

MASTER PURCHASE AGREEMENT

BY AND AMONG

**THE FEDERAL DEPOSIT INSURANCE CORPORATION
AS CONSERVATOR FOR INDYMAC FEDERAL BANK, FSB,**

IMB HOLDCO LLC, and

ONEWEST BANK GROUP LLC

Dated as of March 18, 2009

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| Exhibit EE | Intellectual Property, Data and Information Technology Assets License Agreement |
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| Exhibit HH | HoldCo Closing Certifications, Opinions and Other Documents to be Delivered to Seller |
| Exhibit II | Intermediate HoldCo Closing Certifications, Opinions and Other Documents to be Delivered to Seller |
| Exhibit JJ | Legal Opinions of Cleary Gottlieb Steen & Hamilton LLP |

MASTER PURCHASE AGREEMENT

THIS MASTER PURCHASE AGREEMENT (as the same shall be amended or supplemented, this “**Agreement**”) is made and entered into as of the 18th day of March, 2009 (the “**Effective Date**”) by and among THE FEDERAL DEPOSIT INSURANCE CORPORATION AS CONSERVATOR FOR INDYMAC FEDERAL BANK, FSB (including its successors and assigns, the “**Seller**”), IMB HOLDCO LLC (“**HoldCo**”) and ONEWEST BANK GROUP LLC (“**Intermediate HoldCo**”).

RECITALS

WHEREAS, on July 11, 2008, the FDIC (as defined below) was appointed receiver for IndyMac Bank, FSB (the “**Failed Thrift**”) and certain assets and obligations of the Failed Thrift were transferred to a newly-formed thrift, IndyMac Federal Bank, FSB (“**IndyMac Federal**”), for which the FDIC was appointed conservator;

WHEREAS, under the Federal Deposit Insurance Act, as amended, the FDIC is authorized to sell or otherwise dispose of the assets of thrift institutions for which it serves as conservator or receiver;

WHEREAS, HoldCo desires to purchase certain specified assets and assume certain specified liabilities of IndyMac Federal on the terms and subject to the conditions set forth herein and in the other Definitive Agreements (as defined below);

WHEREAS, in order to facilitate the purchase of the assets and assumption of the liabilities by HoldCo, Intermediate HoldCo, a newly formed direct wholly owned subsidiary of HoldCo, will form a new federally chartered, FDIC insured, stock form savings association or savings bank to be known as OneWest Bank, FSB (the “**Purchaser**”);

WHEREAS, in order to facilitate the transactions provided for herein and in the other Definitive Agreements, on the Closing Date (as defined below), the FDIC shall be appointed receiver of IndyMac Federal;

WHEREAS, on the Closing Date, each of the Purchaser and the FDIC, as receiver for IndyMac Federal, shall become a party to this Agreement by executing a joinder hereto, and shall thereafter be subject to and bound by all of the terms and conditions applicable to it hereunder, respectively, and each of the Purchaser (or a subsidiary of the Purchaser) and the FDIC, as receiver for IndyMac Federal, shall also enter into the other Definitive Agreements to which it is named as a party;

WHEREAS, pursuant to this Agreement and the other Definitive Agreements, the Seller shall sell, assign, convey and transfer to the Purchaser or a subsidiary of the Purchaser and, in connection with Group 3 and Group 4, as defined below, cause certain subsidiaries of IndyMac Federal to sell, assign, convey and transfer to the Purchaser or a subsidiary of the Purchaser, the following:

- certain assets and liabilities of IndyMac Federal’s retail bank business (referred to herein as “**Group 1**”);

- IndyMac Federal’s servicing advances and servicing rights with respect to certain mortgage loans and the related platform (referred to herein as “**Group 2**”);
- certain assets and liabilities of IndyMac Federal’s reverse mortgage business (referred to herein as “**Group 3**”);
- substantially all of IndyMac Federal’s securities portfolio (referred to herein as “**Group 4**”);
- substantially all of IndyMac Federal’s residential mortgage loan portfolio (referred to herein as “**Group 5**”); and
- substantially all of IndyMac Federal’s consumer construction loan portfolio, homebuilder loan portfolio and lot loan portfolio (referred to herein as “**Groups 6-8**”);

WHEREAS, concurrently with the execution and delivery of this Agreement, as an inducement to HoldCo to enter into this Agreement and incur the obligations set forth herein, the FDIC is executing and delivering to HoldCo the FDIC Guaranty (as defined below); and

WHEREAS, the parties desire to memorialize their agreements relating to the transactions described above and certain other matters as set forth in this Agreement and the other Definitive Agreements.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows.

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. For purposes of this Agreement, the following terms shall have the meanings and definitions hereinafter respectively set forth:

“**Accounting Records**” means the general ledger and subsidiary ledgers and supporting schedules which support the general ledger balances.

“**Accrual Period**” means the period beginning on the day immediately following a Measurement Date and ending on the immediately succeeding Measurement Date, except the first Accrual Period shall begin on the day immediately following the Closing Date and end on the second Measurement Date following the Closing Date and the last Accrual Period shall end on the Termination Date.

“**Acquired Subsidiary**” means IndyMac Financial Services, a California corporation and a wholly owned subsidiary of IndyMac Federal.

“Adjusted FHLB Advances” means the FHLB Advances identified on Schedule 4.01(c)(i), adjusted down for any maturities, payments or prepayments and shall exclude any FHLB Advances that have been extended, renewed or rolled over.

“Affiliate” means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. For purposes of this definition, the term **“control”** (including the phrases **“controlled by”** and **“under common control with”**) when used with respect to any specified Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise.

“Aggregate Closing Payment” means an amount equal to the sum of (i) the Group 1 Closing Payment, *plus* (ii) the Group 2 Closing Payment, *plus* (iii) the Group 3 Closing Payment, *plus* (iv) the Group 4 Closing Payment, *plus* (v) the Group 5 Closing Payment, *plus* (vi) the Groups 6-8 Closing Payment.

“Aggregate Final Payment” means an amount equal to the sum of (i) the Group 1 Final Payment, *plus* (ii) the Group 2 Final Payment, *plus* (iii) the Group 3 Final Payment, *plus* (iv) the Group 4 Final Payment, *plus* (v) the Group 5 Final Payment, *plus* (vi) the Groups 6-8 Final Payment.

“Aggregate Final Purchase Price” has the meaning given in Section 3.01.

“Agreement” has the meaning given in the preamble, and shall include all exhibits, schedules and attachments hereto.

“Amortizing Prepayment Penalty Schedule Amount” means, for any Accrual Period, the differential between (a) the Initial Maximum Prepayment Penalty and (b) the sum of (i) all previous Differential Payment Calculations and (ii) the Differential Payment Calculation during such Accrual Period.

“Assets” means the aggregate of all of the Group 1 Assets and the assets included in Group 2, Group 3, Group 4, Group 5 and Groups 6-8, as more specifically identified in the applicable Definitive Agreement.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement in the form attached hereto as Exhibit A-1.

“Assignment and Assumption of Leases” means the Assignment and Assumption of Leases in the form attached hereto as Exhibit A-2.

“Assumed Contracts” has the meaning given in Section 4.01(f).

“Assumed Group 1 Liabilities” has the meaning given in Section 4.01.

“Assumed Real Property Leases” has the meaning given in Section 4.01(g).

“**Backstop Purchase**” has the meaning given in Section 16.05.

“**Backstop Purchasers**” has the meaning given in Section 16.05.

“**Bank Premises**” means the banking branch offices, drive-in banking facilities and teller facilities (staffed or automated), together with appurtenant parking, storage and service facilities and structures connecting remote facilities to banking branches, and land on which the foregoing are located, that are owned or leased by the Seller and that are occupied by IndyMac Federal (and, with respect to Section 6.11, real property leased by Financial Freedom) as of the Closing Date.

“**Bill of Sale**” means a Bill of Sale in the form attached hereto as Exhibit B.

“**Book Value**” means, with respect to any asset purchased or liability assumed by the Purchaser pursuant to this Agreement or the other Definitive Agreements, the Dollar amount thereof stated on the Accounting Records of IndyMac Federal, as of the applicable date, determined after adjustments made by the Seller for differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary. Without limiting the generality of the foregoing, the Book Value of an assumed liability shall include all accrued and unpaid interest thereon. The Book Value of an Asset shall not include any adjustment for loan premiums, discounts or any related deferred income or fees, or general or specific reserves on the Accounting Records of IndyMac Federal.

“**Business Day**” means any day except a Saturday, Sunday or other day on which federal savings banks in California, New York or Washington, D.C. or United States federal government offices are required or authorized by Law to close.

“**Capital Contribution**” means the capital contribution in the amount of ONE BILLION FIVE HUNDRED FIFTY MILLION Dollars (\$1,550,000,000), inclusive of the Deposit, to be contributed by HoldCo to Intermediate HoldCo and thereafter by Intermediate HoldCo to the Purchaser.

“**Cash on Hand**” means any and all cash maintained at the Bank Premises in connection with the operation of the retail banking business and any cash maintained in the Seller’s operating accounts (other than custodial accounts) as reflected on the Accounting Records.

“**Closing**” has the meaning given in Section 2.05.

“**Closing Adjustment Documents**” has the meaning given in Section 3.03(a).

“**Closing Date**” has the meaning given in Section 2.05.

“**Closing Escrow Account**” means the escrow account for the Closing Escrow Funds pursuant to the Closing Escrow Agreement.

“**Closing Escrow Agreement**” means the Closing Escrow Agreement in the form attached hereto as Exhibit C-1 to be entered into prior to the Closing Date by and among the escrow agent named therein, HoldCo and the FDIC as conservator for IndyMac Federal.

“Closing Escrow Funds” has the meaning given in Section 2.03.

“Confidential Information” has the meaning given in Section 8.04(e).

“Confidentiality Agreement” means the Confidentiality Agreement executed by HoldCo on December 31, 2008.

“Consent and Collateral Assignment” means the Consent and Collateral Assignment in the form attached hereto as Exhibit C-2 to be entered into as of the Closing Date by and among the Purchaser, the Seller and the FHLB.

“Contract” means any written agreement, lease (other than for real property), license or sublicense, evidence of indebtedness, or other written contract, commitment, arrangement or obligation.

“Current Period Prepayment Penalty Amount” means, for any Accrual Period, the sum of all prepayment penalties paid to the FHLB by the Purchaser or any of its Affiliates on the Adjusted FHLB Advances during such Accrual Period. For the avoidance of doubt, the prepayment penalties will not include any accrued interest calculable from the previous interest payment date on the Adjusted FHLB Advances. All prepayment penalties associated with the prepayment of an Adjusted FHLB Advance with a new FHLB advance will be excluded from any Prepayment Penalty Reimbursement Amount.

“Data Processing Equipment” means data processing equipment and related hardware and software, and shall include all equipment related thereto, including remote terminals, networked personal computers, cabling, writing and related installation equipment and materials.

“Data Protection Laws” has the meaning given in Section 8.07(a).

“Day Count” means 30/360 for each Accrual Period, except for: (x) the first Accrual Period which will equal the fraction of (a) the actual number of days between the Closing Date and the second Measurement Date following the Closing Date and (b) 360; and (y) the last Accrual Period, if the Termination Date is the three (3) year anniversary of the Closing Date, which will equal the fraction of (i) the actual number of days between the previous Measurement Date and the Termination Date and (ii) 360.

“Definitive Agreements” means this Agreement, the Servicing Business Asset Purchase Agreement, the Reverse Mortgage Business Asset Purchase Agreement, the Securities Sale Agreement, the Loan Sale Agreement, the Shared-Loss Agreement, the Reverse Mortgage Shared-Loss Agreement, the Intellectual Property Assignments, the Intellectual Property, Data and Information Technology Assets License, the Participation Structure Documents, the Transitional Services Agreement, the Seller Financing Agreements, the FDIC Guaranty, and, upon execution of each such agreement, the Unfunded Commitment Definitive Agreements and the Flow Subservicing Definitive Agreement.

“Deposit” means the ONE HUNDRED THIRTY NINE MILLION Dollars (\$139,000,000) being held in escrow pursuant to the Initial Escrow Agreement and released to the Seller on the date hereof in accordance with the terms of the Initial Escrow Agreement.

“**Differential Payment Calculation**” means, for any Accrual Period, the product of (a) the product of (i) the Differential Rate and (ii) the Day Count and (b) the average outstanding principal balance of the Adjusted FHLB Advances for such Accrual Period.

“**Differential Rate**” equals 1.25%.

“**Disagreement**” has the meaning given in Section 3.03(b).

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

“**Effective Date**” has the meaning given in the preamble.

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

“**ERISA Affiliate**” means any entity that, together with the Seller, the Failed Thrift or IndyMac Federal, would be treated as a single employer under Section 414 of the Internal Revenue Code of 1986, as amended.

“**Excess Stock**” has the meaning set forth in the Capital Plan of the FHLB.

“**Excess Stock Payment**” has the meaning given in Section 10.03(a).

“**Excluded Assets**” has the meaning given in Section 5.02.

“**Excluded Contracts**” has the meaning given in Section 4.02(a).

“**Excluded Liabilities**” has the meaning given in Section 4.02(b).

“**Excluded Losses**” means any consequential, special or indirect damages, lost profits, lost investment or business opportunity, interest, damages to reputation, punitive damages, exemplary damages, treble damages, nominal damages and operating losses.

“**Failed Thrift**” has the meaning given in the recitals.

“**Fair Market Value**” means the fair market value of an asset or a group of assets as set forth in an appraisal prepared prior to the Closing Date by Industrial Appraisal Company.

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

“**FDIA**” means the Federal Deposit Insurance Act, as amended.

“**FDIC**” means the Federal Deposit Insurance Corporation in any capacity.

“**FDIC Guaranty**” means the Guaranty Agreement dated as of the date hereof, by and among the FDIC, in its corporate capacity, HoldCo and each other Beneficiary (as defined therein) that executes a joinder thereto.

“**FHLB**” has the meaning given in Section 4.01(c).

FHLB Advance Make Whole Payment” has the meaning given in Section 5.09(a).

FHLB Advances” has the meaning given in Section 4.01(c).

FHLB Interest Rates” means the interest rates so identified on Schedule 5.09(a).

FHLB Stock” means the capital stock of the Federal Home Loan Bank of San Francisco owned by IndyMac Federal.

Financed Security” has the meaning given in the Securities Sale Agreement.

Financed Group 4 Closing Payment” has the meaning given in the Securities Sale Agreement.

Financed Group 4 Purchase Price” has the meaning given in the Securities Sale Agreement.

Financial Freedom” means Financial Freedom Senior Funding Corporation, a Delaware corporation and wholly owned subsidiary of IndyMac Federal.

Fixtures” means those leasehold improvements, additions, alterations and installations constituting all or a part of the leased or owned Bank Premises and which were acquired, added, built, installed or purchased at the expense of the Failed Thrift, IndyMac Federal or the Seller.

Flow Subservicing Definitive Agreement” means the definitive agreement executed pursuant to the terms set forth in the Term Sheet for Flow Subservicing Agreement attached hereto as Exhibit D.

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

Furniture and Equipment” means the furniture, equipment and software owned by or licensed or leased to the Seller, IndyMac Federal or any Subsidiary thereof, and reflected on the Accounting Records of IndyMac Federal as of the Closing Date, or located on (or, for software, including accessed from) the leased or owned Bank Premises, including Safe Deposit Boxes, Data Processing Equipment, carpeting, furniture, artwork, office machinery, shelving, office supplies, information technology systems and equipment, telecommunications systems and equipment and surveillance and security systems.

GAAP” means United States generally accepted accounting principles as in effect from time to time.

Ginnie Mae” means the Government National Mortgage Association, or any successor thereto.

Governmental Authority” means any United States or non-United States national, federal, state, local, municipal or provincial or international government or any political

subdivision of any governmental, regulatory or administrative authority, agency or commission, or judicial or arbitral body.

“**Group 1**” has the meaning given in the recitals.

“**Group 1 Assets**” has the meaning given in Section 5.01.

“**Group 1 Closing Adjustment Documents**” has the meaning given in Section 5.06.

“**Group 1 Closing Payment**” has the meaning given in Section 5.03(b).

“**Group 1 Final Payment**” has the meaning given in Section 5.07.

“**Group 1 Final Purchase Price**” has the meaning given in Section 5.03(a).

“**Group 2**” has the meaning given in the recitals.

“**Group 2 Closing Payment**” has the meaning given in the Servicing Business Asset Purchase Agreement.

“**Group 2 Final Payment**” has the meaning given in the Servicing Business Asset Purchase Agreement.

“**Group 2 Final Purchase Price**” has the meaning given in the Servicing Business Asset Purchase Agreement.

“**Group 3**” has the meaning given in the recitals.

“**Group 3 Closing Payment**” has the meaning given in the Reverse Mortgage Business Asset Purchase Agreement.

“**Group 3 Final Payment**” has the meaning given in the Reverse Mortgage Business Asset Purchase Agreement.

“**Group 3 Final Purchase Price**” has the meaning given in the Reverse Mortgage Business Asset Purchase Agreement.

“**Group 4**” has the meaning given in the recitals.

“**Group 4 Closing Payment**” has the meaning given in the Securities Sale Agreement.

“**Group 4 Final Payment**” has the meaning given in the Securities Sale Agreement.

“**Group 4 Final Purchase Price**” has the meaning given in the Securities Sale Agreement.

“**Group 5**” has the meaning given in the recitals.

“**Group 5 Closing Payment**” has the meaning given in the Loan Sale Agreement.

“Group 5 Final Payment” has the meaning given in the Loan Sale Agreement.

“Group 5 Final Purchase Price” has the meaning given in the Loan Sale Agreement.

“Groups 6-8” has the meaning given in the recitals.

“Groups 6-8 Closing Payment” has the meaning given in the LLC Interest Sale and Assignment Agreement.

“Groups 6-8 Final Payment” has the meaning given in the LLC Interest Sale and Assignment Agreement.

“Groups 6-8 Final Purchase Price” has the meaning given in the LLC Interest Sale and Assignment Agreement.

“GSE Loans” has the meaning given in Section 17.10.

“HoldCo” has the meaning given in the preamble.

“Holdings” has the meaning given in Section 15.03(n).

“Independent Accounting Firm” means a nationally recognized certified public accounting firm selected by the Purchaser and approved by the Seller (including approval by the Seller of the engagement terms of such firm), which approval shall not be unreasonably withheld.

“IndyMac Federal” has the meaning given in the recitals.

“Initial Calculation Date” means the close of business on January 31, 2009.

“Initial Escrow Agreement” means the Escrow Agreement, dated January 2, 2009, by and among the Seller, HoldCo and the escrow agent named therein.

“Initial Maximum Prepayment Penalty” means \$288,236,052.71; however, if the Closing Date is after March 17, 2009, the Initial Maximum Prepayment Penalty will be reduced by \$397,000 per day.

“Intellectual Property Assignment” means an Assignment in the forms attached hereto as Exhibit E-1, Exhibit E-2, Exhibit E-3 and Exhibit E-4.

