to know that the Transferee will not honor the restrictions on subsequent transfers of the residual interest or that the Transferee cannot or will not pay any taxes associated with the residual interest; or

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(b)(i) The Transferee is a United States Person; (ii) The present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of: (A) The present value of any consideration given to the Transferee to acquire the interest; (B) The present value of the expected future distributions on the interest; and (C) The present value of the anticipated tax savings associated with holding the interest as any REMIC generates losses; and (iii) For purposes of calculating the aforementioned present values: (A) The transferee has assumed that it pays tax at a rate equal to the highest rate of tax specified in Code Section 11(b)(1) (unless the Transferee has been subject to the alternative minimum tax under Code Section 55 in the preceding two years and will compute its taxable income in the current taxable year using the alternative minimum tax rate, in which case the Transferee can assume that it pays tax at the rate specified in Code Section 55(b)(1)(B) provided the Transferee states in this Transfer Affidavit that it is using such alternate rate and that has been subject to the alternative minimum tax under Code Section 55 in the preceding two years and will compute its taxable income in the current taxable year using the alternative minimum tax rate):and (B) The Transferee uses a discount rate equal to the Federal short-term rate prescribed by section 1274(d) for the month of the transfer and the compounding period used by the Transferee.

The term “Eligible Corporation” means any domestic C corporation (as defined in section 1361(a)(2) of the Code) other than a corporation which is exempt from, or is not subject to, tax under section 11 of the Code, an entity described in section 851(a) or 856(a) of the Code, a REMIC; or an organization to which part I, subchapter T, chapter 1, subtitle A of the Code applies. The Term “Related Person” means any person that bears a relationship to the Transferee enumerated in section 267(b) or 707(b)(1) of the Code, using "20 percent" instead of "50 percent" where it appears under the provisions; or is under common control (within the meaning of section 52(a) and (b) of the Code) with the Transferee.

15. Either (i) the Transferee is not an employee benefit plan that is subject to ERISA or a plan that is subject to Section 4975 of the Code, and the Transferee is not acting on behalf of or with plan assets of such a plan; or (ii) the Transferee is an insurance company that is investing funds contained in an “insurance company general account” (as such term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 (“PTCE 95-60”) and the purchase and holding of the Class A-R Certificate satisfy the requirements for exemptive relief under Sections I and III of PTCE 95-60.

* * *

IN WITNESS WHEREOF, the Transferee has caused this instrument to be executed on its behalf, pursuant to authority of its Board of Directors, by its duly authorized officer and its corporate seal to be hereunto affixed, duly attested, this ___ day of _________, 20_.

____________________________________________
Print Name of Transferee

By:__________________________________________
Name:
Title:

[Corporate Seal]

ATTEST:

[Assistant] Secretary

Personally appeared before me the above-named ______, known or proved to me to be the same person who executed the foregoing instrument and to be the __________ of the Transferee, and acknowledged that he executed the same as his free act and deed and the free act and deed of the Transferee.

Subscribed and sworn before me this ___ day of ____, 20_.

_______________________________
NOTARY PUBLIC

My Commission expires the __ day of ________, 20_.

**EXHIBIT 1**
**to EXHIBIT I**

Certain Definitions

"Ownership Interest": As to any Certificate, any ownership interest in such Certificate, including any interest in such Certificate as the Holder thereof and any other interest therein, whether direct or indirect, legal or beneficial.

"Permitted Transferee": Any Person other than (i) the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing, (ii) a foreign government, International Organization or any agency or instrumentality of either of the foregoing, (iii) an organization (except certain farmers' cooperatives described in Code Section 521) that is exempt from tax imposed by Chapter 1 of the Code (including the tax imposed by Code Section 511 on unrelated business taxable income) on any excess inclusions (as defined in Code Section 860E(c)(1)) with respect to any Restricted Certificate, (iv) a rural electric and telephone cooperatives described in Code Section 1381(a)(2)(c), (v) an "electing large partnership" as defined in Code Section 775 of (vi) a Person that is not a U.S. Person, and (vii) any other Person so designated by the Depositor based upon an Opinion of Counsel that the Transfer of an Ownership Interest in a Residual Certificate to such Person may cause any REMIC to fail to qualify as a REMIC at any time that certain Certificates are Outstanding. The terms "United States," "State" and "International Organization" shall have the meanings set forth in Code Section 7701 or successor provisions. A corporation will not be treated as an instrumentality of the United States or of any State or political subdivision thereof if all of its activities are subject to tax, and, with the exception of the FHLMC, a majority of its board of directors is not selected by such governmental unit.

"Person": Any individual, corporation, partnership, joint venture, limited liability company, bank, joint stock company, trust (including any beneficiary thereof), unincorporated organization or government or any agency or political subdivision thereof.

"Transfer": Any direct or indirect transfer or sale of any Ownership Interest in a Certificate, including the acquisition of a Certificate by the Depositor.

"Transferee": Any Person who is acquiring by Transfer any Ownership Interest in a Certificate.

**EXHIBIT 2**
**to EXHIBIT I**

Section 5.02(c) of the Agreement

(c) Each Person who has or who acquires any Ownership Interest in a Residual Certificate shall be deemed by the acceptance or acquisition of such Ownership Interest to have agreed to be bound by the following provisions, and the rights of each Person acquiring any Ownership Interest in a Residual Certificate are expressly subject to the following provisions:

(i) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall be a Permitted Transferee and shall promptly notify the Trustee of any change or impending change in its status as a Permitted Transferee.

(ii) No Ownership Interest in a Residual Certificate may be registered on the Closing Date or thereafter transferred, and the Trustee shall not register the Transfer of any Residual Certificate unless, in addition to the certificates required to be delivered to the Trustee under subparagraph (b) above, the Trustee shall have been furnished with an affidavit (a "Transfer Affidavit") of the initial owner or the proposed transferee in the form attached hereto as Exhibit I.

(iii) Each Person holding or acquiring any Ownership Interest in a Residual Certificate shall agree (A) to obtain a Transfer Affidavit from any other Person to whom such Person attempts to Transfer its Ownership Interest in a Residual Certificate, (B) to obtain a Transfer Affidavit from any Person for whom such Person is acting as nominee, trustee or agent in connection with any Transfer of a Residual Certificate and (C) not to Transfer its Ownership Interest in a Residual Certificate or to cause the Transfer of an Ownership Interest in a Residual Certificate to any other Person if it has actual knowledge that such Person is not a Permitted Transferee.

(iv) Any attempted or purported Transfer of any Ownership Interest in a Residual Certificate in violation of the provisions of this Section 5.02(c) shall be absolutely null and void and shall vest no rights in the purported Transferee. If any purported transferee shall become a Holder of a Residual Certificate in violation of the provisions of this Section 5.02(c), then the last preceding Permitted Transferee shall be restored to all rights as Holder thereof retroactive to the date of registration of Transfer of such Residual Certificate. The Trustee shall be under no liability to any Person for any registration of Transfer of a Residual Certificate that is in fact not permitted by Section 5.02(b) and this Section 5.02(c) or for making any payments due on such Certificate to the Holder thereof or taking any other action with respect to such Holder under the provisions of this Agreement so long as the Transfer was registered after receipt of the Transfer Affidavit, Transferor Certificate and either the Rule 144A Letter or the Investment Letter. The Trustee shall be entitled but not obligated to recover from any Holder of a Residual Certificate that was in fact not a Permitted Transferee at the time it became a Holder or, at such subsequent time as it became other than a Permitted Transferee, all payments made on such Residual Certificate at and after either such time. Any such payments so recovered by the Trustee shall be paid and delivered by the Trustee to the last preceding Permitted Transferee of such Certificate.

(v) The Depositor shall use its best efforts to make available, upon receipt of written request from the Trustee, all information necessary to compute any tax imposed under Section 860E(e) of the Code as a result of a Transfer of an Ownership Interest in a Residual Certificate to any Holder who is not a Permitted Transferee.

EXHIBIT J

FORM OF TRANSFEROR CERTIFICATE

__________, 200__

IndyMac MBS, Inc.
155 North Lake Avenue, 7th Floor
Pasadena, CA 91101
Attention: S. Blair Abernathy

Deutsche Bank National Trust Company
1761 East St. Andrew Place
Santa Ana, CA 92705-4934
Attention: Trust Administration, Series 200 -

Re: IndyMac MBS, Inc.
Mortgage Pass-Through Certificates, Series 200 -, Class

Ladies and Gentlemen:

In connection with our disposition of the above Certificates we certify that (a) we understand that the Certificates have not been registered under the Securities Act of 1933, as amended (the "Act"), and are being disposed by us in a transaction that is exempt from the registration requirements of the Act, (b) we have not offered or sold any Certificates to, or solicited offers to buy any Certificates from, any person, or otherwise approached or negotiated with any person with respect thereto, in a manner that would be deemed, or taken any other action which would result in, a violation of Section 5 of the Act and (c) to the extent we are disposing of a Class A-R Certificate, we have no knowledge the Transferee is not a Permitted Transferee.

Very truly yours,

______________________________
Print Name of Transferor

By: ___________________________
Authorized Officer

EXHIBIT K

FORM OF INVESTMENT LETTER (NON-RULE 144A)

__________, 200__

IndyMac MBS, Inc.
155 North Lake Avenue, 7th Floor
Pasadena, CA 91101
Attention: S. Blair Abernathy

Deutsche Bank National Trust Company
1761 East St. Andrew Place
Santa Ana, CA 92705-4934
Attention: Trust Administration, Series 200 -

Re: IndyMac MBS, Inc.
Mortgage Pass-Through Certificates, Series 200 -, Class

Ladies and Gentlemen:

In connection with our acquisition of the above Certificates we certify that (a) we understand that the Certificates are not being registered under the Securities Act of 1933, as amended (the "Act"), or any state securities laws and are being transferred to us in a transaction that is exempt from the registration requirements of the Act and any such laws, (b) we are an "accredited investor," as defined in Regulation D under the Act, and have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of investments in the Certificates, (c) we have had the opportunity to ask questions of and receive answers from the Depositor concerning the purchase of the Certificates and all matters relating thereto or any additional information deemed necessary to our decision to purchase the Certificates, (d) either (i) we are not an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974, as amended, or a plan or arrangement that is subject to Section 4975 of the Internal Revenue Code of 1986, as amended, nor are we acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect such acquisition or (ii) if the Certificates have been the subject of an ERISA-Qualifying Underwriting, we are purchasing the Certificates with funds contained in an "insurance company general account" (as such term is defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 ("PTCE 95-60")) and the purchase and holding of such Certificates are covered under Sections I and III of PTCE 95-60, (e) we are acquiring the Certificates for investment for our own account and not with a view to any distribution of such Certificates (but without prejudice to our right at all times to sell or otherwise dispose of the Certificates in accordance with clause (g) below), (f) we have not offered or sold any Certificates to, or solicited offers to buy any Certificates from, any person, or otherwise approached or negotiated with any person with respect thereto, or taken any other action which would result in a violation of Section 5 of the Act, (g) we will not sell, transfer or otherwise dispose of any Certificates unless (1) such sale, transfer or other disposition is made pursuant to an effective registration statement under the Act or is exempt from such registration requirements, and if requested, we will at our expense provide an opinion of counsel satisfactory to the addressees of this Certificate that such sale, transfer or other disposition may be made pursuant to an exemption from the Act, (2) the purchaser or transferee of such Certificate has executed and delivered to you a certificate to substantially the same effect as this certificate, and (3) the purchaser or transferee has otherwise complied with any conditions for transfer set forth in the Pooling and

Servicing Agreement and (h) if we are a corporation purchasing the Certificates in the State of California, we have a net worth of at least $14,000,000 according to our most recent audited financial statements.

Very truly yours,

________________________________
Print Name of Transferee

By: ______________________________
Authorized Officer

EXHIBIT L

FORM OF RULE 144A LETTER

____________, 200__

IndyMac MBS, Inc.
155 North Lake Avenue, 7th Floor
Pasadena, CA 91101
Attention: S. Blair Abernathy

Deutsche Bank National Trust Company
1761 East St. Andrew Place
Santa Ana, CA 92705-4934
Attention: Trust Administration, Series 200 -

Re: IndyMac MBS, Inc.
<u>Mortgage Pass-Through Certificates, Series 200 -, Class</u>

Ladies and Gentlemen:

In connection with our acquisition of the above Certificates we certify that (a) we understand that the Certificates are not being registered under the Securities Act of 1933, as amended (the "Act"), or any state securities laws and are being transferred to us in a transaction that is exempt from the registration requirements of the Act and any such laws, (b) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of investments in the Certificates, (c) we have had the opportunity to ask questions of and receive answers from the Depositor concerning the purchase of the Certificates and all matters relating thereto or any additional information deemed necessary to our decision to purchase the Certificates, (d) either (i) we are not an employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974, as amended, or a plan or arrangement that is subject to Section 4975 of the Internal Revenue Code of 1986, as amended, nor are we acting on behalf of any such plan or arrangement or using the assets of any such plan or arrangement to effect such acquisition, or (ii) if the Certificates have been the subject of an ERISA-Qualifying Underwriting, we are purchasing the Certificates with funds contained in an "insurance company general account" (as defined in Section V(e) of Prohibited Transaction Class Exemption 95-60 ("PTCE 95-60")) and our purchase and holding of the Certificates satisfy the requirements for exemptive relief under Sections I and III of PTCE 95-60, (e) we have not, nor has anyone acting on our behalf offered, transferred, pledged, sold or otherwise disposed of the Certificates, any interest in the Certificates or any other similar security to, or solicited any offer to buy or accept a transfer, pledge or other disposition of the Certificates, any interest in the Certificates or any other similar security from, or otherwise approached or negotiated with respect to the Certificates, any interest in the Certificates or any other similar security with, any person in any manner, or made any general solicitation by means of general advertising or in any other manner, or taken any other action, that would constitute a distribution of the Certificates under the Act or that would render the disposition of the Certificates a violation of Section 5 of the Act or require registration pursuant thereto, nor will act, nor has authorized or will authorize any person to act, in such manner with respect to the Certificates, (f) we are a "qualified institutional buyer" as that term is defined in Rule 144A under the Act ("Rule 144A") and have completed either of the forms of certification to that effect attached hereto as Annex 1 or Annex 2, (g) we are aware that the sale to us is being made in reliance on Rule 144A, (h) we are acquiring the Certificates for our own account or for resale pursuant to Rule 144A and further, understand that such Certificates may be resold, pledged or transferred only (A) to a person reasonably believed to be a qualified institutional buyer that purchases for its own account or for the account of a qualified institutional buyer to whom notice is given that the resale, pledge or transfer is being made in reliance on Rule 144A, or (B) pursuant to another exemption from registration under the Act and (i) if we are a corporation purchasing the Certificates in the State of California, we have a net worth of at least $14,000,000 according to our most recent audited financial statements.

