IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

NICOLE WILLIAMS, et al.  )
) )
Plaintiffs, ) No. 09-CV-1959 ADM JJG
v. )
TIMOTHY F. GEITHNER, et al. )
) Defendants.
)

DECLARATION OF NOAH A. LEVINE IN SUPPORT OF BRIEF OF DEFENDANTS
FEDERAL NATIONAL MORTGAGE ASSOCIATION (d/b/a FANNIE MAE) AND
FEDERAL HOME LOAN MORTGAGE CORPORATION (d/b/a FREDDIE MAC) IN
OPPOSITION TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION

Noah A. Levine declares under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am a partner in the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, and
am one of the counsel for Defendant Federal National Mortgage Association (d/b/a Fannie Mae)
in the above-captioned matter.

2. I submit this declaration in support of the Brief Of Defendants Federal National
Mortgage Association (d/b/a Fannie Mae) And Federal Home Loan Mortgage Association (d/b/a
Freddie Mac) In Opposition To Plaintiffs’ Motion For A Preliminary Injunction.

3. Attached to this declaration are true and correct copies of the following
documents (or specified excerpts of those documents):

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Dated: September 16, 2009

/s/ Noah A. Levine

Noah A. Levine
EXHIBIT 1
## Contract

### Mortgage Selling and Servicing Contract

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**Mortgage Selling and Servicing Contract**

This contract for selling and servicing mortgages (the "Contract") is between the Mortgage Lender (the "Lender") that signs this document and the Federal National Mortgage Association ("Fannie Mae", "we", "our", "us"), a corporation organized and existing under the laws of the United States.

**I General Information**

This section contains important basic information about the Contract, which we are permitted to enter into under authority of Title III of the National Housing Act (12 U.S.C. 1716, et. seq.), which is also known as the Federal National Mortgage Association Charter Act.

A. Purpose of Contract

The purpose of this Contract is:

- to establish the Lender as an approved seller of mortgages and participation interests to us;
- to provide the terms and conditions of the sales;
- to establish the Lender as an approved servicer of mortgages we have purchased or in which we have purchased a participation interest; and
- to provide the terms and conditions of servicing.

B. Consideration

In consideration of the purpose of this Contract and of all the provisions and mutual promises contained in it, the Lender and Fannie Mae agree to all that this Contract contains.

C. Our Guides

We issue Fannie Mae’s Guides to Lenders (our "Guides") and furnish them to the Lender. These Guides are:

- Selling;
- Servicing; and
- Multifamily.

Whenever there is a reference to the Guides in this Contract, it means the Guides as they exist now and as they may be amended or supplemented in writing. We may amend or supplement them, at our sole discretion, by furnishing amendments or supplementary matter to the Lender.

The term "Guides" also includes anything that, in whole or in part, supersedes or is substituted for the Guides.

D. Important Definitions

Anywhere the words that appear below are used in this Contract, the following definitions apply:

1. "Mortgage"—A loan, evidenced by a note, bond or other instrument of indebtedness. The loan is secured by a mortgage, deed of trust, deed to secure debt or other instrument of security that applies to property. "Mortgage" includes such instruments of indebtedness and security, together with

- the evidence of title;
- the chattel mortgage or security agreement and financing statement; and
- all other documents, instruments and papers pertaining to the loan.
Contract

2. "FHA/VA Mortgage"—A mortgage insured or guaranteed in whole or in part by the Federal Housing Administration or Veterans Administration.


4. "Property" or "Mortgaged Property"—The property that is now subject to a mortgage, or was subject to such mortgage, where the mortgage has been foreclosed or possession or title to the property has been taken by Fannie Mae or on our behalf.

5. "Participation Interest" or "Participation Interest in Mortgages"—An undivided interest in mortgages, specified in the applicable participation certificate that is evidence of such interest. A "participation interest" or "participation interest in mortgages" consists of a specified percentage of the principal (and a like percentage of all rights and benefits of the mortgagee or equivalent party under such mortgage) together with a specified yield on it.

II Eligibility Requirements For Lenders

For us to purchase mortgages or participation interests from a Lender, the Lender must meet the eligibility requirements specified in this section.

A. General Requirements

1. Meet Fannie Mae Standards. The Lender must have as two of its principal business purposes:
   • making mortgages of the type that we will purchase entirely or purchase a participation interest in under this Contract; and
   • servicing such mortgages.

In addition, the Lender, in our judgment, must have at all times the capacity to originate and sell to us mortgages and participation interests that meet our purchase standards and the standards generally imposed by private institutional mortgage investors, and must at all times have the capacity to service such mortgages for us under those standards.

2. Have Qualified Staff and Adequate Facilities. The Lender must, at all times, have employees who are well trained and qualified to perform the functions required of the Lender under this Contract.

In addition, the Lender must maintain facilities that are adequate to perform its functions under this Contract.

3. Maintain Fidelity Bonds and Errors and Omissions Coverage. The Lender must maintain, at its own expense, a fidelity bond and errors and omissions insurance, as required by our Guides.

4. Report Basic Changes. The Lender must notify us promptly in writing of any changes that occur in its principal purpose, activities, staffing or facilities.
Contract

B. Ownership And Status Of Lender

When we approve a Lender, one of the major considerations is the information the Lender has provided about the eligibility, qualifications and financial status of the Lender and its owners.

Consequently, the Lender must give us immediate notice of a change in its status or ownership, including any:

- sale or transfer of a majority interest in it;
- merger;
- consolidation; or
- change in legal structure.

C. Finances

In order to remain an approved Lender under this Contract, the Lender must meet our current net worth requirements. These requirements are contained in our Guides.

The required net worth must be maintained in the form of assets acceptable to us.

The Lender must give us a copy of its annual financial statements and any other related information that we may require.

The Lender agrees to permit our employees or designated representatives to examine or audit records or accounts relating to mortgages or participation interests sold or serviced under this Contract. All records relative to the Lender’s continued eligibility to sell or service mortgages under this Contract may also be examined or audited. Any examination or audit made on our behalf will be conducted during regular business hours unless the Lender agrees otherwise.

III Sale of Mortgages and Participation Interests

This section contains the basic rules governing our purchase of mortgages and participation interests.

A. What Governs Purchases

Purchases of mortgages and participation interests will be governed by:

- our written commitment to purchase;
- our Guides, including all amendments in effect on the day we make our written commitment; and
- this Contract.

The mortgages or participation interests that we purchase must meet the requirements found in our Guides on the day we make our written commitment.

If our Guides require, the Lender will promptly purchase our common stock each time it delivers a mortgage or participation interest to us. The amount of stock to be purchased and the procedures for buying it are also found in our Guides.

The fact that we have signed this Contract does not mean that we must make a commitment to purchase any mortgage or participation interest from the Lender.
Contract

IV Sale Of Mortgages And Participation Interests — Lender’s Warranties

The Lender makes certain warranties to us.

These warranties:
• apply to each mortgage sold to us in its entirety;
• apply to each mortgage in which a participation interest is sold to us;
• are made as of the date transfer is made to us;
• continue after the purchase of the mortgage or participation interest;
• continue after payment by us of the purchase price to the Lender; and
• are for our benefit as well as the benefit of our successors and assigns.

Warranties may be waived, but only by us in writing.

Following are the specific warranties made by the Lender.

1. Mortgage Meets Requirements. The mortgage conforms to all the applicable requirements in our Guides and this Contract.

2. Lender Authorized To Do Business. The Lender and any other party that held the mortgage were, at all times during which the holder held the mortgage, authorized to transact business in the jurisdiction where the property is located.

However, if the Lender or any other party that held the mortgage was not authorized to do business in the jurisdiction where the property is located, then the warranty is made that none of the following activities of the Lender or other parties constituted doing business in that jurisdiction:
• lending the mortgage funds;
• acquiring the mortgage;
• holding the mortgage; or
• transferring the mortgage in whole or to the extent of a participation interest.

3. Lender Has Full Right To Sell And Assign. The Lender is the sole owner and holder of the mortgage and has full right and authority to sell and assign it, or a participation interest in it, to us. In addition, the Lender’s right to sell or assign is not subject to any other party’s interest or to an agreement with any other party.

4. Lender’s Lien On Property. The mortgage, whether represented by the Lender as the first lien or as the second lien, is a valid and subsisting lien on the property described in it.

If the mortgage is represented by the Lender as the first lien, the property is free and clear of all encumbrances and liens having priority over it except for liens for real estate taxes, and liens for special assessments, that are not yet due and payable.
Contract

If the mortgage is represented by the Lender as the second lien, the property is free and clear of all encumbrances and liens having priority over it except for one properly recorded first mortgage lien, real estate taxes and liens of special assessments not yet due and payable.

Any security agreement, chattel mortgage or equivalent document that is related to the mortgage and that is held by the Lender or delivered to us, is a valid and subsisting lien on the property described in such document, of the same priority as the mortgage.

The Lender has full right and authority to sell or assign each lien to us or to an extent that is proportionate to our participation interest.

5. Documents Are Valid And Enforceable. The mortgage and any security agreements, chattel mortgages, or equivalent documents relating to it have been properly signed, are valid, and their terms may be enforced by us, our successors and assigns, subject only to bankruptcy laws, Soldiers’ and Sailors’ Relief Acts, laws relating to administering decedents’ estate, and general principles of equity.

6. Property Not Subject To Liens. The Property is free and clear of all mechanics’ liens, materialmen’s liens or similar types of liens. There are no rights outstanding that could result in any of such liens being imposed on the property.

This warranty is not made if the Lender furnishes us with title insurance that gives us substantially the same protection as this warranty.

7. Title Insurance. There is a mortgage title insurance policy, or other title evidence acceptable to us, on the property. The title insurance policy is on a current ALTA form (or other generally acceptable form) issued by a generally acceptable insurance company.

The title insurance insures (or the other title evidence protects) us or the Lender and its successors and assigns, as holding a lien of the priority warranted in “4. Lender’s Lien On Property.”

8. Modification Or Subordination Of Mortgage. The Lender has not done any of the following:

- materially modified the mortgage;
- satisfied or cancelled the mortgage in whole or in part;
- subordinated the mortgage in whole or in part, unless it is represented to us as a second mortgage;
- released the property in whole or in part from the mortgage lien; or
- signed any release, cancellation, modification or satisfaction of the mortgage.

This warranty is not made if any of the things just mentioned have been done but have been expressly brought to our attention in a letter before we make payment to the Lender. The letter must be acknowledged by us in writing.
9. **Mortgage In Good Standing.** There are no defaults under the mortgage, and all of the following that have become due and payable have been paid or an escrow of funds sufficient to pay them has been established:

- taxes;
- government assessments;
- insurance premiums;
- water, sewer and municipal charges;
- leasehold payments; or
- ground rents.

10. **Advances.** The Lender has not made or knowingly received from others, any direct or indirect advance of funds in connection with the loan transaction on behalf of the borrower except as provided in our Guides. This warranty does not cover payment of interest from the earlier of:

- the date of the mortgage note; or
- the date on which the mortgage proceeds were disbursed to
- the date one month before the first installment of principal and interest on the mortgage is due.

11. **Property Conforms To Zoning Laws.** The Lender has no knowledge that any improvement to the property is in violation of any applicable zoning law or regulation.

12. **Property Intact.** The property is not damaged by fire, wind or other cause of loss. There are no proceedings pending for the partial or total condemnation of the property.

13. **Improvements.** Any improvements that are included in the appraised value of the property are totally within the property's boundaries and building restriction lines. No improvements on adjoining property encroach on the mortgaged property unless FHA or VA regulations or our Guides permit such an encroachment.

14. **Mortgage Not Usurious.** The mortgage is not usurious and either meets or is exempt from any usury laws or regulations.

15. **Compliance With Consumer Protection Laws.** The Lender has complied with any applicable federal or state laws, regulations or other requirements on consumer credit, equal credit opportunity and truth-in-lending.

16. **Property Is Insured.** A casualty insurance policy on the property is in effect. It is written by a generally acceptable insurance company and provides fire and extended coverages for an amount at least equal to the amount required by our Guides.
Contract

A flood insurance policy is in effect on the property if any part of it is in an area listed in the Federal Register by the Federal Emergency Management Agency as an area with special flood hazards, and if insurance is available. The flood insurance is written by a generally acceptable insurance company, meets current guidelines of the Federal Insurance Administration, and is for an amount at least equal to the amount required by our Guides.

The Lender will make sure the required insurance is maintained as long as it services the mortgage. Any policy mentioned in this warranty contains a standard mortgage clause that names us or the Lender and its successors and assigns as mortgagee.

17. Mortgage Is Acceptable Investment. The Lender knows of nothing involving the mortgage, the property, the mortgagor or the mortgagor's credit standing that can reasonably be expected to:

- cause private institutional investors to regard the mortgage as an unacceptable investment;
- cause the mortgage to become delinquent; or
- adversely affect the mortgage's value or marketability.

18. Mortgage Insurance Or Guaranty In Force. If the Lender represents that the mortgage is insured or guaranteed under the National Housing Act as amended, or under the Servicemen's Readjustment Act of 1944 as amended, or by a contract with a mortgage insurance company, the insurance or guaranty is in full force. In addition, the Lender has complied with all applicable provisions and related regulations of the Act, or the insurance contract, that covers the mortgage.

19. Adjustable Mortgages. If the mortgage provides that the interest rate or the principal balance of the mortgage may be adjusted, all of the terms of the mortgage may be enforced by us, our successors and assigns.

These adjustments will not affect the priority of the lien warranted in "4. Lender's Lien On Property."

20. Participation Information Is Correct. All the information and statements in any participation certificate that the Lender delivers to us are complete, correct and true.

We may require the Lender to repurchase a mortgage or participation interest sold to us if any warranty made by the Lender about the mortgage or participation interest is untrue (whether the warranty is in this Contract or was made at our specific request).