“Intellectual Property, Data and Information Technology Assets License” means the Intellectual Property, Data and Information Technology Assets License Agreement in the form attached hereto as Exhibit EE.

“Intermediate HoldCo” has the meaning given in the preamble.

“Investors” means the Persons identified on Schedule 1.01.

“**Law**” means any applicable statute, law, ordinance, regulation, rule, code, injunction, judgment, decree or order (including any executive order) of any Governmental Authority.

“**Lien**” means any mortgage, pledge, security interest, equity interest, participation interest, lien or other charge or encumbrance, including the lien or retained security title of a conditional vendor, upon or with respect to any property or assets.

“**LLC Interest Sale and Assignment Agreement**” means the LLC Interest Sale and Assignment Agreement in the form attached hereto as Exhibit J to be entered into as of the Closing Date by and among OneWest Ventures Holdings LLC, the Seller and IndyMac Venture, LLC, in connection with the sale of the Groups 6-8 assets.

“**Loan Sale Agreement**” means the Loan Sale Agreement in the form attached hereto as Exhibit F to be entered into as of the Closing Date by and between the Seller and the Purchaser in connection with the sale of the Group 5 assets.

“**Losses**” means actual losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees and litigation and similar costs, and other out-of-pocket expenses incurred in investigating, defending, asserting or preparing the defense or assertion of any of the foregoing), deficiencies, claims, interest, awards, judgments, penalties and fines.

“**Measurement Date**” means the 15th calendar day of each month.

“**Minimum Equity Capital**” means equity capital paid by the Investors to HoldCo prior to the execution of this Agreement in the amount of ONE BILLION FIVE HUNDRED FIFTY MILLION Dollars (\$1,550,000,000).

“**Monthly Prepayment Penalty Cap**” means, for any Accrual Period, the greater of (a) 0 and (b) the differential between (i) the Amortizing Prepayment Penalty Schedule Amount for such Accrual Period and (ii) the sum of (x) all previous FHLB Advance Make Whole Payments and (y) the current Rate Differential Payment for such Accrual Period.

“**MSR Mortgage Loan**” means a reverse mortgage loan with respect to which the Seller owns only the related servicing rights and not the reverse mortgage loan itself as provided for in the Reverse Mortgage Business Asset Purchase Agreement.

“**Non-Financed Group 4 Closing Payment**” has the meaning given in the Securities Sale Agreement.

“**Non-Financed Group 4 Purchase Price**” has the meaning given in the Securities Sale Agreement.

“**Non-Transferred Employee**” means any current or former employee or contractor of the Seller or its respective Affiliates who is not and does not become a Transferred Employee pursuant to the terms of Section 11.01.

“**Notice of Disagreement**” has the meaning given in Section 3.03(b).

“Offeree Employee” has the meaning given in Section 11.01(a).

“OTS” means the Office of Thrift Supervision.

“Overdraft Loans” means all overdraft balances on Thrift Deposits made pursuant to a written credit agreement between the Seller and the account party.

“Participation Structure Documents” means the Participation and Servicing Agreement (including the Servicing Agreement, the Electronic Tracking Agreement, the Account Control Agreement and the Custodial Agreement attached as exhibits thereto), the Asset Contribution and Assignment Agreement, the LLC Operating Agreement and the LLC Interest Sale and Assignment Agreement (and the guaranty required to be delivered thereby), all of which documents are to be entered into as of the Closing Date in connection with the sale of the Groups 6-8 assets in the form attached hereto as Exhibit G, Exhibit H, Exhibit I and Exhibit J.

“Person” means any individual, corporation, partnership (general or limited), limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity.

“Personally Identifiable Information” means any information that, alone or in combination with other information, can serve to identify or trace a specific, identifiable individual person. Personally Identifiable Information includes individual names, social security numbers or other national identity numbers, passport or visa numbers, telephone numbers, home addresses, driver’s license numbers, account numbers, credit card numbers, personal profiles, personnel records or files, email addresses, and vehicle registration numbers.

“Prepayment Penalty Reimbursement Amount” means, for any Accrual Period, the greater of (a) 0 and (b) the lesser of (x) the product of (i) 75% and (ii) the Current Period Prepayment Penalty Amount for such Accrual Period and (y) the Monthly Prepayment Penalty Cap for such Accrual Period.

“Primary Indemnitor” means any Person (other than the Purchaser or any of its Affiliates) who is obligated to indemnify or insure, or otherwise make payments (including payments on account of claims made against) to or on behalf of any Person in connection with the claims covered under Article XVII, including any insurer issuing any directors and officers liability policy or any Person issuing a financial institution bond or banker’s blanket bond.

“Privacy Laws” has the meaning given in Section 8.07(a).

“Privileged Information” has the meaning given in Section 8.03(b)(ii).

“Purchase and Assumption Transactions” means the sale, transfer, conveyance and assignment of the assets and liabilities included in Group 1, Group 2, Group 3, Group 4, Group 5, and Groups 6-8.

“Purchaser” has the meaning given in the recitals.

“Purchaser Employee Plans” has the meaning given in Section 11.02(a).

“Purchaser Indemnitor” has the meaning given in Section 17.06(a).

“Purchaser Notice” has the meaning given in Section 3.03(c).

“Rate Differential Payment” means, for any Accrual Period, the product of (a) the product of (i) the differential between (x) the Weighted Average FHLB Interest Rate for such Accrual Period and (y) the Synthetic Rate and (ii) the Day Count and (b) the average daily outstanding principal balance of the Adjusted FHLB Advances for such Accrual Period.

“Reassigned Contracts” means the Contracts assigned back to the Seller pursuant to Section 10.01(e).

“Records” means copies and originals of all records and documents, whether in hard copy, microfiche, microfilm or electronic format (including but not limited to magnetic tape, disc storage, card forms, printed copy, and electronic stored information (as defined in Rule 34(a) of the Federal Rules of Civil Procedure) which (i) pertain to, and are utilized to administer, reflect, monitor, evidence or record information respecting the assets purchased and the liabilities assumed by the Purchaser or any of its Subsidiaries pursuant to this Agreement or the other Definitive Agreements and (ii) are owned by the Seller or any Subsidiary of IndyMac Federal and in the possession of the Seller or any such Subsidiary as of the Closing Date. For the avoidance of doubt, the definition of **“Records”** does not include **“Unassigned Records”**.

“Reimbursed Parties” means HoldCo, Intermediate HoldCo, the Purchaser and their Affiliates.

“Reformed Agreements” has the meaning given in Section 10.04.

“Reverse Mortgage Business Asset Purchase Agreement” means the Reverse Mortgage Business Asset Purchase Agreement in the form attached hereto as Exhibit K to be entered into as of the Closing Date by and among the Seller, Financial Freedom, the Purchaser and a subsidiary of the Purchaser in connection with the sale of the Group 3 assets.

“Reverse Mortgage Shared-Loss Agreement” means the Reverse Mortgage Shared-Loss Agreement to be entered into as of the Closing Date by and among the Seller, Financial Freedom Acquisition LLC and the Purchaser.

“Safe Deposit Boxes” means the safe deposit boxes of the Seller, if any, including the removable safe deposit boxes and safe deposit stacks in the Seller’s vault(s), all rights and benefits (other than fees collected prior to the Closing Date) under rental agreements with respect to such safe deposit boxes, and all keys and combinations thereto.

“Securities Sale Agreement” means the Sale Agreement in the form attached hereto as Exhibit L to be entered into as of the Closing Date by and between the Seller, the Purchaser and a subsidiary of the Purchaser in connection with the sale of the Group 4 assets.

“Seller” has the meaning given in the preamble.

“Seller Employees” has the meaning given in Section 11.01.

“Seller Employee Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA, including multiemployer plans within the meaning of Section 3(37) of ERISA, and each other employment, severance, consulting, deferred compensation, incentive compensation, fringe benefit, change in control, retention, employee loan, stock option or other equity or equity-based or other compensatory or benefit plan, policy, agreement or arrangement (including any collective bargaining agreement, multiemployer, multiple employer or post retirement benefit plan), in all cases whether or not subject to ERISA, whether formal or informal, oral or written, legally binding or not, that is or was (i) maintained, sponsored, administered, contributed to or required to be contributed to by the Seller, the Failed Thrift, IndyMac Federal or any of their respective ERISA Affiliates, or to which the Seller, the Failed Thrift, IndyMac Federal or any of their respective ERISA Affiliates is or was a party or had or has any present or future liability thereunder (except as custodian, trustee, fiduciary or service provider to a customer plan), and (ii) is or was for the benefit of current or former employees, directors or consultants who have a present or future right to benefits in respect of services performed for the Seller, the Failed Thrift, IndyMac Federal or any of their respective Affiliates.

“Seller Financing” means the portion of the Aggregate Final Purchase Price that the Seller has agreed to finance on the Purchaser’s behalf in accordance with the Seller Financing Agreements.

“Seller Financing Agreements” means the Mortgage Loan Master Repurchase Agreement, the Securities Master Repurchase Agreement, the Collection Account Control Agreement (Securities), the Collection Account Control Agreement (Mortgage Loan), the Master Netting Agreement, the Electronic Tracking Agreement (Mortgage Loan), Collateral Account Control Agreement (Securities), the Limited Guaranty Agreement (Securities), the Custodial Agreement (Mortgage Loan), the Indenture, the Pricing Side Letter, the Receivables Purchase Agreement, the Note Purchase Agreement, the Financing Guaranty, the Trust Agreement, the Administration Agreement, the Financing Note and the Trust Certificate, to be entered into on the Closing Date, in the form attached hereto as Exhibit M, Exhibit N, Exhibit O-1, Exhibit O-2, Exhibit P, Exhibit Q, Exhibit R-1, Exhibit R-2, Exhibit S, Exhibit T, Exhibit U, Exhibit V, Exhibit W, Exhibit X, Exhibit Y, Exhibit Z, Exhibit AA, and Exhibit BB, respectively, with such changes thereto as may be agreed upon by all parties thereto.

“Seller Indemnitees” means the Seller, the Failed Thrift and its predecessors-in-interest, and their respective officers, directors, employees, partners, principals, agents and contractors (other than the Transferred Employees).

“Seller’s Intellectual Property” means all worldwide trade secrets and confidential information, excluding Unassigned Records; patents, inventions, know-how, tools, indices, analytics, designs, models; copyrights and copyrightable works; trademarks, trade names, corporate names, brand names, trade dress, slogans, logos and service marks, together with the goodwill of the business connected with the use of, or symbolized by, the foregoing; and Internet domain names and rights to use the IP addresses associated with such domain names (to the extent such IP addresses are static and within the contract rights of the Seller); in each case of the foregoing, whether registered or unregistered (and including any registrations or applications for

registration of any of the foregoing, including those patent rights, trademarks, domain names and copyrights set forth in Schedule 5.01(e)), owned by the Seller and related to or used in the business of IndyMac Federal or the Assets, to the extent such business or Assets are being acquired by the Purchaser pursuant to this Agreement. The foregoing does not include any intellectual property used exclusively in connection with the Excluded Assets, Excluded Contracts or Excluded Liabilities.

“Servicing Business Asset Purchase Agreement” means the Servicing Business Asset Purchase Agreement in the form attached hereto as Exhibit CC to be entered into as of the Closing Date by and between the Seller and the Purchaser in connection with the sale of the Group 2 assets.

“Servicing Business Premises” means the real property owned by the Seller set forth on Schedule 5.01(b)(ii).

“Settlement Date” has the meaning given in Section 3.03(d).

“Settlement Interest Rate” means, for the first calendar quarter or portion thereof during which interest accrues, the rate determined by the Seller to be equal to the equivalent coupon issue yield on twenty-six (26) week United States Treasury Bills in effect as of the Closing Date as published in The Wall Street Journal; provided that if no such equivalent coupon issue yield is available as of the Closing Date, the equivalent coupon issue yield for such Treasury Bills most recently published in The Wall Street Journal prior to the Closing Date shall be used. Thereafter, the rate shall be adjusted to the rate determined by the Seller to be equal to the equivalent coupon issue yield on such Treasury Bills in effect as of the first day of each succeeding calendar quarter during which interest accrues as published in The Wall Street Journal.

“Settlement Payment” has the meaning given in Section 3.03(d).

“Shared-Loss Agreement” means the Shared-Loss Agreement in the form attached as Attachment G to the Loan Sale Agreement, to be entered into as of the Closing Date by and between the Seller and the Purchaser.

“Swapped Fixed Rate” means 1.628%.

“Synthetic Rate” means the Swapped Fixed Rate plus 1.25%.

“Subsidiary” has the meaning set forth in Section 3(w)(4) of the FDIA (12 U.S.C. Section 1813(w)(4)).

“Tax” or **“Taxes”** means all income, excise, gross receipts, ad valorem, sales, use, employment, franchise, profits, gains, property, transfer, payroll, withholding, severance, occupation, social security, unemployment compensation, alternative minimum, value added, intangibles or other taxes, fees, stamp taxes, duties, charges, levies or assessments of any kind whatsoever (whether payable directly or by withholding), together with any interest and any penalties, fines, additions to tax or additional amounts imposed by any Governmental Authority with respect thereto.

“Tax Authority” means any branch, office, department, agency, instrumentality, court, tribunal, officer, employee, designee, representative, or other Person that is acting for, on behalf of, or as a part of any foreign or domestic government (or any state, local or other political subdivision thereof) that is engaged in or has any power, duty, responsibility or obligation relating to the legislation, promulgation, interpretation, enforcement, regulation, monitoring, supervision or collection of or any other activity relating to any Tax or Tax Return.

“Tax Return” means any return, election, declaration, report, schedule, information return, document, information, opinion, statement, or any amendment to any of the foregoing (including any consolidated, combined or unitary return) submitted or required to be submitted to any Tax Authority.

“Termination Date” has the meaning given in Section 5.09(a).

“Third Party Claim” means, with respect to any Reimbursed Party, a claim, counterclaim or demand made by any Person (other than the Purchaser or any of its directors, officers, partners, employees, agents, creditors, stockholders or other equityholders, whether beneficial or of record) against such Reimbursed Party; and, with respect to any Seller Indemnitee, a claim, counterclaim or demand made by any Person (other than the Seller or any of its Affiliates) against such Seller Indemnitee.

“Thrift Deposit” means a deposit as defined in 12 U.S.C. Section 1813(l), including outstanding cashier’s checks and other official checks and all uncollected items included in the depositors’ balances (including the balance in custodial accounts) and credited on the books and records of the Seller, including accrued interest thereon; provided that the term “Thrift Deposit” shall not include all or any portion of those deposit balances which, in the discretion of the Seller, (i) may be required to satisfy the Seller for any liquidated or contingent liability of any depositor arising from an unauthorized or unlawful transaction, or (ii) may be needed to provide payment of any liability of any depositor to the Seller, including the liability of any depositor as a director or officer of IndyMac Federal or the Seller, whether or not the amount of the liability is or can be determined as of the Closing Date.

“Transaction” means the aggregate of all of the transactions contemplated in this Agreement and the other Definitive Agreements.

“Transferred Employee” has the meaning given in Section 11.01.

“Transferred Employees/Contractors” has the meaning given in Section 8.03(b)(i).

“Transferred Employee Data” has the meaning given in Section 8.03(b)(i).

“Transition Employees” has the meaning given in Section 11.04.

“Transition Employee Costs” has the meaning given in Section 11.04.

“Transition Period” has the meaning given in Section 11.04.

“Transitional Services Agreement” means the Transitional Services Agreement to be entered into as of the Closing Date by and between the Seller and the Purchaser.

“Unassigned Records” has the meaning given in Section 8.03(b).

“Unfunded Commitment Definitive Agreements” means the definitive agreements executed after the Closing Date pursuant to the terms set forth in (i) the Term Sheet for Assignment of Funding Obligations to Servicer in HELOC Securitizations and Reimbursement for Draws attached to the Servicing Business Asset Purchase Agreement as Exhibit C, (ii) the Term Sheet for Shared-Loss and Participation Interest in Unfunded Commitments of Reverse Mortgage Loans attached to the Reverse Mortgage Business Asset Purchase Agreement as Exhibit F, and (iii) the Term Sheet for Participation Interests in Unfunded HELOC Commitments attached to the Loan Sale Agreement as Attachment H.

“WARN Act” has the meaning given in Section 11.03.

“Weighted Average FHLB Interest Rate” means, for any Accrual Period, the face weighted average FHLB advance rate as of the given period for all then outstanding FHLB Advances.

Section 1.02 Construction. This Agreement shall be construed and interpreted in accordance with the following:

(a) References to “Affiliates” include only other Persons which from time to time constitute “Affiliates” of such specified Person, and do not include, at any particular time, other Persons that may have been, but at such time have ceased to be, “Affiliates” of such specified Person, except to the extent that any such reference specifically provides otherwise.

(b) The term “or” is not exclusive.

(c) A reference to a law includes any amendment, modification or replacement to such law.

(d) Accounting terms shall have the meanings assigned to them by GAAP applied on a consistent basis by the accounting entity to which they refer.

(e) References to any document, instrument or agreement (i) shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in replacement thereof, and (ii) shall mean such document, instrument or agreement, or replacement thereto, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time.

(f) Unless otherwise specified, the words “hereof,” “herein” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(g) The words “include” and “including” and words of similar import are not limiting, and shall be construed to be followed by the words “without limitation,” whether or not they are in fact followed by such words.

(h) The word “during” when used with respect to a period of time shall be construed to mean commencing at the beginning of such period and continuing until the end of such period.

(i) Unless the context otherwise requires, singular nouns and pronouns when used herein shall be deemed to include the plural and vice versa and impersonal pronouns shall be deemed to include the personal pronoun of the appropriate gender.

ARTICLE II

DESCRIPTION OF TRANSACTION

Section 2.01 Formation of Purchaser. On or prior to the Closing Date, HoldCo shall cause Intermediate HoldCo to, and Intermediate HoldCo shall, organize the Purchaser as a federally chartered, FDIC insured, stock form savings association or savings bank and direct wholly owned subsidiary of Intermediate HoldCo.

Section 2.02 Capitalization. On or prior to the Closing Date, HoldCo and Intermediate HoldCo shall make the Capital Contribution, which shall be deemed to have been made upon the occurrence of both of the following:

(a) the application of the Deposit by the Seller on the Closing Date to the Aggregate Closing Payment, and

(b) the release of the Closing Escrow Funds (as defined below) on the Closing Date from the Closing Escrow Account by the Seller and HoldCo in accordance with terms of the Closing Escrow Agreement and the application thereof to the Aggregate Closing Payment in accordance with Section 3.02 hereof.

Section 2.03 Transactions Prior to Closing. On the Business Day immediately preceding the Closing Date, HoldCo shall pay by wire transfer of immediately available funds an amount equal to ONE BILLION FOUR HUNDRED ELEVEN MILLION Dollars (\$1,411,000,000) to the Closing Escrow Account (the “Closing Escrow Funds”).