Very truly yours,

________________________
Print Name of Transferee

By:________________________
Authorized Officer

ANNEX 1 TO EXHIBIT L

QUALIFIED INSTITUTIONAL BUYER STATUS UNDER SEC RULE 144A

[For Transferees Other Than Registered Investment Companies]

The undersigned (the "Buyer") hereby certifies as follows to the parties listed in the Rule 144A Transferee Certificate to which this certification relates with respect to the Certificates described therein:

1. As indicated below, the undersigned is the President, Chief Financial Officer, Senior Vice President or other executive officer of the Buyer.

2. In connection with purchases by the Buyer, the Buyer is a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended ("Rule 144A") because (i) the Buyer owned and/or invested on a discretionary basis $ [1] in securities (except for the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year (such amount being calculated in accordance with Rule 144A and (ii) the Buyer satisfies the criteria in the category marked below.

___ Corporation, etc. The Buyer is a corporation (other than a bank, savings and loan association or similar institution), Massachusetts or similar business trust, partnership, or charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

___ Bank. The Buyer (a) is a national bank or banking institution organized under the laws of any State, territory or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official or is a foreign bank or equivalent institution, and (b) has an audited net worth of at least $25,000,000 as demonstrated in its latest annual financial statements, a copy of which is attached hereto.

___ Savings and Loan. The Buyer (a) is a savings and loan association, building and loan association, cooperative bank, homestead association or similar institution, which is supervised and examined by a State or Federal authority having supervision over any such institutions or is a foreign savings and loan association or equivalent institution and (b) has an audited net worth of at least $25,000,000 as demonstrated in its latest annual financial statements, a copy of which is attached hereto.

___ Broker-dealer. The Buyer is a dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934.

___ Insurance Company. The Buyer is an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies and which is subject to supervision by the

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[1] Buyer must own and/or invest on a discretionary basis at least $100,000,000 in securities unless Buyer is a dealer, and, in that case, Buyer must own and/or invest on a discretionary basis at least $10,000,000 in securities.

insurance commissioner or a similar official or agency of a State, territory or the District of Columbia.

___ State or Local Plan. The Buyer is a plan established and maintained by a State, its political subdivisions, or any agency or instrumentality of the State or its political subdivisions, for the benefit of its employees.

___ ERISA Plan. The Buyer is an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974.

___ Investment Advisor. The Buyer is an investment advisor registered under the Investment Advisors Act of 1940.

___ Small Business Investment Company. Buyer is a small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958.

___ Business Development Company. Buyer is a business development company as defined in Section 202(a)(22) of the Investment Advisors Act of 1940.

3. The term "securities" as used herein does not include (i) securities of issuers that are affiliated with the Buyer, (ii) securities that are part of an unsold allotment to or subscription by the Buyer, if the Buyer is a dealer, (iii) securities issued or guaranteed by the U.S. or any instrumentality thereof, (iv) bank deposit notes and certificates of deposit, (v) loan participations, (vi) repurchase agreements, (vii) securities owned but subject to a repurchase agreement and (viii) currency, interest rate and commodity swaps.

4. For purposes of determining the aggregate amount of securities owned and/or invested on a discretionary basis by the Buyer, the Buyer used the cost of such securities to the Buyer and did not include any of the securities referred to in the preceding paragraph, except (i) where the Buyer reports its securities holdings in its financial statements on the basis of their market value, and (ii) no current information with respect to the cost of those securities has been published. If clause (ii) in the preceding sentence applies, the securities may be valued at market. Further, in determining such aggregate amount, the Buyer may have included securities owned by subsidiaries of the Buyer, but only if such subsidiaries are consolidated with the Buyer in its financial statements prepared in accordance with generally accepted accounting principles and if the investments of such subsidiaries are managed under the Buyer's direction. However, such securities were not included if the Buyer is a majority-owned, consolidated subsidiary of another enterprise and the Buyer is not itself a reporting company under the Securities Exchange Act of 1934, as amended.

5. The Buyer acknowledges that it is familiar with Rule 144A and understands that the seller to it and other parties to the Certificates are relying and will continue to rely on the statements made herein because one or more sales to the Buyer may be in reliance on Rule 144A.

6. Until the date of purchase of the Rule 144A Securities, the Buyer will notify each of the parties to which this certification is made of any changes in the information and conclusions herein. Until such notice is given, the Buyer's purchase of the Certificates will constitute a reaffirmation of this certification as of the date of such purchase. In addition, if the Buyer is a bank or savings and loan is provided above, the Buyer agrees that it will furnish to such parties updated annual financial statements promptly after they become available.

______________________________
Print Name of Buyer

By:______________________________
Name:
Title:

______________________________
Date:

ANNEX 2 TO EXHIBIT L

QUALIFIED INSTITUTIONAL BUYER STATUS UNDER SEC RULE 144A

[For Transferees That are Registered Investment Companies]

The undersigned (the "Buyer") hereby certifies as follows to the parties listed in the Rule 144A Transferee Certificate to which this certification relates with respect to the Certificates described therein:

1. As indicated below, the undersigned is the President, Chief Financial Officer or Senior Vice President of the Buyer or, if the Buyer is a "qualified institutional buyer" as that term is defined in Rule 144A under the Securities Act of 1933, as amended ("Rule 144A") because Buyer is part of a Family of Investment Companies (as defined below), is such an officer of the Adviser.

2. In connection with purchases by Buyer, the Buyer is a "qualified institutional buyer" as defined in SEC Rule 144A because (i) the Buyer is an investment company registered under the Investment Company Act of 1940, as amended and (ii) as marked below, the Buyer alone, or the Buyer's Family of Investment Companies, owned at least $100,000,000 in securities (other than the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year. For purposes of determining the amount of securities owned by the Buyer or the Buyer's Family of Investment Companies, the cost of such securities was used, except (i) where the Buyer or the Buyer's Family of Investment Companies reports its securities holdings in its financial statements on the basis of their market value, and (ii) no current information with respect to the cost of those securities has been published. If clause (ii) in the preceding sentence applies, the securities may be valued at market.

___ The Buyer owned $ in securities (other than the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year (such amount being calculated in accordance with Rule 144A).

___ The Buyer is part of a Family of Investment Companies which owned in the aggregate $ in securities (other than the excluded securities referred to below) as of the end of the Buyer's most recent fiscal year (such amount being calculated in accordance with Rule 144A).

3. The term "Family of Investment Companies" as used herein means two or more registered investment companies (or series thereof) that have the same investment adviser or investment advisers that are affiliated (by virtue of being majority owned subsidiaries of the same parent or because one investment adviser is a majority owned subsidiary of the other).

4. The term "securities" as used herein does not include (i) securities of issuers that are affiliated with the Buyer or are part of the Buyer's Family of Investment Companies, (ii) securities issued or guaranteed by the U.S. or any instrumentality thereof, (iii) bank deposit notes and certificates of deposit, (iv) loan participations, (v) repurchase agreements, (vi) securities owned but subject to a repurchase agreement and (vii) currency, interest rate and commodity swaps.

5. The Buyer is familiar with Rule 144A and understands that the parties listed in the Rule 144A Transferee Certificate to which this certification relates are relying and will continue to rely on the statements made herein because one or more sales to the Buyer will be in reliance on Rule 144A. In addition, the Buyer will only purchase for the Buyer's own account.

6. Until the date of purchase of the Certificates, the undersigned will notify the parties listed in the Rule 144A Transferee Certificate to which this certification relates of any changes in the information and conclusions herein. Until such notice is given, the Buyer's purchase of the Certificates will constitute a reaffirmation of this certification by the undersigned as of the date of such purchase.

________________________________
Print Name of Buyer

By:______________________________
Name:
Title:

________________________________
Date:

EXHIBIT M

REQUEST FOR RELEASE
(for Trustee)

IndyMac MBS, Inc.
Mortgage Pass-Through Certificates
Series 200_-_

Loan Information

Name of Mortgagor:

Servicer
Loan No.: ______________________

Trustee

Name: ______________________

Address: ______________________

______________________

Trustee
Mortgage File No.:

The undersigned Master Servicer hereby acknowledges that it has received from Deutsche Bank National Trust Company, as Trustee for the Holders of Mortgage Pass-Through Certificates, of the above-referenced Series, the documents referred to below (the "Documents"). All capitalized terms not otherwise defined in this Request for Release shall have the meanings given them in the Pooling and Servicing Agreement (the "Pooling and Servicing Agreement") relating to the above-referenced Series among the Trustee, IndyMac Bank, F.S.B., as Seller and Master Servicer and IndyMac MBS, Inc., as Depositor.

( ) Mortgage Note dated ______, 20_, in the original principal sum of $_____, made by _________, payable to, or endorsed to the order of, the Trustee.

( ) Mortgage recorded on _________ as instrument no. ___________ in the County Recorder's Office of the County of __________, State of ________ in book/reel/docket ________ of official records at page/image ________.

( ) Deed of Trust recorded on _________ as instrument no. _________ in the County Recorder's Office of the County of ________, State of ________ in book/reel/docket ________ of official records at page/image ________.

( ) Assignment of Mortgage or Deed of Trust to the Trustee, recorded on _________ as instrument no. ______ in the County Recorder's Office of the County of _____, State of ________ in book/reel/docket ________ of official records at page/image ________.

( ) Other documents, including any amendments, assignments or other assumptions of the Mortgage Note or Mortgage.

The undersigned Master Servicer hereby acknowledges and agrees as follows:

(1) The Master Servicer shall hold and retain possession of the Documents in trust for the benefit of the Trustee, solely for the purposes provided in the Agreement.

(2) The Master Servicer shall not cause or knowingly permit the Documents to become subject to, or encumbered by, any claim, liens, security interest, charges, writs of attachment or other impositions nor shall the Servicer assert or seek to assert any claims or rights of setoff to or against the Documents or any proceeds thereof.

(3) The Master Servicer shall return each and every Document previously requested from the Mortgage File to the Trustee when the need therefor no longer exists, unless the Mortgage Loan relating to the Documents has been liquidated and the proceeds thereof have been remitted to the Certificate Account and except as expressly provided in the Agreement.

(4) The Documents and any proceeds thereof, including any proceeds of proceeds, coming into the possession or control of the Master Servicer shall at all times be earmarked for the account of the Trustee, and the Master Servicer shall keep the Documents and any proceeds separate and distinct from all other property in the Master Servicer's possession, custody or control.

INDYMAC BANK, F.S.B.

By: ____________________
Name:
Title:

Date: , 20

EXHIBIT N

REQUEST FOR RELEASE OF DOCUMENTS

To: Deutsche Bank National Trust Company

Attn: Mortgage Custody Services

Re: The Pooling and Servicing Agreement dated June 1, 2005 among IndyMac Bank, F.S.B. as Master Servicer, Inc, IndyMac MBS, Inc. and Deutsche Bank National Trust Company, as Trustee

Ladies and Gentlemen:

In connection with the administration of the Mortgage Loans held by you as Trustee for IndyMac MBS, Inc., we request the release of the Mortgage Loan File for the Mortgage Loan(s) described below, for the reason indicated.

FT Account #: Pool #:

Mortgagor's Name, Address and Zip Code:

Mortgage Loan Number:

Reason for Requesting Documents (check one)

_______1. Mortgage Loan paid in full (IndyMac hereby certifies that all amounts have been received.)

_______2. Mortgage Loan Liquidated (IndyMac hereby certifies that all proceeds of foreclosure, insurance, or other liquidation have been finally received.)

_______3. Mortgage Loan in Foreclosure.

_______4. Other (explain): ______________________________

If item 1 or 2 above is checked, and if all or part of the Mortgage File was previously released to us, please release to us our previous receipt on file with you, as well as an additional documents in your possession relating to the above-specified Mortgage Loan. If item 3 or 4 is checked, upon return of all of the above documents to you as Trustee, please acknowledge your receipt by signing in the space indicated below, and returning this form.

INDYMAC BANK, F.S.B.
155 North Lake Ave.
Pasadena, CA 91101

By:________________________
Name:______________________
Title:____________________
Date:______________________

TRUSTEE CONSENT TO RELEASE AND
ACKNOWLEDGEMENT OF RECEIPT

By:________________________
Name:______________________
Title:____________________
Date:______________________

EXHIBIT O

FORM OF TRUSTEE CERTIFICATION

To: IndyMac MBS, Inc.
IndyMac Bank, F.S.B.