We may require repurchase whether or not the Lender had actual knowledge of the untruth. We may also enforce any other available remedy.

The Lender must pay us the repurchase price within 30 days of our demand. The repurchase price, as provided in our Guides, will not be adjusted because the Lender paid us fees or charges or subscribed to our capital stock.
C. Consequences Of Untrue Warranties-Termination Of Contract

While untrue warranties about a particular mortgage or participation interest may be the basis for requiring repurchase of the particular mortgage or participation interest, there can be additional consequences. They may also give rise to responsibilities of the Lender under "D. Indemnification For Breach Of Warranty; Holding Us Harmless." In addition, untrue warranties can, under certain circumstances, be treated as a breach of contract that could result in the withdrawal of our approval of a Lender and the termination of this Contract (details are contained in Sections VIII and IX).

D. Indemnification For Breach Of Warranty; Holding Us Harmless

If there is a breach of warranty under this Contract, the Lender, at our request, will indemnify us and hold us harmless against any related losses, damages, judgments or legal expenses.

V Servicing Mortgages

This section contains the basic rules governing the servicing of mortgages that we purchase, or in which we purchase a participation interest.

The servicing duties of the Lender are:

1. Scope Of Duties. The Lender will diligently perform all duties that are necessary or incident to the servicing of:

   • all mortgages it is servicing for us on the date this Contract takes effect; and
   • all other mortgages that the Lender is required to service by the terms of this Contract or any other existing or future agreement between us and the Lender.

2. Mortgages To Be Serviced. Any mortgage we have purchased from the Lender, or in which we have purchased a participation interest from the Lender, will be serviced by the Lender for us according to the terms of this Contract, unless:

   • the mortgage is not within any category of those that are required by our Guide to be serviced; or
   • we give the Lender written notification or consent that a mortgage to be purchased by us will not be serviced by the Lender.

3. Service According To Guides. Any mortgage serviced under this Contract, which we own or in which we have purchased a participation interest, must be serviced by the Lender according to the provisions in our Guides that are in effect on the date of this Contract or as amended in the future. This is true regardless of when:

   • the mortgage was originated;
   • the mortgage or a participation interest in it was transferred to us; or
   • the Lender began servicing the mortgage.

The Lender will also follow other reasonable instructions we give it and must strictly follow accepted industry standards when servicing a mortgage for us.
4. **Service At Lender's Own Expense.** The cost of servicing will be the Lender's unless our Guides expressly provide otherwise.

5. **Special Responsibilities In Foreclosures.** Among the other duties that may be assigned to the Lender through our special instructions or under the terms of our Guides is the responsibility to manage and appropriately dispose of property when a mortgage it is servicing for us has been foreclosed, or possession or title has been taken by us or on our behalf.

The Lender must manage and dispose of the property according to the terms of the mortgage and our Guides.

6. **Service Until Need Ends.** The Lender must service each mortgage continuously from the date its servicing duties begin until:
   - the mortgage's principal and interest have been paid in full;
   - the mortgage has been liquidated and the mortgaged property properly disposed of (if the Lender is required to do these things); or
   - the Lender's servicing duties are terminated according to Section IX of this Contract.

The Lender's compensation for servicing mortgages, including the management and disposal of properties, under this Contract is specified in our Guides.

We may change the Lender's compensation by modifying our Guides at any time. However, such a change will not affect mortgages that we have purchased or committed to purchase before the date of the change.

All mortgage records reasonably required to document or properly service any mortgage we own in its entirety are our property at all times. This is true whether or not the Lender developed or originated them.

The following are considered mortgage records:
   - all mortgage documents;
   - tax receipts;
   - insurance policies;
   - insurance premium receipts;
   - ledger sheets;
   - payment records;
   - insurance claim files and correspondence;
   - foreclosure files and correspondence;
   - current and historical data files; and
   - all other papers and records.
Contract

1. Lender As Custodian. The mortgage records belong to us. The Lender can have possession of the mortgage records only with our approval, and the Lender is acting as our custodian. This is true whether the Lender receives the mortgage records from an outside source or prepares them itself.

2. Delivery. When we ask for any mortgage records in writing, the Lender will deliver them to us or someone we choose. The Lender must also send us a list that identifies each mortgage, and must give us other information we request to identify the mortgages delivered.

We will not be required to sign or deliver any trust receipts before the Lender delivers the mortgage records we have requested.

If we ask the Lender in writing for reproductions of any mortgage records the Lender microfilmed or condensed, the Lender will reproduce them promptly at no cost to us or the party to whom we want them delivered.

3. Joint Ownership. If we own a participation interest in a mortgage, the other owners and we own the mortgage records jointly. For these mortgages, the Lender possesses the mortgage records as a custodian for the joint owners.

If we ask for copies of the mortgage records and servicing information about any such mortgages, the Lender will furnish them. Or, if we need any mortgage records for legal evidence or other purposes, the Lender will release them to us for a reasonable time.

The Lender will indemnify us and hold us harmless against all losses, damages, judgments or legal expenses that result from its failure in any way to perform its services and duties in connection with servicing mortgages or managing or disposing of property according to this Contract or our Guides.

If any private entity or governmental agency sues us, makes a claim against us or starts a proceeding against us based on the Lender's acts or omissions in servicing mortgages or managing or disposing of property, the Lender's obligation to indemnify and hold us harmless must be met regardless of whether the suit, claim or proceeding has merit or not.

The Lender's obligation does not apply, however, if during a suit, claim or proceeding, we give the Lender express written instructions and as a result of the Lender following them we suffer losses, damages, judgments or legal expenses.

If our Guides require, the Lender will continuously own our common stock in connection with all mortgages it services under this Contract. The amount of stock to be owned will be established by our Guides as they were in existence on the date the Lender started servicing the applicable mortgages.

D. Agreement To Indemnify And Hold Harmless

E. Ownership Of Our Stock

VI Assignment, Consideration And Continuance

This section describes our requirements covering assignment of, consideration for and continuance of this Contract.
Contract

A. Assignment

Because the relationships created by this Contract are personal, the Lender may not, without our prior written approval, assign:

- this Contract under any circumstances, either voluntarily or involuntarily, by operation of law, or otherwise; or
- its responsibility for servicing individual mortgages we own or in which we have a participation interest. (See Section VII of this Contract for required procedures governing assignments of servicing).

B. Limited Value Of Contract To Lender

The Lender acknowledges that it has paid us no monetary consideration for making it an approved mortgage seller or servicer, except an application fee to reimburse us for the expenses of reviewing its application.

The Lender also agrees that, except for the purchase of mortgages, the servicing of mortgages, or any fee for the termination of this Contract, this Contract has no value to the Lender.

The Lender’s right to continue selling and servicing mortgages under this Contract depends on, among other things, its continuing to meet the eligibility requirements in Section II of this Contract.

VII Assigning Mortgage Servicing

The Lender may not assign its responsibility for servicing all or any part of the mortgages that it is servicing for us without first obtaining our written consent.

Any Lender to which servicing is assigned must:

- be acceptable to us; and
- sign a Mortgage Selling and Servicing Contract with us.

We may require that the Lender and transferee lender sign documents and take other reasonable steps to perfect the assignment.

VIII Breaches Of Contract

The Lender’s taking certain actions, or failing to take certain actions, can be treated by us as a breach of contract. A breach of contract can lead to a termination of the Contract. Termination is provided for in detail in Section IX.

Breaches of this Contract include the following:

1. Harm, Damage, Loss Or Untrue Warranties. It is a breach if any act or omission of the Lender in connection with the origination and sale to us of any mortgage or participation interest causes us harm, damage or loss. It is also a breach if the Lender sells us any mortgage or participation interest knowing that any of the mortgage warranties are untrue (these warranties are listed in Section IV A).
Breaches Of Contract

Contract

2. Failure To Comply With This Contract Or Our Guides. It is a breach if the Lender does not comply with this Contract or our Guides through any act or omission, including, without limitation, the following:

- failure to establish and maintain accounts for our funds or mortgagors' funds as required by our Guides;

- use of our or mortgagors' funds in any manner other than that permitted by our Guides, including the Lender's failure to deposit all mortgage funds if, when, and to the extent required by our Guides;

- failure to remit all funds due to us within the time periods required by our Guides;

- failure to make or ensure, according to the provisions of each mortgage or of applicable laws or regulations, proper and timely payment of all:
  - taxes;
  - assessments;
  - leasehold payments;
  - ground rents;
  - insurance premiums (including premiums of casualty, liability and mortgage insurance and other forms of required insurance);
  - required interest on escrow funds; and
  - other required payments with respect to any mortgage (including mortgaged property) serviced;

unless the Lender is relieved of these responsibilities by the express provisions of our Guides, or by our written instructions that relate to a particular mortgage or property;

- failure to renew or ensure renewal of any required insurance policy on any mortgage (including mortgaged property) serviced under this Contract;

- failure to maintain adequate and accurate accounting records and mortgage servicing records for the mortgages, or to maintain proper identification of the applicable loan files and mortgage records that prove our outstanding participation interests;

- failure to submit adequate and accurate accounting and mortgage servicing reports within the time required by our Guides; or

- failure to take prompt and diligent action under applicable law or regulation to collect past due sums on mortgages, or to take any other diligent action described in our Guides that we reasonably require for mortgages in default.
Contract

3. Failure To Properly Foreclose Or Liquidate. Where a mortgage is in default and the Lender is required or has decided to foreclose or liquidate it, it is a breach if the Lender fails to take prompt and diligent action consistent with applicable law or regulations to foreclose on or otherwise appropriately liquidate such mortgage and to perform all incident actions. It is a breach whether or not the failure results from the acts or omissions of an attorney, trustee or other person or entity the Lender chooses to effect foreclosure or liquidation.

4. Failure To Properly Manage, Dispose Of, Or Effect Proper Conveyance Of Title. It is a breach if any mortgage serviced under this Contract has been foreclosed or the possession or title to the property has been taken by us or on our behalf, or on behalf of other owners of a participation interest in the mortgage, and the Lender:

   • fails to properly manage, dispose of or effect proper conveyance of title to the mortgaged property; or
   • fails to do the above in accordance with this Contract, our Guides, and any pertinent laws, regulations, or mortgage insurance policies or contracts.

5. Lender's Financial Ability Impaired. It is a breach if there is a change in the Lender's financial status that, in our opinion, materially and adversely affects the Lender's ability to satisfactorily service mortgages.

   Changes of this type include:
   • the Lender's insolvency;
   • adjudication of the Lender as a bankrupt;
   • appointment of a receiver for the Lender; or
   • the Lender's execution of a general assignment for the benefit of its creditors.

   If any such change does take place:
   • no interest in this Contract will be considered an asset or liability of the Lender or of its successors or assigns; and
   • no interest in this Contract will pass by operation of law without our consent.

6. Failure To Obtain Our Prior Written Consent. It is a breach if the Lender fails to obtain our prior written consent for:

   • a sale of the majority interest in the Lender; or
   • a change in its corporate status or structure.

7. Failure To Comply With This Contract Or Our Guides. It is a breach if the Lender fails at any time to meet our standards for eligible mortgage sellers or servicers so that, in our opinion, the Lender's ability to comply with this Contract or our Guides is adversely affected.
8. Court Findings Against Lender Or Principal Officers. It is a breach if:

- a court of competent jurisdiction finds that the Lender or any of its principal officers has committed an act of civil fraud; or

- the Lender or any of its principal officers is convicted of any criminal act related to the Lender's lending or mortgage selling or servicing activities or that, in our opinion, adversely affects the Lender's reputation or our reputation or interests.

If there is a breach of contract by the Lender, we will have the right to take any reasonable action to have any breach corrected by the Lender before we exercise any right we have to terminate this Contract in whole or in part; however, we are not required to try to have a breach corrected before termination.

Any forbearance by us in exercising our right to terminate this Contract in whole or in part will not be a waiver of any present or future right we have under this Contract to so terminate it.

IX Termination Of Contract

The reason why this Contract may be terminated and the ways in which this may be done are outlined in this section. When the Contract is terminated, the entire relationship between the Lender and us ends (with certain exceptions that are explained in this section).

The provisions of this Contract covering the sale of mortgages or participation interests under this Contract may be terminated by the Lender or by us, with or without cause, by giving notice to the other party. Notice of termination may be given at any time but must conform to Section XII of this Contract.

Termination is effective immediately upon notice of termination, unless the notice specifies later termination.

Termination will not affect any outstanding commitments we have made to purchase mortgages or participation interests from the Lender. However, if the Lender has breached this Contract, we may declare any or all outstanding commitments void.

The Lender may terminate the provisions of this Contract covering the servicing of mortgages we entirely own by giving us notice at any time. Notice must conform to Section XII of this Contract.

Termination is effective the last day of the third calendar month after the calendar month in which notice is given.

If the Lender terminates this Contract in whole or in part, we will not pay the Lender a termination fee.
We may terminate the provisions of this Contract covering the servicing under this Contract of any or all mortgages that we entirely own. This may be done by following the procedures outlined below.

1. **Termination Without Cause.** We may terminate servicing for any reason, by giving the Lender notice of the termination. If we do so, the provisions of this Contract covering the servicing of the affected mortgages will automatically terminate on the thirtieth day following the day our notice is given. Whenever we do this (and the termination is not because of any breach by the Lender as described in Section IX C2) we will pay the Lender, for each mortgage on which servicing is terminated, a lump-sum termination fee as provided in a. below. However, whenever we terminate solely in order to transfer the servicing to another Lender, and there has been no sale of our interest in the affected mortgages, the provisions of b. below will apply.

a. **Termination Fee.** The termination fee will be an amount equal to twice the Lender’s annualized servicing compensation, at the rate of compensation that is in effect for the mortgage as of the date of the termination, applied against the unpaid principal balance of the mortgage as of such date.