Section 2.04 Closing Date Transactions. The following transactions shall occur substantially simultaneously on the Closing Date but shall be deemed to occur in the following order:

(a) the FDIC shall be appointed receiver for IndyMac Federal;

(b) the Purchaser shall be formed as a federally chartered, stock form savings association or savings bank and direct wholly owned subsidiary of Intermediate HoldCo, subject to the supervision of the OTS;

(c) the Purchaser shall be approved as an FDIC insured depository institution; and

(d) the Purchase and Assumption Transactions shall occur in accordance with the terms hereof and the other applicable Definitive Agreements.

Section 2.05 The Closing. The closing for the Transaction (the “**Closing**”) shall take place at the offices of Sonnenschein Nath & Rosenthal LLP, Two World Financial Center, New York, New York, on March 19, 2009, or such other date as HoldCo and the Seller may mutually determine upon satisfaction or waiver of all conditions set forth in this Agreement and the other Definitive Agreements to the obligations of the parties to consummate the Transaction (other than conditions with respect to actions the respective parties will take at the Closing itself) (the “**Closing Date**”). Except as otherwise expressly provided with respect to Group 3 in the Reverse Mortgage Business Asset Purchase Agreement and in Article XIV below, the parties hereto acknowledge that if any Definitive Agreement is not performed, then none of the Definitive Agreements shall be deemed performed.

ARTICLE III

PURCHASE PRICE FOR THE PURCHASE AND ASSUMPTION TRANSACTIONS

Section 3.01 Final Purchase Price. The aggregate purchase price for the Purchase and Assumption Transactions shall be determined as of the Closing Date pursuant to Section 3.03 below and shall be equal to the sum of (i) the Group 1 Final Purchase Price *plus* (ii) the Group 2 Final Purchase Price, *plus* (iii) to the extent the acquisition of Group 3 is completed, the Group 3 Final Purchase Price, *plus* (iv) the Group 4 Final Purchase Price, *plus* (v) the Group 5 Final Purchase Price, *plus* (vi) the Groups 6-8 Final Purchase Price (the “**Aggregate Final Purchase Price**”).

Section 3.02 Aggregate Closing Payment.

(a) Calculation. The Aggregate Closing Payment shall be calculated by the Seller in accordance with Schedule 3.02(a), and such calculation shall be provided to the Purchaser at least two (2) Business Days prior to the Closing Date along with reasonable supporting information and documentation that was relied upon by the Seller in connection with such calculation. Notwithstanding the prior sentence or the closing payment calculation provisions in Section 5.03(b) of this Agreement and in the other Definitive Agreements, for purposes of calculating the Aggregate Closing Payment only, if the appraisals necessary to determine Fair Market Value are not received by the Seller at least two (2) Business Days prior to the Closing Date, then any portion of the Aggregate Closing Payment that is to be calculated using Fair Market Value under the Definitive Agreements shall be calculated using the Book Value of the relevant Assets as of the Initial Calculation Date.

(b) Payment. At the Closing, assuming the Deposit has been released to the Seller in accordance with the Initial Escrow Agreement, the Aggregate Closing Payment shall be paid by HoldCo or one or more of its Subsidiaries as follows:

(i) the Closing Escrow Funds shall be released from the Closing Escrow Account to the Seller in accordance with the terms of the Closing Escrow Agreement;

(ii) subject to the provisions of paragraph (iii) below, the Purchaser shall pay to the Seller, by wire transfer of immediately available funds, in accordance with the wire transfer instructions set forth in Schedule 3.02(b), an amount equal to the positive difference, if any, obtained by subtracting (x) the sum of (1) the Deposit, (2) the Closing Escrow Funds and (3) the Seller Financing from (y) the Aggregate Closing Payment; and

(iii) if the amount obtained by subtracting the amount in clause (x) from the amount in clause (y) in paragraph (ii) above results in a negative amount, then the release to the Seller of the Closing Escrow Funds pursuant to Section 3.02(b)(i) shall be reduced by such amount with the remainder of the Closing Escrow Funds released to the Purchaser in accordance with the terms of the Closing Escrow Agreement.

Section 3.03 Post-Closing Settlement.

(a) Closing Adjustment Documents. Within forty-five (45) calendar days following the Closing Date, the Purchaser shall prepare and deliver to the Seller the Group 1 Closing Adjustment Documents (as defined below) and the closing adjustment documents required under the other Definitive Agreements, along with the Purchaser's calculation of the Aggregate Final Purchase Price, the Aggregate Final Payment and the Settlement Payment (as defined below) (collectively, the "**Closing Adjustment Documents**"), all of which such documents shall be delivered on the same day.

(b) Disagreements. Within thirty (30) calendar days after delivery of the Closing Adjustment Documents, the Seller may dispute all or any portion of such Closing Adjustment Documents by giving written notice (a "**Notice of Disagreement**") to the Purchaser setting forth in reasonable detail the basis for any such dispute and the Seller's calculation of any amounts set forth in the Closing Adjustment Documents that are the subject of such dispute (any such dispute being hereinafter called a "**Disagreement**"). Promptly following the delivery of a Notice of Disagreement, the parties shall commence good faith negotiations with a view to resolving all such Disagreements. If the Seller does not give a Notice of a Disagreement within thirty (30) calendar days after delivery of the Closing Adjustment Documents, the Seller will be deemed to have irrevocably accepted all of the Closing Adjustment Documents in the form delivered to the Seller by the Purchaser and to have agreed to all amounts set forth therein. If the Seller gives a Notice of Disagreement with respect to one or more but not all of the Closing Adjustment Documents, the Seller will be deemed to have irrevocably accepted all of the Closing Adjustment Documents with respect to which no Notice of Disagreement was provided, in the form delivered to the Seller by the Purchaser and to have agreed to all amounts set forth therein.

(c) Resolution of Disagreement. If the Seller delivers a Notice of Disagreement and the Purchaser does not dispute all or any portion of such Notice of Disagreement by giving written notice (a "**Purchaser Notice**") to the Seller setting forth in

reasonable detail the basis for such dispute within ten (10) calendar days following the receipt of such Notice of Disagreement, the Purchaser will be deemed to have irrevocably accepted the Closing Adjustment Documents as modified in the manner described in the Notice of Disagreement. If the Purchaser gives a Purchaser Notice within the ten (10)-day period described in the previous sentence, and the Purchaser and the Seller do not resolve the Disagreement within ten (10) calendar days after the delivery of the Purchaser Notice to the Seller (with such resolution evidenced by a written agreement signed by the Purchaser and the Seller), such Disagreement or portion thereof that is not resolved by an agreement signed by the Purchaser and the Seller shall be referred by the Purchaser to the Independent Accounting Firm for resolution. The Purchaser shall provide the Independent Accounting Firm with a copy of this Agreement and the other Definitive Agreements, copies of all schedules and other documents delivered at the Closing, the Closing Adjustment Documents and any supporting documentation that has been exchanged by the parties, the Notice of Disagreement, and any partial settlements agreed to by the Purchaser and the Seller in connection with the Closing Adjustment Documents that relate to the Notice of Disagreement (any such matters that have been agreed to by the parties are not considered part of the Disagreement and are not subject to a determination by the Independent Accounting Firm). The Independent Accounting Firm shall resolve the Disagreement as follows (and only as follows): it is to determine, solely based on the terms of this Agreement and the other documents made available to it in accordance with this Section 3.03(c), whether the amount due to or from the Purchaser pursuant to the Closing Adjustment Documents is (i) the amount the Seller claims to be due to or from the Purchaser, (ii) the amount the Purchaser claims to be due to or from the Purchaser or (iii) an amount in between the amount claimed by the Seller in clause (i) and the amount claimed by the Purchaser in clause (ii). For the avoidance of any doubt and in furtherance of the previous sentence, even if the Independent Accounting Firm determines that the correct amount due to or from the Purchaser is an amount greater than the higher of or less than the lower of the amounts set forth in clauses (i) and (ii) of the previous sentence, the Independent Accounting Firm nevertheless must resolve the Disagreement in accordance with the parameters set forth in the previous sentence. The Independent Accounting Firm shall issue a written decision setting forth the resolution of the Disagreement and provide the same to each party. Such resolution by the Independent Accounting Firm shall be final and binding upon the parties and the parties expressly acknowledge the foregoing. The Purchaser and the Seller shall use their best efforts to cause the Independent Accounting Firm to render its determination as soon as practicable after the referral to it of the Disagreement but in any event shall direct the Independent Accounting Firm to render its decision no later than thirty (30) calendar days after the date on which the Independent Accounting Firm receives all of the information to be provided to it in accordance with this Section 3.03(c). The Purchaser and the Seller each shall cooperate with the Independent Accounting Firm and provide such firm with reasonable access to such Accounting Records and personnel as the Independent Accounting Firm reasonably requests in order to render its determination. Either the Purchaser or the Seller may enforce the decision of the Independent Accounting Firm in a court of competent jurisdiction, but neither the Purchaser nor the Seller shall challenge or seek to appeal the decision of the Independent Accounting Firm, and each expressly waives any right it may otherwise have to so challenge such decision. The allocation of the fees and expenses of the Independent Accounting Firm shall be made in accordance with Section 19.03.

(d) Settlement Payment. On the fifth (5th) Business Day following the acceptance or deemed acceptance of the Closing Adjustment Documents or, if later, the fifth (5th) Business Day following the final resolution of any Disagreements relating to such Closing Adjustment Documents (the "Settlement Date"), there shall be a post-closing settlement payment for the Purchase and Assumption Transactions (the "Settlement Payment") as follows: (i) with respect to Group 4, (A) the Seller Financing with respect to the Financed Securities in Group 4 shall be adjusted in accordance with the Securities Master Repurchase Agreement, to wit, the Outstanding Purchase Price shall be increased or decreased to equal the Recalculated Purchase Price (as such terms are defined in the Securities Master Repurchase Agreement) and (B) an amount equal to (x) the Financed Group 4 Purchase Price minus the Financed Group 4 Closing Payment multiplied by (y) 0.25 shall be paid to the Seller (if positive) or the Purchaser (if negative); and (ii) with respect to all other Groups, an amount equal to (A) the sum of the Group 1 Final Payment, the Group 2 Final Payment, the Group 3 Final Payment, the Non-Financed Group 4 Purchase Price, the Group 5 Final Payment and the Groups 6-8 Final Payment, minus (B) the sum of the Group 1 Closing Payment, the Group 2 Closing Payment, the Group 3 Closing Payment, the Non-Financed Group 4 Closing Payment, the Group 5 Closing Payment and the Groups 6-8 Closing Payment shall be paid to the Seller (if positive) or the Purchaser (if negative). The payments due under clause (i)(B) and clause (ii) shall be netted and the resulting payment due under this section shall be paid to the party entitled to receive such payment by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Schedule 3.02(b), which instructions may be updated on or prior to the Settlement Date.

(e) Interest. Any amounts paid under Section 3.03(d) shall bear interest for the period from and including the day following the Closing Date to and including the day preceding the payment at the Settlement Interest Rate, and such interest shall be paid by the Purchaser or the Seller, as applicable, in connection with the Settlement Payment.

(f) Adjustment to Purchase Price. The Purchaser and the Seller agree to treat all payments and adjustments provided in this Agreement (including any interest described in Section 3.03(e)), other than any payments pursuant to Section 5.09, as adjustments to the Aggregate Final Purchase Price, and as having been made prior to the Closing Date, for all Tax purposes.

ARTICLE IV

ASSUMPTION OF GROUP 1 LIABILITIES

Section 4.01 Group 1 Liabilities Assumed by the Purchaser. Subject to the terms and provisions of this Agreement (including the retention of all rights and remedies under Article XVII), and effective as of the Closing Date, the Purchaser shall assume and agree to pay, perform, and discharge all of the following liabilities and obligations of IndyMac Federal (such liabilities referred to as the "Assumed Group 1 Liabilities"):

(a) subject to the provisions of Section 4.03, liabilities related to the Thrift Deposits as of the Closing Date, including the obligations under the deposit agreements with respect to Thrift Deposits opened after July 11, 2008 (the Thrift Deposits as of the Initial Calculation Date are set forth on Schedule 4.01(a));

(b) all liabilities for indebtedness secured by mortgages, deeds of trust, chattel mortgages, security interests or other Liens on or affecting any Group 1 Assets (as defined below);

(c) all liabilities for borrowings from the Federal Home Loan Bank of San Francisco (the “**FHLB**”) listed on Schedule 4.01(c)(i) (the “**FHLB Advances**”) and all liabilities under the related FHLB contracts listed on Schedule 4.01(c)(ii);

(d) all liabilities for federal funds purchased, repurchase agreements and overdrafts in accounts maintained with other depository institutions (including any accrued and unpaid interest thereon computed to and including the Closing Date);

(e) all liabilities related to United States Treasury tax and loan note option accounts, if any;

(f) subject to Section 10.01(e), all duties, obligations and liabilities relating to the Contracts listed on Schedule 4.01(f) (the “**Assumed Contracts**”) and the Contracts with IndyMac Federal customers governing Seller’s debit card business (including any extensions of credit with respect thereto), overdraft protection plans, safe deposit business, safekeeping business and custody business, in each case from and after the Closing Date;

(g) all duties, obligations and liabilities as a tenant under the leases for real property listed on Schedule 4.01(g) (the “**Assumed Real Property Leases**”) from and after the Closing Date; and

(h) all obligations of the Seller with respect to the other liabilities listed on Schedule 4.01(h).

Section 4.02 Liabilities Not Assumed by the Purchaser.

(a) Except for the Assumed Group 1 Liabilities and the liabilities expressly assumed by the Purchaser pursuant to the other Definitive Agreements, the Seller shall not assign and the Purchaser shall not assume any claims, debts, obligations or liabilities (whether known or unknown, contingent or unasserted, matured or unmatured), however they may be characterized, that the Failed Thrift, IndyMac Federal or the Seller has or may have now or in the future, including, (i) the claims, debts, obligations or liabilities of the Seller relating to the Contracts listed on Schedule 4.02(a) (the “**Excluded Contracts**”); and (ii) any direct or indirect Tax liabilities or obligations of the Failed Thrift, IndyMac Federal or the Seller that are attributable to any taxable period (or portion thereof) ending on or before the Closing Date;

(b) Notwithstanding anything to the contrary set forth herein, the Seller shall not assign and the Purchaser shall not assume: (i) any claim against or liability of the FDIC in its capacity as receiver for the Failed Thrift or the FDIC as receiver for IndyMac Federal that, under and in accordance with applicable Law, was, is or will be subject to the receivership administrative claims processes administered by the FDIC in its capacity as receiver for the Failed Thrift or the FDIC as receiver for IndyMac Federal pursuant to 12 U.S.C. §1821(d)(3) through (13), including claims and liabilities that are affirmative or defensive, now existing or arising in the future, contingent or fixed, monetary or non-monetary, equitable or legal, or

declarative or injunctive; or (ii) any claim against or liability based on any alleged act or omission of the Failed Thrift or IndyMac Federal which is not provable or allowable, or is otherwise barred against the FDIC as receiver for the Failed Thrift or the FDIC as receiver for IndyMac Federal under applicable Law, including claims and liabilities that are barred under 12 U.S.C. §§1821(c), (d), (e) (including §1821(e)(3)), (i), or (j); 12 U.S.C. §1822; 12 U.S.C. §1823; or 12 U.S.C. §1825. The claims, debts, obligations and liabilities referred to in Sections 4.02(a) and 4.02(b) are collectively referred to as the “**Excluded Liabilities**”.

Section 4.03 Interest on Thrift Deposit Liabilities. With respect to the Thrift Deposits opened after July 11, 2008, from and after the Closing Date the Purchaser shall accrue and pay interest on such Thrift Deposits under the deposit agreements assumed with respect to such Thrift Deposits in accordance with such assumed agreements. With respect to the Thrift Deposits opened on or prior to July 11, 2008, from and after the Closing Date the Purchaser shall (i) accrue and pay interest on such Thrift Deposits at such rates as it shall determine and (ii) permit each depositor, to withdraw, without penalty for early withdrawal, all or any portion of such depositor’s Thrift Deposit, whether or not the Purchaser elects to pay interest in accordance with any deposit agreement formerly existing between the Failed Thrift, IndyMac Federal or the Seller, on the one hand, and such depositor, on the other hand; provided that if such Thrift Deposit has been pledged to secure an obligation of the depositor or other party, any withdrawal thereof shall be subject to the terms of the agreement governing such pledge.

Section 4.04 Unclaimed Deposits. If, within eighteen (18) months after the Closing Date, any depositor of the Seller does not claim or arrange to continue such depositor’s Thrift Deposit assumed by the Purchaser pursuant to Section 4.01, the Purchaser shall, within fifteen (15) Business Days after the end of such eighteen (18)-month period, (i) refund to the Seller the full amount of each such Thrift Deposit (without reduction for service charges), (ii) provide to the Seller a schedule of all such refunded Thrift Deposits in such form as may be prescribed by the Seller, and (iii) assign, transfer, convey and deliver to the Seller all right, title and interest of the Purchaser in and to Records previously transferred to the Purchaser and other records generated or maintained by the Purchaser pertaining to such Thrift Deposits and the Seller shall assume all liabilities with respect to such refunded Thrift Deposits. During such eighteen (18)-month period, at the request of the Seller, the Purchaser promptly shall provide to the Seller schedules of unclaimed deposits in such form as may be reasonably prescribed by the Seller.

Section 4.05 Employee Benefit Plans. None of HoldCo, Intermediate HoldCo, the Purchaser or any of their Affiliates shall have any liabilities, obligations or responsibilities under any Seller Employee Plan or with respect to any Seller Employee who is not a Transferred Employee, unless HoldCo, Intermediate HoldCo, the Purchaser or any of their Affiliates, as applicable, and the Seller agree otherwise in writing subsequent to the Effective Date of this Agreement.

ARTICLE V

PURCHASE OF GROUP 1 ASSETS

Section 5.01 Group 1 Assets Purchased by the Purchaser. On the Closing Date, the Purchaser shall purchase from the Seller, and the Seller shall sell, assign, transfer, convey, and deliver to the Purchaser, all right, title, and interest of the Seller in and to the following assets (whether personal or mixed, wherever located and however acquired) (collectively, the “**Group 1 Assets**”) (it being understood that, as set forth below, the Schedules described in this Section 5.01 shall be updated as of the Closing Date and assets included in such updated Schedules shall constitute Group 1 Assets):

- (a) the Cash on Hand listed on Schedule 5.01(a);
- (b) the owned Bank Premises listed on Schedule 5.01(b)(i) and the owned Servicing Business Premises listed on Schedule 5.01(b)(ii);
- (c) the Fixtures and owned Furniture and Equipment listed on Schedule 5.01(c)(i), and the additional Furniture and Equipment listed on Schedule 5.01(c)(ii);
- (d) the Overdraft Loans listed on Schedule 5.01(d);
- (e) all rights in and to the Seller’s Intellectual Property, including the Seller’s Intellectual Property listed on Schedule 5.01(e);
- (f) the accounts and accounts receivable (other than any intercompany accounts receivable) listed on Schedule 5.01(f);
- (g) all rights of and benefits accruing to the Seller under the Assumed Contracts listed on Schedule 4.01(f) and the Contracts governing the Seller’s debit card business, overdraft protection plans, safe deposit business, safekeeping business and custody business, and the Assumed Real Property Leases listed on Schedule 4.01(g), including rights to assert claims and take other rightful actions in respect of breaches, defaults and other violations of such Contracts or leases;
- (h) the FHLB Stock having an aggregate par value of \$317,833,700;
- (i) all permits relating to the retail banking business of IndyMac Federal, to the extent transferable;
- (j) the artwork listed on Schedule 5.01(j);
- (k) pre-paid expenses listed on Schedule 5.01(k); and
- (l) the other assets listed on Schedule 5.01(l).