Re: The Pooling and Servicing Agreement dated June 1, 2005 among IndyMac Bank, F.S.B. as Master Servicer, Inc, IndyMac MBS, Inc. and Deutsche Bank National Trust Company, as Trustee

Ladies and Gentlemen:

In connection with the delivery of the Required Certifications on behalf of the Trust Fund, we certify, based on the information provided by the Master Servicer to the Trustee, the information contained in the Monthly Statements, taken as a whole, does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading as of the last day of the period covered by any Required Certification.

DEUTSCHE BANK NATIONAL TRUST COMPANY

By:____________________________
Name:__________________________
Title:___________________________
Date:___________________________

# EXHIBIT B

| LOAN NUMBER | SERVICER LOAN NUMBER | CPILoanNumber | INVESTOR LOAN NUMBER | PENDING COMMITMENT NUMBER | SALE NUMBER | LOAN STATUS | LOAN STATUS DATE | POOL NUMBER | SERVICER NUMBER | CONTRACT CONVERSION NUMBER | DIVISION CODE | LOAN PROGRAM |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 120388742 | 3001149495 | 3001149495 | 120388742 | 9998 | 10 | 1 | | | | | INM | 12 MAT B |



OWB-KALUSH_000204

| PROGRAM OPTION | SPECIAL FEATURE CODE | DOCUMENTATION TYPE CODE | LOAN PREPAYMENT PENALTY CODE | LIEN TYPE | PURPOSE CODE | OWNER OCCUPANCY CODE | PROPERTY TYPE | NUMBER OF UNITS | LOAN TO VALUE RATIO | COMBINED ORIGINAL LTV RATIO | ORIGINAL RATE | LOAN NOTE RATE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| STD | X | R | 1 | 1 | P | O | 28 | 4 | 70.00 | | 4.7710% | 5.1040% |

| ORIGINAL LOAN BALANCE | LOAN PARTICIPANT PRINCIPAL | BALANCE SOLD | LAST PART PRIN ADV | APPRAISED VALUE | REVIEW APPRAISAL | ORIGINAL SALES PRICE | LOAN PAYMENT AMOUNT | ORIGINATION DATE | ORIGINAL PURCHASE DATE | NOTE DATE | FIRST PAYMENT DATE |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1,725,500.00 | 1,722,255.67 | $ 1,715,223.67 | - | 2,465,000.00 | | 2,465,000.00 | 6,369.16 | 1/26/2005 | 3/25/2005 | 1/26/2005 | 3/1/2005 |

OWB-KALUSH_000207

| MATURITY DATE | INTEREST PAID TO DATE | LOAN DUE DATE | ORIGINAL TERM | LOAN REMAINING TERM | PROPERTY STREET NUMBER | PROPERTY STREET NAME | PROPERTY CITY | STATE CODE | ZIP CODE | BORROWER FIRST NAME | BORROWER NAME |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 2/1/2035 | 4/1/2005 | 01-May-05 | 360 | 358 | 16625 | SOUTH PCIFIC COAST | SUNSET BEACH | CA | 90742 | TRUDY A. | KALUSH |

| CREDIT LEVEL | DEBT RATIO | FOREIGN NATIONAL | LOAN PREMIUM BALANCE | LOAN DISCOUNT BALANCE | PUR CURRENT SERVICE FEE RATE | FICO SCORE 1 | FICO SCORE 2 | FICO SCORE 3 | FICO SCORE 4 | DECISION CREDIT SCORE | MI COVERAGE AMOUNT | MI CARRIER CUSTNO |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| N/A | 44.51 | | 36,592.34 | 0 | 0.0000% | 747 | | | | 747 | | |

| MI CERTIFICATE NUMBER | SERVICER CUSTNO | BROKER SELLER CUSTNO | WET DRY FLAG | SBO CUSTODIAN AGREEMENT NUMBER | FINAL LOAN PRICE | BUY DOWN FLAG | BUY DOWN DESC | DESKTOP UNDERWRITER CASE NO | SELLER DU CASEFILE NO | DU RESULTS | DU EZ ACCESS | LP KEY NUMBER |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 3685 | 29803 | N | 76 | 102.1250 | | | | | | | |

OWB-KALUSH_000210

| RISK CLASS | ACCEPT PLUS FLAG | LOAN SALE PRICE | G FEE | G FEE AFTER BU BD | SERVICING FEE | EXCESS SERVICING | TOTAL SERVICING | TRUSTEE FEE | LPMI FEE | NET RATE | PRICE | EXPENSE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 0.3750% | 0.0000% | 0.3750% | 0.0017% | | 4.7273% | | |

OWB-KALUSH_000211

| ESCROW BALANCE | PROCEEDS | ACCRUED INTEREST | NET PROCEEDS | ESCROW INDICATOR | RATE MARGIN | MERS LOAN NUMBER | FPD INVESTOR | T&I MONTHLY AMOUNT | PTR | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | 0.026 | | 1-Jul-05 | | 2.2250% | |

# EXHIBIT C

NOTICE TO BORROWER: THIS NOTE CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE AND A BALLOON PAYMENT MAY BE DUE AT MATURITY.

# PROMISSORY NOTE
## ADJUSTABLE RATE MORTGAGE LOAN

| | | | | | |
|---|---|---|---|---|---|
| PRINCIPAL (Loan Amount): | $1,725,000.00 | | | LOAN NO: | 0910718-6 |
| | | | | DATE: | January 20, 2005 |
| Initial Interest Rate: | 1.990% | Initial Monthly Installment: | $6,369.16 | Commencement Date: | March 1, 2005 |
| Margin: | 2.600% | Installment Due Date: | 1st Day of Each Month | Maturity Date: | February 1, 2035 |
| Minimum Rate: | 4.487% | First Installment Adjustment Date: | March 1, 2006 | Fixed Payment Interval: | 12 |
| Maximum Rate*: | 10.200% | Rate Adjustment Frequency: | Monthly | | |
| Amortization Period: | 360 | Months | | | |

Prepayment Penalty Term: 1 Year(s)

Prepayment Penalty Amount: 6 month(s) advance interest on the amount prepaid in any 12 month period during the Prepayment Penalty Term in excess of 20% of the original Loan Amount.

If the Loan has a Release Price Addendum which permits release of any Property securing the Loan, any principal reduction made in accordance with said Release Price Addendum shall not be subject to this prepayment provision.

Late Charge: 6.000% of monthly installments if not received within 15 days of due date.

* Subject to Paragraph 8 below.

Those signing below (the "undersigned") promise to pay in lawful money of the United States to Commercial Capital Bank, FSB, a federally chartered savings bank, ("Holder"), or order, at Holder's office at P.O. Box 25035, Santa Ana, California 92799-9998 or at such other address Holder designates, the Principal shown above with interest from date of disbursement of funds on unpaid principal at the initial adjustable interest rate per annum ("Initial Interest Rate") shown above, payable in Initial Monthly Installments in the amount shown above (subject to adjustment as provided below), commencing on the Commencement Date shown above and continuing on the Installment Due Date of each and every month thereafter until the Maturity Date, when all sums then remaining unpaid shall immediately become due and payable. Each installment shall be credited first to interest which became due during the month for which installment is being made, then to any unpaid interest which became due previously, and the remainder to principal; interest shall then cease on the portion of principal credited. Monthly interest will be computed at 1/12th of the annual rate and any partial month's interest at 1/30th of the monthly calculation per day. To the extent that any scheduled monthly installment due is insufficient to pay all interest required for the period for which installment is being made, the amount of such unpaid interest ("Deferred Interest") shall be added to and become a part of the unpaid principal as of the due date of any such monthly installment, and shall bear interest thereafter as provided in this Note. In the event any sum has not been paid at the Maturity Date, interest shall be due from the Maturity Date on such unpaid sums, without extending the Maturity Date or waiving such default, at the default interest rate described in Paragraph 8 below.

1. **DEFINITIONS. As used in this Note:** (a) "Index" shall mean the Twelve-Month Average, determined as set forth below, of the monthly yields ("Monthly Yields") on United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board. The Twelve-Month Average is determined by adding together the Federal Reserve Board published Monthly Yields for the most recent 12 months immediately preceeding the month prior to each Rate Adjustment Date and dividing the sum by 12. In the event the Index or the alternate index selected by the Holder is no longer published, the Holder may, in its sole discretion, choose an alternate index to permit interest rate adjustments and that alternate index shall be the Index; (b) "Current Index" shall mean that Twelve-Month Average of the 12 months immediately preceding the month prior to the effective date of an interest rate adjustment; and (c) "Margin" shall mean the number of percentage points specified above or, in the event an alternate index is selected by the Holder, the term "Margin" shall mean the positive or negative difference (expressed in percentage points) between the adjusted interest rate in effect on the day immediately preceding the day on which the alternate index is to become applicable to this Note and the level of the alternate index on such date; and (d) "Fixed Payment Interval" means each successive increment of the number of monthly installments due under the terms of this Note shown above, provided, however, the final such increment may include fewer monthly installments.

2. **ADJUSTABLE INTEREST RATE TERMS.** The Initial Interest Rate shall be adjusted as follows: (a) the first rate adjustment will be effective with the Installment Due Date of the **2nd** monthly installment and subsequent rate changes will be effective on the Installment Due Date of each monthly installment thereafter; (b) Holder will increase or decrease the interest rate of this Note each month by adding the margin to the Current Index which sum shall be the adjusted rate; (It is understood that the Current Index is calculated for each calendar month, but publication of the Index may be delayed. The Index will be deemed to have been published once each successive calendar month for purpose of rate adjustments.); (c) Holder may elect at its sole option but shall not be required to forgo all or any part of a rate adjustment that would result in an increase of that rate. No prior notification of interest rate adjustment shall be required.

3. **INSTALLMENT ADJUSTMENT.** The Initial Monthly Installment amount shall be adjusted commencing on the First Installment Adjustment Date and at the end of each Fixed Payment Interval thereafter as follows. Within approximately sixty (60) days prior to each Installment Adjustment Date a review of the loan shall be made for the purpose of calculating the installment adjustment. The loan balance as of the time of the review shall be projected to the Installment Adjustment Date without regard to any delinquent or prepaid installments to calculate the installment adjustment. The interest rate in effect at the time of review shall be used for calculation of the adjustment. The monthly installment shall be adjusted to an amount which would be sufficient to then amortize the projected loan balance at said rate over the remainder of the Amortization Period. Subsequent adjustments to the interest rate and actual changes to the loan balance that may occur between the time of the installment review and the effective date of the installment adjustment shall not be considered.

3A. **INSTALLMENT ADJUSTMENT LIMITATION.** Any monthly installment increase or decrease required under the provisions of Paragraph 3 shall not exceed 7 1/2% of the most recent monthly installment due prior to the effective date of an installment adjustment except as follows, when installments will be adjusted without the 7 1/2% limitation: (a) at the end of the fifth (5th) year from the Commencement Date of the monthly installments due on this Note (if the Maturity Date is more than 5 years) and on each Installment Adjustment Date that occurs every five (5) years thereafter; (b) on the last Installment Adjustment Date prior to the Maturity Date; and (c) whenever Holder determines the loan balance has reached 110% of the original principal balance.

3B. **LIMIT ON UNPAID PRINCIPAL LOAN BALANCE; INCREASE IN MONTHLY INSTALLMENT.** The unpaid principal balance of this Note may never exceed a maximum amount equal to 110% of the original principal balance of this Note (the "110% Limitation"). In the event that the unpaid principal balance of this Note would otherwise exceed that 110% limit, the undersigned will, starting on the next Installment Due Date, begin paying a new monthly installment. The new monthly installment will be an amount sufficient to pay off the unpaid principal balance of this Note that is projected to be owed on that Installment Due Date, together with interest at the interest rate in effect during the month prior to that Installment Due Date, in full at the Maturity Date in substantially equal monthly payments. The new monthly installment will be determined without regard to the 7.5% installment adjustment limitation described in Section 3A of this Note. The undersigned will continue to pay this monthly installment until the next regularly scheduled Installment Adjustment Date, when the new monthly installment will be determined as provided in this Note, except that the monthly installment will increase again whenever the 110% Limitation is reached.

The monthly installments due under this Note shall also be increased as set forth in Section 3B of this Note.

4. **LATE CHARGES.** The undersigned promises to pay a Late Charge equal to the above specified percentage of the monthly principal and interest of any installment or portion thereof which is not received within the above stated number of days after its due date. Holder is under no obligation to accept a partial installment. The undersigned acknowledges that it would be extremely difficult or impractical to determine Holder's actual damages resulting from any late installment and this Late Charge is a reasonable estimate of those damages. Holder agrees to accept this Late Charge as its sole right to damages for any late installments. Acceptance of any Late Charge shall not limit any of Holder's other rights under this Note, Deed of Trust or other documents executed to induce Holder to make the loan evidenced by this Note.

5. **COLLECTION STEPS WAIVED.** The undersigned waives the taking of any formal steps to collect this Note after a default on undersigned's part. Such steps include, among others, giving notice that an installment is about to become due, giving notice that amounts due have not been paid, and demanding payment of amounts due.

6. **COLLECTION COSTS.** The undersigned promises to pay Holder all its costs, expenses, and reasonable attorneys' fees incurred in connection with or arising from this Note.