For purposes of determining the termination fee:

- The Lender’s servicing compensation consists of the servicing fee at the Applicable Servicing Rate plus any previously agreed upon excess yield that the Lender is permitted to retain on the applicable mortgage.
- “Applicable Servicing Rate” means the rate of the servicing fee for the servicing of the mortgage, expressed as an annualized fractional percentage.

[Refer to appropriate sections of our Guides for more detailed information regarding the computation of termination fees.]

b. **Termination To Effect Transfer.** Whenever we terminate servicing solely in order to transfer servicing of the mortgages to another Lender, and there has been no sale of our interest in the mortgages, we will give the Lender notice of the required transfer. Within the 90-day period immediately following the date our notice is given, the Lender may arrange for the sale of the servicing to another Fannie Mae-approved Lender in good standing that, in our judgment, will properly service the mortgages to be transferred. Within that 90-day period, the Lender will give notice of any proposed sale to us, together with all related information. The sale of servicing is conditioned upon our approval, which will not be unreasonably withheld. Any resulting transfer of servicing will be completed not later than 60 days after our approval of the transfer; and

- the Lender will be entitled to the proceeds of the sale of servicing, and will bear all costs and expenses related to the sale and transfer of servicing;
- the Lender will not pay us a transfer fee;
- we will not pay the Lender a termination fee;
Termination Of Contract

Contract

- we may require the purchaser of the servicing to assume any or all warranties that were made to us in connection with the sale to us of the affected mortgages; and

- the purchaser of the servicing will succeed to the Lender's obligations, rights and servicing compensation, under the provisions of this Contract covering the servicing of the affected mortgages. For all of the affected mortgages that we purchased under a net-yield contract, the servicing compensation will include the specified minimum servicing fee, plus the Lender's share of that portion of the yield which exceeds the stated net yield, as provided under the commitment contract.

[Refer to appropriate sections of our Guides for more detailed information regarding the computation of the Lender's servicing compensation.]

If at the end of the 90-day period following our notice, the Lender has not arranged to sell and transfer the servicing of the affected mortgages to another Lender acceptable to us and given us the required notice, the provisions of this Contract covering the servicing of the mortgages will automatically terminate on the fifteenth day following the end of the 90-day period, and we will transfer the servicing to a Lender of our choice. In such a case, we will pay the Lender, for each mortgage on which servicing is terminated, a termination fee computed as provided under a. above. We will deduct from the termination fee paid to the Lender a transfer fee that is the greater of $500.00 or 1/100 of 1% of the aggregate unpaid principal balance of all of the affected mortgages on which servicing is transferred.

c. General Criteria For Termination Fees. Notwithstanding anything to the contrary in this Contract, we may change the amount of termination fee that we pay, or other provisions of this Section IX C1, from time to time, by changing the appropriate provisions of our Guides. However, such a change will not affect mortgages that we have purchased or that we have committed to purchase before the date of the change.

Our written tender of the termination fee to the Lender, or its successors or assigns, is complete compensation for each mortgage serviced by the Lender on which servicing is terminated. Any sums we owe the Lender for servicing prior to the termination date are not included in the termination fee. When we pay a termination fee, the Lender will not be entitled to the proceeds for any sale of the servicing involved.

2. Termination With Cause. We may terminate if the Lender breaches any agreement in this Contract, including, without limitation, any of those breaches listed in Section VIII A. This may be done by giving the Lender notice of termination. Notwithstanding anything in this Contract to the contrary, if we terminate for breach, we may make it effective immediately, and we will not pay the Lender a termination fee or proceeds from any sale of the servicing involved. Furthermore, we will not pay a servicing termination fee if a mortgage is repurchased by the Lender because a warranty is untrue.
D.
Termination
By Us Of
Servicing
Arrangements
For Mortgages
In Which We
Have A
Participation
Interest

If the Lender breaches any agreement in this Contract, including, without limitation, any breach listed in Section VIII A, we may terminate the provisions of this Contract covering the servicing of any or all mortgages in which we own a participation interest. This may be done by giving notice of termination. Such termination may be effective immediately, and we will not pay the Lender a termination fee.

1. Transfer Of Lender’s Powers. Upon termination, we will automatically succeed to all the Lender’s rights in and responsibilities for servicing of the affected mortgages. We will also have the option to exercise all the Lender’s powers relating to these mortgages, and to designate any person or firm to exercise those powers. However, exercise of the Lender’s powers must be consistent with the Lender’s and our respective participation interests.

The mortgage instruments for these mortgages and all related mortgage records will be delivered to us or a party we designate. The Lender will also deliver necessary assignments, transfers and documents of authority.

2. Transfer Of Servicing. If we terminate the Lender’s servicing of any such mortgages, we are authorized to transfer the servicing of the mortgages to new servicers and pay the new servicers a fee. The fee will apply to the total outstanding principal balance on each mortgage, including our participation interest in each mortgage as well as the participation interest of the Lender and of any other owner.

3. Liability For Fees. The Lender and all additional owners of a participation interest will be liable for their respective shares of the servicing fee we pay. They will also be liable for their respective shares of advances that, in our sole discretion, are required. Advances may be required for insurance, taxes, maintenance, improvements or other necessary outlays.

If the Lender or other owners fail to promptly provide their share of funds for advances, or for any other necessary expenses, during any period, we may supply the funds. The fact that we do this does not release the Lender or other owners from their liability. We may deduct any amount we advance the next time we owe money to the Lender or other owners.

The exercise of a right of termination under any provision of this Contract will not impair any further right of termination under another provision.

X Continuance Of Responsibilities Or Liabilities

Responsibilities or liabilities of the Lender that exist before the termination of this Contract will continue to exist after termination unless we expressly release the Lender from any of them in writing. This is true whether the Contract was terminated by the Lender or by us.
XI Participation Interests-Special Provisions

This section contains special provisions that govern participation interests.

Listed below are the consequences of the sale of a participation interest.

1. Transfer Of Undivided Interest. When the Lender sells and conveys to us a participation interest in one or more mortgages, this is a transfer of an undivided interest in each mortgage.

The sale and conveyance of the participation interest will have the same force and effect as:

- a separate assignment of each mortgage executed and delivered to us by the Lender; and

- a promissory note separately endorsed or transferred to us.

2. Assurance Of Our Legal Rights. If federal or state laws or regulations now, or later, provide that the purchase of a participation interest is an extension of credit, the Lender will take whatever additional steps we may require to assure our legal rights as a purchaser of participation interests.

Such steps may include:

- placing legends on promissory notes;

- endorsing promissory notes in blank and delivering them to us; and

- executing mortgage assignments in a form acceptable to us and delivering them to us.

3. No Partnership Or Joint Venture. Neither the simultaneous ownership of interests in one or more mortgages nor any provision of this Contract will mean that a partnership or joint venture exists between the Lender and us.

The Lender will make the following payments to us, according to our Guides, for mortgages in which both the Lender and we own an interest:

1. Ratable Sharing Of Principal. The Lender will ratably share with us all mortgage principal payments.

2. Participation Share Of Interest. The Lender will pay us our participation share of interest payments up to:

- an amount sufficient for us to earn our yield on each mortgage; plus

- any amounts due us pursuant to this section.

As required by our Guides, the Lender will enforce the due-on-sale provisions and call options in the mortgages it services for us.
D. Repurchase Option

The Lender will have the option to repurchase our interest in a mortgage if:

- the Lender is required by our Guides to enforce a due-on-sale clause of a mortgage in which the Lender and we own an interest; or
- we elect to exercise a call option provision of such a mortgage.

If the Lender wishes to repurchase our interest in such a mortgage, it may do so by:

- giving us notice of its intention to repurchase; and
- paying us an amount calculated according to the provisions of our Guides.

The note rate of a mortgage is stated in the participation certificate or attached loan schedule.

1. Note Rate Increase. If, for any reason, there is an increase of the note rate of a mortgage in which we hold a participation interest, the Lender will pay us, according to our Guides, a percentage of the increase equal to the percentage represented by our participation interest in the mortgage. This amount will be in addition to our yield on the mortgage.

2. Foreclosure Expenses. The Lender will ratably share with us any reasonable foreclosure and related expenses in connection with a mortgage in which we own a participation interest.

3. Prepayment Charges. The Lender will ratably share with us any prepayment charges collected for mortgages in which we own a participation interest.

The Lender will not make any optional or voluntary advances to the borrower under an open-end mortgage in which we own a participation interest.

Participation interests may be assigned either by the Lender or us, as follows:

1. By Us. Without the Lender’s consent we may assign:

- our participation interest in any mortgage; and
- all rights in the mortgage we own under this Contract or under any other instruments.

2. By Lender To Transferee. The Lender may sell or transfer all or part of any participation interest that it owns in any mortgage under this Contract unless expressly prohibited from doing so by our Guides.

This sale or transfer of participation interests is subject to the conditions below, as well as to our Guides as they are in effect on the date of our commitment to purchase.

For every sale or transfer, the Lender must obtain and furnish us with a properly executed instrument by which the transferee:

- agrees to be bound by the terms of this Contract; and
- acknowledges our rights and interests under this Contract with respect to the mortgage.
Contract

Our rights and interests that must be acknowledged include, without limitation, the right to assess a servicing fee against the owner of each participation interest if we:

- assume the servicing of the mortgage; or
- transfer the servicing to a new servicer under Section IX D of this Contract.

The sale or transfer of a participation interest does not relieve the Lender of any responsibility or liability under this Contract. For example, the Lender continues to be liable for any fees and other amounts charged under Section IX D3 of this Contract against the participation interest that is transferred. We may collect these amounts from the Lender or from the transferee.

3. **By Lender To Bank.** The Lender may be a member of, or be required to maintain reserves with a Federal Home Loan Bank or Federal Reserve Bank. If so, and the Lender transfers its participation interests in any mortgage under this Contract to such a bank to secure one or more advances, then the bank will not be deemed to have assumed the mortgage warranties found in Section IV A.

Also, such a transfer to the bank will not relieve the Lender of any responsibility or liability under this Contract.

XII Notice

Whenever notice is required under this Contract, it must be given as described in this section.

Any notice of termination given under this Contract must be:

- in writing;
- delivered in person or sent by registered or certified mail, with a return receipt requested; and
- addressed to the party to which notice is being given.

Delivery and notice is given when we or the Lender mail or register the notice with any post office.

Our Guides, including any amendments or supplements, and any other notices, demands or requests under this Contract or applicable law will be:

- in writing;
- delivered in person or mailed from any post office, substation, or letter box;
- enclosed in a postage prepaid envelope; and
- addressed to the Lender to which the matter is directed.

For purposes of notice, the following rules apply:

1. Our address is the address of our regional office given in this Contract.
2. The Lender's address is that of its principal place of business given in this Contract.

Any change of address must be given in writing.
XIII Prior Agreements

This Contract supersedes any prior agreements between the Lender and us that govern selling or servicing of mortgages and participation interests to which this Contract relates.

However, this section will not release the Lender from any responsibility or liability under any prior agreements and understandings.

XIV Severability And Enforcement

If any provision of this Contract conflicts with applicable law, the other provisions of this Contract that can be carried out without the conflicting provision will not be affected.

All rights and remedies under this Contract are distinct and cumulative not only as to each other but as to any rights or remedies afforded by law or equity. They may be exercised together, separately or successively. These rights and remedies are for our benefit and that of our successors and assigns.

XV Captions

This Contract's captions and headings are for convenience only and are not part of the Contract.

XVI Scope of Contract

The following provisions apply, whether or not they are contrary to other provisions in this Contract.

A. Restriction Of Lender

We reserve the right to restrict the Lender's sale or servicing of mortgages or of participation interests to the type that the Lender and its employees have the experience and ability to originate, sell or service.

B. Types Of Mortgages Covered

This Contract covers only the sale of mortgages and participation interests and the servicing of mortgages, within the following categories:
Contract

XVII Signatures And Date

By executing this Contract, the Lender and we agree to all of this Contract's terms and provisions. Both the Lender and we have signed and dated this Contract below.

This Contract takes effect on the date we sign it.

Lender: ____________________________________________

(Address)

____________________________________________________

By: _____________________________________________

(Authorized Signature)

____________________________________________________

(Type Name and Title)

Date: ___________________________________________________________________

Federal National Mortgage Association

(Address)

____________________________________________________

____________________________________________________

By: _____________________________________________

(Authorized Signature)

____________________________________________________

(Type Name and Title)

Date: ___________________________________________________________________
EXHIBIT 2
The Mortgage Selling and Servicing Contract establishes the basic legal relationship between a lender and Fannie Mae. Specifically, it

• establishes the lender as an approved seller of mortgages and participation interests in mortgages to us;
• provides the terms and conditions of those sales;
• establishes the lender as an approved servicer of mortgages we have purchased for our portfolio, pools of mortgages in which we have purchased a participation interest for our portfolio, and pools of whole mortgages or participation interests that we have securitized to back an MBS issue;
• provides the terms and conditions for servicing; and
• incorporates by reference the terms of the Selling Guide, the Servicing Guide, and the Multifamily Guide(s).

The Contract also states the types of mortgages the lender may sell to and service for us.

All of our lender communications—such as guides, announcements, and letters to lenders (regardless of the medium through which they are issued)—are instructions we provide to enable a lender to perform (as an independent contractor) its obligations to Fannie Mae (as a secondary market investor) under the terms of the Mortgage Selling and Servicing Contract. No borrower or other third party is intended to be a legal beneficiary of the Mortgage Selling and Servicing Contract or to obtain any such rights or entitlements through our lender communications.