Each Schedule referenced above shall be updated as of the Closing Date and delivered to the Purchaser in accordance with Section 5.06.

To the extent that any party discovers within 180 days following the Closing that there were assets of the Seller used primarily in IndyMac Federal's retail banking business or of the type listed in this Section 5.01, which assets all parties hereto intended to have transferred in connection with the transactions contemplated in this Agreement but were omitted from the Schedules to this Agreement, such party shall promptly provide written notice of such discovery to the other parties. Promptly following its discovery of such asset or its receipt of such written notice, as applicable, the Seller shall or shall cause its Affiliates to assign and transfer to the Purchaser all right, title and interest in such asset.

Section 5.02 Assets Not Purchased by the Purchaser. The Assets shall not include, and the Purchaser shall not purchase or otherwise acquire, any assets not specifically being acquired pursuant to the Definitive Agreements (collectively, the "**Excluded Assets**"), including the excluded assets listed on Schedule 5.02.

Section 5.03 Purchase Price; Closing Payment.

(a) Purchase Price. Subject to the terms and conditions of this Agreement, the Purchaser shall pay to the Seller an aggregate purchase price for the Group 1 Assets in an amount equal to the sum of (such sum, the "**Group 1 Final Purchase Price**"):

(i) with respect to the Cash on Hand, an amount equal to the aggregate Book Value thereof as of the Closing Date; *plus*

(ii) with respect to the owned Bank Premises, an amount equal to the aggregate Book Value thereof as of the Closing Date; *plus*

(iii) with respect to the Servicing Business Premises, an amount equal to the Fair Market Value thereof; *plus*

(iv) with respect to the Fixtures and the owned Furniture and Equipment listed on Schedule 5.01(c)(i), an amount equal to the Fair Market Value thereof; *plus*

(v) with respect to the additional Furniture and Equipment listed on Schedule 5.01(c)(ii), an aggregate amount equal to ONE HUNDRED TWENTY-TWO THOUSAND THREE HUNDRED SIXTY-FIVE Dollars (\$122,365); *plus*

(vi) with respect to the Overdraft Loans, an amount equal to the aggregate Book Value thereof less the amount of any reserves related thereto as of the Closing Date, plus accrued interest from the paid-to date to but not including the Closing Date; *plus*

(vii) with respect to the accounts and accounts receivable listed on Schedule 5.01(f) (other than any intercompany accounts receivable), an amount equal to the aggregate Book Value thereof less the amount of any reserves related thereto as of the Closing Date; *plus*

(viii) with respect to the FHLB Stock, an amount equal to the par value thereof; plus

(ix) with respect to the artwork listed on Schedule 5.01(j), an aggregate amount equal to FIFTY-SIX THOUSAND Dollars (\$56,000); plus

(x) with respect to the prepaid expenses listed on Schedule 5.01(k), an amount equal to the aggregate Book Value thereof as of the Closing Date, prorated in accordance with Section 5.04; plus

(xi) with respect to the other assets listed on Schedule 5.01(l), an amount equal to the aggregate Book Value of such other assets as of the Closing Date; less

(xii) an amount equal to the aggregate Book Value of the Thrift Deposits as of the Closing Date; less

(xiii) an amount equal to the aggregate Book Value of the liabilities for borrowings from the FHLB as of the Closing Date; less

(xiv) an amount equal to the aggregate Book Value of the other liabilities listed on Schedule 4.01(h) as of the Closing Date.

(b) Closing Payment. On the Closing Date, the Purchaser shall pay to the Seller, in accordance with Article III, an amount equal to the balance of (i) the Group 1 Final Purchase Price, calculated using balances, as applicable, as of the Initial Calculation Date rather than the Closing Date, less (ii) prorated amounts owed by the Seller through and including the Closing Date which are calculable as of the Closing Date, as determined pursuant to Section 5.04 (collectively, the “**Group 1 Closing Payment**”).

Section 5.04 Prorations. Except to the extent otherwise specifically provided for herein, all payments under or pursuant to any Contract (including document custodial arrangements and applicable insurance policies) or any Assumed Real Property Lease assigned to the Purchaser under this Agreement, and real and personal property taxes related to the Group 1 Assets, whether or not payable after the Closing Date, shall be prorated between the Purchaser and the Seller, as the case may be, on the basis of a 365 day year and the number of days elapsed and days remaining in the applicable period through the end of the Closing Date. With respect to any products sold (or services rendered) pursuant to any Contracts assigned to the Purchaser under this Agreement, the Seller and the Purchaser shall use commercially reasonable efforts to arrange for vendors to bill the Seller directly, through and including the Closing Date, and the Purchaser directly after the Closing Date. All amounts prorated pursuant to this Section 5.04 will be taken into account in connection with the adjustments provided in Section 5.07.

Section 5.05 Closing Procedure. At the Closing, subject to and upon the terms and conditions of this Agreement:

(a) the Seller shall deliver to the Purchaser the certificates, instruments and documents referred to in Section 13.01;

(b) the Purchaser shall deliver to the Seller the certificates, instruments and documents referred to in Section 13.02;

(c) the Seller shall, as herein provided, sell, assign, transfer, convey, and deliver to the Purchaser all right, title and interest in and to the Group 1 Assets, and the Group 1 Assets shall be transferred from the Seller to the Purchaser;

(d) the Purchaser shall deliver the Group 1 Closing Payment in accordance with the provisions of Article III; and

(e) the Seller shall, as herein provided, assign, transfer, convey, and deliver to the Purchaser the Assumed Group 1 Liabilities, and the Purchaser shall assume and agree to pay, perform and discharge in accordance with their terms all of the Assumed Group 1 Liabilities.

Section 5.06 Closing Adjustment Documents. Within sixty (60) calendar days following the Closing Date, the Purchaser shall prepare and deliver to the Seller (i) a schedule of the Group 1 Assets as of the Closing Date, (ii) a schedule of the Assumed Group 1 Liabilities, including the Thrift Deposits, as of the Closing Date, (iii) Schedule 4.01(a), Schedule 4.01(c)(i), Schedule 4.01(h), Schedule 5.01(a), Schedule 5.01(b)(i), Schedule 5.01(d), Schedule 5.01(f), Schedule 5.01(k) and Schedule 5.01(l), each updated as of the Closing Date and prepared in accordance with the Accounting Records of IndyMac Federal and consistent with past practice (including the preparation of the Schedules attached hereto) and (iv) a schedule setting forth in reasonable detail the calculations contemplated by Section 5.07 below (collectively, the **“Group 1 Closing Adjustment Documents”**). The parties shall cooperate in the preparation of the Group 1 Closing Adjustment Documents and such additional documents as may be necessary to calculate the Group 1 Final Purchase Price. Without limiting the generality of the foregoing, to the extent necessary, the Purchaser shall provide the Seller and its designees with reasonable access to the books, Records, work papers, personnel and representatives which relate to the Group 1 Assets and the Assumed Group 1 Liabilities.

Section 5.07 Calculation of Adjustments. The Group 1 Closing Adjustment Documents shall set forth the Purchaser’s calculation of (i) the Group 1 Final Purchase Price in accordance with Section 5.03(a) and (ii) a payment amount (such amount, the **“Group 1 Final Payment”**) which shall be the sum of the following: (i) the Group 1 Final Purchase Price, *less* (ii) prorated amounts, as determined pursuant to Section 5.04, owed by the Seller through and including the Closing Date. The Group 1 Closing Adjustment Documents shall be reviewed, and any Disagreements related thereto resolved, in accordance with Article III.

Section 5.08 Final Settlement. Upon the earlier of (x) the acceptance of the Closing Adjustment Documents by the Seller and (y) the final and binding resolution of any Disagreements, in each case in accordance with Article III, any amounts shall be paid in accordance with Section 3.03(d).

Section 5.09 FHLB Advances Make Whole Payment.

(a) In respect of the Purchaser’s assumption of the FHLB Advances, the Seller agrees to pay to the Purchaser on a monthly basis during the period beginning on the

date immediately following the Closing Date and ending on the earlier of the date that is the three (3) year anniversary of the Closing Date and the first Measurement Date as of which there are no longer any Adjusted FHLB Advances outstanding (in each case, the "**Termination Date**"), in accordance with Section 5.09(b), the sum of (a) the Rate Differential Payment and (b) the Prepayment Penalty Reimbursement Amount for the Accrual Period (such sum referred to herein as the "**FHLB Advance Make Whole Payment**").

(b) Within five (5) Business Days after the end of each Accrual Period, the Purchaser shall provide to the Seller the calculation of the FHLB Advance Make Whole Payment, together with all reasonable supporting documentation therefor. On or prior to the day that is five (5) Business Days following the receipt of the calculation and supporting documentation referenced in the preceding sentence the Seller shall pay to the Purchaser by wire transfer in immediately available funds in accordance with the wire transfer instructions provided by the Purchaser the FHLB Advance Make Whole Payment.

Section 5.10 Disclaimer. EACH OF HOLDCO, INTERMEDIATE HOLDCO AND THE PURCHASER ACKNOWLEDGE THAT THE GROUP 1 ASSETS WILL BE CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION, WARRANTY OR GUARANTY WHATSOEVER WITH RESPECT TO THE GROUP 1 ASSETS, INCLUDING AS TO THE COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE SELLER, THE FAILED THRIFT OR THE FDIC, OR ANY PREDECESSOR OR AFFILIATE OF THE SELLER, THE FAILED THRIFT OR THE FDIC, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR CONTRACTORS.

ARTICLE VI

ASSUMPTION OF CERTAIN GROUP 1 DUTIES AND OBLIGATIONS

Section 6.01 Continuation of Banking Business. The Purchaser shall provide full service retail banking in the retail branches of IndyMac Federal commencing on the first banking business day (including a Saturday) after the Closing Date. For the avoidance of any doubt, the foregoing shall not restrict or otherwise affect the ability of the Purchaser to make changes to the retail banking business that it conducts at any time from and after the Closing, including opening or closing retail branches.

Section 6.02 Agreement with Respect to Debit Card Business. The Purchaser shall honor and perform, from and after the Closing Date, all duties and obligations with respect to IndyMac Federal's debit card business, and processing related to debit cards, if any. Fees related to the debit card business, if any, collected prior to the Closing Date shall be for the benefit of the Seller and fees collected after the Closing Date, if any, shall be for the benefit of the Purchaser.

Section 6.03 Agreement with Respect to Safe Deposit Business. The Purchaser shall perform and discharge, from and after the Closing Date, in the usual course of conducting a retail banking business, the duties and obligations of IndyMac Federal with respect to all Safe Deposit Boxes, if any, of IndyMac Federal and maintain all of the necessary facilities for the use of such Safe Deposit Boxes by the renters thereof during the period for which such Safe Deposit Boxes have been rented and the rent therefor paid to IndyMac Federal, subject to the provisions of the rental agreements between IndyMac Federal and the respective renters of such Safe Deposit Boxes. Fees related to the safe deposit business collected prior to the Closing Date shall be for the benefit of the Seller and fees collected after the Closing Date shall be for the benefit of the Purchaser.

Section 6.04 Agreement with Respect to Safekeeping Business. The Seller hereby transfers, conveys and delivers to the Purchaser and the Purchaser accepts all securities and other items, if any, held by IndyMac Federal in safekeeping for the customers of IndyMac Federal as of the Closing Date. The Purchaser shall perform and discharge, from and after the Closing Date, the duties and obligations of IndyMac Federal with respect to such securities and items held in safekeeping. The Purchaser shall be entitled to all rights and benefits heretofore accrued or hereafter accruing with respect thereto; provided that fees related to the safe keeping business collected prior to the Closing Date shall be for the benefit of the Seller and fees collected after the Closing Date shall be for the benefit of the Purchaser. Within sixty (60) days after the Closing Date, the Purchaser shall provide to the Seller written verification of all assets held for safekeeping as of the Closing Date by IndyMac Federal.

Section 6.05 Agreement with Respect to Custody Business.

(a) From and after the Closing Date, the Purchaser shall, without further transfer, substitution, act or deed, to the fullest extent permitted by Law, succeed to the rights, obligations, properties, assets, investments, deposits, agreements and custodies under custodianships and other fiduciary or representative capacities of IndyMac Federal, all to the same extent as though the Purchaser had assumed the same from IndyMac Federal prior to the Closing Date; provided that any liability based on the misfeasance, malfeasance or nonfeasance of the Failed Thrift, IndyMac Federal or the Seller or their respective directors, officers, employees or agents with respect to the custody business is not assumed hereunder. Fees related to the custody business collected prior to the Closing Date shall be for the benefit of the Seller and fees collected after the Closing Date shall be for the benefit of the Purchaser.

(b) The Purchaser shall, to the fullest extent permitted by Law, succeed to, and be entitled to take and execute, the appointment to all custodianships and other fiduciary or representative capacities to which IndyMac Federal is or may be named or appointed by any instrument.

(c) In the event additional proceedings of any kind are necessary to accomplish the transfer of such custody business, the Purchaser shall take whatever action is necessary to accomplish such transfer. The Seller shall use reasonable efforts to assist the Purchaser in accomplishing such transfer. The allocation of the costs and expenses incurred in connection with such transfer shall be made in accordance with Section 19.03.

(d) Within sixty (60) days after the Closing Date, the Purchaser shall provide to the Seller written verification of all assets held as of the Closing Date by IndyMac Federal in connection with IndyMac Federal's custody business.

Section 6.06 Agreement with Respect to Assumed Contracts. Subject to Section 4.01 and Section 10.01(e), the Purchaser shall assume, perform and discharge IndyMac Federal's obligations under each Assumed Contract listed on Schedule 4.01(f), and each Assumed Real Property Lease listed on Schedule 4.01(g) and each other Contract assumed pursuant to Section 4.01, and shall comply with the terms and conditions of each such Contract or lease, in each case from and after the Closing Date.

Section 6.07 Informational Tax Reporting. The Purchaser shall perform all obligations of IndyMac Federal with respect to federal and state income tax informational reporting related to (i) the Group 1 Assets and the Assumed Group 1 Liabilities, (ii) deposit accounts that were closed and loans that were paid off or collateral obtained with respect thereto prior to the Closing Date, (iii) miscellaneous payments made to vendors of IndyMac Federal, and (iv) any other asset or liability of IndyMac Federal, including loans not purchased and Thrift Deposits not assumed by the Purchaser, as may reasonably be required by the Seller. The Seller shall provide the Purchaser with any information that is required to comply with any of the Purchaser's Tax reporting responsibilities, including the responsibilities described herein; provided that, such information is in the possession of the Seller, IndyMac Federal or the Failed Thrift and not in the possession of the Purchaser, Intermediate HoldCo or HoldCo.

Section 6.08 Insurance. The Purchaser shall obtain insurance coverage effective from and after the Closing Date, including public liability, fire and extended coverage insurance reasonably acceptable to the Seller with respect to the owned or leased Bank Premises that the Purchaser occupies, and all owned or leased Furniture and Equipment and Fixtures (including leased Data Processing Equipment) located thereon, in the event such insurance coverage is not already in force and effect with respect to the Purchaser as the insured as of the Closing Date. All such insurance shall, where appropriate (as reasonably determined by the Seller), name the Seller as an additional insured.

Section 6.09 Flow Subservicing. The Seller and the Purchaser hereby acknowledge and agree that the Seller is retaining certain assets of IndyMac Federal and the Purchaser will service such assets after the Closing on the terms set forth in the term sheet attached hereto as Exhibit D. The Seller and the Purchaser shall negotiate in good faith and use their best efforts, and the Purchaser shall cause Financial Freedom Acquisition LLC to negotiate in good faith and use its best efforts, to finalize the Flow Subservicing Definitive Agreement in accordance with such term sheet no later than thirty (30) calendar days after the Closing Date.

Section 6.10 Transitional Services Agreement. The Seller and the Purchaser hereby acknowledge and agree that the Purchaser is to provide certain transitional services after the Closing pursuant to, and subject to the terms of, the Transitional Services Agreement.

Section 6.11 Agreement with Respect to Leased Bank Premises.

(a) Option to Lease. The Seller hereby grants to the Purchaser an exclusive option for the period of ninety (90) days commencing the day after the Closing to cause the Seller to assign, or to cause the Seller's Subsidiaries to assign (as applicable), to the Purchaser any or all leases for leased Bank Premises set forth on Schedule 6.11(a) which have been continuously occupied by the Purchaser from the Closing Date to the date it elects to accept an assignment of the leases with respect thereto to the extent such leases can be assigned; provided that, the exercise of this option with respect to any lease must be as to all premises or other property subject to the lease. If an assignment cannot be made of any such lease, the Seller may, in its discretion, enter into subleases, or cause its Subsidiaries to enter into subleases (as applicable), with the Purchaser containing the same terms and conditions provided under such existing leases for such leased Bank Premises or other property. The Purchaser shall give notice to the Seller within the option period of its election to accept or not to accept an assignment of any or all such leases (or enter into subleases or new leases in lieu thereof). The Purchaser agrees to assume all leases assigned (or enter into subleases or new leases in lieu thereof) pursuant to this Section 6.11.

(c) Facilitation. The Seller agrees to facilitate, or to cause its Subsidiaries to facilitate (as applicable), the assumption, assignment or sublease of leases or the negotiation of new leases by the Purchaser with respect to the leased Bank Premises set forth on Schedule 6.11(a); provided that, none of the FDIC, the Seller nor any of the Seller's Subsidiaries shall be obligated to engage in litigation, make payments to the Purchaser or to any third party in connection with facilitating any such assumption, assignment, sublease or negotiation or commit to any other obligations to third parties.

(d) Occupancy. The Purchaser shall give the Seller thirty (30) days' prior written notice of its intention to vacate prior to vacating any leased Bank Premises set forth on Schedule 6.11(a) with respect to which the Purchaser has not exercised the option provided in Section 6.11(a). Any such notice shall be deemed to terminate the Purchaser's option with respect to such leased Bank Premises.

(e) Occupancy Costs.

(i) The Purchaser agrees to pay to the Seller, or to appropriate third parties including Subsidiaries of the Seller at the direction of the Seller, during and for the period of any occupancy by it of any of the leased Bank Premises set forth on Schedule 6.11(a), all operating costs with respect thereto and to comply with all relevant terms of applicable leases entered into by the Failed Thrift, the Seller or any Subsidiary of the Seller, including without limitation the timely payment of all rent. Operating costs include, without limitation all taxes, fees, charges, utilities, insurance and assessments, to the extent not included in the rental value or rent.