7. **DEFAULT AND ACCELERATION.** Upon failure to pay any installments when due or to perform when due any obligation, covenant, or agreement in this Note, in the Deed of Trust or other security instruments which secure this Note, or in any other document executed by the undersigned to induce Holder to make the loan evidenced by this Note, or if any statement made by the undersigned in any such document is false or misleading, then all indebtedness will become immediately due at Holder's option.

8. **DEFAULT INTEREST RATE.** The failure of the undersigned to make any payment due under the terms of this Note, or the Deed of Trust securing this Note, shall result in an adjustment of the interest rate to a sum equal to the Index plus the Margin, plus 2.50 percentage points (the "default rate") effective 30 days after the due date of the unpaid payment until the failure to pay has been cured, and in the case of a failure to pay all sums due at the Maturity Date, the default rate shall be in effect from the Maturity Date until all sums have been paid in full. Any limitations on the maximum interest rate that would otherwise apply shall not apply to the default interest rate.

9. **DUE ON SALE PROVISIONS.** Paragraph 13 of the Deed of Trust securing this Note contains provisions which permit Beneficiary, at its option, to declare all principal and accrued interest immediately due and payable if Trustor, without Beneficiary's prior written consent, transfers any interest in the security property by any means of transfer there specifically set forth. Paragraph 13 of the Deed of Trust provides:

13. BENEFICIARY'S CONSENT REQUIRED. Beneficiary may declare all sums secured hereby immediately due and payable except as expressly limited by law, if Trustor without Beneficiary's prior written consent: (a) sells, conveys, contracts to sell by installment land contract, alienates or further encumbers all or any part of the Property; or (b) leases all or any part of the Property for a term, together with all exercisable options, of 3 years or more, or which contains a purchase option; or (c) suffers the title or any interest in the secured Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) is a partnership and any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (f) is a corporation with fewer than 100 stockholders at the date of execution of this Deed of Trust and more than 10% of its capital stock is sold, transferred or assigned during a 12 month period; or (g) is a limited liability company and either (i) any of the managers' interests are transferred or assigned, whether voluntarily or involuntarily, or (ii) more than 10% of the aggregate of its membership interests are sold, transferred or assigned during a 12 month period. Trustor will not create or permit to continue in existence any mortgage, pledge, encumbrance, lien, or charge of any kind (including purchase money and conditional sale liens) on any of the Property except for liens securing the Loan and (a) liens for taxes not yet delinquent, and (b) any other liens or charges that are specifically approved in writing by Beneficiary prior to the recordation of this Deed of Trust.

10. **RIGHT TO PREPAY.** The undersigned shall have no right to prepay all or any portion of the principal balance of this Note unless a period of time is indicated following the heading "Prepayment Penalty Term" shown above. If a term is indicated after the heading "Prepayment Penalty Term", prepayment may be made during such term only upon payment of an amount, in addition to the amount prepaid, equal to the amount shown above after the heading "Prepayment Penalty Amount". There shall be no prepayment penalty for prepayment made after the end of the Prepayment Penalty Term if one is shown above. Said term commences on the date of this Note.

11. **MULTIPLE SIGNERS.** If more than one person signs this Note, their liability is joint and several.

12. **LAW.** This Note and the rights and obligations of the Holder and the undersigned hereunder shall be interpreted, enforced and construed in accordance with the laws of the State in which the real property securing this Note is located, except to the extent the same may be preempted by applicable federal law.

13. **INVALIDITY.** In case any one or more of the provisions contained in this Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Note shall be construed as if such invalid, illegal or unenforceable provision(s) had never been included.

(Please sign your name exactly as it appears below.)

Trudy A. Kalush

**END OF DOCUMENT**

Loan No. 0910718-6

## ENDORSEMENT TO PROMISSORY NOTE

THIS ENDORSEMENT TO PROMISSORY NOTE is attached to that certain Promissory Note in the face amount of **$1,725,500.00**, dated **January 20, 2005**, made by **Trudy A. Kalush, A Single Woman**, payable to the order of Commercial Capital Bank, FSB, a federally chartered savings bank.

PAY TO THE ORDER OF IndyMac Bank, F S B ("ASSIGNEE"), WITHOUT RECOURSE OR WARRANTY EXCEPT AS SET FORTH IN THAT CERTAIN MORTGAGE LOAN SALE AGREEMENT BETWEEN COMMERCIAL CAPITAL BANK, FSB, A FEDERALLY CHARTERED SAVINGS BANK AND **IndyMac Bank**.

Dated: **March 16, 2005**

Commercial Capital Bank, FSB, a federally chartered savings bank

By: ______________________

Name: **Dale Schiering**

Its: **Vice President / Secondary Marketing Manager**

Pay To The Order Of

Without Recourse

IndyMac Bank, F.S.B.

BY ______________________

First Vice President

Z:\Pool #6 INDYMAC\assignment_0910718-6.doc

# EXHIBIT D

Chicago Title

This document was electronically recorded by
Chicago Title Glendale

PREPARED BY AND AFTER
RECORDING MAIL TO:

Commercial Capital Bank, FSB
P.O. Box 25035
Santa Ana, California 92799-9998
Attention: Loan Service

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

33.00
2005000068194 11:58am 01/27/05
102 122 D11 10
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SPACE ABOVE THIS LINE FOR RECORDER'S USE

178-522-04

# DEED OF TRUST
# (ADJUSTABLE INTEREST RATE)

LOAN AMOUNT: **$1,725,500.00** LOAN NO: **0910718-6**

THIS DEED OF TRUST is made and dated as of **January 20, 2005** between **Trudy A. Kalush, A Single Woman**, herein called "Trustor", whose address is **16625 South Pacific Coast Highway, Sunset Beach, California 90742**, Commercial Capital Bancorp, Inc., a Nevada corporation, herein called "Trustee", and Commercial Capital Bank, FSB, a federally chartered savings bank, herein called "Beneficiary". WITNESSETH: That Trustor irrevocably grants, transfers, and assigns to Trustee in trust, with power of sale, that real property, property rights and interest in the County of **Orange**, described in EXHIBIT "A" attached hereto and by this reference made a part hereof.

Assessor's ID/Parcel No.: **178-522-04**

INCLUDING all buildings, structures, improvements, appliances, equipment and appurtenances now or hereafter constructed or placed thereon, including, but not limited to, all apparatus and equipment, whether affixed to the land or building thereon or not affixed thereto, whether single units or centrally controlled, used to provide or supply air-cooling, air-conditioning, heat, gas, water, light and power, refrigeration, ventilation, laundry, clothes drying, dish washing, garbage disposal or other services, waste vent systems, antennas, pool equipment, window coverings, drapes and drapery rods, carpeting and floor coverings, awnings, ranges and ovens, water heaters, attached cabinets, pumps, pipes, tanks, fire prevention, fire extinguishing and communications apparatus, elevators, escalators, and partitions, and all of the above items are declared to be and are deemed to be things affixed to and a part of the realty for the purposes of this Deed of Trust.

TOGETHER WITH all interest which Trustor now has or may hereafter acquire in or to said property and in and to:

(a) All rents, issues, profits, royalties, tolls, earnings and incomes therefrom and installments of money payable pursuant to any agreement for sale of said Property or any part thereof, subject however to the right, power and authority given to and conferred upon Beneficiary by Paragraph 15 below.
(b) All easements, rights of way and other appurtenances thereto;
(c) All shrubs, trees and plants;
(d) All adjacent lands included in enclosure or occupied by buildings located partly on the above described property;
(e) All crops growing or to be grown on said property;



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(f) All water and water rights (whether or not appurtenant) and shares of stock pertaining to water or water rights ownership of which affects said property;

(g) All claims, demands or causes of action of any kind, including proceeds of settlement of any such claim, demand or cause of action of any kind, including insurance proceeds subject to the right of Beneficiary given by Paragraph 2 below, which Trustor now has or may hereafter acquire, arising out of acquisition or ownership of the property, subject however to the right, power and authority given to and conferred upon Beneficiary by Paragraph 5 below. Trustee shall have no duty to prosecute any such claim, demand or cause of action.

For the purposes of this instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights and interest shall be referred to as "the Property".

THIS DEED OF TRUST SECURES AN ADJUSTABLE RATE NOTE - SEE PARAGRAPH 23.

THIS DEED OF TRUST IS FOR THE PURPOSE OF SECURING THE FOLLOWING:

A. Payment of the loan amount above, with interest thereon, according to the terms of a Promissory Note or Notes (herein sometimes referred to as "the Note") of even date herewith, made by Trustor, payable to Beneficiary or order, and any and all modifications and extensions or renewals thereof (see Paragraph 23);

B. Payment of such additional sums, with interest thereon, as may be hereafter borrowed from Beneficiary by the then record owner or owners of the Property which are required or permitted by the documents secured by this Deed of Trust and all extensions, modifications and renewals of such additional borrowings;

C. Payment, performance and discharge of and security for every obligation, covenant and agreement of Trustor whether contained or incorporated by reference in this Deed of Trust, or contained in any instrument now or hereafter executed by Trustor in connection with the loan evidenced by the Note, including but not limited to the loan application, any financial statements, escrow instructions, assignment, construction loan agreement, holdback agreement, pledge agreement, security agreement, supplemental agreement, assignment of Lessor's interest in leases, modification agreement or assumption agreement, but expressly excluding any environmental indemnification agreement, (collectively the "Loan Documents");

D. Payment of all sums of money with interest which may be paid out or advanced by, or may otherwise be due to Trustee or Beneficiary under any provision of this Deed of Trust.

To Protect the Security of this Deed of Trust, Trustor Agrees:

1. **PRESERVATION OF THE PROPERTY.** Trustor (a) shall keep and maintain the Property in good condition and repair, (b) shall not remove, demolish or substantially alter any building, structure or improvement thereon, (c) shall complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon and will pay when due all claims for labor performed and material furnished therefor, (d) shall comply with the provisions of all insurance policies covering and with all laws and regulations affecting the Property or requiring any alterations, repairs or improvements thereon, (e) shall not commit or suffer any waste thereon, (f) shall not commit or suffer any act upon the Property in violation of any provision of any insurance policy or law or regulation, and (g) consistent with the use thereof, shall timely do all other acts which the character or use of the Property may reasonably require.

2. **INSURANCE.** Trustor shall, at Trustor's expense, provide and maintain in force at all times with respect to the Property, fire, flood, earthquake and other types of insurance as may be required by Beneficiary. All of such insurance policies shall have a loss payable endorsement in favor of Beneficiary and shall be for a term and in form, content, amount, and with such insurance companies, as may be satisfactory to Beneficiary. Such policies shall be delivered to Beneficiary whether upon the making of this Deed of Trust or at a subsequent time during the term of the Note. Trustor shall also deliver at such times evidence that the full premium for any such policy has been paid. Beneficiary at its option may retain possession of the original policy or it may release it to the possession of the Trustor. At least thirty (30) days before the expiration of any such insurance policy, a policy or policies renewing, extending or replacing such expiring insurance shall be delivered by Trustor to Beneficiary. If any such insurance policy is not so delivered to Beneficiary or in the event any such insurance policy is canceled, whether the Beneficiary has in its possession the policies or not, and no reinstatement or replacement policy is received prior to termination of insurance, Beneficiary, without notice to or demand upon Trustor, may (but shall not be obligated to) obtain such insurance with such company as Beneficiary may deem satisfactory, and pay the premium therefore, and the amount of any premium so paid shall be charged to and promptly paid by Trustor or at the option of Beneficiary, may be added to the indebtedness secured hereby. Failure to reimburse Beneficiary within 10 days of billing for such premium shall be a default, even if the required policies were in effect if the evidence of such coverage was not timely provided as required to Beneficiary.

Beneficiary may add the premium an it if not timely paid to the principal balance the Loan without waiving any default. Should any policy thus obtained by Beneficiary thereafter be cancelled, Trustor shall pay to Beneficiary any earned premiums on said policy and a reasonable charge for its services in obtaining such policy.

Neither Trustee nor Beneficiary shall be responsible for the collection of any insurance monies, or for any insolvency of any insurer or insurance underwriter. The right to any unearned premiums under said insurance policies is hereby assigned and shall pass to the purchaser of the Property conveyed at any Trustee's sale held or to the grantee of a deed in lieu of foreclosure if such a conveyance is made. Any part or all of the amount collected under any fire or other insurance policy covering the Property, whether such policy was required by Beneficiary or not, may be applied by Beneficiary upon any indebtedness secured by this Deed of Trust at such time and in the manner and amount as Beneficiary may determine, or at the option of Beneficiary, without reducing the indebtedness secured hereby, may either be used to replace, restore or reconstruct the Property to a condition satisfactory to Beneficiary or be released to Trustor. Any application, use or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Trustor shall pay Beneficiary inspection fees and other costs resulting from or connected with the casualty loss to which such insurance relates.

Trustor hereby assigns to Beneficiary all proceeds of any insurance (including, but not limited to, earthquake insurance) which Trustor may be entitled to receive for loss or damage to the Property, whether or not such insurance is required pursuant to this Deed of Trust or any of the Loan Documents. In the event of any loss or damage to the Property, all insurance proceeds (including, but not limited to, earthquake insurance), whether or not so required, shall be payable to Beneficiary, and Trustor hereby authorizes and instructs any concerned insurance company to pay such insurance proceeds directly to Beneficiary.

3. **LIFE, ACCIDENT OR HEALTH INSURANCE.** If Trustor shall assign or deliver a policy of life, accident or health insurance to Beneficiary as further security hereunder, then if Trustor fails to pay any premium thereon, Beneficiary shall be entitled, but not obligated, to pay any such premium. Any amount so paid shall be charged to and promptly paid by Trustor. Failure to reimburse Beneficiary within 10 days of billing for such premium shall be a default. Beneficiary may add the premium amount if not timely paid to the principal balance of the Loan without waiving any default.