Fannie Mae transmits lender communications to a lender by posting them on or making them available through Fannie Mae's official corporate Web sites FannieMae.com or eFannieMae.com (or such other Web sites as Fannie Mae may establish in the future) or by mailing printed copies for a fee. We require lenders to be informed of our Guide requirements and changes thereto, and lenders should select and rely on the manner of receiving notice of lender communications that best meets their business needs.
EXHIBIT 3
COMMITMENT TO PURCHASE FINANCIAL INSTRUMENT
and
SERVICER PARTICIPATION AGREEMENT

This Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment") is entered into as of the Effective Date, by and between Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae"), and the undersigned party ("Servicer"). Capitalized terms used, but not defined contextually, shall have the meanings ascribed to them in Section 12 below.

Recitals

WHEREAS, the U.S. Department of the Treasury (the "Treasury") has established a Making Home Affordable Program pursuant to section 101 and 109 of the Emergency Economic Stabilization Act of 2008 (the "Act"), as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009;

WHEREAS, the Treasury has established a variety of programs (the "Programs") under the Act to stabilize the housing market by facilitating first lien mortgage loan modifications, facilitating second lien mortgage loan modifications and extinguishments, providing home price decline protection incentives, encouraging foreclosure alternatives, such as short sales and deeds in lieu of foreclosure, and making other foreclosure prevention services available to the marketplace (collectively, the "Services");

WHEREAS, the Programs may include Services relating to FHA, VA and USDA loans;

WHEREAS, Fannie Mae has been designated by the Treasury as a financial agent of the United States in connection with the implementation of the Programs; all references to Fannie Mae in the Agreement shall be in its capacity as financial agent of the United States;

WHEREAS, Fannie Mae will fulfill the roles of administrator and record keeper for the Programs, and in conjunction therewith must standardize certain mortgage modification and foreclosure prevention practices and procedures as they relate to the Programs, consistent with the Act and in accordance with the directives of, and guidance provided by, the Treasury;

WHEREAS, Federal Home Loan Mortgage Corporation ("Freddie Mac") has been designated by the Treasury as a financial agent of the United States and will fulfill a compliance role in connection with the Programs; all references to Freddie Mac in the Agreement shall be in its capacity as compliance agent of the Programs;

WHEREAS, all Fannie Mae and Freddie Mac approved servicers are being directed through their respective servicing guides and bulletins to implement the Programs with respect to mortgage loans owned, securitized, or guaranteed by Fannie Mae or Freddie Mac (the "GSE Loans"); accordingly, this Agreement does not apply to the GSE Loans;

WHEREAS, all other servicers, as well as Fannie Mae and Freddie Mac approved servicers, that wish to participate in the Programs with respect to loans that are not GSE Loans (collectively, "Participating Servicers") must agree to certain terms and conditions relating to the respective roles and responsibilities of participants and other financial agents of the government; and

WHEREAS, Servicer wishes to participate in the Programs as a Participating Servicer on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the representations, warranties, and mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fannie Mae and Servicer agree as follows.
Agreement

1. Services

A. Contemporaneously with the execution and delivery of this Commitment and the Financial Instrument, Servicer will execute and deliver to Fannie Mae one or more schedules describing the Services to be performed by Servicer pursuant to this Agreement, effective as of the Effective Date of the Agreement (each, a “Service Schedule” or an “Initial Service Schedule” and, collectively, the “Initial Service Schedules”). After the Effective Date of the Agreement, Servicer may opt-in to any additional initiatives offered by Treasury in connection with the Programs by executing and delivering to Fannie Mae one or more additional Service Schedules describing the Services relating to such initiatives (each, a “Service Schedule” or an “Additional Service Schedule” and, collectively, the “Additional Service Schedules”) (the Initial Service Schedules and the Additional Service Schedules, collectively, the “Service Schedules”). All Service Schedules that are executed and delivered to Fannie Mae by Servicer from time to time will be numbered sequentially (e.g. Service Schedule A-1; Service Schedule A-2; Service Schedule A-3; et seq.) and are referenced herein, collectively, as Exhibit A; Exhibit A is hereby incorporated into the Commitment by this reference.

B. Subject to Section 10.C., Servicer shall perform the Services described in (i) the Financial Instrument attached hereto as Exhibit B (the “Financial Instrument”); (ii) the Service Schedules attached hereto, collectively, as Exhibit A; (iii) the guidelines and procedures issued by the Treasury with respect to the Programs outlined in the Service Schedules (the “Program Guidelines”); and (iv) any supplemental documentation, instructions, bulletins, frequently asked questions, letters, directives, or other communications, including, but not limited to, business continuity requirements, compliance requirements, performance requirements and related remedies, issued by the Treasury, Fannie Mae, or Freddie Mac in order to change, or further describe or clarify the scope of, the rights and duties of the Participating Servicers in connection with the Programs outlined in the Service Schedules (the “Supplemental Directives” and, together with the Program Guidelines, the “Program Documentation”). The Program Documentation will be available to all Participating Servicers at www.HMPadmin.com; for the avoidance of doubt, the term “Program Documentation” includes all of the Program Guidelines and Supplemental Directives issued by Treasury and made available to Participating Servicers at www.HMPadmin.com prior to the Effective Date of the Agreement. The Program Documentation, as the same may be modified or amended from time to time in accordance with Section 10 below, is hereby incorporated into the Commitment by this reference.

C. Servicer’s representations and warranties, and acknowledgement of and agreement to fulfill or satisfy certain duties and obligations, with respect to its participation in the Programs and under the Agreement are set forth in the Financial Instrument. Servicer’s certification as to its continuing compliance with, and the truth and accuracy of, the representations and warranties set forth in the Financial Instrument will be provided annually in the form attached hereto as Exhibit C (the “Certification”), beginning on June 1, 2010 and again on June 1 of each year thereafter during the Term (as defined below) and upon the execution and delivery by Servicer of any Additional Service Schedule during the Term.

D. The recitals set forth above are hereby incorporated herein by this reference.

2. Authority and Agreement to Participate in Programs

A. Servicer shall perform the Services for all mortgage loans it services, whether it services such mortgage loans for its own account or for the account of another party, including any holders of mortgage-backed securities (each such other party, an “Investor”).

B. Fannie Mae acknowledges that Servicer may service mortgage loans for its own account or for the account of one or more Investors and may be subject to restrictions set forth in pooling and servicing agreements or other servicing contracts governing Servicer’s servicing of a mortgage loan; Servicer shall use reasonable efforts to remove all prohibitions or
impediments to its authority, and use reasonable efforts to obtain all third party consents, waivers and delegations that are required, by contract or law, in order to perform the Services.

C. Notwithstanding subsection B., if (x) Servicer is unable to obtain all necessary consents, waivers and delegations for performing any Services under the Programs, or (y) the pooling and servicing agreement or other servicing contract governing Servicer’s servicing of a mortgage loan prohibits Servicer from performing such Services for that mortgage loan, Servicer shall not be required to perform such Services with respect to that mortgage loan and shall not receive all or any portion of the Purchase Price (defined below) otherwise payable for such Services with respect to such loan.

D. Notwithstanding anything to the contrary contained herein, the Agreement does not apply to GSE Loans. Servicers are directed to the servicing guides and bulletins issued by Fannie Mae and Freddie Mac, respectively, concerning the Programs as applied to GSE Loans.

E. Servicer’s performance of the Services and implementation of the Programs shall be subject to review by Freddie Mac and its agents and designees as more fully set forth in the Agreement.

3. Set Up; Prerequisite to Payment

Servicer will provide to Fannie Mae: (a) the set up information required by the Program Documentation and any ancillary or administrative information requested by Fannie Mae in order to process Servicer’s participation in the Programs as a Participating Servicer on or before the Effective Date of the Agreement as to the Initial Service Schedules that are executed and delivered contemporaneously herewith, and on or before the effective date of the Additional Service Schedules (if any) executed and delivered after the Effective Date of the Agreement; and (b) the data elements for each mortgage obligation, property, or borrower eligible for the Programs as and when described in the Program Documentation and the Financial Instrument. Purchase Price payments will not be remitted pursuant to Section 4 with respect to Services for which the required data elements have not been provided.

4. Agreement to Purchase Financial Instrument; Payment of Purchase Price

A. Fannie Mae, in its capacity as a financial agent of the United States, agrees to purchase, and Servicer agrees to sell to Fannie Mae, in such capacity, the Financial Instrument that is executed and delivered by Servicer to Fannie Mae in the form attached hereto as Exhibit B, in consideration for the payment by Fannie Mae, as agent, of the Purchase Price.

B. The conditions precedent to the payment by Fannie Mae of the Purchase Price with respect to the Services described on the Initial Service Schedules are: (a) the execution and delivery of the Commitment, the Initial Service Schedules, and the Financial Instrument by Servicer to Fannie Mae; (b) the execution and delivery of the Commitment and the Initial Service Schedules by Fannie Mae to Servicer; (c) the delivery of copies of the fully executed Commitment, Initial Service Schedules and Financial Instrument to Treasury on the Effective Date of the Agreement; (d) the performance by Servicer of the Services described in the Agreement, in accordance with the terms and conditions thereof, to the reasonable satisfaction of Fannie Mae and Freddie Mac; and (e) the satisfaction by Servicer of such other obligations as are set forth in the Agreement.

C. The conditions precedent to the payment by Fannie Mae of the Purchase Price with respect to the Services described on the Additional Service Schedules (if any) are: (a) the execution and delivery of the Additional Service Schedules and the Certification by Servicer to Fannie Mae; (b) the execution and delivery of the Additional Service Schedules by Fannie Mae to Servicer; (c) the delivery of copies of the fully executed Additional Service Schedules to Treasury; (d) the performance by Servicer of the Services described in the Agreement, in accordance with the terms and conditions thereof, to the reasonable satisfaction of Fannie Mae and Freddie Mac; and (e) the satisfaction by Servicer of such other obligations as are set forth in the Agreement.
D. Solely in its capacity as the financial agent of the United States, and subject to subsection E. below, Fannie Mae shall remit all payments described in the Program Documentation to Servicer for the account or credit of Servicer, Investors and borrowers, in each case in accordance with the Program Documentation (all such payments, collectively, the “Purchase Price”); all payments remitted to Servicer for the credit or account of third parties under the Program Documentation shall be applied by Servicer as required by the Program Documentation. Fannie Mae shall have no liability to Servicer with respect to the payment of the Purchase Price, unless and until: (a) Servicer and all other interested parties have satisfied all pre-requisites set forth herein and in the Program Documentation relating to the applicable Program payment structure, including, but not limited to, the delivery of all data elements required by Section 3 of this Commitment; and (b) the Treasury has provided funds to Fannie Mae for remittance to Servicer, together with written direction to remit the funds to Servicer in accordance with the Program Documentation.

E. The Purchase Price will be paid to Servicer by Fannie Mae as the financial agent of the United States as and when described herein and in the Program Documentation in consideration for the execution and delivery of the Financial Instrument by Servicer on or before the Effective Date of the Agreement, upon the satisfaction of the conditions precedent to payment described in this Section 4.

F. The value of the Agreement is limited to [INSERT DOLLAR AMOUNT] (the “Program Participation Cap”). Accordingly, the aggregate Purchase Price payable to Servicer under the Agreement with respect to all Services described on all of the Service Schedules that are executed and delivered in connection with the Agreement may not exceed the amount of the Program Participation Cap. For each Service to be performed by Servicer, the aggregate remaining Purchase Price available to be paid to Servicer under the Agreement will be reduced by the maximum Purchase Price potentially payable with respect to that Service. In the event the Purchase Price actually paid with respect to that Service is less than the maximum Purchase Price potentially payable, the aggregate remaining Purchase Price available to be paid to Servicer under the Agreement will be increased by the difference between such amounts. Notwithstanding the foregoing, no agreements with any party that may result in a new payment obligation under the Programs will be effected under the Agreement, and no payments will be made with respect to any new Services, from and after the date on which the aggregate Purchase Price paid or payable to Servicer under the Agreement equals the Program Participation Cap. Treasury may, from time to time in its sole discretion, adjust the amount of the Program Participation Cap. Servicer will be notified of all adjustments to the Program Participation Cap in writing by Fannie Mae.

G. Servicer shall maintain complete and accurate records of, and supporting documentation for, all Services provided in connection with the Programs including, but not limited to, data relating to borrower payments (e.g., principal, interest, taxes, homeowner’s insurance, hazard insurance, flood insurance and homeowner’s association and/or condo fees), delinquencies and the terms of each agreement executed under the Programs (e.g., trial modification agreements, loan modification agreements and extinguishment agreements), which will be relied upon by Fannie Mae when calculating, as financial agent for the United States, the Purchase Price to be paid by the Treasury through Fannie Mae or any other financial agent. Servicer agrees to provide Fannie Mae and Freddie Mac with documentation (including copies of executed borrower agreements) and other information with respect to any amounts paid by the Treasury as may be reasonably requested by such parties. In the event of a discrepancy or error in the amount of the Purchase Price paid hereunder, at Fannie Mae’s election, (x) Servicer shall remit to Fannie Mae the amount of any overpayment within thirty (30) days of receiving a refund request from Fannie Mae, or (y) Fannie Mae may immediately offset the amount of the overpayment against other amounts due and payable to Servicer by Fannie Mae, as financial agent of the United States, upon written notice to Servicer. Servicer shall still be obligated to credit to the respective accounts of Investors and borrowers any portion of the Purchase Price to which they are entitled (if any) notwithstanding such offset unless otherwise directed by Fannie Mae.

H. At the election and upon the direction of the Treasury and with prior written notice to Servicer, Fannie Mae may deduct from any amount to be paid to Servicer any amount that Servicer, Investor, or borrower is obligated to reimburse or pay to the United States government, provided, however, that any amount withheld under this subsection H. will be withheld only from the amounts payable to, or for the account or credit of, the party which is liable for the obligation to the United States government.
5. Term

A. New Services may be undertaken by Servicer as described in the Financial Instrument and the Program Documentation from and after the Effective Date until December 31, 2012 (the "Initial Term"), subject to one or more extensions of the Initial Term by the Treasury, or earlier termination of the Agreement by Fannie Mae pursuant to the provisions hereof, or earlier suspension or termination of one or more of the Programs by the Treasury, provided, however, no new Services may be undertaken by Servicer, and Servicer will have no further obligation to perform any Services under this Agreement, from and after the date on which the Program Participation Cap is reached.