(ii) The Purchaser agrees during the period of occupancy by it of any of the leased Bank Premises set forth on Schedule 6.11(a), to pay to the Seller or to the appropriate Subsidiary of the Seller rent for the use of all owned or leased Furniture and Equipment and all owned or leased Fixtures located on such Bank Premises for the period

of such occupancy (provided that the Purchaser shall not be required to pay rent for any Furniture and Equipment or Fixtures that the Purchaser has purchased, or that is the subject of an Assumed Contract assumed by the Purchaser, pursuant to this Agreement or the other Definitive Agreements). Rent for such leased property shall be an amount equal to any and all rent and other amounts which the Seller or any Subsidiary of the Seller incurs or accrues as an obligation or is obligated to pay for such period of occupancy pursuant to all leases and contracts with respect to such property. If the Purchaser purchases any owned Furniture and Equipment or owned Fixtures in accordance with Section 5.01(c), the amount of any rents paid by the Purchaser with respect thereto shall be applied as an offset against the purchase price thereof.

(f) Vacating Premises. If the Purchaser elects not to exercise the option provided in Section 6.11(a), the notice of such election in accordance with Section 6.11(a) shall specify the date upon which the Purchaser's occupancy of such leased Bank Premises shall terminate, which date shall not be later than the date which is one hundred seventy (170) calendar days after the Closing Date. Upon vacating such premises, the Purchaser shall relinquish and release to the Seller, or to the Seller's Subsidiaries (as applicable), such premises and the Fixtures and the Furniture and Equipment located thereon (other than any Furniture and Equipment purchased, or that is the subject of an Assumed Contract assumed by the Purchaser, pursuant to this Agreement or the other Definitive Agreements) in the same condition as at Closing, normal wear and tear excepted. By failing to provide notice of its intention to vacate such premises prior to the expiration of the option period specified in Section 6.11(a), or by occupying such premises after the one hundred seventy (170)-day period specified above in this paragraph, the Purchaser shall, at the Seller's option, (x) be deemed to have assumed all leases, obligations and liabilities with respect to such premises (including any ground lease with respect to the land on which premises are located), and leased Furniture and Equipment and leased Fixtures located thereon in accordance with this Section 6.11 (unless the Seller or any Subsidiary of the Seller previously repudiated any such lease), and (y) be required to purchase all Furniture and Equipment and Fixtures owned by the Seller or any of the Seller's Subsidiaries and located on such premises as of the Closing Date.

ARTICLE VII

DUTIES WITH RESPECT TO DEPOSITORS OF INDYMAC FEDERAL

Section 7.01 Payment of Checks, Drafts and Orders. Subject to Section 9.04, the Purchaser shall pay all properly drawn checks, drafts and withdrawal orders of depositors of IndyMac Federal presented for payment, whether drawn on the check or draft forms provided by the Failed Thrift or IndyMac Federal or by the Purchaser, to the extent that the Thrift Deposit balances to the credit of the respective makers or drawers assumed by the Purchaser under this Agreement are sufficient to permit the payment thereof, and in all other respects to discharge, in the usual course of conducting a retail banking business, the duties and obligations of IndyMac Federal with respect to the Thrift Deposit balances due and owing to depositors and assumed by the Purchaser under this Agreement.

Section 7.02 Notice to Depositors.

(a) Within seven (7) calendar days after the Closing Date, the Purchaser shall give notice to depositors of IndyMac Federal of its assumption of the Thrift Deposit liabilities of IndyMac Federal, by mailing to each such depositor a notice with respect to such assumption and by advertising in a newspaper of general circulation in the county or counties in which the retail branches of IndyMac Federal are located as of the Closing. The Purchaser agrees that such notice shall be in the form provided by the Seller to the Purchaser prior to the date hereof, with such additional changes as may be agreed to by the Seller.

(b) The Purchaser shall give notice by mail to depositors of IndyMac Federal concerning the procedures to claim their deposits, which notice shall be in the form provided by the Seller to the Purchaser prior to the date hereof, with such additional changes as may be agreed to by the Seller. Such notice shall be included with the notice to depositors to be mailed by the Purchaser pursuant to Section 7.02(a).

(c) If the Purchaser proposes to charge fees different from those charged by IndyMac Federal immediately prior to the Closing before the Purchaser establishes new deposit account relationships with the existing depositors of IndyMac Federal as of the Closing Date, the Purchaser shall give notice by mail of such changed fees to such depositors.

ARTICLE VIII

RECORDS

Section 8.01 Transfer of Records.

(a) The Seller, for itself and on behalf of IndyMac Federal and any Subsidiary thereof, assigns, transfers, conveys and delivers to the Purchaser the following Records pertaining to the Group 1 Assets and the Assumed Group 1 Liabilities, except as provided in Section 10.02(a):

(i) signature cards, orders, contracts between IndyMac Federal and its depositors (to the extent the same are being assumed by the Purchaser) and Records of similar character;

(ii) passbooks of deposits held by IndyMac Federal, deposit slips, cancelled checks and withdrawal orders representing charges to accounts of depositors;

(iii) records of deposit balances carried with other banks, bankers or trust companies;

(iv) deeds, mortgages, abstracts, surveys, and other instruments or records of title pertaining to the owned Bank Premises;

(v) signature cards, agreements and records pertaining to Safe Deposit Boxes, if any; and

(vi) records pertaining to the debit card business, overdraft protection plans, custody business or safekeeping business of IndyMac Federal, if any.

(b) Subject to Section 8.03, the Seller shall assign and transfer to the Purchaser by a single blanket assignment or otherwise, as soon as practicable after the Closing Date, any other Records not assigned and transferred to the Purchaser as provided in this Agreement, including loan disbursement checks, general ledger tickets, official bank checks, proof transactions (including proof tapes) and paid out loan files.

Section 8.02 Delivery of Records. The Seller shall deliver to the Purchaser all Records described above on the Closing Date by delivery of possession of the Bank Premises.

Section 8.03 Unassigned Records.

(a) The Seller, IndyMac Federal or any of their respective Subsidiaries will deliver and make accessible the Transferred Employee Data (as defined in Section 8.03(b)(i)) to the Purchaser by delivery of possession of the Bank Premises on the Closing Date and may further disclose Transferred Employee Data through the period during which such Transferred Employee/Contractor (as defined below) remains an employee or contractor (as applicable) of the Seller, Indy Mac Federal or any of their Subsidiaries.

(b) “Unassigned Records” means any of the following that the Seller, IndyMac Federal or any of their Subsidiaries, delivers, discloses or provides access to the Purchaser or its Subsidiaries (but, in any event, will not assign any rights, title or interest in or to):

(i) any data, documents, records and information (including without limitation Personally Identifiable Information) relating to or in connection with (A) the Non-Transferred Employees, provided at any time, and (B) the Transferred Employees and individuals classified as contractors of Seller, IndyMac Federal or its Subsidiaries that are engaged to perform services as independent contractors of Purchaser or its Affiliates (collectively, the “Transferred Employees/Contractors”), in the Seller’s, Indy Mac Federal’s or any of their Subsidiary’s possession or delivered to the Purchaser as of the Closing Date or through the period during which such Transferred Employee/Contractor remains an employee or contractor (as applicable) of the Seller, Indy Mac Federal or any of their Subsidiaries (the aforesaid data is referred to herein as “Transferred Employee Data”);

(ii) any data, documents, records and information (including without limitation Personally Identifiable Information) subject to a claim of protection from discovery or disclosure by the attorney client privilege, the attorney work product doctrine, or any other applicable privilege or doctrine held or asserted by the Seller, IndyMac Federal or any of their Subsidiaries or their respective counsel related to or in connection with (A) the Transferred Employees/Contractors, in the Seller’s, IndyMac Federal’s or any of their Subsidiary’s possession or delivered to the Purchaser as of the Closing Date or through the period during which such Transferred Employee/Contractor remains an employee or contractor of the Seller, IndyMac Federal or any of their

Subsidiaries, (B) Non-Transferred Employees, provided at any time, and (C) the Excluded Assets, Excluded Liabilities (or any facts related thereto or asserted therein) and Excluded Contracts (collectively, the “**Privileged Information**”); or

(iii) any data, documents, records and information (including without limitation Personally Identifiable Information) to the extent relating to or connected with the Excluded Assets, Excluded Liabilities and Excluded Contracts.

(c) For purposes of clarification, Unassigned Records do not include any data, documents, records and information (including without limitation Personally Identifiable Information) relating to or in connection with a Transferred Employee/Contractor created from and after the date on which such Transferred Employee/Contractor becomes an employee or contractor of the Purchaser or any of its Affiliates (except with respect to Transferred Employee Data). The data, documents, records and information (including without limitation Personally Identifiable Information) identified in the preceding sentence (except with respect to Transferred Employee Data) shall be owned by the Purchaser and its Affiliates.

(d) The Seller, IndyMac Federal and any Subsidiary thereof, and their respective representatives, will have the same right and the Purchaser and its Affiliates will have the same obligations with respect to the Unassigned Records as to the Records in Section 10.02 of this Agreement. Unassigned Records are, or shall be, and shall remain the property of, the Seller, IndyMac Federal or any Subsidiary thereof, with the Purchaser and its Affiliates holding such Unassigned Records for the benefit of the Seller, IndyMac Federal and any Subsidiary thereof. The Seller for itself and on behalf IndyMac Federal and any Subsidiary thereof shall have and retain all right, title and interest, including without limitation worldwide ownership of trade secret and confidentiality rights and copyright, in and to the Unassigned Records and all copies made from it. The Purchaser, its Affiliates, licensees, vendors or contractors shall not have, nor in any circumstances gain, any ownership interest in the Unassigned Records.

(e) Without the Seller’s prior written approval (in its sole discretion) or except as set forth in Section 8.03(f), the Unassigned Records shall not be (i) used by the Purchaser, its Affiliates, licensees, vendors or contractors in any manner other than in connection with providing the services to the Seller, IndyMac Federal or any Subsidiary thereof under the Transitional Services Agreement, (ii) disclosed, sold, assigned, leased, published, disseminated or otherwise provided to third parties by the Purchaser, its Affiliates, licensees, vendors or contractors, including without limitation in any anonymized or aggregated formats, (iii) commercially exploited by or on behalf of the Purchaser, its Affiliates, licensees, vendors or contractors, including without limitation in any anonymized or aggregated formats or (iv) used by the Purchaser, its Affiliates, licensees, vendors or contractors against the Seller, IndyMac Federal and its Subsidiaries. The Purchaser on behalf of itself and its Affiliates hereby irrevocably assigns, transfers and conveys to the Seller for itself or on behalf of IndyMac Federal or any Subsidiary thereof without further consideration, any right, title or interest in and to the Unassigned Records or any proprietary rights therein worldwide in perpetuity that it may acquire notwithstanding the foregoing. Upon request by the Seller, the Purchaser shall or shall cause its Affiliates to execute and deliver any financing statements or other documents that may be reasonably necessary or desirable under any laws,

rule or regulation to preserve or protect, or enable the Seller, IndyMac Federal or any Subsidiary thereof to enforce, its rights hereunder with respect to the Unassigned Records, in each case at the Seller's cost and expense.

(f) Subject to Sections 8.05 and 8.06, the Purchaser and its Subsidiaries shall have, and the Seller (for itself and on behalf of IndyMac Federal and any Subsidiary thereof (as applicable)) hereby grants, a royalty-free, worldwide, non-exclusive, non-transferable (other than a transfer by operation of law including a merger of the Purchaser or its Subsidiaries, as applicable), perpetual and non-sublicensable right and license to use the Transferred Employee Data for any reasonable purpose to the extent relating to or in connection with (i) the Transferred Employee/Contractor, or (ii) any employee of Purchaser or its Affiliates in connection or relating to such Transferred Employee/Contractor; provided, however, the foregoing right and license are limited to those uses for which the Seller (for itself and on behalf of IndyMac Federal and any Subsidiary thereof (as applicable)) may grant a license and right without violating any applicable Law or legal duty to a Transferred Employee/Contractor. The Purchaser and its Affiliates covenant for each of themselves and on behalf of each of their employees, personnel, contractors, agents and representatives that the Transferred Employee Data will not be used in contravention of the provisions set forth in this Agreement.

(g) Contractors of the Purchaser and its Subsidiaries may, during their provision of contracted services, use the Transferred Employee Data solely for the purpose stated in Section 8.03(f) in the performance of such services and exclusively for the benefit of the Purchaser and its Subsidiaries, provided that such contractors are bound by confidentiality and data protection and security obligations no less stringent than those set forth in this Agreement.

Section 8.04 Confidentiality.

(a) On and from the Effective Date, and during the term of this Agreement and each of the other Definitive Agreements and at all times thereafter, the Purchaser and its Affiliates each covenant they will hold, and their agents, representatives, licensees and contractors will hold, in confidence, all Confidential Information disclosed or made available to the Purchaser and its Affiliates by the Seller, IndyMac Federal or any Subsidiary thereof, except pursuant to subpoena, discovery request in pending litigation, other court process, or as otherwise required by Law; provided, however, that in the event the Purchaser receives such a demand, the Purchaser shall, unless expressly prohibited by a court order, promptly notify the Seller in writing of such required disclosure and cooperate with the Seller, at the Seller's cost and expense, in the Seller's efforts to contest or limit the scope of or impose conditions upon such required disclosure including seeking a protective order, or filing motions or otherwise making appearances before a court.

(b) Except for Privileged Information, the Purchaser and its Subsidiaries may disclose Confidential Information (i) to their personnel, contractors and representatives in exercising their rights under Section 8.03(f) or in connection with the Transaction provided that (x) such disclosure is necessary for the exercise of such rights or the performance of the Purchaser's obligations under this Agreement, (y) such personnel, contractors and

representatives are informed by the Purchaser of the confidential nature of such information, and (z) such personnel, contractors and representatives are bound by confidentiality terms no less stringent than to those contained under this Agreement; and (ii) to any third parties directly in connection with pending litigation relating to a Transferred Employee/Contractor; provided, that prior to any such disclosure pursuant to this clause (ii), the Purchaser shall notify the Seller in writing and shall comply with the Seller's requirements to limit the scope of or impose conditions upon such disclosure including by entry, prior to disclosure, into a protective order governing protection of the Confidential Information.

(c) With respect to Privileged Information, except with the prior written consent of the Seller, the Purchaser and its Affiliates may only disclose Privileged Information to (i) current employees who have a need to know the contents of the record, and (ii) third parties who are agents retained for the purpose of assisting the Purchaser's in-house or outside counsel in the provision of legal advice to the Purchaser, provided that such current employees or third parties are informed by the Purchaser of the confidential and privileged nature of such information and are bound by confidentiality terms no less stringent than to those contained under this Agreement or as set forth in Section 8.04(a).

(d) The Purchaser shall be responsible for any failure by its or its Affiliates' personnel, contractors and representatives to comply with the Confidential Information, data protection and security provisions of this Agreement as if the Purchaser or its Affiliates have committed the breach themselves. The Purchaser and its Affiliates shall take all reasonable measures to ensure that the Confidential Information is not disclosed or used in contravention of this Agreement. The Purchaser shall use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information to avoid unauthorized disclosure, publication, dissemination, destruction, loss or alteration of its own information (or information of its customers) of a similar nature, but not less than reasonable care. If this Agreement or another Definitive Agreement is terminated or expires, the Purchaser and its Affiliates will deliver to the Seller, upon request, all Confidential Information and all copies thereof or destroy such Confidential Information and certify in writing such destruction, except with respect to the Transferred Employee Data, which the Purchaser and its Affiliates may retain in their possession subject to Section 8.03(f) and the confidentiality and data protection and security requirements set forth under this Agreement.

(e) "Confidential Information" means (i) all information marked confidential, restricted or proprietary by the Seller, IndyMac Federal or any Subsidiary thereof, but excluding any information to the extent it is owned by Purchaser pursuant to Section 8.03(c) or is otherwise related to or part of the Assets or the Seller's Intellectual Property (except any information to the extent it is related to or part of Unassigned Records), (ii) any other information that is treated as confidential by the Seller, IndyMac Federal or any Subsidiary thereof and would reasonably be understood to be confidential, whether or not so marked, but excluding any information to the extent it is owned by Purchaser pursuant to Section 8.03(c) or is otherwise related to or part of the Assets or the Seller's Intellectual Property (except any information to the extent it is related to or part of the Unassigned Records), (iii) the Unassigned Records, (iv) data, documents, records and information (including without limitation Personally Identifiable Information) that is identified or designated by any party to be subject to attorney client privilege or work product obligations

between the Seller, IndyMac Federal or any Subsidiary thereof and their respective counsel, including Privileged Information. Confidential Information will not include information to the extent it can be shown to have been (i) previously known on a non-confidential basis by the Purchaser or its Affiliates, (ii) in the public domain through no fault of the Purchaser or its Affiliates, (iii) later lawfully acquired by the Purchaser or its Affiliates from sources other than the Seller, IndyMac Federal or any Subsidiary thereof, or (iv) independently developed by the Purchaser or its Affiliates, provided the Purchaser or its Affiliates have not come to know of, obtained or accessed such information in breach of its confidentiality obligations under this Agreement.

Section 8.05 No Waiver of Privilege. The parties acknowledge that the Records and Unassigned Records are found on servers and in other data stores that are being transferred from the Seller to the Purchaser, and that it is impractical and inefficient to separate the Records and Unassigned Records. Both the Seller, IndyMac Federal, and their respective Subsidiaries and the Purchaser have a common interest in defending existing and possible future litigation relating to the Seller, IndyMac Federal and their respective Subsidiaries and acknowledge that the Records and Unassigned Records may contain data, documents, records, and information which Seller, IndyMac Federal, and their respective Subsidiaries or Purchaser and its Affiliates claim are protected from disclosure by the attorney client privilege, the attorney work product doctrine or other applicable privilege or doctrine. Neither party waives any privilege or work product doctrine protection by the delivery or access described in this Article VIII or in Section 10.02. Each party may claim privilege or work product protection in such Records, and Seller, IndyMac Federal, and their respective Subsidiaries may claim privilege or work product protection in such Unassigned Records, and all data, documents, records, and information contained therein, and neither party shall claim that the other party waived privilege or work product protection based on such delivery or access.

Section 8.06 System Security. The Purchaser and its Affiliates and subcontractors to whom Confidential Information and Unassigned Records are provided shall maintain a comprehensive data security program, which shall include reasonable and appropriate technical, organizational and security measures against the destruction, loss, unavailability, unauthorized access or alteration of Confidential Information and Unassigned Records in the possession or under the control of the Purchaser or such Affiliates, and be no less rigorous than industry accepted security standards for similar types of information. The Purchaser shall promptly notify the Seller in writing of any actual or potential data breach or compromise that may affect any of the Unassigned Records.