4. **TAXES AND ENCUMBRANCES.** Trustor shall pay (a) at least twenty (20) days before delinquency, all general and special taxes, and assessments now or hereafter affecting the Property, including any assessments on appurtenant water stock; (b) when due, all special assessments for public improvements without permitting any improvement bond to issue for any special assessment; (c) on demand of Beneficiary, all encumbrances, charges and liens on the Property or any part thereof, which are or may be prior or superior hereto; (d) when due, all fees and charges incidental to ownership, occupancy or beneficial use of the Property; and (e) if the Property is or includes a condominium, community apartment or is all or part of a planned development, all payments required of the owner thereof under any declaration of covenants or conditions or restrictions pertaining to such project. Should Trustor fail to make any payment under this Paragraph 4, Beneficiary may, but shall not be obligated to, make such payment and any amount so paid shall be charged to and promptly paid by Trustor or, at the option of Beneficiary, shall be added to the indebtedness secured hereby, without regard to the validity or legality of such assessments, liens or charges.

5. **CLAIMS, DEMANDS AND ACTIONS.** Trustor shall (a) appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (b) at the option of Beneficiary, assign to Beneficiary, to the extent of Beneficiary's interest, any claims, demands or causes of action of any kind, including any award, court judgment or proceeds of settlement of any such claim, demand or cause of action of any kind which Trustor now has or may hereafter acquire arising out of acquisition or ownership of the Property. Without limiting the generality of the foregoing, any such claim, demand or cause of action arising out of acquisition or ownership of the Property may include (i) any such injury or damage to the Property or any structure or improvement situated thereon, or (ii) any claim or cause of action in favor of Trustor which shall have arisen out of the transaction financed in whole or in part by the making of the loan secured hereby, or (iii) any claim or cause of action in favor of Trustor (except for bodily injury) which arises as a result of any negligent or improper construction, installation or repair of the Property, including the surface or subsurface thereof, or of any building or structure thereon. Trustor shall at Trustor's expense pursue such claims and shall not permit any award of damages to be subject to a claim of attorneys' fees unless approved in writing by Beneficiary. Beneficiary may apply, use or release such monies received by it in the same manner as Paragraph 2 provides for application, use, or release of insurance proceeds.

6. **DEFENDING TRUST.** Notwithstanding the provisions of Paragraph 5, Beneficiary or Trustee may (a) commence and prosecute or appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; (b) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appear to be prior or superior hereto; and (c) in exercising any such right, incur any liability and expend whatever amounts either deems reasonably necessary, including cost of evidence of title and reasonable attorneys' fees and such costs and expenses shall be added to the principal balance of the Loan and shall be paid by Trustor within 30 days or such other period acceptable to Beneficiary.

7. **PROTECTION OF SECURITY BY BENEFICIARY OR TRUSTEE.** Should Trustor fail to make any payment or do any act provided in this Deed of Trust, then Beneficiary or Trustee, but without obligation so to do, and without

notice to or demand upon Trustor, a. /ithout releasing Trustor from any obligat. iereof, may make any such payment or do any such act in such manner and to such extent as either deems necessary to protect the security hereof. Beneficiary or Trustee is authorized to enter upon the Property at any time for such purpose. Trustor hereby irrevocably authorizes Beneficiary to apply any and all amounts received by Beneficiary in repayment of the Loan first to amounts which are not guaranteed pursuant to the terms of any guaranty executed in connection with this Loan and then to amounts which are guaranteed pursuant to the terms of any such guaranty. Trustor hereby waives any and all rights it has or may have under Section 2822 of the Civil Code of California, as amended or recodified from time to time, which provides that if a guarantor is "liable upon only a portion of an obligation and the principal provides partial satisfaction of the obligation, the principal may designate the portion of the obligation that is to be satisfied".

8. **REIMBURSEMENT.** Trustor shall pay immediately upon demand all costs, fees or expenses incurred and sums expended or advanced under the terms of this Deed of Trust by Beneficiary or Trustee, with interest thereon at a rate equal to the rate provided for in the Note secured hereby, and the obligation of Trustor to pay such sums and interest as aforesaid shall be secured hereby.

9. **LEASEHOLD ESTATES.** If the security for this Deed of Trust is a leasehold estate, Trustor shall not modify, surrender, or terminate the lease or leases, creating the leasehold estate, and shall comply with all of the covenants and conditions required of the Lessee or his successor in interest to be performed under the lease or leases creating said leasehold estate, including but not limited to paying when due rent and other charges imposed upon such Lessee.

10. **IMPOUND ACCOUNT.** Trustor shall pay to Beneficiary, if Beneficiary shall so demand, in addition to any other payment required hereunder, monthly installments for the purpose of creating and maintaining a fund to provide payment when due of any taxes, encumbrances, assessments, leasehold payments relating to the Property, premiums for any policies of insurance insuring the Property, the Trustor or the loan, more specifically referred to in Paragraphs 2, 3, 4 and 9. Trustor shall deliver promptly to Beneficiary all bills and notices thereof. Said installments shall be in such amounts as Beneficiary shall estimate from time to time to be necessary to provide sufficient monies in said fund to pay such taxes, encumbrances, assessments, leasehold payments and premiums when they become due and shall be payable concurrently with the monthly installment under the Note. If the amounts paid to Beneficiary under the provisions of this paragraph are insufficient to pay such taxes, assessments, leasehold payments and premiums as they become due, Trustor shall pay to Beneficiary promptly upon demand the amount of the deficiency. Failure to timely pay any such insufficient impound amounts shall be a default.

In the event of default of any obligation hereby secured, then any funds in the possession of Beneficiary under the provisions of this paragraph may, at the option of Beneficiary, be applied upon any indebtedness secured hereby.

11. **FINANCIAL STATEMENTS.** Within thirty (30) days after written demand by Beneficiary but not more frequently than annually, Trustor shall deliver to Beneficiary verified financial statements for the Trustor and for any business of Trustor which was a material consideration in Beneficiary granting the Loan, prepared in accordance with acceptable accounting practices, for such annual or other period as Beneficiary may designate. Such financial statements shall include balance sheets, operating statements, and statements of sources and application of funds. In addition, Trustor shall deliver to Beneficiary on demand, copies of all leases, agreements, vouchers, receipts and other documents supporting any of the items shown in such statements. Trustor shall keep and maintain a full and accurate set of books and records showing all the matters above specified, and shall permit Beneficiary at any time to inspect and audit all Trustor's books of account, records, and papers relating to any of the foregoing matters. In the event any such audit is caused to be made by Beneficiary by reason of the failure of Trustor to comply with any of the foregoing provisions, then Trustor shall pay to Beneficiary upon demand all expenses incurred by Beneficiary in connection with such audit.

12. **DAMAGE TO OR CONDEMNATION OF PROPERTY.** Any award of damages or compensation for injury to, or in connection with any condemnation for public use of the Property or any part thereof, or any proceeds of any settlement with respect to a condemnation whether or not eminent domain proceedings have been instituted, shall be and is hereby assigned by Trustor and shall be paid to Beneficiary, who may apply, use or release the amount thereof in the same manner as Paragraph 2 provides for application, use, or release of insurance proceeds.

13. **BENEFICIARY'S CONSENT REQUIRED.** Beneficiary may declare all sums secured hereby immediately due and payable except as expressly limited by law, if Trustor without Beneficiary's prior written consent: (a) sells, conveys, contracts to sell by installment land contract, alienates or further encumbers all or any part of the Property; or (b) leases all or any part of the Property for a term, together with all exercisable options, of 3 years or more, or which contains a purchase option; or (c) suffers the title or any interest in the secured Property to be divested, whether voluntarily or involuntarily; or (d) changes or permits to be changed the character or use of the Property; or (e) is a partnership and any of the general partners' interests are transferred or assigned, whether voluntarily or involuntarily; or (f) is a corporation with fewer than 100 stockholders at the date of execution of this Deed of Trust and more than 10% of its capital stock is sold, transferred or assigned during a 12 month period; or (g) is a limited liability company and either (i) any of the managers' interests are transferred or assigned, whether voluntarily or involuntarily, or (ii) more than 10% of the aggregate of its membership interests are sold, transferred or assigned during a 12 month period. Trustor will not create or permit to continue in

existence any mortgage, pledge, encumbrance, lien, or charge of any kind (including purchase money and conditional sale liens) on any of the Property except for liens securing the Loan and (a) liens for taxes not yet delinquent, and (b) any other liens or charges that are specifically approved in writing by Beneficiary prior to the recordation of this Deed of Trust.

14. **NO WAIVER.** Trustee or Beneficiary by accepting payment of any sum secured hereby after its due date, or by making payment or taking any action which, under the provisions hereof either Trustee or Beneficiary is entitled but not obligated to make or take, or by forbearing from enforcing any of its rights, shall not be deemed to have waived its right to require payment from or action by Trustor and to declare a default for Trustor's failure to do so. In the event either Trustee or Beneficiary shall expressly waive any rights under any provisions of this Deed of Trust, such waiver shall not be deemed a waiver of any rights Trustor or Beneficiary may have subsequently to require payment from or action by Trustor and declare a default for Trustor's failure to do so.

15. **ASSIGNMENT.** Trustor hereby absolutely and unconditionally assigns and transfers all of Trustor's right, title, and interest to Beneficiary, during the continuance of these trusts, in and to all rents, issues, profits, royalties, tolls, earnings and income of the Property including those arising by reason of any oil, gas or mineral lease thereof, and all installments of money payable pursuant to any contract of sale or lease relating to the Property or any part thereof (hereinafter referred to collectively as "income"), together with the right, power and authority to collect and retain all such income as it becomes due and payable. All income received by Beneficiary through the exercise of the foregoing assignment, less all expenses, (including reasonable attorneys' fees) incurred by Beneficiary in collecting such income shall be applied by Beneficiary on any indebtedness secured by this Deed of Trust at such time and in the manner and amount as Beneficiary may determine. Without limiting the generality of the foregoing, such application may include payment of periodic installments of principal and interest, or reduction of the principal balance or reimbursement to Beneficiary as provided in Paragraph 8. The foregoing is an absolute assignment effective upon recordation of this Deed of Trust and is independent of Beneficiary's actual or constructive possession of the Property. Prior to any default, Trustor is hereby granted the right to collect the assigned income first to pay all operating expenses of the Property then to pay any net income to the owners of the Property. Upon default, Trustor's right to collect income terminates automatically.

16. **DEFAULT BY TRUSTOR.** Upon default by Trustor in payment of any indebtedness secured, or in the performance of any obligation imposed upon Trustor by this Deed of Trust, or the other Loan Documents, Beneficiary may, without notice and irrespective of whether declaration of default has been delivered to Trustee and without regard to the adequacy of the security for the indebtedness secured hereby, either personally or by attorney or agent, without bringing any action or proceeding, without entering into possession of the Property, or by receiver to be appointed by a court; (a) enter into possession and hold, occupy, possess and enjoy the Property; (b) make, cancel, enforce, modify or terminate leases; (c) obtain and eject tenants; (d) set or modify rents; (e) take, receive and collect all or any part of the income described in Paragraph 15, including income received by the Trustor after the default or before it became due. After paying such costs of maintenance and operation of the Property as it in its judgment may deem proper, Beneficiary may apply the balance upon the entire indebtedness then secured hereby. The acceptance of such income shall not constitute a waiver of any other right which Trustee or Beneficiary may have under this Deed of Trust or under the laws of California. The receipt and application by Beneficiary of such income pursuant thereto, after execution and delivery of declaration of default and demand for sale or during the pendency of a Trustee's sale proceeding hereunder, shall not cure any breach or default, nor affect said sale proceeding or any sale made pursuant thereto, but such income, less all costs of operation and maintenance, when received by Beneficiary, shall be applied in reduction of the entire indebtedness from time to time secured hereby. Trustor shall not in any manner obstruct or interfere with any of Beneficiary's rights under this Paragraph 16.

17. **TRUSTEE AUTHORIZED.** Upon written request of Beneficiary and presentation of this Deed of Trust and the Note secured hereby for endorsement, and without affecting the liability of any person for payment of the indebtedness secured hereby, Trustee may (a) reconvey any part of the Property; (b) execute the title sheet of any map, plat or record of survey thereof; (c) join in granting any easement thereon; or (d) join in any agreement modifying the terms hereof or subordinating the lien or charge hereof. Trustor shall pay to Beneficiary and Trustee a reasonable service charge for any such action.

18. **RECONVEYANCE.** Upon written request of Beneficiary and upon surrender of this Deed of Trust and the Note secured hereby to Trustee for retention, and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters of fact shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto". Five (5) years after the date of such reconveyance, Trustee may destroy the Deed of Trust and Note, without liability. Notwithstanding anything set forth herein, Trustee may, in its sole discretion, deliver said Note or Deed of Trust or both to the person entitled thereto.

19. **FEES.** Trustor shall pay to Beneficiary the maximum amount as may from time to time be permitted by law for furnishing in connection with the obligations secured hereby, each statement pursuant to any statute at the time then in force. Additionally, Trustor shall pay Beneficiary's and Trustee's fees, charges and expenses for any other statement, information or services furnished by Beneficiary or Trustee in connection with the obligations secured hereby. Said

services may include, but shall not limited to, the processing by Beneficia, r Trustee, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owner, recordation of map, plat or record of survey, grants of easements, and full and partial reconveyance, and the obtaining by Beneficiary of any policies of insurance pursuant to any of the provisions contained in this Deed of Trust. Additionally, Trustor shall pay all Trustee's fees, attorneys' fees, costs and expenses incurred in connection with or arising from any of the actions taken by Beneficiary, Trustee, or their agents described in Paragraphs 6, 8, 16 and 20.