B. Servicer shall perform the Services described in the Program Documentation in accordance with the terms and conditions of the Agreement during the Initial Term and any extensions thereof (the Initial Term, together with all extensions thereof, if any, the "Term"), and during such additional period as may be necessary to: (i) comply with all data collection, retention and reporting requirements specified in the Program Documentation during and for the periods set forth therein; and (ii) complete all Services that were initiated by Servicer, including, but not limited to, the completion of all documentation relating thereto, during the Term. Servicer agrees that it will work diligently to complete all Services as soon as reasonably possible after the end of the Term or earlier termination.

C. Notwithstanding Sections 5.A. and 5.B., if the Servicer has elected to participate in the Second Lien Modification Program by executing and delivering to Fannie Mae a Service Schedule relating thereto, the Servicer in its discretion, may elect to opt out of the Second Lien Modification Program on an annual basis by providing notice to Fannie Mae in accordance with Section 9 hereof within 30 days following the anniversary of the Effective Date of the Service Schedule for the Second Lien Modification Program. Following the Servicer’s election to opt out of the Second Lien Modification Program, the Servicer will not be required to perform any Services for any new mortgage loans under the Second Lien Modification Program; however, the Servicer must continue to perform any Services for any mortgage loan for which it had already begun performing Services prior to electing to opt out of the Second Lien Modification Program.

D. The Agreement, or any of the Programs implemented under the Agreement, may be terminated by Fannie Mae or Servicer prior to the end of the Term pursuant to Section 6 below.

6. Defaults, Acts of Bad Faith and Early Termination; Remedies for and Effects of Defaults, Acts of Bad Faith and Early Termination; Opportunity to Cure

A. The following constitute events of default by Servicer under the Agreement (each, an "Event of Default" and, collectively, "Events of Default"):

1. Servicer fails to perform or comply with any of its material obligations under the Agreement, including, but not limited to, circumstances in which Servicer fails to ensure that all eligibility criteria and other conditions precedent specified in applicable Program Documentation are satisfied prior to effectuating any Services in connection with any of the Programs.

2. Servicer: (a) ceases to do business as a going concern; (b) makes a general assignment for the benefit of, or enters into any arrangement with creditors in lieu thereof; (c) admits in writing its inability to pay its debts as they become due; (d) files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions of the laws of the United States or any other jurisdiction; (e) authorizes, applies for or consents to the appointment of a trustee or liquidator of all or substantially all of its assets; (f) has any substantial part of its property subjected to a levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) enters into an agreement or resolution to take any of the foregoing actions.
(3) Servicer, any employee or contractor of Servicer, or any employee or contractor of Servicers' contractors, commits a grossly negligent, willful or intentional, or reckless act (including, but not limited to, misrepresentation or fraud) in connection with any of the Programs or the Agreement.

(4) Any representation, warranty, or covenant made by Servicer in the Agreement or any Certification is or becomes materially false, misleading, incorrect, or incomplete.

(5) An evaluation of performance that includes any specific findings by Freddie Mac, in its sole discretion, that Servicer’s performance under any performance criteria established pursuant to applicable Program Documentation is materially insufficient, or any failure by Servicer to comply with any directive issued by Fannie Mae or Freddie Mac with respect to documents or data requested, findings made, or remedies established, by Fannie Mae and/or Freddie Mac in conjunction with such performance criteria or other Program requirements.

B. Fannie Mae may take any, all, or none of the following actions upon an Event of Default by Servicer under the Agreement:

(1) Fannie Mae may: (i) withhold some or all of the Servicer’s portion of the Purchase Price until, in Fannie Mae’s determination, Servicer has cured the default; and (ii) choose to utilize alternative means of paying any portion of the Purchase Price for the credit or account of borrowers and Investors and delay paying such portion pending adoption of such alternative means.

(2) Fannie Mae may: (i) reduce the amounts payable to Servicer under Section 4; and/or (ii) obtain repayment of prior payments made to Servicer under Section 4, provided, however, Fannie Mae will seek to obtain repayment of prior payments made under Section 4 only with respect to Services that are determined by Fannie Mae or Freddie Mac to have been impacted by, or that Fannie Mae or Freddie Mac believes may have been, or may be, impacted by, the Event of Default giving rise to the remedy.

(3) Fannie Mae may require Servicer to submit to additional Program administrator oversight, including, but not limited to, additional compliance controls and quality control reviews.

(4) Fannie Mae may terminate the Agreement and cease its performance hereunder, or cease its performance hereunder as to any Program in which Servicer is a participant.

(5) Fannie Mae may require Servicer to submit to information and reporting with respect to its financial condition and ability to continue to meet its obligations under the Agreement.

C. The following constitute acts of bad faith of Investors and borrowers in connection with the Programs (each, an “Act of Bad Faith” and, collectively, “Acts of Bad Faith”): an Investor or borrower commits a grossly negligent, willful or intentional, or reckless act (including, but not limited to, misrepresentation or fraud) in connection with any of the Programs (including, but not limited to, in connection with such Investor’s or borrower’s response to Program questionnaires, the execution or delivery to Servicer, Fannie Mae, or Treasury of any of the agreements relating to such Investor’s or borrower’s participation in any of the Programs and the production of supporting documentation therefor and in connection with any audit or review by Freddie Mac for Investor or borrower compliance with the Programs). For brevity, any such Investor or borrower is referred to in this subsection as a “defaulting party” or as a “defaulting” Investor or borrower and the Act of Bad Faith by such Investor or borrower as a “default.”

D. Fannie Mae may take any, all, or none of the following actions if an Act of Bad Faith involving an Investor or a borrower occurs, or is reasonably believed by Fannie Mae to have occurred, in connection with any of the Programs:
(1) Fannie Mae may withhold all or any portion of the Purchase Price payable to, or for the credit or account of, the defaulting party until, in Fannie Mae’s determination, the default has been cured or otherwise remedied to Fannie Mae’s satisfaction.

(2) Fannie Mae may: (i) reduce the amounts payable to Servicer for the credit, or account of, the defaulting party under Section 4; and/or (ii) obtain repayment of prior payments made to or for the credit or account of the defaulting party under Section 4. Servicer will reasonably cooperate with, and provide reasonable support and assistance to, Fannie Mae and Freddie Mae in connection with their respective roles and, in Fannie Mae’s case, in connection with its efforts to obtain repayment of prior payments made to Investors and borrowers as provided in this subsection.

(3) Fannie Mae may require Servicer to submit to additional Program administrator oversight, including, but not limited to, additional compliance controls and quality control reviews.

(4) Fannie Mae may cease its performance hereunder as to some or all of the Services subject to the Agreement that relate to the defaulting Investor or borrower.

(5) Fannie Mae may terminate the Agreement and cease its performance hereunder if Acts of Bad Faith occur on a recurring basis, are widespread among the Investor or borrower bases served by Servicer, or occur in combination or in connection with one or more Events of Default by Servicer.

E. In addition to the termination rights set forth above, Fannie Mae may terminate the Agreement or any Program implemented under the Agreement immediately upon written notice to Servicer:

(1) at the direction of the Treasury;

(2) in the event of a merger, acquisition, or other change of control of Servicer;

(3) in the event that a receiver, liquidator, trustee, or other custodian is appointed for the Servicer; or

(4) in the event that a material term of the Agreement is determined to be prohibited or unenforceable as referred to in Section 11.C.

F. The Agreement will terminate automatically:

(1) in the event that the Financial Agency Agreement, dated February 18, 2009, by and between Fannie Mae and the Treasury is terminated; or

(2) upon the expiration or termination of all of the Programs implemented under the Agreement.

G. The effects of the expiration or termination of the Agreement are as follows:

(1) In the event that the Agreement expires at the end of the Initial Term or any extension thereof pursuant to Section 5, or in the event that the Agreement expires or is terminated pursuant to Section 6.E. or 6.F., Fannie Mae shall, solely in its capacity as the financial agent of the United States, continue to remit all amounts that are properly payable pursuant to Section 4 to Servicer in accordance with the Program Documentation until paid in full, provided, however, that Purchase Price payments will be made only with
respect to Services that were performed in accordance with the applicable Program Documentation prior to the date of expiration or termination and that do not exceed the Program Participation Cap.

(2) In the event that the Agreement is terminated in connection with an Event of Default by Servicer, no compensation with respect to any Service will be paid to Servicer for the account of the Servicer subsequent to termination; Fannie Mae’s only continuing obligations as financial agent of the United States subsequent to termination will be to remit all payments that are properly payable pursuant to Section 4 to Servicer (or, at Fannie Mae’s discretion, an alternative provider) for the account of borrowers and Investors in accordance with the Program Documentation until paid in full.

(3) In the event that the Agreement is terminated in connection with an Act of Bad Faith by an Investor or a borrower, no compensation with respect to any Services will be paid to Servicer for the credit or account of the defaulting Investor or borrower subsequent to termination; Fannie Mae’s only continuing obligation as financial agent of the United States subsequent to termination will be to remit all payments that are properly payable pursuant to Section 4 to Servicer for the credit or account of non-defaulting parties as described in the applicable Program Documentation until paid in full. For the avoidance of doubt, if the Act of Bad Faith resulting in the termination of the Agreement occurs in connection with an Event of Default of Servicer, no compensation with respect to any Service will be paid to Servicer for the account of the Servicer subsequent to termination.

H. Fannie Mae, in its capacity as the financial agent of the United States, may reduce the amounts payable to Servicer under Section 4, or obtain repayment of prior payments made under Section 4, in connection with: (a) an evaluation of Servicer’s performance that includes any specific findings by Freddie Mac that Servicer’s performance under any performance criteria established pursuant to the Program Documentation is materially insufficient, or (b) any failure by Servicer to comply materially with any directive issued by Fannie Mae or Freddie Mac with respect to documents or data requested, findings made, or remedies established, by Fannie Mae and/or Freddie Mac in conjunction with such performance criteria or other Program requirements; provided, however, Fannie Mae will seek to obtain repayment of prior payments made under Section 4 only with respect to Services that are determined by Fannie Mae or Freddie Mac to have been impacted by, or that Fannie Mae or Freddie Mac believes may have been, or may be, impacted by, the findings giving rise to this remedy. Fannie Mae may initially avail itself of this remedy in lieu of a specific declaration of an Event of Default, provided, however, that doing so shall not preclude Fannie Mae from later declaring an Event of Default or exercising any other rights or remedies otherwise available to it under this Section 6, or at law or in equity, in connection with the event giving rise to this remedy, or any future events giving rise to this remedy.

I. The remedies available to Fannie Mae upon an Event of Default and an Act of Bad Faith under this Section are cumulative and not exclusive; further, these remedies are in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

J. In the event of the expiration or termination of the Agreement or any Program implemented under the Agreement under any circumstances, Servicer and Fannie Mae agree to cooperate with one another on an ongoing basis to ensure an effective and orderly transition or resolution of the Services, including the provision of any information, reporting, records and data required by Fannie Mae and Freddie Mac.

K. If an Event of Default under Section 6.A.1., Section 6.A.4., or Section 6.A.5. occurs and Fannie Mae determines, in its sole discretion, that the Event of Default is curable and elects to exercise its right to terminate the Agreement, Fannie Mae will provide written notice of the Event of Default to Servicer and the Agreement will terminate automatically thirty (30) days after Servicer’s receipt of such notice, if the Event of Default is not cured by Servicer to the reasonable satisfaction of Fannie Mae prior to the end of such thirty (30) day period. If Fannie Mae determines, in its sole discretion, that an Event of Default under Section 6.A.1., Section 6.A.4., or Section 6.A.5. is not curable, or if an Event of Default under Section 6.A.2. or Section 6.A.3.
occurs, and Fannie Mae elects to exercise its right to terminate the Agreement under Section 6.B.4., Fannie Mae will provide written notice of termination to the Servicer on or before the effective date of the termination.

7. Disputes

Fannie Mae and Servicer agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises under the Agreement, the parties will use all reasonable efforts to promptly resolve the dispute by mutual agreement. If a dispute cannot be resolved informally by mutual agreement at the lowest possible level, the dispute shall be referred up the respective chain of command of each party in an attempt to resolve the matter. This will be done in an expeditious manner. Servicer shall continue diligent performance of the Services pending resolution of any dispute. Fannie Mae and Servicer reserve the right to pursue other legal or equitable rights they may have concerning any dispute. However, the parties agree to take all reasonable steps to resolve disputes internally before commencing legal proceedings.

8. Transfer or Assignment; Mergers, Acquisitions and Changes of Control; Effects of Assignment

A. Mortgage loans and servicing rights are freely transferable under this Agreement, subject to: (i) the contractual requirements regarding notice and the execution and delivery of the Assignment and Assumption Agreement, in the form of Exhibit D, set forth in Sections 8 and 9 hereof; and (ii) any restrictions under applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements. Servicer must provide written notice to Fannie Mae and Freddie Mac pursuant to Section 9 below of: (i) any transfers or assignments of mortgage loans, or servicing rights relating to mortgage loans, that are 60 or more days delinquent and otherwise eligible for consideration or process under one or more of the Programs at the time of transfer or assignment; or for which the Servicer is performing Services at the time of transfer or assignment (collectively, “Eligible Loans”); and (ii) any other transfers or assignments of Servicer’s rights and obligations relating to Eligible Loans under this Agreement, including, but not limited to, transfers or assignments of any rights or obligations relating to Eligible Loans under this Agreement that occur in connection with the merger, acquisition, or other change of control of Servicer. Such notice must include payment instructions for payments to be made to the transferee or assignee of the Eligible Loans, servicing rights or other rights and obligations subject to the notice (if applicable), and, subject to Section 8.B. below, evidence of the assumption by such transferee or assignee of the Eligible Loans, servicing rights or other rights and obligations that are transferred, in the form of Exhibit D (the “Assignment and Assumption Agreement”). Servicer acknowledges that Fannie Mae will continue to remit payments to Servicer in accordance with Section 4 for Services relating to mortgage loans, servicing rights or other rights and obligations that have been assigned or transferred, and that Servicer will be liable for underpayments, overpayments and misdirected payments, unless and until such notice and an executed Assignment and Assumption Agreement are provided to Fannie Mae and Freddie Mac.