Section 8.07 Privacy And Data Protection.

(a) The Purchaser acknowledges that the Seller, IndyMac Federal and any Subsidiary thereof are and/or will be subject to United States Laws and other Laws throughout the world relating to the collection and privacy of personally identifiable information including without limitation the Gramm-Leach-Bliley Act, Title V, and applicable regulations thereto (collectively, the "Privacy Laws") governing privacy and confidentiality of personal information as defined in the Privacy Laws, and relating to the collection, use, processing, protection, record retention, security or disclosure of data relating to individuals or corporations, including personal data (which may include European Directive 95/46/EC on the

protection of individuals with regard to the processing of personal data and on the free movement of such data, and any legislation implementing such article, and any legislation implementing the same in the relevant state; and may include state breach notification laws) (collectively, the “**Data Protection Laws**”). Each of the Purchaser and its Affiliates covenant that they shall at all times comply with all applicable Privacy Laws and Data Protection Laws in the collection, use, retention and disclosure of the Seller’s, IndyMac Federal’s and any Subsidiary thereof’s customers’, employees and other individuals’ Personally Identifiable Information provided to or accessible by the Purchaser or its Affiliates pursuant to this Agreement or any other Definitive Agreement; provided, however, that the Purchaser and its Affiliates will not be liable to the Seller, IndyMac Federal or any Subsidiary thereof for any breach of Privacy Laws or Data Protection Laws regarding Personally Identifiable Information to the extent such information is owned by the Purchaser pursuant to Section 8.03(c) or is otherwise related to or part of the Assets or the Seller’s Intellectual Property (except any such information to the extent it is related to or part of Unassigned Records and Confidential Information for which this Section will apply).

(b) The Purchaser shall perform the Services (as defined under the Transitional Services Agreement) and the Purchaser’s other obligations pursuant to this Agreement in a manner that complies with all applicable Privacy Laws and Data Protection Laws. Nothing in this Agreement will be deemed to prevent the Seller, IndyMac Federal or any Subsidiary thereof from taking the steps it reasonably deems necessary or appropriate to comply with the Privacy Laws or Data Protection Laws.

ARTICLE IX

GROUP 1 TRANSACTION COVENANTS

Section 9.01 Additional Title Documents. The Seller and the Purchaser each agree, at any time, and from time to time, upon the request of any party hereto, to execute and deliver such additional instruments and documents of conveyance as shall be reasonably necessary to vest in the Purchaser its full legal or equitable title in and to the Group 1 Assets. The Purchaser shall prepare such instruments and documents of conveyance (in form and substance reasonably satisfactory to the Seller) as shall be necessary to vest title to the Group 1 Assets in the Purchaser. The Purchaser shall be responsible for recording such instruments and documents of conveyance at its own expense.

Section 9.02 Thrift Deposits. From the Effective Date through the Closing Date, the Seller shall use commercially reasonable efforts to maintain customer Thrift Deposits (other than custodial accounts) within an aggregate range of 15% of the aggregate Thrift Deposit balance as of September 30, 2008 (excluding custodial accounts) and shall provide the Purchaser a consultation right with respect to the Seller’s efforts to maintain such Thrift Deposits, including a consultation right with respect to the establishment of interest rates for all such Thrift Deposit products.

Section 9.03 Payment of Thrift Deposits. In the event any depositor does not accept the obligation of the Purchaser to pay any Thrift Deposit liability of IndyMac Federal assumed by the Purchaser pursuant to this Agreement and asserts a claim against the Seller for all or any

portion of any such Thrift Deposit liability, the Purchaser agrees on demand to provide to the Seller funds sufficient to pay such claim in an amount not in excess of the Thrift Deposit liability reflected on the books of the Purchaser at the time such claim is made. Upon payment by the Purchaser to the Seller of such amount, the Purchaser shall assign back to the Seller any deposit agreements assumed by the Purchaser with respect to such Thrift Deposit, and, thereafter, shall be discharged from any further obligation under this Agreement or otherwise to pay to any such depositor the amount of such Thrift Deposit liability paid to the Seller.

Section 9.04 Withheld Payments. At any time, the Seller may, in its discretion, determine that all or any portion of any deposit balance assumed by the Purchaser pursuant to this Agreement does not constitute a “Thrift Deposit” (or otherwise, in its discretion, determine that it is in the best interest of the Seller to withhold all or any portion of any deposit), and may direct the Purchaser to withhold payment of all or any portion of any such deposit balance. Upon such direction, the Purchaser shall hold such deposit and shall not make any payment of such deposit balance to or on behalf of the depositor, or to itself, whether by way of transfer, set-off, or otherwise. The Purchaser shall maintain the “withheld payment” status of any such deposit balance until directed in writing by the Seller as to its disposition. At the direction of the Seller, the Purchaser shall return all or any portion of such deposit balance to the Seller, as appropriate, and thereupon the Purchaser shall be discharged from any further liability to such depositor with respect to such returned deposit balance. If such deposit balance has been paid to the depositor prior to a demand for return by the Seller, and payment of such deposit balance had not been previously withheld pursuant to this Section 9.04, the Purchaser shall not be obligated to return such deposit balance to the Seller. The Purchaser shall be obligated to reimburse the Seller for the amount of any deposit balance or portion thereof paid by the Purchaser in contravention of any previous direction to withhold payment of such deposit balance or return such deposit balance the payment of which was withheld pursuant to this Section 9.04.

ARTICLE X

TRANSACTION COVENANTS

Section 10.01 Pre-Closing Covenants. Each of the Seller, HoldCo, Intermediate HoldCo and the Purchaser agree as follows with respect to the period between the Effective Date and the Closing or, if earlier, the termination of this Agreement in accordance with its terms:

(a) Efforts and Actions to Cause Closing to Occur. Each of the Seller, HoldCo, Intermediate HoldCo and the Purchaser shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable (subject to compliance with all Laws) to consummate the Transaction as promptly as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate the Transaction.

(b) Applications; Regulatory and Other Approvals. Each of the Seller, HoldCo, Intermediate HoldCo and the Purchaser shall provide information reasonably requested by any other party and within the timeframes requested by such other party for the preparation of any applications necessary to consummate the Transaction. Each of the Seller, HoldCo, Intermediate HoldCo and the Purchaser shall take all commercially reasonable steps necessary or

desirable, and proceed diligently and in good faith and use all commercially reasonable efforts, as promptly as practicable to: (i) obtain all consents and approvals of, make all filings with and give all notices to each Governmental Authority or any other Person that are required to be obtained, made or given by the Seller, HoldCo, Intermediate HoldCo or the Purchaser, as the case may be, including all of the consents and approvals listed on Schedule 14.01(g), in order to consummate the Transaction, including but not limited to compliance with all Laws and all contracts (subject, in each case, to any statutory rights of the Seller to assign or transfer any asset or liability without any consent or approval); and (ii) satisfy each other condition to the obligations of the Seller, HoldCo, Intermediate HoldCo or the Purchaser, as the case may be, contained in this Agreement. In furtherance, but not in limitation of the foregoing, HoldCo and Intermediate HoldCo jointly and severally shall use commercially reasonable efforts to (x) organize the Purchaser as a federally chartered, FDIC insured, stock form savings bank or savings association and (y) organize or cause to be organized the Subsidiaries of the Purchaser that are to be party to any of the other Definitive Agreements.

(c) Access and Information. The Seller shall afford HoldCo reasonable access to its personnel, properties, contracts, books and records to the extent that the Seller itself has the right to grant such access (provided that, under all circumstances, each party will coordinate all visits and communications with management of the other party upon reasonable notice); provided, however, that the foregoing shall not (1) require the Seller to permit any inspection, or to disclose any information, that in its reasonable judgment would violate any obligations of the Seller to any third party with respect to confidentiality or (2) require any disclosure by the Seller that could, as a result of such disclosure, have the effect of causing the waiver of any attorney-client privilege (it being understood that the Seller shall use commercially reasonable efforts to obtain a consent for such disclosure or otherwise to avoid the impediments described in the foregoing clauses (1) and (2)). In addition to the confidentiality arrangements contained herein, all information provided or obtained in connection with the Transaction shall be held by HoldCo in accordance with and subject to the terms of the Confidentiality Agreement, as modified or amended by this Agreement. In the event of a conflict or inconsistency between the terms of this Agreement and the Confidentiality Agreement, the terms of this Agreement shall govern.

(d) Minimum Equity Capital; Dividends. HoldCo will continuously maintain the Minimum Equity Capital and will not declare, set aside or pay any dividend or other distribution to its members which would cause HoldCo to fail to continuously maintain the Minimum Equity Capital.

(e) Contracts. Notwithstanding anything to the contrary contained in this Agreement or the other Definitive Agreements, the Seller will (i) give HoldCo the opportunity to review the Contracts listed on Schedule 10.01(e) and (ii) give HoldCo the option to assign back to the Seller any Contracts listed on Schedule 10.01(e) by providing written notice to the Seller, no later than thirty (30) calendar days after the Closing Date, of the Contracts it is so assigning. The Seller shall pay, perform and discharge all of the duties, obligations and liabilities relating to the Reassigned Contracts effective as of the close of business on the last Business Day of the month in which the Seller receives the notice referred to in the prior sentence.

(f) FHLB Financing. The Seller shall use commercially reasonable efforts to cooperate with HoldCo with respect to obtaining any financing for the benefit of the Purchaser requested from the FHLB.

(g) Delivery of Fair Market Value Appraisals. On the Closing Date, or as soon as reasonably practicable thereafter, HoldCo and Intermediate HoldCo shall deliver to the Seller the appraisal(s), prepared by Industrial Appraisal Company, of all of the assets being purchased at Fair Market Value by the Purchaser pursuant to this Agreement and the other Definitive Agreements.

Section 10.02 Post-Closing Covenants Relating to Records and Accounting Records.

(a) Retention of Records; Access. Each of HoldCo, Intermediate HoldCo and the Purchaser agrees that, after the Closing Date, HoldCo, Intermediate HoldCo and the Purchaser shall retain, and maintain for the joint benefit of the Seller and the Purchaser, all Records of which they have custody for at least ten (10) years from the Closing Date and comply with all Laws in connection with the retention, storage and maintenance of all Records, including the length of time such Records are to be retained. In addition, each of HoldCo, Intermediate HoldCo and the Purchaser shall permit the Seller and its representatives access, upon reasonable notice, to all Records of which HoldCo, Intermediate HoldCo or the Purchaser has custody, and to use, inspect, make extracts from or request copies of any such Records in the manner and to the extent requested, and to duplicate, in the discretion of the Seller, any Record; provided that, in the event that the Seller maintained one or more duplicate copies of any Records, the Purchaser hereby assigns, transfers, and conveys to the Seller one such duplicate copy of each such Record without cost to the Seller, and shall deliver to the Seller all Records assigned and transferred to the Seller under this Article X as soon as reasonably practicable on or after the Closing Date. Each of HoldCo, Intermediate HoldCo and the Purchaser shall give reasonable notice to the Seller of HoldCo's, Intermediate HoldCo's or the Purchaser's intention to (i) destroy or dispose of any Records, or (ii) disable, discontinue, cancel or permit the lapse of any licenses or permits with respect to any software application or other medium used to obtain access to any Records either directly, or if necessary, after translation into a reasonably usable form (including but not limited to the e-MITS application). After receipt by Seller of such notice, each of HoldCo, Intermediate HoldCo and the Purchaser will allow the Seller, at its own expense, a reasonable amount of time to plan for the recovery and recover such Records from HoldCo, Intermediate HoldCo or the Purchaser, as the case may be. The Purchaser shall have the responsibility to respond to subpoenas, discovery requests, and other similar official inquiries with respect to the Records of which it has custody; and shall provide written notice to the Seller of any such subpoenas, requests and inquiries within five (5) Business Days after its receipt of the same.

(b) Proceedings with Respect to Certain Assets and Liabilities. In connection with any investigation or proceeding with respect to any asset or liability retained by the Seller, or any Asset or liability acquired or assumed by the Purchaser or any of its Subsidiaries pursuant to this Agreement or any of the other Definitive Agreements (i) each of HoldCo, Intermediate HoldCo and the Purchaser shall cooperate to the extent reasonably required by the Seller and the Seller shall cooperate to the extent reasonably required by HoldCo, Intermediate HoldCo or the Purchaser (ii) each of HoldCo, Intermediate HoldCo and the

Purchaser shall provide representatives of the Seller access at reasonable times and locations without other limitation or qualifications to (x) its directors, officers, employees and agents and those of the Subsidiaries acquired by the Purchaser pursuant to the Definitive Agreements and (y) its books and records, the books and records of such Subsidiaries, and copies thereof. Copies of any books and records shall be provided by HoldCo, Intermediate HoldCo and the Purchaser as reasonably requested by the Seller and the costs of duplication thereof shall be borne by the Seller.

(c) Other Information. Each of HoldCo, Intermediate HoldCo and the Purchaser promptly shall provide to the Seller such other information, including financial statements and computations, relating to the performance of the provisions of this Agreement as the Seller may reasonably request from time to time.

Section 10.03 FHLB Excess Stock.

(a) Seller Payment. To the extent that (i) within three (3) years following the Closing Date, the Purchaser repays all or a portion of the FHLB Advances assumed pursuant to Section 4.01 and delivers a written notice to the FHLB in accordance with 12 U.S.C. § 1421 et seq., the rules and regulations of the FHLB promulgated thereunder and the Capital Plan of the FHLB requesting the redemption or repurchase of Excess Stock and (ii) the FHLB does not, within ninety (90) calendar days of such written notice, redeem or repurchase such Excess Stock, then, subject to the provisions of this Section 10.03, the Seller shall pay to the Purchaser an amount equal to the aggregate par value of the Excess Stock, if any, measured on the first, second and third anniversaries of the Closing Date (the “**Excess Stock Payment**”).

(b) Procedures. Within thirty (30) calendar days of the anniversary of the Closing Date immediately following the FHLB’s failure or refusal to redeem or repurchase Excess Stock as provided in Section 10.03(a), the Purchaser shall deliver to the Seller written notice and supporting documentation (including documentation evidencing repayment of such FHLB Advances, written notice to the FHLB to redeem or repurchase such Excess Stock and documentation evidencing the failure or refusal by the FHLB to redeem or repurchase such Excess Stock) of the Purchaser’s demand for payment for such Excess Stock by the Seller under this Section 10.03. The Seller shall make any Excess Stock Payment to the Purchaser within ten (10) Business Days of the receipt of such notice and supporting documentation.

(c) Annual Reconciliation. In the event the Seller makes an Excess Stock Payment to the Purchaser, in connection with the next annual measurement of Excess Stock the Purchaser or the Seller, as applicable, shall make the following payments:

(i) If the Excess Stock at the time of the prior Excess Stock Payment exceeds the Excess Stock measured as of the subsequent annual measurement, the Purchaser shall pay to the Seller the difference in par value of the Excess Stock as of the two annual measurements.

(ii) If the Excess Stock at the time of the prior Excess Stock Payment is less than the Excess Stock measurement of the subsequent annual measurement, the

Seller shall pay to the Purchaser the difference in par value of the Excess Stock as of the two annual measurements.

In any event, the last measurement of Excess Stock for purposes of any Excess Stock Payment or any annual reconciliation under this paragraph (c) shall be the third anniversary of the Closing Date. For the avoidance of doubt, any Excess Stock existing on the third anniversary of the Closing Date (regardless of the events creating Excess Stock) shall be eligible for the Excess Stock Payment provisions of Section 10.03(a).

(d) Reconciliation for Sales of Excess Stock. With respect to any Excess Stock for which the Seller has made a payment to the Purchaser under this Section 10.03 and for which the Purchaser has not reimbursed the Seller pursuant to Section 10.03(c)(i), if at any time following such payment by the Seller (including after the third anniversary of the Closing Date) and preceding any reimbursement pursuant to Section 10.03(c)(i) with respect to such Excess Stock: (i) the Purchaser shall sell such Excess Stock to any third party; (ii) such Excess Stock is redeemed by the FHLB; or (iii) the Purchaser shall receive dividends from the FHLB with respect to such Excess Stock, then, in each such case, the Purchaser shall promptly pay to the Seller the full amount of the proceeds or income (including dividends) therefrom, as the case may be; provided that, in the case of a sale or redemption pursuant to clause (i) or clause (ii) above, the Purchaser shall have no further obligation to reimburse the Seller with respect to such Excess Stock pursuant to Section 10.03(c)(i). For the avoidance of doubt, any Excess Stock sold or redeemed and for which the Seller has received payment pursuant to clause (i) or clause (ii) above shall be excluded from all calculations under Section 10.03(c) thereafter (including the calculation of Excess Stock outstanding at the time of a prior Excess Stock Payment).

(e) Post-Closing Purchases of FHLB Stock. If at anytime after the Closing Date the Purchaser is required by the FHLB to purchase additional shares of FHLB Stock, the Purchaser shall, to the extent permitted to do so by the FHLB, first offer to purchase such additional shares from the Seller, at par value, before the Purchaser shall otherwise purchase such additional shares of FHLB Stock from any other source.

Section 10.04 Reformation and Amendment of Definitive Agreements in Certain Circumstances. Notwithstanding anything to the contrary in this Agreement, if the conditions set forth in Section 14.01(n) and Section 14.02(n) have not been satisfied, or have become incapable of satisfaction, or if the transactions contemplated by the Consent and Collateral Assignment shall not have been consummated, prior to the close of business on March 23, 2009, the parties shall use commercially reasonable efforts to amend this Agreement and the other Definitive Agreements, as applicable, to (i) eliminate the transfer and assignment by the Seller to the Purchaser of, and to incorporate into the definition of Excluded Liabilities, any liabilities to the FHLB, including the FHLB Advances and the liabilities under the related FHLB contracts listed on Schedule 4.01(c)(ii), and replace the assumption of such liabilities with Seller Financing under the Mortgage Loan Master Repurchase Agreement, (ii) eliminate the transfer of the FHLB Stock to the Purchaser, (iii) include additional financing in the Seller Financing sufficient to enable the Purchaser to complete the purchase of the Assets included in Group 3 and eliminate any condition from the Seller Financing, as so supplemented, that requires financing from the FHLB or evidence to the effect that the Purchaser and its Affiliates are unable to finance the

acquisitions contemplated by the Definitive Agreements with financing from the FHLB, and (iv) to otherwise amend this Agreement and the other Definitive Agreements as appropriate consistent with the foregoing, including, without limitation, to (A) delete Section 5.09 and Section 10.03 and (B) delete the conditions set forth in Section 14.01(n) and Section 14.02(n) (such agreements, as so amended, the “Reformed Agreements”).