20. **SALE BY TRUSTEE.** Upon default by Trustor in payment of any indebtedness, or performance of any obligation secured by this Deed of Trust, Beneficiary, in addition to any other remedy or process available to Beneficiary, may declare all sums secured by this Deed of Trust immediately due and payable by delivering to Trustee a written declaration of default and causing to be filed for record a written notice of default and election to sell, and shall deposit with Trustee this Deed of Trust and any Note or other evidence of indebtedness secured by this Deed of Trust and all documents evidencing expenditures secured hereby. After the lapse of such time as may be required by law following the filing for record of said notice of default, and after giving all such notice as may be required by law, Trustee, without demand on Trustor, may sell the Property, either as a whole or in separate parcels, and in such order as it may determine, by public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale, or for the equivalent of cash, as so determined by Trustee in its sole discretion. If the indebtedness secured hereunder is additionally secured by real property which is not subject to this Deed of Trust, Trustee may sell any property so given as security for Trustor's obligation, which it is authorized to sell, either in whole or in separate parcels and in such order as it may determine. Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place fixed for such sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Following sale, Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recital in such deed of any matters of fact shall be conclusive proof of the truth thereof. Any person, including Trustor, Trustee and Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this trust, including cost of evidence of title in connection with the sale and reasonable attorneys' fees, Trustee shall apply the proceeds of sale to payment, first, of all sums expended under the terms of this Deed of Trust, not then repaid, with accrued interest at the rate specified in the note secured by this Deed of Trust, and then to all other sums secured by this Deed of Trust, and, if there be any proceeds remaining, shall distribute them to the person or persons legally entitled thereto, upon proof of entitlement being submitted to Trustee.

21. **WAIVER OF STATUTE OF LIMITATIONS.** Trustor hereby waives, to the fullest extent permissible by law, the statute of limitations as a defense to any demand or obligations secured by this Deed of Trust.

22. **SUBSTITUTION OF TRUSTEE.** Beneficiary may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or action hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the office of the Recorder of the county or counties where the Property is situated, shall be conclusive proof of the proper substitution of such successor Trustee or Trustees, who shall, without conveyance, succeed to all the title, estate, right, powers and duties of the predecessor Trustee. Said instrument shall contain the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution may not be exercised unless the then acting Trustee signs an endorsement on such instrument of substitution to the effect that all costs, fees and expenses due to such Trustee have been paid or satisfied.

23. **ADJUSTABLE MORTGAGE LOAN.** The Note secured by this Deed of Trust contains provisions which may result in increases in the interest rate, in the monthly installments, and in the unpaid principal balance. Reference is hereby made to the Promissory Note for the specific provisions relating to such increases.

24. **HAZARDOUS SUBSTANCES.** Trustor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Trustor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Trustor shall promptly give Beneficiary written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Trustor has actual knowledge. If Trustor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Trustor shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 24, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 24, "Environmental Laws" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**25. OCCUPANCY AGREEMENT.** If Trustor was required to execute an Occupancy Agreement as a condition for obtaining the Loan secured by this Deed of Trust, the terms of the Occupancy Agreement, including the provisions which make a violation of its terms an event of default under this Deed of Trust, are incorporated herein by this reference.

**26. WARRANTIES.** Trustor represents and warrants that by signing this Deed of Trust all signers have requisite power and authority to execute this Deed of Trust and any and all other instruments they have executed and delivered to Beneficiary in connection with the Loan secured by this Deed of Trust, that any and all balance sheets, income statements, and financial data of any other kind furnished to Beneficiary by or on behalf of Trustor are true and correct and accurately reflect the present financial condition of the subjects thereof as of the date thereof. These representations and warranties shall survive until all obligations and sums due which are secured by this Deed of Trust have been satisfied in full. Any breach of these warranties shall be a default and Trustor shall indemnify, defend and hold Beneficiary harmless from any loss, fees or costs directly or indirectly related to claims arising out of such breach.

**27. GENERAL PROVISIONS:**

A. The term "Trustor" shall mean all parties executing this Deed of Trust as Trustor, their respective heirs, legatees, devisees, administrators, executors, successors in interest and assigns, provided that Beneficiary shall not be obligated to give Notice of Default or Notice of Sale hereunder to any Trustor other than as shown on the face page hereof.

B. The term "Beneficiary" shall mean the owner and holder (including a pledgee) of the Note secured hereby, whether or not named as Beneficiary herein.

C. Every provision of this Deed of Trust imposing upon Trustor an obligation to perform an act, or embodying an agreement by Trustor to perform an act, shall be construed as obligating Trustor to pay all costs and expenses relating thereto.

D. In the event any provision hereof shall be declared invalid or unenforceable through a final judgment in a court having competent jurisdiction, the validity or enforceability of any of the remaining terms hereof shall not be thereby impaired.

E. In this Deed of Trust, wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural, and vice versa, and if more than one person is named as Trustor, the obligations of Trustor shall be the joint and several obligations of each person.

F. Captions and paragraph headings used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.

The undersigned Trustor(s) request(s) that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to each Trustor named on the face page hereof, at the address set forth thereon.

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR AN ADJUSTABLE INTEREST RATE AND CONTAINS PROVISIONS WHICH MAY REQUIRE A BALLOON PAYMENT AT MATURITY.

Trudy A. Kalush

Trudy A. Kalush



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State of California
County of LOS ANGELES

On JAN. 21, ~~2004~~ 2005 before me, VERLYNE VANDERPOOL
DATE NAME, TITLE OF OFFICER-E.G., "JANE DOE, NOTARY PUBLIC"

personally
appeared TRUDY A. KALUSH

NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

VERLYNE VANDERPOOL
Commission # 1457434
Notary Public - California
Los Angeles County
My Comm. Expires Dec 21, 2007

WITNESS my hand and official seal.

Verlyne Vanderpool
SIGNATURE OF NOTARY



G:\LEGAL\ESTATE\MORTGAGE\DOTARM(R-2).DOC
WEPAT

GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the Notary Seal on the document to which this Statement is attached reads as follows:

NAME OF THE NOTARY: Verlyne Vanderpool
DATE COMMISSION EXPIRES: 12-21-07
COUNTY WHERE BOND IS FILED: Los Angeles
COMMISSION NUMBER: 1457434 VENDOR#: NNA1

I certify under penalty of perjury and the laws of the State of California that the illegible portion of this document to which this statement is attached reads as follows:

PLACE OF EXECUTION: **LOS ANGELES** DATE: 1/24/05

SIGNATURE:

* Personally know to me (or proved to me on the basis of satisfactory evidence) to be the person(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or entity upon behalf of which the person(s)acted, executed the instrument.

# EXHIBIT "A"

LOT 1, BLOCK 20, OF SUNSET BEACH, IN THE COUNTY OF ORANGE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGES 39 AND 40 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**NOTE:** When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
333 South Grand Avenue, Suite 2100
Los Angeles, CA 90071

A true and correct copy of the foregoing document described as Declaration of Ronaldo Reyes in Support of Creditor Standing and Note Ownership

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On 8/21/12, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

☑ Service information continued on attached page

**II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL**(indicate method for each person or entity served):
On 8/21/12, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.
Judge Smith, US Bankruptcy Court, 411 W Fourth Street, Suite 5041, Santa Ana, CA 92701

☐ Service information continued on attached page

**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL** (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on ____________, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

| 8/21/12 | Lewis R. Landau | /s/ Lewis R. Landau |
|---|---|---|
| *Date* | *Type Name* | *Signature* |

Case 8:11-bk-19563-ES Doc 262 Filed 08/21/12 Entered 08/21/12 12:23:28 Desc
Part 2 of 2 Page 136 of 140

| In re: Kalush Debtor(s). | CHAPTER: 11<br>CASE NUMBER: 8:11-bk-19563-ES |
|---|---|

**ADDITIONAL SERVICE INFORMATION** (if needed):

NEF Service List (category I):

Richard J Bauer on behalf of Interested Party Courtesy NEF
rbauer@mileslegal.com

Joseph C Delmotte on behalf of Interested Party Courtesy NEF
ecfcacb@piteduncan.com

Mark Domeyer on behalf of Creditor Bank of America, N.A....
mdomeyer@mileslegal.com

Mark D Estle on behalf of Creditor Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 Under the Pooling and Servicing Agreement dated
mdestle@estlelaw.com

Marc C Forsythe on behalf of Debtor Trudy Kalush
kmurphy@goeforlaw.com

Robert P Goe on behalf of Debtor Trudy Kalush
kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
nancy.goldenberg@usdoj.gov

John H Kim on behalf of Creditor Wells Fargo Bank, N.A.
jkim@cookseylaw.com

Lewis R Landau on behalf of Creditor Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 Under the Pooling and Servicing Agreement dated
LLandau@Dykema.com

Christopher M McDermott on behalf of Creditor JPMorgan Chase Bank, N.A., successor in interest from the Federal Deposit Insurance Corporation, as receiver for Washington Mutual Bank
ecfcacb@piteduncan.com

Vy Pham on behalf of Creditor The Bank of New York Mellon...
vpham@mileslegal.com

Cassandra J Richey on behalf of Creditor The Bank of New York Mellon, et al
cmartin@pprlaw.net

United States Trustee (SA)
ustpregion16.sa.ecf@usdoj.gov

# EXHIBIT 6

EXHIBIT 6

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION

| | |
|---|---|
| In re:<br><br>TRUDY KALUSH,<br><br>Debtor.<br>_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _<br><br>TRUDY KALUSH, an individual,<br><br>Plaintiff,<br><br>vs.<br><br>DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE OF THE INDYMAC INDX DEED OF TRUST LOAN TRUST 2005-AR12, DEED OF TRUST PASS-THROUGH CERTIFICATES, SERIES 2005-AR12, UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005; ONE WEST BANK, FSB; and DOES 1-100, inclusive,<br><br>Defendants.<br>_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ | No: 8:11-bk-19563-es |

DEPOSITION OF

RONALDO REYES

IRVINE, CALIFORNIA

DECEMBER 3, 2012

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depo.com

REPORTED BY: THERESA M. SILVA, CSR NO. 12895

FILE NO: A60BC96

BY MR. GOE:

Q. Well, you're stating that Deutsche Bank signed the former final certification of trustee; correct?

A. Right.

But as I said, the purpose of the form of final certification is to let the deal parties know that the trustee has received, or was delivered by the depositor entity, certain documents.

And when you look at this certification, there is a parenthetical, other than any mortgage loan paid in full or listed on the attached document exception report.

So as I said earlier, it basically states for the deal parties, what may not have yet been delivered by the depositor to the trustee at that point in time.

Q. So is there a document that says that the Kalush deed of trust was not delivered as of the closing of the PSA?

A. That the Kalush mortgage was not delivered or that the -- that's what you're asking?

Q. It says the original recorded mortgage, which you say you received on May 3, 2012?

A. Right.

Q. You did not have it as of the closing -- Deutsche did not have it as of the closing of this trust; correct?

A. That's correct. Based on our business records, that's correct.

Q. Now, if you go to what's marked as Exhibit B to your declaration.

A. Okay.

Q. What is this document what's marked -- that's Exhibit B to your declaration?

A. Exhibit B?

Q. B.

A. "B," as in "boy"; right?

Q. Yeah.

MS. RHIM: Objection.

THE WITNESS: This is the redacted mortgage loan schedule.

MR. GOE: Did you want to make an objection?

MS. RHIM: Yeah. Objection calls for narrative.

BY MR. GOE:

Q. Now, when you say it's a redacted loan schedule, that means you took out Ms. Kalush's portion of the mortgage loan schedule from a much larger document that had a number of loans scheduled on there?

A. Yes.

Q. Now, if you go to -- go to right behind where it says Exhibit B, it says loan number 120388742.

A. Yes.

correct?

MS. RHIM: Objection. Vague.

THE WITNESS: I'm sorry. Are you asking me if that was the first date?

BY MR. GOE:

Q. Yes.

A. I don't know. I'd have to look at our system of record.

Q. Okay. All right.

Let's take a look at what's marked as Exhibit 3.

This is the proof of claim that was filed in Ms. Kalush's bankruptcy proceeding on or about August 2, 2011.

Have you ever seen this document before?

A. No.

Q. Now, at the bottom it's got a signature from Michael Shaw, as creditor's authorized agent.

Did Deutsche hire Mr. Shaw?

MS. RHIM: Objection. Vague.

THE WITNESS: No.

BY MR. GOE:

Q. Do you know who Mr. Shaw is?

A. No.

Q. Now, this document was signed on August 2, 2011. And Mr. Shaw attached a promissory note and a deed of trust.

Do you see that?

A. Yes, I see those documents.

Q. Did Deutsche give those documents to Mr. Shaw?

MS. RHIM: Objection. Vague.

THE WITNESS: No.

BY MR. GOE:

Q. So you have no idea how Mr. Shaw got the documents, you don't know Mr. Shaw and you didn't authorize the filing of this proof of claim; right?

MS. RHIM: Objection. Compound. Compound.

THE WITNESS: Well --

MS. RHIM: Counsel, I suggest you break down your questions.

THE WITNESS: I don't recall now the first two questions.

But with respect to the last question, I would refer you to One West's servicer. Because Deutsche Bank National Trust Company is the trustee of this trust, and it doesn't service the mortgage loans.