B. Servicer shall notify Fannie Mae as soon as legally possible of any proposed merger, acquisition, or other change of control of Servicer, and of any financial and operational circumstances which may impair Servicer’s ability to perform its obligations under the Agreement, in accordance with Sections 8 and 9, provided, however, that Servicer need not execute and deliver an Assignment and Assumption Agreement in the form of Exhibit D in the event that the assignment and assumption occur by operation of law in connection with a merger, acquisition, or other change of control of Servicer and are effective as to all of Servicer’s rights and obligations under this Agreement with respect to all of the mortgage loans it services.

C. The effects of transfers and assignments under this Agreement are as follows:

(1) If the Servicer transfers or assigns all or any portion of its portfolio of mortgage loans or servicing rights to a third party pursuant to an Assignment and Assumption Agreement, only the Eligible Loans must be identified on a schedule to the Assignment and Assumption Agreement. The transferee or assignee of Servicer’s mortgage loans and servicing rights must assume Servicer’s obligations under this Agreement only with respect to Eligible Loans, subject to the Service Schedules and the Program Documentation applicable to the Programs in which Servicer agreed to participate prior to the transfer or assignment. Any mortgage loans or servicing rights that (I) are not Eligible Loans at the time of the transfer or assignment, (II)
are a part of the transferee’s or assignee’s existing portfolio prior to the transfer or assignment, or (III) become a part of the transferee’s or assignee’s portfolio subsequent to such transfer or assignment will become subject to the Programs only if the transferee or assignee has itself executed a Commitment to Purchase Financial Instrument and Servicer Participation Agreement separate and apart from the transfer or assignment involving Servicer and, then, only in accordance therewith.

(2) If the Servicer transfers or assigns its portfolio of mortgage loans and servicing rights to a third party in connection with a merger, acquisition, or other change of control and the transfer or assignment is effective by operation of law, the transferee or assignee of such mortgage loans and servicing rights must provide servicing with respect to all such mortgage loans and servicing rights (regardless of status at the time of transfer or assignment with respect to Program eligibility) in accordance with this Agreement, subject to the Service Schedules and the Program Documentation applicable to the Programs in which Servicer agreed to participate prior to the transfer or assignment. Any mortgage loans or servicing rights that (I) are a part of the transferee’s or assignee’s existing portfolio prior to the transfer or assignment, or (II) become a part of the transferee’s or assignee’s portfolio subsequent to such transfer or assignment will become subject to the Programs only if the transferee or assignee has itself executed a Commitment to Purchase Financial Instrument and Servicer Participation Agreement separate and apart from the transfer or assignment involving Servicer and, then, only in accordance therewith.

(3) Servicer may not transfer or assign any mortgage loans or servicing rights to any third party in a manner that is intended to circumvent, or has the effect of circumventing, Servicer’s obligations under this Agreement.

9. Notices

All legal notices under the Agreement shall be in writing and referred to each party’s point of contact identified below at the address listed below, or to such other point of contact at such other address as may be designated in writing by such party. All such notices under the Agreement shall be considered received: (a) when personally delivered; (b) when delivered by commercial overnight courier with verification receipt; (c) when sent by confirmed facsimile; or (d) three (3) days after having been sent, postage prepaid, via certified mail, return receipt requested. Notices shall not be made or delivered in electronic form, except as provided in Section 12.B. below, provided, however, that the party giving the notice may send an e-mail to the party receiving the notice advising that party that a notice has been sent by means permitted under this Section.

To Servicer:

[INSERT SERVICER CONTACT INFORMATION FOR LEGAL NOTICES – INCLUDE EMAIL]

To Fannie Mae:

[INSERT FANNIE MAE CONTACT INFORMATION FOR LEGAL NOTICES – INCLUDE EMAIL]

To Treasury:

[INSERT TREASURY CONTACT INFORMATION FOR LEGAL NOTICES – INCLUDE EMAIL]

To Freddie Mac:

[INSERT FREDDIE MAC CONTACT INFORMATION FOR LEGAL NOTICES – INCLUDE EMAIL]
10. Modifications

A. Subject to Sections 10.B. and 10.C., modifications to the Agreement shall be in writing and signed by Fannie Mae and Servicer.

B. Fannie Mae and the Treasury each reserve the right to unilaterally modify or supplement the terms and provisions of the Program Documentation that relate (as determined by Fannie Mae or the Treasury, in their reasonable discretion) to the compliance and performance requirements of the Programs, and related remedies established by Freddie Mac, and/or to technical, administrative, or procedural matters or compliance and reporting requirements that may impact the administration of the Programs.

C. Notwithstanding Sections 10.A. and 10.B., any modification to the Program Documentation that materially impacts the borrower eligibility requirements, the amount of payments of the Purchase Price to be made to Participating Servicers, Investors and borrowers under any of the Programs in which Servicer participates, or the rights, duties, or obligations of Participating Servicers, Investors or borrowers in connection with any of the Programs in which Servicer participates (each, a “Program Modification” and, collectively, the “Program Modifications”) shall be effective only on a prospective basis; Participating Servicers will be afforded the opportunity to opt-out of a modified Program when Program Modifications are published with respect to the Services to be performed by Servicer in connection with the modified Program on or after the effective date of the Program Modification, at Servicer’s discretion. Opt-out procedures, including, but not limited to, the time and process for notification of election to opt-out and the window for such election, will be set forth in the Program Documentation describing the Program Modification, provided, however, that Servicer will be given at least thirty (30) days to elect to opt-out of a Program Modification. For the avoidance of doubt, during the period during which Servicer may elect to opt-out of a Program Modification and after any such opt-out is elected by Servicer, Servicer will continue to perform the Services described in the Financial Instrument and the Program Documentation (as the Program Documentation existed immediately prior to the publication of the Program Modification prompting the opt-out) with respect to any Services that Servicer had already begun to perform prior to the opt-out.

11. Miscellaneous

A. The Agreement shall be governed by and construed under Federal law and not the law of any state or locality, without reference to or application of the conflicts of law principles. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the United States Federal courts located within the District of Columbia. Both parties consent to the jurisdiction and venue of such courts and irrevocably waive any objections thereto.

B. The Agreement is not a Federal procurement contract and is therefore not subject to the provisions of the Federal Property and Administrative Services Act (41 U.S.C. §§ 251-260), the Federal Acquisition Regulations (48 CFR Chapter 1), or any other Federal procurement law.

C. Any provision of the Agreement that is determined to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement, and no such prohibition or unenforceability in any jurisdiction shall invalidate such provision in any other jurisdiction.

D. Failure on the part of Fannie Mae to insist upon strict compliance with any of the terms hereof shall not be deemed a waiver, nor will any waiver hereunder at any time be deemed a waiver at any other time. No waiver will be valid unless in writing and signed by an authorized officer of Fannie Mae. No failure by Fannie Mae to exercise any right, remedy, or power hereunder will operate as a waiver thereof. The rights, remedies, and powers provided herein are cumulative and not exhaustive of any rights, remedies, and powers provided by law.
E. The Agreement shall inure to the benefit of and be binding upon the parties to the Agreement and their permitted successors-in-interest.

F. The Commitment, the Service Schedule(s) and the Assignment and Assumption Agreement (if applicable) may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

G. The Commitment, together with the Service Schedule(s), the Financial Instrument, the Certifications, the Assignment and Assumption Agreement (if applicable) and the Program Documentation, constitutes the entire agreement of the parties with respect to the subject matter hereof. In the event of a conflict between any of the foregoing documents and the Program Documentation, the Program Documentation shall prevail. In the event of a conflict between the Program Guidelines and the Supplemental Directives, the Program Guidelines shall prevail.

H. Any provisions of the Agreement (including all documents incorporated by reference thereto) that contemplate their continuing effectiveness, including, but not limited to, Sections 4, 5.B., 6, 8, 9, 11 and 12 of the Commitment, and Sections 2, 3, 5, 7, 8, 9 and 10 of the Financial Instrument, and any other provisions (or portions thereof) in the Agreement that relate to, or may impact, the ability of Fannie Mae and Freddie Mac to fulfill their responsibilities as agents of the United States in connection with the Programs, shall survive the expiration or termination of the Agreement.

12. Defined Terms; Incorporation by Reference

A. All references to the “Agreement” necessarily include, in all instances, the Commitment and all documents incorporated into the Commitment by reference, whether or not so noted contextually, and all amendments and modifications thereto. Specific references throughout the Agreement to individual documents that are incorporated by reference into the Commitment are not inclusive of any other documents that are incorporated by reference, unless so noted contextually.

B. The term “Effective Date” means the date on which Fannie Mae transmits a copy of the fully executed Commitment, Initial Service Schedule(s) and Financial Instrument to Treasury and Servicer with a completed cover sheet, in the form attached hereto as Exhibit E (the “Cover Sheet”); the Agreement shall be effective on the Effective Date. Any Additional Service Schedules that are executed and delivered to Fannie Mae after the Effective Date of the Agreement shall be also be accompanied by a completed Cover Sheet and shall be effective on the effective date or dates set forth therein. All executed documents and accompanying Cover Sheets will be faxed, emailed, or made available through other electronic means to Treasury and Servicer in accordance with Section 9.

C. The Program Documentation and Exhibit A – Service Schedule(s) (Service Schedule A-1, et seq.), Exhibit B – Form of Financial Instrument, Exhibit C – Form of Certification, Exhibit D – Form of Assignment and Assumption Agreement and Exhibit E – Form of Cover Sheet (in each case, in form and, upon completion, in substance), including all amendments and modifications thereto, are incorporated into this Commitment by this reference and given the same force and effect as though fully set forth herein.

[SIGNATURE PAGE FOLLOWS; REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
In Witness Whereof, Servicer and Fannie Mae by their duly authorized officials hereby execute and deliver this Commitment to Purchase Financial Instrument and Servicer Participation Agreement as of the Effective Date.

**SERVICER:** [INSERT FULL LEGAL NAME OF SERVICER]  
**FANNIE MAE,** solely as Financial Agent of the United States

By: ____________________________  
Name: ____________________________  
Title: ____________________________  
Date: ____________________________

By: ____________________________  
Name: ____________________________  
Title: ____________________________  
Date: ____________________________

**EXHIBITS**

- Exhibit A Service Schedule(s)  
- Exhibit B Form of Financial Instrument  
- Exhibit C Form of Certification  
- Exhibit D Form of Assignment and Assumption Agreement  
- Exhibit E Form of Cover Sheet
EXHIBIT A

SERVICE SCHEDULE(S)

The attached Service Schedules together comprise Exhibit A to that certain Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), entered into as of the Effective Date, by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer").

Each of the Service Schedules attached hereto is effective as of the Effective Date, or on such other date or dates as may be specified therein. All of the capitalized terms that are used but not defined in the Service Schedules shall have the meanings ascribed to them in the Commitment.

Exhibit A is deemed to be amended to include all Additional Service Schedules (if any) that are executed and delivered by the parties after the Effective Date in accordance with the Agreement, without any further action on the part of the parties hereto.
SERVICE SCHEDULE A-[INSERT NUMBER]

This Service Schedule is appended to that certain Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the “Commitment”), entered into as of the Effective Date, by and between Federal National Mortgage Association (“Fannie Mae”), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party (“Servicer”), and, together with all other Services Schedules appended thereto (if any), constitutes Exhibit A to the Commitment.

All of the capitalized terms that are used but not defined below shall have the meanings ascribed to them in the Commitment or in applicable Program Documentation.

1. **Program Name:**

   Servicer hereby elects to participate in the following Program(s):

   **Home Affordable Modification Program (HAMP)**

2. **Description of Program Services:**

   All services required to be performed by a participating servicer as set forth in the Program Documentation for the Home Affordable Modification Program under the Emergency Economic Stabilization Act of 2008, as amended, including, but not limited to, obligations relating to the modification of first lien mortgage loans and the provision of loan modification and foreclosure prevention services relating thereto.

3. **Effective date of Service Schedule:**

   **OPTION A**: This Service Schedule is executed and delivered contemporaneously with the Commitment; accordingly, the effective date of this Service Schedule is the Effective Date of the Agreement.

   **OPTION B**: This Service Schedule is effective as of [INSERT DATE].

In Witness Whereof, Servicer and Fannie Mae by their duly authorized officials hereby execute and deliver this Service Schedule as of the effective date of the Service Schedule set forth above.

SERVICER: [INSERT FULL LEGAL NAME OF SERVICER]  

FANNIE MAE, solely as Financial Agent of the United States

By: ________________________________  
Name: ________________________________  
Title: ________________________________  
Date: ________________________________

By: ________________________________  
Name: ________________________________  
Title: ________________________________  
Date: ________________________________

A-1
SERVICE SCHEDULE A-[INSERT NUMBER]

This Service Schedule is appended to that certain Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), entered into as of the Effective Date, by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"), and, together with all other Services Schedules appended thereto (if any), constitutes Exhibit A to the Commitment.