ARTICLE XI

EMPLOYMENT MATTERS

Section 11.01 Employees. HoldCo has separately provided written notice to the Seller and the FDIC of its decision with respect to the employees of the Seller, the Failed Thrift, IndyMac Federal or their respective Affiliates that are performing services relating to the business of the Failed Thrift, IndyMac Federal or their respective Affiliates (in either case, the “Seller Employees”) to whom HoldCo or an Affiliate of HoldCo will, subject to this Section 11.01, make offers of employment (such Seller Employees, the “Offeree Employees”). HoldCo, Intermediate HoldCo or an Affiliate of HoldCo or Intermediate HoldCo shall make offers of employment to such Offeree Employees, subject to the terms hereof. Such offers shall in all cases be offers for at-will employment unless HoldCo, Intermediate HoldCo or an Affiliate of HoldCo or Intermediate HoldCo, in its sole discretion, elects to offer some other form of employment relationship. The Seller acknowledges that the continued employment of any Transferred Employee (as such term is defined below) following the Closing Date is subject to the sole discretion of HoldCo, Intermediate HoldCo and their Affiliates. Each Offeree Employee who accepts an offer of employment from HoldCo, Intermediate HoldCo or one of their Affiliates, whether such acceptance occurs in writing or by the Offeree Employee continuing to work from and after the Closing Date (provided that any offer of employment to such Offeree Employee has not been declined, withdrawn or otherwise cancelled in accordance with this Section 11.01) is a “Transferred Employee” for purposes of this Agreement. The Offeree Employees shall consent to, and HoldCo or Intermediate HoldCo intends to perform, such background and credit checks as HoldCo or Intermediate HoldCo shall deem reasonable and appropriate. In the event that, prior to the Closing, (i) any Offeree Employee does not consent to such background or credit check; (ii) HoldCo, Intermediate HoldCo or one of their Affiliates is permitted or required under applicable law to withdraw, and elects to withdraw, the offer of employment based upon the results of either or both of such background or credit checks; or (iii) cause exists to terminate the Offeree Employee, then, in the case of (i), (ii) or (iii), the Offeree Employee shall not become a Transferred Employee and none of HoldCo, Intermediate HoldCo, the Purchaser and their Affiliates shall have any liability or obligation with respect to such Offeree Employee. Transferred Employees shall, subject to the terms of this Article XI, become employees of HoldCo, Intermediate HoldCo or an Affiliate of HoldCo or Intermediate HoldCo effective as of 12:00 a.m. on the day following the last day of the Transition Period.

Section 11.02 Welfare and Retirement Benefits for Transferred Employees. With regard to the Transferred Employees, each of HoldCo, Intermediate HoldCo and the Purchaser agrees as follows:

- (a) HoldCo, Intermediate HoldCo or the Purchaser shall provide, or shall cause an Affiliate to provide, and until the first anniversary of the Closing Date, shall maintain,

or shall cause an Affiliate to maintain, health, retirement and other welfare benefits for the Transferred Employees that are, in the aggregate, substantially comparable to the health, retirement and other welfare benefits (excluding any equity or equity-based compensation or retention bonuses) provided by the Seller to such Transferred Employees immediately prior to Closing, considered in the aggregate (the "**Purchaser Employee Plans**"); provided, however, that nothing in this subsection (a) shall (i) prevent the amendment or termination of any Purchaser Employee Plan, (ii) interfere with the right or obligation of HoldCo, Intermediate HoldCo or the Purchaser to make such changes as are necessary to conform or comply with Law or (iii) limit the right of HoldCo, Intermediate HoldCo or the Purchaser to terminate the employment of any Transferred Employee at any time.

(b) HoldCo, Intermediate HoldCo and the Purchaser shall recognize, and shall cause their respective Affiliates to recognize, for the purposes of determining eligibility for participation in the Purchaser Employee Plans and for any applicable vesting periods pursuant to such plans only (and not for benefit accrual purposes), the service of any Transferred Employee with the Seller, the Failed Thrift, IndyMac Federal, their Affiliates and their respective predecessors, to the extent such service was recognized for purposes of the Seller Employee Plans.

(c) HoldCo, Intermediate HoldCo and the Purchaser shall cause, or shall cause an Affiliate to cause, (i) any Purchaser Employee Plan that is a self-insured plan and (ii) to the extent practicable without a material increase in premium cost, any other Purchaser Employee Plan, to waive any coverage limitation thereunder due to any pre-existing condition for purposes of the Purchaser Employee Plans to the extent that such condition was covered and would have been waived by the Seller Employee Plans, and such condition would otherwise be covered by the Purchaser Employee Plans in the absence of such pre-existing condition coverage limitation. All Transferred Employees who become participants in the Purchaser Employee Plans shall receive credit for any co-payment and deductibles paid (or accrued) under the Seller Employee Plans for purposes of satisfying any applicable deductible or out-of-pocket requirements under the Purchaser Employee Plans, upon substantiation, in a form satisfactory to HoldCo, the Purchaser or their respective Affiliates that such co-payment and/or deductible has been paid.

(d) HoldCo, Intermediate HoldCo or the Purchaser shall, or shall cause an Affiliate to, cooperate with the Seller to arrange for a transfer of the Transferred Employees' flexible spending account balances, if any, and HoldCo, Intermediate HoldCo or the Purchaser shall, or shall cause an Affiliate to, take all commercially reasonable actions necessary to assist in facilitating a plan-to-plan transfer of account balances. For this purpose, "account balance" shall mean (a) the amount of each Transferred Employee's reimbursement entitlement for the coverage period that includes the Closing Date, to the extent not drawn as of the Closing Date; (b) the obligation, if any, of the Transferred Employee to pay all or part of the cost of such reimbursement right through salary reduction contributions after the Closing Date and (c) the terms, conditions and limitations applicable to the Transferred Employee's participation in such flexible spending account as in effect immediately prior to the Closing Date.

(e) If HoldCo, Intermediate HoldCo or the Purchaser maintains, or causes an Affiliate to maintain, a defined contribution plan intended to be qualified under Section 401

of the Internal Revenue Code of 1986, as amended, HoldCo, Intermediate HoldCo or the Purchaser (as applicable) will, or will cause an Affiliate to, upon mutually agreeable terms with the Seller, assist in facilitating a trustee-to-trustee transfer of the Transferred Employees' defined contribution plan account balances to HoldCo or the Purchaser's defined contribution plan.

(f) The Seller shall assume and be responsible for satisfying all obligations under Part 6, Subtitle B, Title I of ERISA (COBRA), if any: (i) with respect to Seller Employees other than the Transferred Employees and their qualified beneficiaries with respect to any benefit plan coverage and (ii) with respect to Transferred Employees and their qualified beneficiaries, but only with respect to qualifying events that occur on or prior to the last day of the Transition Period for that Transferred Employee.

Section 11.03 WARN Act. From and after the Closing Date, HoldCo, Intermediate HoldCo and the Purchaser shall indemnify and hold harmless the Seller against any liability arising under the Workers Adjustment and Retraining Notification Act and any state or local equivalent (collectively, the "**WARN Act**") in connection with (i) the termination of employment of any Transferred Employee by HoldCo, Intermediate HoldCo or the Purchaser at any time after the Closing Date, or (ii) the issuance of any notices required by the WARN Act with respect to the termination of any Transferred Employee at any time after the Closing Date, and HoldCo, Intermediate HoldCo, the Purchaser and their respective Affiliates shall have no liability or obligation arising under the WARN Act with respect to any Seller Employees other than the Transferred Employees. On or before the Closing Date, the Seller shall provide HoldCo and the Purchaser with a schedule of all layoffs and any other "employment losses" (as such term is defined in the WARN Act) in the United States, by site of employment, implemented by the Seller, IndyMac Federal, the Failed Thrift or any of their respective Affiliates during the ninety (90)-day period preceding the Closing Date.

Section 11.04 Transition Employees. In the case of each Transition Employee (as defined below), during the period beginning at the close of business on the Closing Date and ending at the close of business on the last day of the Transition Employee's employment with the Seller or its Affiliates (or, if earlier, midnight Pacific time on March 31, 2009) (for such Transition Employee, the "**Transition Period**"), the Seller shall make available, or cause IndyMac Resources, Inc. to make available, to the Purchaser the services of all the Seller Employees who are expected to become Transferred Employees as a result of satisfying the conditions in Section 11.01 hereof (the "**Transition Employees**"). During the applicable Transition Period, the Transition Employees shall perform exclusively such services as the Purchaser may request. All such services shall be performed for the benefit of the Purchaser and under the supervision, direction and control of the Purchaser or its designees. During the applicable Transition Period, a Transition Employee shall, and shall have been informed by the Seller that the Transition Employee shall, be subject only to the supervision, direction, control and instructions of the Purchaser. The Purchaser shall reimburse the Seller for each and every direct cost reasonably incurred by the Seller with respect to the Transition Employees and attributable to the applicable Transition Period, including but not limited to (in each case, to the extent applicable) salaries, wages, overtime pay, on-call pay, payroll taxes, employee benefits, other compensation, unemployment insurance costs and any other expense, in each case which the Seller would not have incurred but for the fact that the Transition Employees remain

employed by the Seller after the close of business on the Closing Date, but not including fidelity bond costs or errors and omissions insurance premiums or other costs if such costs or premiums are incurred directly by the Purchaser, the identity and amount of which shall be determined by the Seller and promptly communicated to the Purchaser (all such costs, the “**Transition Employee Costs**”). The reimbursement provided for in the preceding sentence shall be included as part of the calculation of the Settlement Payment, notwithstanding any other provision of this Agreement or the other Definitive Agreements. The Purchaser shall defend and indemnify the Seller against, and hold the Seller harmless from, any Losses arising out of or resulting from the fact that any Transition Employee remains employed by the Seller after the close of business on the Closing Date, including without limitation from any acts or omissions of any Transition Employee during the Transition Period and any Losses incurred by the Seller as a result of any claim asserted by any Transition Employee with respect to any act or omission of the Purchaser or any officer, director, employee or agent of the Purchaser during the Transition Period, except to the extent any such Losses are proven by the Purchaser by clear and convincing evidence to have arisen from any written instructions to the Transition Employee by the Seller or any act or omission by the Seller. Any indemnification provided for the benefit of the Seller under this Section 11.04 shall be subject to the applicable terms, conditions and procedures set forth in Section 17.06. To the extent reasonably practicable, the Purchaser shall have in place errors and omission insurance and fidelity bond insurance for the Transition Employees for the Transition Period to the same extent that it expects to have such insurance in place for all employees including Transferred Employees immediately following the Transition Period. This provision is intended to place the Purchaser and the Seller in the same position in which they would have been if all Transition Employees had resigned their employment with Seller at the close of business on the Closing Date and become employees of the Purchaser immediately following the close of business on the Closing Date, and it shall be interpreted, administered and enforced to give effect to such intent. This Section 11.04 shall be binding on and shall inure to the benefit of IndyMac Resources, Inc., which shall, notwithstanding any other provision of this Agreement have the right to enforce this Section 11.04 either as a signatory hereto or a third-party beneficiary hereof.

ARTICLE XII

TAX MATTERS

Section 12.01 Tax Characterization and Net Operating Losses. The Seller and HoldCo hereby acknowledge and agree that for United States federal income tax purposes, the Transaction will be treated as a sale of assets by IndyMac Federal pursuant to Treasury Regulation Section 1.597-5. HoldCo hereby acknowledges and agrees that it will not be permitted to take advantage of any tax benefits relating to net operating losses of IndyMac Federal. To the extent that the Seller, IndyMac Federal or the Purchaser files or causes to be filed any Tax Returns, such Tax Returns shall be filed in accordance with the tax treatment described in this Article XII.

ARTICLE XIII

CLOSING DELIVERIES FOR GROUP 1 TRANSACTION

Section 13.01 Seller's Deliverables. In addition to any other documents to be delivered under other provisions of this Agreement, the Seller shall deliver and release, subject to and in accordance with this Section 13.01, to the Purchaser the following on or prior to the Closing:

- (a) an original Bill of Sale executed by the Seller;
- (b) four originals of the Assignment and Assumption Agreement executed by the Seller;
- (c) four originals of the joinder to this Agreement executed by the FDIC as receiver for IndyMac Federal;
- (d) four originals of each Intellectual Property Assignment executed by the Seller;
- (e) four originals of the Intellectual Property, Data and Information Technology Assets License executed by the Seller and the FDIC in its corporate capacity;
- (f) four originals of the Consent and Collateral Assignment for the FHLB Advances executed by the Seller;
- (g) four originals of the Assignment and Assumption of Leases executed by the Seller;
- (h) with respect to each of the owned Bank Premises listed on Schedule 5.01(b)(i) and each of the owned Servicing Business Premises listed on Schedule 5.01(b)(ii), an original grant deed in recordable form in the relevant jurisdiction, executed by the Seller; and
- (i) such other deeds, bills of sale, certificates of title and other instruments of assignment, transfer and conveyance as are set forth on Schedule 13.01(i), in form and substance to be agreed upon by the Purchaser and the Seller prior to Closing.

Section 13.02 Purchaser's Deliverables. In addition to any other documents to be delivered under other provisions of this Agreement, the Purchaser shall deliver and release, subject to and in accordance with this Section 13.02, to the Seller the following on or prior to the Closing:

- (a) the Group 1 Closing Payment in accordance with this Agreement;
- (b) four originals of the Assignment and Assumption Agreement executed by the Purchaser;

- (c) four originals of the joinder to this Agreement executed by the Purchaser;
- (d) four originals of each Intellectual Property Assignment executed by the Purchaser;
- (e) four originals of the Intellectual Property, Data and Information Technology Assets License executed by the Purchaser;
- (f) four originals of the Consent and Collateral Assignment for the FHLB Advances executed by the Purchaser; and
- (g) four originals of the Assignment and Assumption of Leases executed by the Purchaser.

ARTICLE XIV

CONDITIONS PRECEDENT TO TRANSACTION

Notwithstanding anything to the contrary in this Article XIV, any failure of any of the conditions set forth in Article IX of the Reverse Mortgage Business Asset Purchase Agreement shall not affect the obligation of either party to consummate the Transaction; provided, however that in such case the Assets included in Group 3 shall not be acquired by the Purchaser and the Aggregate Closing Payment, the Aggregate Final Payment and the Aggregate Final Purchase Price shall be calculated excluding the Group 3 Closing Payment, the Group 3 Final Payment and the Group 3 Final Purchase Price, respectively.

Section 14.01 Conditions to Each of HoldCo's, Intermediate HoldCo's and the Purchaser's Obligation. The obligation of each of HoldCo, Intermediate HoldCo and the Purchaser to effect the Closing hereunder is subject to the satisfaction (or waiver by HoldCo, Intermediate HoldCo and/or the Purchaser, as applicable) of all of the following conditions on or prior to the Closing:

- (a) The representations and warranties of the Seller set forth in this Agreement shall be true and accurate in all material respects when made and at and as of the Closing Date;
- (b) The Seller shall have delivered to HoldCo, Intermediate HoldCo and the Purchaser duly executed copies of (i) each of the Definitive Agreements and other agreements related to the Transaction to which it is named as a party and (ii) the instruments of assignment, transfer and conveyance specifically identified in Article XIII hereof and in each of the other Definitive Agreements;
- (c) The Seller shall have delivered to HoldCo, Intermediate HoldCo and the Purchaser such certifications and other documents as are expressly set forth on Exhibit FF and all other deliverables (other than those listed in this Article XIV) required to be delivered by it on or prior to the Closing pursuant to this Agreement and the other Definitive Agreements;

(d) All approvals of trustees, bond insurers or rating agencies that are necessary to permit the Seller to transfer any mortgage servicing assets shall have been obtained other than those the failure of which to obtain would not have a material adverse effect on the benefits of the Transaction to HoldCo, Intermediate HoldCo or the Purchaser;

(e) Subject to Section 14.01(d) above, the Seller shall have requested the consent of all other third parties whose consents are required in order to consummate the Transaction other than those the failure of which to obtain would not have a material adverse effect on the benefits of the Transaction to HoldCo, Intermediate HoldCo or the Purchaser;

(f) No temporary restraining order, preliminary injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Transaction shall be in effect as of the Closing Date;

(g) All approvals or licenses required by Law or any Governmental Authority that are necessary to permit the Seller, the Purchaser, Intermediate HoldCo or HoldCo to perform their respective obligations hereunder and to consummate the Transaction, all of which are listed on Schedule 14.01(g), shall have been obtained, and all applicable waiting periods (and any extensions thereof) imposed by Law shall have expired or otherwise been terminated, including the receipt by each of J.C. Flowers & Co. LLC and Paulson & Co. Inc. of (i) a determination from the OTS substantially to the effect that it and its Affiliates do not control the Purchaser and therefore it is not required to register as a savings and loan holding company and (ii) a determination from the FDIC substantially to the effect that it and its Affiliates will not be deemed to control the Purchaser within the meaning of Section 3(w)(5) of the FDIA and for purposes of cross-guarantee liability under the FDIA, and will not be deemed to be “controlling stockholders” of the Purchaser for purposes of Section 3(u)(1) of the FDIA;

(h) The Seller shall have performed and complied in all material respects with all other covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing;

(i) HoldCo (or the applicable Affiliate of HoldCo) shall have received the requested Seller Financing on the terms and conditions set forth in the Seller Financing Agreements;

(j) The FDIC, as receiver for IndyMac Federal, shall have entered into this Agreement by executing and delivering the joinder to this Agreement that follows the signature pages hereto;

(k) All conditions to the obligations of each of HoldCo, Intermediate HoldCo and the Purchaser to consummate the transactions set forth in each of the Servicing Business Asset Purchase Agreement, the Reverse Mortgage Business Asset Purchase Agreement (subject to the introductory paragraph of this Article XIV), the Securities Sale Agreement, the Loan Sale Agreement and the Participation Structure Documents, if any, which conditions and obligations are not otherwise set forth herein, shall have been satisfied (or waived by HoldCo, Intermediate HoldCo or the Purchaser, as applicable);

(l) The Seller shall have entered into the Transitional Services Agreement containing such terms as mutually agreed by the Seller and the Purchaser;

(m) The Seller shall have entered into the Reverse Mortgage Shared-Loss Agreement containing such terms as mutually agreed by the Seller and the Purchaser; and

(n) Subject to the provisions of Section 10.04 of this Agreement, the FHLB and the Seller shall have entered into the Consent and Collateral Assignment attached hereto as Exhibit C-2.

In furtherance, but not in limitation, of the foregoing, and except as set forth in the introductory paragraph of this Article XIV and in Article IX of the Reverse Mortgage Business Asset Purchase Agreement, each of HoldCo, Intermediate HoldCo and the Purchaser further acknowledges and agrees that it shall not otherwise be a condition to its obligations to consummate the Transaction (or any part thereof) that there shall not have been any material adverse change in the Assets between the date of this Agreement and the Closing.