The mortgage loan servicer is responsible for collecting the mortgage loan payments, initiating foreclose proceedings, if necessary.

MS. RHIM: I think you've answered the question.

MR. GOE: Please don't -- let him answer the

# EXHIBIT 7

# EXHIBIT 7

BRICE, VANDER LINDEN & WERNICK, P.C.

9441 LBJ Freeway, Suite 250 • Dallas, Texas 75243 • (972) 643-6600 • (972) 643-6698 (Fax)

April 19, 2012

**SENT VIA** ☐ **REGULAR MAIL** ☒ **OVERNIGHT** ☐ **FACSIMILE** ________

Wendy Traxler
OneWest Bank
2900 Esperanza Crossing
Austin, TX 78758

| | | |
|---|---|---|
| RE: | Creditor: | OneWest Bank, FSB |
| | Debtor: | Trudy Kalush |
| | Loan No.: | xxxxxx9495 |
| | Alt. Ref. No.: | N/A |
| | Our File No.: | 6506-N-3710 |

Dear Wendy:

Enclosed please find copies of the following documentation regarding the above-referenced case:

- ☐ Notice of Appearance
- ☐ Proof of Claim
- ☐ Reaffirmation Agreement
- ☐ Objection to Confirmation of Plan
- ☐ Motion for Relief from Automatic Stay
- ☐ Affidavit in Support of Motion for Relief
- ☐ Notice of Hearing
- ☐ Notice of Default
- ☐ Discharge of Debtor
- ☐ Agreed Order Modifying Stay ( ___ Proposed / ___ Final)
- ☐ Motion for Approval pursuant to Rule 4001(d)
- ☐ Debtor's Answer/Response to Motion
- ☐ Proof of insurance coverage to be validated
- ☐ Chapter 13 Plan or Plan Summary
- ☒ Original Collateral File

If you have any questions, please do not hesitate to contact us.

Very truly yours,

Pamela Beason

Pamela Beason
National Bankruptcy Services
Phone: 214-550-4087
E-mail: pbeason@nbsdefaultservices.com

Enclosure(s)

COVER LETTER TO CLIENT

OWB_KALUSH_000544

# Collateral File Imaging Checklist

**Loan#** 120388742

| | Yes | No | N/A |
|---|---|---|---|
| Note | ✓ | | |
| Is the endorsement stamp present? | ✓ | | |
| Allonge (if applicable) | | | ✓ |
| Security Instrument (recorded document, if available, should be stacked first) | ✓ | | |
| Is the document recorded? | ✓ | | |
| Final Title Policy | ✓ | | |
| CEMA (If applicable) | | | ✓ |
| UCC 1 (if applicable) | | | ✓ |
| Assignment or UCC-3 (if applicable) | ✓ | | |
| Preliminary Title Report | ✓ | | |

**Reviewed By:** James L. Waite

**Date:** 4/23/2012

OWB_KALUSH_000470

# EXHIBIT 8

EXHIBIT 8

**PREPARED BY AND AFTER RECORDING MAIL TO:**

**INSTRUCTIONS TO COUNTY RECORDER**
Index and file this instrument as (i) a Deed of Trust;
And (ii) a Fixture Filing covering goods which are
or are to become fixtures.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Loan No. **0910718-6**

**ASSIGNMENT OF DEED OF TRUST**

FOR VALUE RECEIVED, the undersigned, Commercial Capital Bank, FSB, a federally chartered savings bank, ("Assignor"), hereby absolutely grants, assigns and transfers to **IndyMac Bank, F.S.B.** whose address is ____________ ("Assignee"), all of Assignor's right, title and interest in, to, under and concerning the following:

That certain Deed of Trust dated **January 20, 2005,** executed by **Trudy A. Kalush, A Single Woman**, as Trustor, for the benefit of Commercial Capital Bank, FSB, a federally chartered savings bank, as Beneficiary and recorded as Instrument No. **2005000068194** on **January 27, 2005** in the Official Records of the County of **Orange, California**.

Together with any and all notes and contracts described or referred to in said Deed of Trust, all sums, including interest, due or to become due thereunder, and all rights accrued or to accrue thereunder.

The Assignment herein is made without any representation or warranty whatsoever except as may be expressly provided in that certain mortgage Loan Purchase Agreement between Assignor and Assignee, or documents, which are attached as exhibits thereto.

Dated: **March 16, 2005**

Commercial Capital Bank, FSB, a federally chartered savings bank

By: ____________
Name: **Dale Schiering**
Its: **Vice President / Secondary Marketing Manager**

State of **California**
County of **Orange**

On **March 16, 2005** before my, Linh My Le, Notary Public personally appeared **Dale Schiering**,

☒ personally known to me – **OR** - ☐ on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

SIGNATURE OF NOTARY

LINH MY LE
COMM. #1378454
Notary Public California
ORANGE COUNTY
My Comm. Expires October 5, 2006

Z:\Pool #6 INDYMAC\assignment_0910718-6.doc

OWB_KALUSH_000522

# EXHIBIT 9

EXHIBIT 9

Requested, Prepared by, and
When Recorded Mail to:
**IndyMac Bank, F.S.B.**
**155 N. Lake Avenue**
**Pasadena, CA 91101**
**Attn: Document Control**
**IndyMac Loan #: 120388742**

Space Above for Recorders Use Only

# Assignment of Deed of Trust/Mortgage

This form is furnished by **IndyMac Bank, F.S.B.**
For valuable consideration, the undersigned hereby grants, assigns, and transfers to :
________________________________________
All interest under that certain Deed of Trust/Mortgage dated: **January 20, 2005**
Executed by: **Trudy A. Kalush, A Single Woman**
and recorded as Instrument No. ______________, in Book _______, Page _______, of official records in the office of the County Recorder of **Orange** County, State of **California**, property described as per said Deed of Trust/Mortgage of Record, together with the Promissory Note secured by said Deed of Trust/Mortgage and also all rights accrued or to accrue under said Deed of Trust/Mortgage.

**IndyMac Bank, F.S.B.**

Dated: **March 30, 2005**
State of: **Georgia**
County of: **Gwinnett**

BY: ________________________
**Melody Spotts – Asst. Vice President**

On **March 30, 2005** before me the undersigned, a Notary Public in and for said state, personally appeared **Melody Spotts – Asst. Vice President**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

*Witness my hand and official seal*

Signature ________________________

FELICITE NGUESSAN
MY COMMISSION EXPIRES MAY 19 2008
GWINNETT COUNTY, GEORGIA
NOTARY PUBLIC

Prepared By: **BSM**

OWB_KALUSH_000523

# EXHIBIT 10

EXHIBIT 10

Recorded in Official Records, Orange County

Tom Daly, Clerk-Recorder

9.00

2011000171094 08:00am 04/05/11

10 405 A32 1

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RECORDING REQUESTED BY
**RSM&A Foreclosures Services**

WHEN RECORDED MAIL TO:
OneWest Bank, FSB
888 East Walnut Street
Pasadena, CA 91101

Trustee Sale No. 11CA00190-1
Order No. 110012705

***Space above this line for recorder's use only***

# ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 under the Pooling and Servicing Agreement dated June 1, 2005, all beneficial interest under that certain Deed of Trust dated January 20, 2005, executed by Trudy A Kalush, a single woman, as Trustor; to Commercial Capital Bancorp, Inc, as Trustee; and recorded January 27, 2005 as Document Number: 2005000068194 of official records in the office of the Recorder of Orange County, California.

TOGETHER with the Note or Notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part, the real property described therein.

This assignment is made without recourse, representation or warranty, express or implied, by the FDIC in any capacity.

DATE: MAR 29 2011

Federal Deposit Insurance Corporation as receiver for IndyMac Federal Bank, FSB, successor in interest to IndyMac Bank, FSB.

BY* Roger Stotts Attorney in Fact

STATE OF Texas

COUNTY OF Travis

On MAR 29 2011 before me, Stacey F. Jones a Notary Public in and for said county, personally appeared Roger Stotts Attorney in Fact, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Stacey F Jones

Notary Public in and for said County and State

STACEY F. JONES
MY COMMISSION EXPIRES
February 11, 2013

Property Address: 16625 SOUTH PACIFIC COAST HIGHWAY, SUNSET BEACH, CA 90742

# EXHIBIT 11

**[RECORDING REQUESTED BY]**
**NATIONWIDE TITLE CLEARING**

**[AND WHEN RECORDED MAIL TO]**
**OneWest Bank, FSB**
**C/O NTC 2100 Alt. 19 North**
**Palm Harbor, FL 34683**

**Loan #: 3001149495**
**FHA/VA Case #:**

**Recorded in Official Records, Orange County**
**Renee Ramirez, Assistant Clerk-Recorder**
9.00
* $ R 0 0 0 5 5 3 3 4 0 1 $ *
2013000044626 12:25 pm 01/23/13
**47 405 A32 F13 1**
**0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00**

# CORPORATE ASSIGNMENT OF DEED OF TRUST

**FOR GOOD AND VALUABLE CONSIDERATION,** the sufficiency of which is hereby acknowledged, the undersigned, **JPMORGAN CHASE BANK, N.A. S/B/M/T WASHINGTON MUTUAL BANK S/B/M COMMERICAL CAPITAL BANK FSBwhose address is 1111 POLARIS PARKWAY, COLUMBUS, OH, 43240, ASSIGNOR,** by these presents does convey, grant, assign, transfer and set over the described Deed of Trust, without recourse, representation or warranty, together with all rights, title and interest secured thereby, all liens, and any rights due or to become due thereon to **OneWest Bank, FSB, WHOSE ADDRESS IS 888 E. WALNUT STREET, PASADENA, CA 91101 (800)781-7399, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).**

Said Deed of Trust made by **TRUDY A. KALUSH** and recorded on 01/27/2005 as Instrument # 2005000068194, in Book , Page in the office of the ORANGE County Recorder, CA.

**Dated on 12/ 12 /2012 (MM/DD/YYYY)**
**JPMORGAN CHASE BANK, N.A. S/B/M/T WASHINGTON MUTUAL BANK S/B/M COMMERICAL CAPITAL BANK FSB**

**By:** Ronnie Sanders
RONNIE SANDERS
Vice President

JPMorgan Chase Bank, National Association CORPORATE JPMorganChase SEAL

ACKNOWLEDGEMENT

STATE OF LOUISIANA
PARISH OF OUACHITA
On 12/ 12 /2012 (MM/DD/YYYY), before me appeared RONNIE SANDERS, to me personally known, who did say that he/she/they is/are the Vice President of JPMORGAN CHASE BANK, N.A. S/B/M/T WASHINGTON MUTUAL BANK S/B/M COMMERICAL CAPITAL BANK FSB and that the instrument was signed on behalf of the corporation (or association), by authority from its board of directors, and that he/she/they acknowledged the instrument to be the free act and deed of the corporation (or association).

Wanda Inez Kinser
WANDA INEZ KINSER
Notary Public - State of LOUISIANA
Commission expires: Upon My Death

WANDA INEZ KINSER NOTARY 16541 PUBLIC LIFETIME COMMISSION STATE OF LOUISIANA

**Document Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152**
OWEAS 14653422 -- 3/3/2011 T0712124109 [C] FRMCA1

*14653422*

# EXHIBIT 12

1/1-1

Recording Requested By
ServiceLink

RECORDING REQUESTED BY
Same as below

AND WHEN RECORDED MAIL TO

OneWest Bank, F.S.B.
2900 Esperanza Crossing, DM-01-08
Austin, TX 78758

Recorded in Official Records, Orange County
Hugh Nguyen, Clerk-Recorder
9.00
* $ R 0 0 0 5 9 4 1 9 0 8 $ *
2013000355025 8:00 am 06/12/13
66 401 A32 F13 1
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

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1461294
Trustee Sale No. 11CA00190 Loan No. 3001149495 Title Order No. 130120078

# ASSIGNMENT OF DEED OF TRUST

FOR VALUE RECEIVED, the undersigned hereby grants, assigns and transfers to Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2005-AR12, Mortgage Pass-Through Certificates, Series 2005-AR12 under the Pooling and Servicing Agreement dated June 1, 2005 all beneficial interest under that certain Deed of Trust dated 01-20-2005, executed by TRUDY A. KALUSH, A SINGLE WOMAN, as Trustor; to COMMERCIAL CAPITAL BANCORP, INC., A NEVADA CORPORATION as Trustee; and Recorded 01-27-2005 Book, Page, Instrument 2005000068194 of official records in the Office of the County Recorder of ORANGE County, California. **APN:** 178-522-04 **Situs:** 16625 SOUTH PACIFIC COAST HIGHWAY, SUNSET BEACH, CA 90742. LEGAL DESCRIPTION AS MORE FULLY DESCRIBED ON SAID DEED OF TRUST.

TOGETHER with the note or notes therein described and secured thereby, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust including the right to have reconveyed, in whole or in part, the real property described therein.

EFFECTIVE DATE: JUN 06 2013

OneWest Bank, FSB

Wendy Traxler, First Vice President

STATE OF TEXAS
COUNTY OF TRAVIS

On JUN 06 2013, 2013, before me, Carla A. Hardin, Notary Public in and for said county, personally appeared Wendy Traxler personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of TEXAS that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Carla A. Hardin

CARLA A. HARDIN
Notary Public, State of Texas
My Commission Expires
July 11, 2015

WE HEREBY CERTIFY THAT THIS IS
A TRUE AND CORRECT COPY OF THE
RECORDED 6/12/2013
INSTRUMENT NO. 355025
OF OFFICIAL RECORDS OF ORANGE
COUNTY CALIFORNIA
CHICAGO TITLE INSURANCE COMPANY.