All of the capitalized terms that are used but not defined below shall have the meanings ascribed to them in the Commitment or in applicable Program Documentation.

1. Program Name:

Servicer hereby elects to participate in the following Program(s):

Second Lien Modification Program

2. Description of Program Services:

All services required to be performed by a participating servicer as set forth in the Program Documentation for the Second Lien Modification Program under the Emergency Economic Stabilization Act of 2008, as amended, including, but not limited to, obligations relating to the modification or extinguishment of second lien mortgage loans and the provision of loan modification and foreclosure prevention services relating thereto.

3. Effective date of Service Schedule:

[OPTION A] This Service Schedule is executed and delivered contemporaneously with the Commitment; accordingly, the effective date of this Service Schedule is the Effective Date of the Agreement.

[OPTION B] This Service Schedule is effective as of [INSERT DATE].

In Witness Whereof, Servicer and Fannie Mae by their duly authorized officials hereby execute and deliver this Service Schedule as of the effective date of the Service Schedule set forth above.

SERVICER: [INSERT FULL LEGAL NAME OF SERVICER]  
FANNIE MAE, solely as Financial Agent of the United States

By: ___________________________  
Name: ___________________________  
Title: ___________________________  
Date: ___________________________

By: ___________________________  
Name: ___________________________  
Title: ___________________________  
Date: ___________________________
EXHIBIT B

FORM OF FINANCIAL INSTRUMENT
FINANCIAL INSTRUMENT

This Financial Instrument is delivered as provided in Section 1 of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the “Commitment”), entered into as of the Effective Date, by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"). This Financial Instrument is effective as of the Effective Date. All of the capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Commitment.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Servicer agrees as follows:

1. Purchase Price Consideration; Services. This Financial Instrument is being purchased by Fannie Mae pursuant to Section 4 of the Commitment in consideration for the payment by Fannie Mae, in its capacity as a financial agent of the United States, of various payments detailed in the Program Documentation and referred to collectively in the Commitment as the “Purchase Price.”

   (a) The conditions precedent to the payment by Fannie Mae of the Purchase Price with respect to the Services described on the Initial Service Schedules are: (i) the execution and delivery of this Financial Instrument, the Commitment and the Initial Service Schedules by Servicer to Fannie Mae; (ii) the execution and delivery of the Commitment and the Initial Service Schedules by Fannie Mae to Servicer; (iii) the delivery of copies of the fully executed Commitment, Initial Service Schedules and Financial Instrument to Treasury on the Effective Date of the Agreement; (iv) the performance by Servicer of the Services described in the Agreement; and (v) the satisfaction by Servicer of such other obligations as are set forth in the Agreement. Servicer shall perform all Services in consideration for the Purchase Price in accordance with the terms and conditions of the Agreement, to the reasonable satisfaction of Fannie Mae and Freddie Mac.

   (b) The conditions precedent to the payment by Fannie Mae of the Purchase Price with respect to the Services described on the Additional Service Schedules (if any) are: (i) the execution and delivery of the Additional Service Schedules and the Certification by Servicer to Fannie Mae; (ii) the execution and delivery of the Additional Service Schedules by Fannie Mae to Servicer; (iii) the delivery of copies of the fully executed Additional Service Schedules to Treasury; (iv) the performance by Servicer of the Services described in the Agreement, in accordance with the terms and conditions thereof, to the reasonable satisfaction of Fannie Mae and Freddie Mac; and (v) the satisfaction by Servicer of such other obligations as are set forth in the Agreement.

2. Authority and Agreement to Participate in Program. Subject to the limitations set forth in Section 2 of the Agreement, Servicer shall use reasonable efforts to remove all prohibitions or impediments to its authority and to obtain all third party consents, waivers and delegations that are required, by contract or law, in order to perform the Services.

3. Audits, Reporting and Data Retention.

   (a) Freddie Mac, the Federal Housing Finance Agency and other parties designated by the Treasury or applicable law shall have the right during normal business hours to conduct unannounced, informal onsite visits and to conduct formal onsite and offsite physical, personnel and information technology testing, security reviews, and audits of Servicer and to examine all books, records and data related to the Services provided and Purchase Price received in connection with each of the Programs in which Servicer participates on thirty (30) days’ prior written notice.
(b) Servicer will collect, record, retain and provide to Treasury, Fannie Mae and Freddie Mac all data, information and documentation relating to the Programs in which Servicer participates as required by applicable Program Documentation. All such data, information and documentation must be provided to the Treasury, Fannie Mae and Freddie Mac as, when and in the manner specified in applicable Program Documentation. In addition, Servicer shall provide copies of executed contracts and tapes of loan pools related to the Programs for review upon request.

(c) Servicer shall promptly take corrective and remedial actions associated with reporting and reviews as directed by Fannie Mae or Freddie Mac and provide to Fannie Mae and Freddie Mac such evidence of the effective implementation of corrective and remedial actions as Fannie Mae and Freddie Mac shall reasonably require. Freddie Mac may conduct additional reviews based on its findings and the corrective actions taken by Servicer.

(d) In addition to any other obligation to retain financial and accounting records that may be imposed by Federal or state law, Servicer shall retain all information described in Section 3(b), and all data, books, reports, documents, audit logs and records, including electronic records, related to the performance of Services in connection with the Programs. In addition, Servicer shall maintain a copy of all computer systems and application software necessary to review and analyze these electronic records. Unless otherwise directed by Fannie Mae or Freddie Mac, Servicer shall retain these records for at least 7 years from the date the data or record was created, or for such longer period as may be required pursuant to applicable law. Fannie Mae or Freddie Mac may also notify Servicer from time to time of any additional record retention requirements resulting from litigation and regulatory investigations in which the Treasury or any agents of the United States may have an interest, and Servicer agrees to comply with these litigation and regulatory investigations requirements.

4. **Internal Control Program.**

(a) Servicer shall develop, enforce and review on a quarterly basis for effectiveness an internal control program designed to: (i) ensure effective delivery of Services in connection with the Programs in which Servicer participates and compliance with applicable Program Documentation; (ii) effectively monitor and detect loan modification fraud; and (iii) effectively monitor compliance with applicable consumer protection and fair lending laws. The internal control program must include documentation of the control objectives for Program activities, the associated control techniques, and mechanisms for testing and validating the controls.

(b) Servicer shall provide Freddie Mac with access to all internal control reviews and reports that relate to Services under the Programs performed by Servicer and its independent auditing firm to enable Freddie Mac to fulfill its duties as a compliance agent of the United States; a copy of the reviews and reports will be provided to Fannie Mae for record keeping and other administrative purposes.

5. **Representations, Warranties and Covenants.** Servicer makes the following representations, warranties and covenants to Fannie Mae, Freddie Mac and the Treasury, the truth and accuracy of which are continuing obligations of Servicer. In the event that any of the representations, warranties, or covenants made herein cease to be true and correct, Servicer agrees to notify Fannie Mae and Freddie Mac immediately.

(a) Servicer is established under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia, and has significant operations in the United States. Servicer has full corporate power and authority to enter into, execute, and deliver the Agreement
and to perform its obligations hereunder and has all licenses necessary to carry on its business as now being conducted and as contemplated by the Agreement.

(b) Servicer is in compliance with, and covenants that all Services will be performed in compliance with, all applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements, including, but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights. Subject to the following sentence, Servicer has obtained or made, will obtain or make, all governmental approvals or registrations required under law and has obtained or will obtain all consents necessary to authorize the performance of its obligations under the Programs in which Servicer participates and the Agreement. The performance of Services under the Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction by which Servicer is bound, provided, however, that Fannie Mae acknowledges and agrees that this representation and warranty is qualified solely by and to the extent of any contractual limitations established under applicable pooling and servicing agreements and other servicing contracts to which Servicer is subject. Servicer is not aware of any other legal or financial impediments to performing its obligations under the Programs in which Servicer participates or the Agreement and shall promptly notify Fannie Mae of any financial and/or operational impediments which may impair its ability to perform its obligations under such Programs or the Agreement. Servicer is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others, excluding any debt or obligation that is being contested in good faith.

(c) Servicer covenants that: (i) it will perform its obligations in accordance with the Agreement and will promptly provide such performance reporting as Fannie Mae may reasonably require; (ii) all Services will be offered to borrowers, fully documented and serviced, or otherwise performed, in accordance with the applicable Program Documentation; and (iii) all data, collection information and other information reported by Servicer to Fannie Mae and Freddie Mac under the Agreement, including, but not limited to, information that is relied upon by Fannie Mae or Freddie Mac in calculating the Purchase Price or in performing any compliance review will be true, complete and accurate in all material respects, and consistent with all relevant business records, as and when provided.

(d) Servicer covenants that it will: (i) perform the Services required under the Program Documentation and the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances; and (ii) use qualified individuals with suitable training, education, experience and skills to perform the Services. Servicer acknowledges that Program participation may require changes to, or the augmentation of, its systems, staffing and procedures, and covenants and agrees to take all actions necessary to ensure it has the capacity to implement the Programs in which it participates in accordance with the Agreement.

(e) Servicer covenants that it will comply with all regulations on conflicts of interest that are applicable to Servicer in connection with the conduct of its business and all conflicts of interest and non-disclosure obligations and restrictions and related mitigation procedures set forth in the Program Documentation (if any), as they relate to the Programs in which Servicer participates.
(f) Servicer acknowledges that the provision of false or misleading information to Fannie Mae or Freddie Mac in connection with any of the Programs or pursuant to the Agreement may constitute a violation of: (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§ 3729-3733). Servicer covenants to disclose to Fannie Mae and Freddie Mac any credible evidence, in connection with the Services, that a management official, employee, or contractor of Servicer has committed, or may have committed, a violation of the referenced statutes.

(g) Servicer covenants to disclose to Fannie Mae and Freddie Mac any other facts or information that the Treasury, Fannie Mae or Freddie Mac should reasonably expect to know about Servicer and its contractors to help protect the reputational interests of the Treasury, Fannie Mae and Freddie Mac in managing and monitoring the Programs in which Servicer participates.

(h) Servicer covenants that it will timely inform Fannie Mae and Freddie Mac of any anticipated Event of Default and of any Act of Bad Faith of which it becomes aware.

(i) Servicer acknowledges that Fannie Mae or Freddie Mac may be required to assist the Treasury with responses to the Privacy Act of 1974 (the “Privacy Act”), 5 USC § 552a, inquiries from borrowers and Freedom of Information Act, 5 USC § 552, inquiries from other parties, as well as formal inquiries from Congressional committees and members, the Government Accounting Office, Inspectors General and other government entities, as well as media and consumer advocacy group inquiries about the Programs and their effectiveness. Servicer covenants that it will respond promptly and accurately to all search requests made by Fannie Mae or Freddie Mac, comply with any related procedures which Fannie Mae or Freddie Mac may establish, and provide related training to employees and contractors. In connection with Privacy Act inquiries, Servicer covenants that it will provide updated and corrected information as appropriate about borrowers’ records to ensure that any system of record maintained by Fannie Mae on behalf of the Treasury is accurate and complete.

(j) Servicer acknowledges that Fannie Mae is required to develop and implement customer service call centers to respond to borrowers’ and other parties’ inquiries regarding the Programs, which may require additional support from Servicer. Servicer covenants that it will provide such additional customer service call support as Fannie Mae reasonably determines is necessary to support the Programs in which Servicer participates.

(k) Servicer acknowledges that Fannie Mae and/or Freddie Mac are required to develop and implement practices to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws. Servicer covenants that it will fully and promptly cooperate with Fannie Mae’s inquiries about loan modification fraud and legal compliance and comply with any anti-fraud and legal compliance procedures which Fannie Mae and/or Freddie Mac may require. Servicer covenants that it will develop and implement an internal control program to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws, among other things, as provided in Section 4 of this Financial Instrument and acknowledges that the internal control program will be monitored, as provided in such Section.

(l) Servicer shall sign and deliver a Certification to Fannie Mae and Freddie Mac beginning on June 1, 2010 and again on June 1 of each year thereafter during the Term, and upon the execution and
delivery by Servicer of Additional Service Schedule(s) (if any) during the Term, in each case in the form attached as Exhibit C to the Agreement.

(m) Solely if Servicer has elected to participate in the Second Lien Modification Program by executing and delivering to Fannie Mae a Service Schedule relating thereto, Servicer represents, warrants and covenants that each mortgage loan it modifies under the Second Lien Modification Program is, or will be at the time of modification, a lien that is second in priority relative to the first lien that was modified under the Programs.

6. **Use of Contractors.** Servicer is responsible for the supervision and management of any contractor that assists in the performance of Services in connection with the Programs in which Servicer participates. Servicer shall remove and replace any contractor that fails to perform. Servicer shall ensure that all of its contractors comply with the terms and provisions of the Agreement. Servicer shall be responsible for the acts or omissions of its contractors as if the acts or omissions were by the Servicer.

7. **Data Rights.**

(a) For purposes of this Section, the following definitions apply:

(i) **“Data”** means any recorded information, regardless of form or the media on which it may be recorded, regarding any of the Services provided in connection with the Programs.

(ii) **“Limited Rights”** means non-exclusive rights to, without limitation, use, copy, maintain, modify, enhance, disclose, reproduce, prepare derivative works, and distribute, in any manner, for any purpose related to the administration, activities, review, or audit of, or public reporting regarding, the Programs and to permit others to do so in connection therewith.

(iii) **“NPI”** means nonpublic personal information, as defined under the GLB.


(b) Subject to Section 7(c) below, Treasury, Fannie Mae and Freddie Mac shall have Limited Rights, with respect to all Data produced, developed, or obtained by Servicer or a contractor of Servicer in connection with the Programs, provided, however, that NPI will not be transferred by Fannie Mae in violation of the GLB and, provided, further, that Servicer acknowledges and agrees that any use of NPI by, the distribution of NPI to, or the transfer of NPI among, Federal, state and local government organizations and agencies does not constitute a violation of the GLB for purposes of the Agreement. If requested, such Data shall be made available to the Treasury, Fannie Mae, or Freddie Mac upon request, or as and when directed by the Program Documentation relating to the Programs in which Servicer participates, in industry standard usable format.