Public Record

# EXHIBIT 13

**BRYAN CAVE LLP**
Sharon Z. Weiss, California Bar No. 169446
120 Broadway, Suite 300
Santa Monica, California 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200
Email: sharon.weiss@bryancave.com

**BRYAN CAVE LLP**
Allan P. Bareng, California Bar No. 237464
3161 Michelson Drive, Suite 1500
Irvine, California 92612-4414
Telephone: (949) 223-7000
Facsimile: (949) 223-7100
E-Mail: barenga@bryancave.com

Attorneys for Third Party
JPMORGAN CHASE BANK, N.A.



**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA**

| | |
|---|---|
| In re:<br><br>TRUDY KALUSH,<br><br>Debtor | Case No. 8:11-bk-19563-ES<br><br>Chapter 11<br><br>**THIRD PARTY JPMORGAN CHASE BANK, N.A.'S RESPONSE TO SUBPOENA BY DEBTOR TRUDY KALUSH**<br><br>Complaint Filed: July 7, 2011<br>Trial Date: Not Assigned |

Third Party JPMorgan Chase Bank, N.A. ("Chase") responds to the subpoena by debtor Trudy Kalush ("Debtor") as follows:

**REQUEST NO. 1**

The original Mortgage Note, with all intervening endorsements showing a complete chain of endorsement from the originator to the Person endorsing the Mortgage note.

**RESPONSE TO REQUEST NO. 1**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 2**

A lost note affidavit for any Loss Mortgage Note from the Seller stating that the original Mortgage Note was lost or destroyed, together with a copy of the Mortgage Note.

**RESPONSE TO REQUEST NO. 2**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 3**

The original Security Interest (Deed of Trust), with evidence of recording indicated thereon, or a copy of the Mortgage certified by the public recording office in which such Mortgage has been recorded all interim recorded assignments of the mortgage (each assignment, when duly and validly completed, to be in recordable form and sufficient to effect the assignment of and transfer to its assignee of the Mortgage to which the assignment relates).

**RESPONSE TO REQUEST NO. 3**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of

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responding party.

**REQUEST NO. 4**

The original or copies of each assumption, modification, written assurance, or substitution agreement.

**RESPONSE TO REQUEST NO. 4**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 5**

The original or duplicate original lender's title policy and all its riders.

**RESPONSE TO REQUEST NO. 5**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 6**

All documents required by the Pooling and Servicing Agreement to be in the loan level file including all exhibits M, that show any removal of the loan filed from the Custodian of the loan level files.

**RESPONSE TO REQUEST NO. 6**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 7**

All copies of documents that reflect any changes with MERS recordings or the custodial records indicating any changes in the location of the files or the ownership of such.

**RESPONSE TO REQUEST NO. 7**

A diligent search and reasonable inquiry has been made, however, no such

documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 8**

The Mortgage loan purchase agreement between Indymac Bank, FSB and Commercial Capital Bank, FSB. Attach the loan schedules.

**RESPONSE TO REQUEST NO. 8**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 9**

The Mortgage loan sale agreement between Indymac Bank, FSB and Commercial Capital Bank, FSB. Attach the loan schedule.

**RESPONSE TO REQUEST NO. 9**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 10**

The custodial documents from Indymac Bank, FSB for the sale of the subject loan from Commercial Capital Bank, FSB to Indymac Bank, FSB.

**RESPONSE TO REQUEST NO. 10**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 11**

The Agency agreement executed by Indymac Mortgage Services as agent for Deutsche Bank National Trust Company as Trustee for said file.

**RESPONSE TO REQUEST NO. 11**

A diligent search and reasonable inquiry has been made, however, no such

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documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 12**

Document for the Declaration of Default sent to the

**RESPONSE TO REQUEST NO. 12**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 13**

Documents or agreements with RSM&A Foreclosure Services, as agent for Onewest Bank, FSB agent and attorney in fact for Deutsche Bank national Trust Company as Trustee.

**RESPONSE TO REQUEST NO. 13**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 14**

Documents of Commercial Capital Bank's collateral ownership for their participation in the warehouse lending for said loan.

**RESPONSE TO REQUEST NO. 14**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 15**

All assignment and assumption agreements related to the sale of loan or servicing ownership.

**RESPONSE TO REQUEST NO. 15**

A diligent search and reasonable inquiry has been made, however, no such

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documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 16**

Any document reflecting payments of any default insurance collected on said file.

**RESPONSE TO REQUEST NO. 16**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 17**

Documents of any investigations or complaints made by Deutsche Bank National Trust Company as Trustee, against the Master Servicer Indymac Mortgage Services for the subject loan.

**RESPONSE TO REQUEST NO. 17**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 18**

Documents of any complaint reviewed by the Office of the Comptroller on this loan level file.

**RESPONSE TO REQUEST NO. 18**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 19**

Documents which show any violation of the representations made by the Seller set forth in clause (28) of Schedule III of the Pooling and Servicing agreement.

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**RESPONSE TO REQUEST NO. 19**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 20**

The loan sale agreement between Indymac Bank, FSB and Commercial Capital Bank, FSB. Including the addendum to reflect this loan being part of the transaction for the trust.

**RESPONSE TO REQUEST NO. 20**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 21**

The Mortgage Loan purchase agreement between Indymac Bank, FSB and Commercial Capital Bank, FSB. Including the addendum to reflect this loan being part of the transaction.

**RESPONSE TO REQUEST NO. 21**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 22**

All wires of monies from Indymac Bank, FSB to Commercial Capital Bank, FSB to reflect the purchase of the subject loan.

**RESPONSE TO REQUEST NO. 22**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 23**

All wires of monies from Indmac MBS, a Delaware Corporation and Depositor of Indymac INDX mortgage loan trust 2005AR12 to Indymac Bank, FSB as seller into this trust. To reflect the accounts wired to and sent from.

**RESPONSE TO REQUEST NO. 23**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 24**

The documents which give authority for Brian Broulliard to sign for Indymac Bank, FSB. Please indicate the location of the file when endorsed by Brian Broulliard.

**RESPONSE TO REQUEST NO. 24**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 25**

Any document to support this loan being sent to the Atlanta Branch of Indymac or its affiliates whereby the loan would come into contact with Brian Broulliard for his endorsement in blank.

**RESPONSE TO REQUEST NO. 25**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 26**

All accounting transactions related to the purchase and sale of this loan. Leger to show who held it on their balance sheet as an asset.

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**RESPONSE TO REQUEST NO. 26**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 27**

Any document to support the endorsement by Commercial Capital Bank, FSB in blank.

**RESPONSE TO REQUEST NO. 27**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 28**

All documents which show the date of sale of the mortgage loan to Indymac Bank, FSB from Commercial Capital Bank, FSB.

**RESPONSE TO REQUEST NO. 28**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 29**

All documents which show the date of sale of the mortgage loan servicing rights to Indymac Bank, FSB from Commercial Capital Bank, FSB.

**RESPONSE TO REQUEST NO. 29**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 30**

Documents to show the physical location of the mortgage loan file [Note and Deed of Trust].

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**RESPONSE TO REQUEST NO. 30**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 31**

Documents used to create the Proof of Claim for the subject property bankruptcy case.

**RESPONSE TO REQUEST NO. 31**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 32**

Copy of the Mortgage Loan file received from Commercial Capital Bank, FSB.

**RESPONSE TO REQUEST NO. 32**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 33**

All documents sent to RSM&A dealing with the default servicing of this loan.

**RESPONSE TO REQUEST NO. 33**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 34**

Copy of the mortgage loan schedule from the Asset sale of the subject mortgage by Onewest Bank, FSB from Indymac Federal Bank, FSB. Please include the document which supports the sale to Onewest Bank, FSB.

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**RESPONSE TO REQUEST NO. 34**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 35**

Any agency agreement with RSM&A and Onewest Bank, FSB.

**RESPONSE TO REQUEST NO. 35**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 36**

Any agency agreement with Brice Vanderlinden & Wernick P.C. and Onewest Bank, FSB.

**RESPONSE TO REQUEST NO. 36**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 37**

The custodial agreement with Onewest Bank, FSB and its custodian before the sale of this loan to Deutsche Bank National Trust Company as Trustee.

**RESPONSE TO REQUEST NO. 37**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 38**

Onewest Bank, FSB Copies of the proof of claim that was filed in this case.

**RESPONSE TO REQUEST NO. 38**

A diligent search and reasonable inquiry has been made, however, no such

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documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 39**

Any servicing records of communication with the Brice Vander Linden & Wernick P.C.

**RESPONSE TO REQUEST NO. 39**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

**REQUEST NO. 40**

Any servicing records of communication with Mark Estle attorney for Onewest Bank, FSB and Deutsche Bank National Trust Company.

**RESPONSE TO REQUEST NO. 40**

A diligent search and reasonable inquiry has been made, however, no such documents, non-privileged, are present and in the possession, custody or control of responding party.

Dated: December 27, 2012

**BRYAN CAVE LLP**
Sharon Z. Weiss
Allan P. Bareng

By: ______________________
Allan P. Bareng
Attorneys for Defendant
JPMORGAN CHASE BANK, N.A.

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# PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

3161 Michelson Drive, Ste. 1500, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **THIRD PARTY JPMORGAN CHASE BANK, N.A.'S RESPONSE TO SUBPOENA BY DEBTOR TRUDY KALUSH** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) ______________, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:
On (*date*) **12/27/2012**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Via First Class Mail**
Robert P. Goe, Esq.
Goe & Forsythe, LLP
18101 Von Karman Avenue, Ste. 510
Irvine, CA 92612

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **12/27/2012**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

| December 27, 2012 | Theresa Macaulay | /s/ Theresa Macaulay |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

# PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 18101 Von Karman Avenue, Suite 510, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT PURSUANT TO FRBP 7056 AND FRBP 3007 ON (1) OBJECTION TO PROOF OF CLAIM 6 OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AND (2) FIRST CLAIM FOR RELIEF TO INVALIDATE LIEN** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) September 24, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Allan P Bareng** barenga@bryancave.com, theresa.macaulay@bryancave.com
- **Robert P Goe** kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- **Robert Reganyan** reganyanlawfirm@gmail.com
- **J Alexandra Rhim** arhim@dykema.com, cperez@dykema.com
- **United States Trustee (SA)** ustpregion16.sa.ecf@usdoj.gov
- **Sharon Z. Weiss** sharon.weiss@bryancave.com, raul.morales@bryancave.com

☐ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**
On (*date*) September 24, 2013, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows: Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL:** (state the method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) September 24, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows: Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- The Honorable Erithe A. Smith, USBC, 411 West Fourth Street, Santa Ana, CA 92701 (Hand delivered)

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

| September 24, 2013 | Susan C. Stein | /s/Susan C. Stein |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

Robert P. Goe - State Bar No. 137019
Elizabeth A. LaRocque - State Bar No. 219977
GOE & FORSYTHE, LLP
18101 Von Karman Avenue, Suite 510
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elarocque@goeforlaw.com

Attorneys for Reorganized Debtor/Plaintiff Trudy Kalush

**UNITED STATES BANKRUPTCY COURT**

**FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**SANTA ANA DIVISION**

| | |
|---|---|
| In re<br><br>TRUDY KALUSH,<br><br>Reorganized Debtor. | Case No. 8:11-bk-19563-ES<br><br>Chapter 11<br><br>Adv. Case No. 8:12-ap-01206-ES |
| TRUDY KALUSH,<br><br>Plaintiff,<br><br>vs.<br><br>DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE OF THE INDYMAC INDX DEED OF TRUST LOAN TRUST 2005-AR12, DEED OF TRUST PASS-THROUGH CERTIFICATES, SERIES 2005-AR12, UNDER THE POOLING AND SERVICING AGREEMENT DATED JUNE 1, 2005; ONEWEST BANK, FSB; and DOES 1-100, Inclusive,<br><br>Defendants. | **[PROPOSED] ORDER ON PARTIAL SUMMARY JUDGMENT MOTION**<br><br><u>Hearing</u>:<br>Date: November 5, 2013<br>Time: 2:00 p.m.<br>Courtroom: 5A |

On November 5, 2013 at 2:00 p.m., a hearing on Plaintiff Trudy Kalush's ("Plaintiff") Motion for partial summary judgment pursuant to FRBP Rule 7056 on Objection to Proof of Claim 6 ("Claim") and Debtor's First Claim for Relief (Declaratory Relief/Invalidate Lien) ("Motion"). Appearances are as noted on the record. Having considered the Motion, the pleadings filed, the evidence submitted, oral arguments of counsel at the hearing, proper notice having been provided and after due deliberation and good and sufficient cause appearing,

**IT IS ORDERED:**

**(1)** The Motion is granted in its entirety;

**(2)** Summary Judgment is entered against Deutsche Bank National Trust Company ("Deutsche Bank") as Trustee of The Indymac INDX Mortgage Loan Trust 2005-Ar12, Mortgage Pass-Through Certificates, Series 2005-AR12 ("Trust"), Under The Pooling And Servicing Agreement Dated June 1, 2005 ("PSA"), in favor of Plaintiff pursuant to Federal Rule of Bankruptcy Procedure, Rules 7056, disallowing Claim No. 6 in its entirety;

**(3)** Summary Judgment is entered against Deutsche Bank in favor of Plaintiff invalidating Deutsche Bank's lien on the Debtor's real property located at 16625 South Pacific Coast Highway, Sunset Beach, California 90742 ("Property").

###