(c) Servicer expressly consents to the publication of its name as a participant in the Programs listed on the Service Schedules, and the use and publication of Servicer’s Data, subject to applicable state and federal laws regarding confidentiality, in any form and on any media utilized by Treasury, Fannie Mae or Freddie Mac, including, but not limited to, on any website or webpage hosted by Treasury, Fannie Mae, or Freddie Mac, in connection with such Programs, provided that no Data placed in the public domain: (i) will contain the name, social security number, or street address of any borrower or other information that would allow the borrower to be
identified; or, (ii) will, if presented in a form that links the Servicer with the Data, include (x) information other than program performance and participation related statistics, such as the number of modifications or extinguishments, performance of modifications, characteristics of the modified loans, or program compensation or fees, or (y) any information about any borrower other than creditworthiness characteristics such as debt, income, and credit score. In any Data provided to an enforcement or supervisory agency with jurisdiction over the Servicer, these limitations on borrower information shall not apply.

8. Publicity and Disclosure.

(a) Servicer shall not make use of any Treasury name, symbol, emblem, program name, or product name, in any advertising, signage, promotional material, press release, Web page, publication, or media interview, without the prior written consent of the Treasury.

(b) Servicer shall not publish, or cause to have published, or make public use of Fannie Mae’s name, logos, trademarks, or any information about its relationship with Fannie Mae without the prior written permission of Fannie Mae, which permission may be withdrawn at any time in Fannie Mae’s sole discretion.

(c) Servicer shall not publish, or cause to have published, or make public use of Freddie Mac’s name (i.e., “Freddie Mac” or “Federal Home Loan Mortgage Corporation”), logos, trademarks, or any information about its relationship with Freddie Mac without the prior written permission of Freddie Mac, which permission may be withdrawn at any time in Freddie Mac’s sole discretion.

9. Limitation of Liability. IN NO EVENT SHALL FANNIE MAE, THE TREASURY, OR FREDDIE MAC, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO SERVICER WITH RESPECT TO ANY OF THE PROGRAMS OR THE AGREEMENT, OR FOR ANY ACT OR OMISSION OCCURRING IN CONNECTION WITH THE FOREGOING, FOR ANY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO DIRECT DAMAGES, INDIRECT DAMAGES, LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE OR UNDER ANY LEGAL THEORY WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORESEEABLE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT FANNIE MAE’S OBLIGATION TO REMIT PURCHASE PRICE PAYMENTS TO SERVICER IN ITS CAPACITY AS FINANCIAL AGENT OF THE UNITED STATES IN ACCORDANCE WITH THE AGREEMENT.

10. Indemnification. Servicer shall indemnify, hold harmless, and pay for the defense of Fannie Mae, the Treasury and Freddie Mac, and their respective officers, directors, employees, agents and affiliates against all claims, liabilities, costs, damages, judgments, suits, actions, losses and expenses, including reasonable attorneys' fees and costs of suit, arising out of or resulting from: (a) Servicer’s breach of Section 5 (Representations, Warranties and Covenants) of this Financial Instrument; (b) Servicer’s negligence, willful misconduct or failure to perform its obligations under the Agreement; or (c) any injuries to persons (including death) or damages to property caused by the negligent or willful acts or omissions of Servicer or its contractors. Servicer shall not settle any suit or claim regarding any of the foregoing without Fannie Mae’s prior written consent if such settlement would be adverse to Fannie Mae’s interest, or the interests of the Treasury or Freddie Mac. Servicer agrees to pay or reimburse all costs that may be incurred by Fannie Mae and Freddie Mac in enforcing this indemnity, including attorneys' fees.
IN WITNESS WHEREOF, Servicer hereby executes this Financial Instrument on the date set forth below.

[INSERT FULL LEGAL NAME OF SERVICER]:

[Name of Authorized Official]        Date
[Title of Authorized Official]
EXHIBIT C

FORM OF CERTIFICATION
CERTIFICATION

This Certification is delivered as provided in Section 1.C. of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), effective as of [INSERT], by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"). All terms used, but not defined herein, shall have the meanings ascribed to them in the Commitment.

Servicer hereby certifies, as of [INSERT DATE ON WHICH CERTIFICATION IS GIVEN], that:

1. Servicer is established under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia, and has significant operations in the United States. Servicer had full corporate power and authority to enter into, execute, and deliver the Agreement and to perform its obligations hereunder and has all licenses necessary to carry on its business as now being conducted and as contemplated by the Agreement.

2. Servicer is in compliance with, and certifies that all Services have been performed in compliance with, all applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements, including, but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights. Subject to the following sentence, Servicer has obtained or made all governmental approvals or registrations required under law and has obtained all consents necessary to authorize the performance of its obligations under the Programs in which Servicer participated and the Agreement. The performance of Services under the Agreement has not conflicted with, or been prohibited in any way by, any other agreement or statutory restriction by which Servicer is bound, except to the extent of any contractual limitations under applicable pooling and servicing agreements and other servicing contracts to which Servicer is subject. Servicer is not aware of any other legal or financial impediments to performing its obligations under the Programs or the Agreement and has promptly notified Fannie Mae of any financial and/or operational impediments which may impair its ability to perform its obligations under the Programs or the Agreement. Servicer is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others, excluding any debts or obligations that are being contested in good faith.

3. (i) Servicer has performed its obligations in accordance with the Agreement and has promptly provided such performance reporting as Fannie Mae and Freddie Mac have reasonably required; (ii) all Services have been offered by Servicer to borrowers, fully documented and serviced by Servicer in accordance with the applicable Program Documentation; and (iii) all data, collection information and other information reported by Servicer to Fannie Mae and Freddie Mac under the Agreement, including, but not limited to, information that was relied upon by Fannie Mae and Freddie Mac in calculating the Purchase Price and in performing any compliance review, was true, complete and accurate in all material respects, and consistent with all relevant business records, as and when provided.

4. Servicer has: (i) performed the Services required under the Program Documentation and the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances; and (ii) used qualified individuals with suitable training, education, experience and skills to perform the Services. Servicer acknowledges that Program participation required changes to, or the augmentation of, its systems, staffing and procedures; Servicer took all actions necessary to ensure that it had the capacity to implement the Programs in which it participated in accordance with the Agreement.

5. Servicer has complied with all regulations on conflicts of interest that are applicable to Servicer in connection with the conduct of its business and all conflicts of interest and non-disclosure obligations and restrictions and related mitigation procedures set forth in the Program Documentation (if any), as they related to the Programs in which Servicer participated.

6. Servicer acknowledges that the provision of false or misleading information to Fannie Mae or Freddie Mac in connection with the Programs or pursuant to the Agreement may constitute a violation of: (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§ 3729-3733). Servicer has disclosed to Fannie Mae and Freddie Mac any credible evidence, in connection with the Services, that a management official, employee, or contractor of Servicer has committed, or may have committed, a violation of the referenced statutes.
7. Servicer has disclosed to Fannie Mae and Freddie Mac any other facts or information that the Treasury, Fannie Mae or Freddie Mac should reasonably expect to know about Servicer and its contractors to help protect the reputational interests of the Treasury, Fannie Mae and Freddie Mac in managing and monitoring the Programs.

8. Servicer acknowledges that Fannie Mae and Freddie Mac may be required to assist the Treasury with responses to the Privacy Act of 1974 (the "Privacy Act"), 5 USC § 552a, inquiries from borrowers and Freedom of Information Act, 5 USC § 552, inquiries from other parties, as well as formal inquiries from Congressional committees and members, the Government Accounting Office, Inspectors General and other government entities, as well as media and consumer advocacy group inquiries about the Programs and their effectiveness. Servicer has responded promptly and accurately to all search requests made by Fannie Mae and Freddie Mac, complied with any related procedures which Fannie Mae and Freddie Mac have established, and provided related training to employees and contractors. In connection with Privacy Act inquiries, Servicer has provided updated and corrected information as appropriate about borrowers’ records to ensure that any system of record maintained by Fannie Mae on behalf of the Treasury is accurate and complete.

9. Servicer acknowledges that Fannie Mae is required to develop and implement customer service call centers to respond to borrowers’ and other parties’ inquiries regarding the Programs in which Servicer participates, which may require additional support from Servicer. Servicer has provided such additional customer service call support as Fannie Mae has reasonably requested to support such Programs.

10. Servicer acknowledges that Fannie Mae and/or Freddie Mac are required to develop and implement practices to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws. Servicer has fully and promptly cooperated with Fannie Mae’s inquiries about loan modification fraud and legal compliance and has complied with any anti-fraud and legal compliance procedures which Fannie Mae and/or Freddie Mac have required. Servicer has developed and implemented an internal control program to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws, among other things, as provided in Section 4 of the Financial Instrument.

11. Solely if Servicer has elected to participate in the Second Lien Modification Program by executing and delivering to Fannie Mae a Service Schedule relating thereto, Servicer acknowledges that each mortgage loan it modified under the Second Lien Modification Program was, at the time of modification, second in priority relative to the first lien that was modified under the Programs.

In the event that any of the certifications made herein are discovered not to be true and correct, Servicer agrees to notify Fannie Mae and Freddie Mac immediately.

[INSERT FULL LEGAL NAME OF SERVICER]:

[Name of Authorized Official]
[Title of Authorized Official]

Date
EXHIBIT D

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT
ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the “Assignment and Assumption Agreement”) is entered into as of [INSERT DATE] by and between [INSERT FULL LEGAL NAME OF ASSIGNOR] (“Assignor”) and [INSERT FULL LEGAL NAME OF ASSIGNEE] (“Assignee”). All terms used, but not defined, herein shall have the meanings ascribed to them in the Underlying Agreement (defined below).

WHEREAS, Assignor and Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States (“Fannie Mae”), are parties to a Commitment to Purchase Financial Instrument and Servicer Participation Agreement, a complete copy of which (including all exhibits, amendments and modifications thereto) is attached hereto and incorporated herein by this reference (the “Underlying Agreement”);

WHEREAS, Assignor has agreed to assign to Assignee all of its rights and obligations under the Underlying Agreement with respect to the Eligible Loans that are identified on the schedule attached hereto as Schedule 1 (collectively, the “Assigned Rights and Obligations”); and

WHEREAS, Assignee has agreed to assume the Assigned Rights and Obligations.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor’s rights and obligations under the Underlying Agreement with respect to the Assigned Rights and Obligations.

2. Assumption. Assignee hereby accepts the foregoing assignment and assumes all of the rights and obligations of Assignor under the Underlying Agreement with respect to the Assigned Rights and Obligations.

3. Effective Date. The date on which the assignment and assumption of rights and obligations under the Underlying Agreement is effective is [INSERT EFFECTIVE DATE OF ASSIGNMENT/ASSUMPTION].

4. Successors. All future transfers and assignments of the Assigned Rights and Obligations transferred and assigned hereby are subject to the transfer and assignment provisions of the Underlying Agreement. This Assignment and Assumption Agreement shall inure to the benefit of, and be binding upon, the permitted successors and assigns of the parties hereto.

5. Counterparts. This Assignment and Assumption Agreement may be executed in counterparts, each of which shall be an original, but all of which together constitute one and the same instrument.
IN WITNESS WHEREOF, Assignor and Assignee, by their duly authorized officials, hereby execute and deliver this Assignment and Assumption Agreement, together with Schedule 1, effective as of the date set forth in Section 3 above.

ASSIGNOR: [INSERT FULL LEGAL NAME OF ASSIGNOR]

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________

ASSIGNEE: [INSERT FULL LEGAL NAME OF ASSIGNEE]

By: __________________________
Name: _________________________
Title: __________________________
Date: __________________________
SCHEDULE 1

To

ASSIGNMENT AND ASSUMPTION AGREEMENT
EXHIBIT F

FORM OF COVER SHEET
Cover Sheet for Transmission of Commitment to Purchase Financial Instrument and Servicer Participation Agreement and Related Documents

To: [INSERT FULL LEGAL NAME OF SERVICER] ("Servicer"), [INSERT SERVICER CONTACT]

From: Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae")

Copy To: The U.S. Department of the Treasury, [INSERT TREASURY CONTACT]

Date: [INSERT DATE OF TRANSMISSION]

Method of Transmission: [Facsimile to [INSERT FAX NUMBER OF SERVICER]] [[Email with PDF file attached to [INSERT SERVICER EMAIL ADDRESS]][Specify other method of electronic delivery]]

NOTICE

[IF THIS TRANSMISSION OCCURS UPON EXECUTION OF COMMITMENT:] This transmission constitutes notice to Servicer that the Commitment to Purchase Financial Instrument and Servicer Participation Agreement, by and between Fannie Mae and Servicer (the "Commitment") and the Service Schedule(s) and Financial Instrument attached thereto have been fully executed and are effective as of the date of this transmission. The date of this transmission shall be the "Effective Date" of the Commitment, the Service Schedule(s) and the Financial Instrument.

[IF THIS TRANSMISSION OCCURS IN CONNECTION WITH DELIVERY OF ADDITIONAL SERVICE SCHEDULES:] This transmission constitutes notice to Servicer that Additional Service Schedule(s) and a Certification have been delivered by Servicer to Fannie Mae, pursuant to Section 4 of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement, by and between Fannie Mae and Servicer (the "Commitment"). The Additional Service Schedule(s) and the Certification attached hereto have been fully executed and are effective as of the date set forth in the Additional Service Schedule(s).

Copies of the fully executed Additional Service Schedule(s) and the Certification are attached to this transmission for your records.

E-1