Section 14.02 Conditions to the Seller's Obligation. The obligation of the Seller to effect the Closing hereunder is subject to the satisfaction (or waiver by the Seller) of all of the following conditions on or prior to the Closing:

(a) The representations and warranties of each of the Purchaser, Intermediate HoldCo and HoldCo set forth in this Agreement shall be true and accurate in all material respects when made and at and as of the Closing Date;

(b) Each of the Purchaser, Intermediate HoldCo and HoldCo shall have delivered, and/or shall have caused its Affiliate to deliver, as applicable, to the Seller (i) duly executed copies of each of the Definitive Agreements and other agreements related to the Transaction to which it is named as a party and (ii) the instruments of assignment, transfer and conveyance specifically identified in Article XIII hereof and in each of the other Definitive Agreements;

(c) The Purchaser shall have delivered to the Seller such certifications, opinions and other documents expressly set forth in Exhibit GG and all other deliverables (other than those listed in this Article XIV) required to be delivered by it on or prior to the Closing pursuant to this Agreement and the other Definitive Agreements;

(d) HoldCo and Intermediate HoldCo shall have delivered to the Seller such certifications, opinions and other documents expressly set forth in Exhibit HH and Exhibit II, respectively; and each of HoldCo and Intermediate HoldCo shall have delivered all other deliverables (other than those listed in this Article XIV) required to be delivered by it on or prior to Closing pursuant to this Agreement;

(e) All approvals of trustees, bond insurers or rating agencies that are necessary to permit the Seller to transfer any mortgage servicing assets shall have been obtained other than those the failure of which to obtain would not have a material adverse effect on the benefits of the Transaction to the Seller;

(f) Subject to Section 14.02(e), each of the Purchaser, Intermediate HoldCo and HoldCo shall have requested the consent of all other third parties whose consents are required to consummate the Transaction other than those the failure of which to obtain would not have a material adverse effect on the benefits of the Transaction to the Seller;

(g) No temporary restraining order, preliminary injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Transaction shall be in effect as of the Closing Date;

(h) All approvals or licenses required by Law or any Governmental Authority that are necessary to permit the Seller, the Purchaser, Intermediate HoldCo or HoldCo to perform their respective obligations hereunder and to consummate the Transaction, all of which are listed on Schedule 14.01(g), shall have been obtained, and all applicable waiting periods (and any extensions thereof) imposed by Law shall have expired or otherwise been terminated, including the receipt by each of J.C. Flowers & Co. LLC and Paulson & Co. Inc. of (i) a determination from the OTS substantially to the effect that it and its Affiliates do not control the Purchaser and therefore it is not required to register as a savings and loan holding company and (ii) a determination from the FDIC substantially to the effect that it and its Affiliates will not be deemed to control the Purchaser within the meaning of Section 3(w)(5) of the FDIA and for purposes of cross-guarantee liability under the FDIA, and will not be deemed to be “controlling stockholders” of the Purchaser for purposes of Section 3(u)(1) of the FDIA;

(i) Each of the Purchaser, Intermediate HoldCo and HoldCo shall have performed and complied in all material respects with all other covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing;

(j) The Purchaser shall have entered into this Agreement by executing and delivering the joinder to this Agreement that follows the signature page hereto;

(k) All conditions to the obligations of the Seller to consummate the transactions set forth in each of the Servicing Business Asset Purchase Agreement, the Reverse Mortgage Business Asset Purchase Agreement, the Securities Sale Agreement, the Loan Sale Agreement and the Participation Structure Documents, which conditions and obligations are not otherwise set forth herein, shall have been satisfied (or waived by the Seller);

(l) The Purchaser shall have entered into the Transitional Services Agreement containing such terms as mutually agreed by the Seller and the Purchaser;

(m) The Purchaser and Financial Freedom Acquisition LLC shall have entered into the Reverse Mortgage Shared-Loss Agreement containing such terms as mutually agreed by the Seller and the Purchaser; and

(n) Subject to the provisions of Section 10.04 of this Agreement, the FHLB and the Purchaser shall have entered into the Consent and Collateral Assignment attached hereto as Exhibit C-2.

ARTICLE XV

REPRESENTATIONS AND WARRANTIES

Section 15.01 Seller's Representations and Warranties. The Seller hereby represents and warrants to HoldCo and Intermediate HoldCo, and, on the Closing Date, to the Purchaser that the statements contained in this Section 15.01 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Section 15.01).

(a) Authority of the Seller. The Seller has all requisite corporate power and authority to execute and deliver this Agreement, the other Definitive Agreements and all other related agreements and to perform its obligations hereunder and thereunder. The execution, delivery and performance of this Agreement and the other Definitive Agreements (including all instruments of transfer to be delivered pursuant to this Agreement, the other Definitive Agreements and all other related agreements) and the consummation of the transactions contemplated hereby and thereby by the Seller have been duly and validly authorized and, assuming the due authorization, execution and delivery by the other parties hereto and thereto (as applicable), this Agreement and the other Definitive Agreements evidence valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, except as enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting or relating to the enforcement of creditors' rights generally and (ii) general principles of equity.

(b) No Conflicts. None of the execution and delivery of this Agreement or any of the other Definitive Agreements by the Seller, the consummation of the Transaction, or the fulfillment of or compliance with the terms and conditions of this Agreement or any of the other Definitive Agreements by the Seller, will conflict with or result in a breach of any of the terms, conditions or provisions of the Seller's charter or by-laws or other constituent documents.

(c) No Litigation Pending. Except as set forth on Schedule 15.01(c), there is no action, suit, proceeding or investigation pending against the Seller which, either individually or in the aggregate, if adversely decided against the Seller would reasonably be expected to materially and adversely affect the Seller's ability to perform its obligations under this Agreement or any of the other Definitive Agreements.

(d) No Consent Required. No consent, approval, authorization or order of any court, governmental agency or body, or non-governmental entity is required for the execution, delivery and performance of this Agreement or any of the other Definitive Agreements, or the consummation of the Transaction by the Seller, except for those consents, approvals, authorizations and orders that (x) have been or will be obtained prior to the Closing Date, or (y) have not been and will not be obtained due to the Seller's exercise of its statutory authority to transfer assets without obtaining any approval, assignment or consent with respect to such transfer.

(e) No Broker's Fees. Except for Barclays Capital Inc. (including any predecessor company or company acquired by Barclays Capital Inc.) and Deutsche Bank Securities, Inc., and the fees and expenses payable to each of them (which fees and expenses will not be the responsibility of HoldCo, Intermediate HoldCo or the Purchaser), the Seller has not employed any broker, investment banker or registered financial adviser in a manner that would reasonably be expected to result in any liability on the part of HoldCo, Intermediate HoldCo or the Purchaser for any broker's fees, commissions or similar fees in connection with the consummation of the Transaction.

Section 15.02 Representations and Warranties Regarding the Purchaser. HoldCo, Intermediate HoldCo and the Purchaser jointly and severally represent and warrant to the Seller that the statements contained in this Section 15.02 are correct and complete as of the Closing Date.

(a) Due Organization. The Purchaser is a federally chartered, stock form savings bank or savings association, duly organized, validly existing and in good standing under the laws of the United States of America.

(b) Authority and Capacity; Performance. The Purchaser has the requisite power, authority and capacity to execute and deliver this Agreement and the other Definitive Agreements, and the other documents, instruments and agreements required to be executed by the Purchaser in connection with this Agreement and the other Definitive Agreements, to perform its obligations hereunder and thereunder and to consummate the Transaction. The execution, delivery and performance of the Definitive Agreements by the Purchaser does not and the consummation of the Transaction will not (i) violate any material provision of law, rule or regulation or any judgment, order, writ, injunction or decree of any court or Governmental Authority applicable to the Purchaser, (ii) conflict with any of the terms of (x) the Purchaser's organizational documents or (y) any other governing instrument relating to the conduct of the Purchaser's business or the ownership of its properties, or (iii) result in or give rise to any right of termination, cancellation or acceleration under any other agreement to which the Purchaser is a party or by which it is bound.

(c) Authorization and Binding Agreement. The execution and delivery of this Agreement and the other Definitive Agreements, and all documents, instruments and other agreements required to be executed in connection with this Agreement and the other Definitive Agreements, and the consummation of the Transaction, each have been duly authorized by all necessary action on behalf of the Purchaser, and assuming the due authorization, execution and delivery by the other parties hereto and thereto (as applicable), this Agreement and the other Definitive Agreements are, and each document, instrument and other agreement contemplated by this Agreement and the other Definitive Agreements to be delivered by the Purchaser, when executed and delivered in accordance with the provisions hereof and thereof, will be, a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting or relating to the enforcement of creditors' rights generally and (ii) general principles of equity.

(d) No Violation. The Purchaser is not in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any state, municipality or other political subdivision or agency of any of the foregoing, or any court or other tribunal having jurisdiction over the Purchaser or any assets of the Purchaser, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of the business of the Purchaser, or the ownership of the properties of the Purchaser, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of the Purchaser or the ability of the Purchaser to perform, satisfy or observe any obligation or condition under this Agreement or any of the other Definitive Agreements.

(e) Consents and Approvals of Governmental Authorities. Except for those consents, approvals, authorizations, orders, waivers, declarations, filings and registrations that have been or will be obtained or made prior to the Closing Date, no consent, approval, authorization, order or waiver of, or declaration, filing or registration with, any court, governmental agency or body, or non-governmental entity is required for the execution, delivery and performance of this Agreement or any of the other Definitive Agreements, or the consummation of the Transaction, by the Purchaser.

(f) Ability to Pay. At the Closing, the Purchaser will have sufficient funds available to enable it to pay the Aggregate Final Purchase Price (after deducting the Seller Financing).

(g) Excluded Assets. The Purchaser acknowledges that it is not purchasing and has no right to or interest in any of the Excluded Assets or any amounts recoverable or recovered therefrom.

(h) Limitations on Liability. The Purchaser acknowledges and agrees that this Agreement and the other Definitive Agreements, except for the FDIC Guaranty, are entered into by the Seller or the FDIC, as receiver for IndyMac Federal, and not by the FDIC in its corporate capacity.

Section 15.03 HoldCo and Intermediate HoldCo's Representations and Warranties. HoldCo and Intermediate HoldCo jointly and severally represent and warrant to the Seller that the statements contained in this Section 15.03 are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Section 15.03).

(a) Due Organization. Each of HoldCo and Intermediate HoldCo is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Authority and Capacity; Performance. Each of HoldCo and Intermediate HoldCo has the requisite power, authority and capacity to enter into this Agreement and the other documents, instruments and agreements required to be executed by it in connection herewith, to perform its obligations hereunder and thereunder and to consummate the

Transaction. Subject solely to the receipt of all prior approvals and consents (if any) that are required to be obtained by HoldCo or Intermediate HoldCo pursuant to Section 14.02 to effect the Transaction, the execution, delivery and performance of this Agreement by HoldCo and Intermediate HoldCo does not and the consummation of the Transaction will not (i) violate any material provision of law, rule or regulation or any judgment, order, writ, injunction or decree of any court or Governmental Authority applicable to HoldCo or Intermediate HoldCo, or (ii) conflict with any of the terms of (x) HoldCo or Intermediate HoldCo's organizational documents or (y) any other governing instrument relating to the conduct of HoldCo or Intermediate HoldCo's business or the ownership of its properties, or (iii) result in or give rise to any right of termination, cancellation or acceleration under any other agreement to which HoldCo or Intermediate HoldCo is a party or by which it is bound.

(c) Authorization and Binding Agreement. The execution and delivery of this Agreement and all documents, instruments and other agreements required to be executed in connection herewith, and the consummation of the Transaction, each have been duly authorized by all necessary action on behalf of HoldCo and Intermediate HoldCo, as applicable, and, assuming the due authorization, execution and delivery by the Seller (or any other counterparty), this Agreement is, and each document, instrument and other agreement contemplated by this Agreement to be delivered by HoldCo or Intermediate HoldCo, as applicable, when executed and delivered in accordance with the provisions hereof, will be, a legal, valid and binding obligation of HoldCo and/or Intermediate HoldCo, as applicable, enforceable against HoldCo and/or Intermediate HoldCo, as applicable, in accordance with its terms, except as enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting or relating to the enforcement of creditors' rights generally and (ii) general principles of equity.

(d) No Litigation Pending. Except as set forth on Schedule 15.03(d), there is no action, suit, proceeding or investigation pending against HoldCo or Intermediate HoldCo which, either individually or in the aggregate, if adversely decided against HoldCo or Intermediate HoldCo, as applicable, would reasonably be expected to materially and adversely affect HoldCo's or Intermediate HoldCo's ability to perform its obligations under this Agreement.

(e) No Violation. None of HoldCo, Intermediate HoldCo or any of their Subsidiaries is in violation of any statute, regulation, order, decision, judgment or decree of, or any restriction imposed by, the United States of America, any state, municipality or other political subdivision or agency of any of the foregoing, or any court or other tribunal having jurisdiction over it or its assets, or any foreign government or agency thereof having such jurisdiction, with respect to the conduct of its business, or the ownership of its properties, which, either individually or in the aggregate with all other such violations, would materially and adversely affect the business, operations or condition (financial or otherwise) of HoldCo or Intermediate HoldCo or the ability of HoldCo or Intermediate HoldCo to perform, satisfy or observe any obligation or condition under this Agreement.

(f) Consents and Approvals of Governmental Authorities. Except for those consents, approvals, authorizations, orders, waivers, declarations, filings, determinations and registrations that have been or will be obtained or made prior to the Closing Date, no consent,

approval, authorization, order or waiver of, or declaration, filing, determination or registration with, any court, governmental agency or body, or non-governmental entity is required for the execution, delivery and performance of this Agreement or any of the other Definitive Agreements, or the consummation of the Transaction, by HoldCo or Intermediate HoldCo, or the contribution of the Minimum Equity Capital to HoldCo and the related acquisition of interests in HoldCo by HoldCo's members.

(g) No Broker's Fees. None of HoldCo, HoldCo's members or Intermediate HoldCo has employed any broker, investment banker or registered financial adviser in a manner that would reasonably be expected to result in any liability on the part of the Seller for any broker's fees, commissions or similar fees in connection with the consummation of the Transaction.

(h) HoldCo Qualifications. Each of HoldCo, HoldCo's members and Intermediate HoldCo is (i) a sophisticated Person having knowledge and experience in business matters and, in particular, in such matters related to assets similar to the Assets, such that it is capable of evaluating independently the merits and risks of a purchase of the Assets and (ii) is able to bear the economic risks of such a purchase.

(i) Ability to Pay. HoldCo has sufficient funds available to enable it to pay the Capital Contribution.

(j) Limitations on Liability. Each of HoldCo, on behalf of itself and its members, and Intermediate HoldCo acknowledges and agrees that this Agreement and the other Definitive Agreements, except the FDIC Guaranty, are entered into by the Seller or the FDIC, as receiver for IndyMac Federal, and not by the FDIC in its corporate capacity.

(k) Government Inquiries. During the past three (3) years, there have been no material inspection reports, questionnaires, inquiries, demands or requests for information received by HoldCo, Intermediate HoldCo or, to the best of HoldCo's knowledge, HoldCo's members, from, or any material statement, report or other document relating to such an inquiry filed by HoldCo, Intermediate HoldCo, or to the best of HoldCo's knowledge, HoldCo's members, with, the federal government or any federal administrative agency (including, but not limited to, HUD, the Securities and Exchange Commission, Justice Department, Internal Revenue Service, Department of Labor, Occupational Safety and Health Administration, Federal Trade Commission, National Labor Relations Board, and Interstate Commerce Commission), any state securities administrator or any other Governmental Authority, in each case regarding possible illegal conduct by HoldCo, Intermediate HoldCo or HoldCo's members.

(l) No Bankruptcies. Other than as a creditor, none of HoldCo, HoldCo's members or Intermediate HoldCo has voluntarily sought, consented to or acquiesced in the protection of, or become party to or made the subject of the Bankruptcy Code of the United States of America or any other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

(m) Due Diligence.

(i) HoldCo and Intermediate HoldCo are solely responsible for conducting the due diligence investigation of the assets and liabilities to be acquired pursuant to the Definitive Agreements. Each of HoldCo and Intermediate HoldCo has made detailed inquiries concerning such assets and liabilities and has received and had an opportunity to review all information necessary to make its own independent informed decisions concerning the same and its decision to enter into this Agreement and all other related agreements and to consummate the transactions contemplated hereby and thereby. HoldCo's members have received the information necessary to make their own independent decisions to invest in HoldCo (including the payment of the Minimum Equity Capital). Each of HoldCo, HoldCo's members and Intermediate HoldCo has completed its due diligence investigation of such assets and liabilities to its full satisfaction.

(ii) None of HoldCo, HoldCo's members or Intermediate HoldCo is relying on any forecasted operating results or budgets prepared by the Seller or any other federal government agency, or any of its respective directors, officers, partners, employees, contractors, attorneys, agents or representatives, but rather is relying upon its own analysis, plan of operation and financial forecasts or such other information as it deems appropriate. Each of HoldCo, on its own behalf and on behalf of its members, and Intermediate HoldCo acknowledges that, independently and without reliance on the Seller (other than with respect to the Seller's representations and warranties set forth in this Agreement and the other Definitive Agreements) or any other government agency or any of its respective officers, directors, partners, employees, contractors, attorneys, agents or representatives, and based upon such information as it deems adequate, appropriate and necessary, (x) each of HoldCo and Intermediate HoldCo has made its own analysis and decision to enter into this Agreement, and all related agreements and to consummate the Transaction and (y) HoldCo's members have made their own analysis and decision to pay the Minimum Equity Capital.

(n) Representations Remain True.

(i) (x) Each of HoldCo and its members has executed and delivered to the Seller a Purchaser Eligibility Certification and a confidentiality agreement in connection with this Agreement and the Transaction and (y) each of Paulson & Co. Inc. and IMB Management Holdings LP ("**Holdings**") has executed and delivered to the Seller a Bid Certification and Qualification Request.

(ii) All certifications, representations and warranties made by or on behalf of HoldCo, HoldCo's members or Intermediate HoldCo in the Qualification Requests, the Purchaser Eligibility Certifications, the confidentiality agreements, the Bid Certifications, the proposal of HoldCo dated December 15, 2008 to acquire the Assets, the business plan of HoldCo submitted with such proposal, the Purchaser's application to the FDIC for deposit insurance, the Purchaser's, HoldCo's and Intermediate HoldCo's application to the OTS for the organization of the Purchaser as a direct, wholly owned subsidiary, and the registration of HoldCo and Intermediate HoldCo as federal savings

and loan holding companies (which are affirmed and ratified hereby) are and remain true and correct in all material respects and, with respect to the foregoing applications and registrations filed with the OTS and FDIC, as amended and supplemented, do not fail to state any fact required to make the information contained therein not misleading.

(o) Minimum Equity Capital. HoldCo has received, and since its receipt has continuously maintained, the Minimum Equity Capital; provided that the parties hereto agree that HoldCo is deemed to have received and to have continuously maintained the Deposit as part of the Minimum Equity Capital.

(p) Written Commitment. HoldCo has obtained, and has provided to the Seller, a written commitment from each Investor to pay to the Seller any amount of the Minimum Equity Capital that has been paid out to such Investor in violation of this Agreement.

ARTICLE XVI

TERMINATION

Section 16.01 Termination of Agreement. This Agreement may be terminated and the Transaction may be abandoned at any time prior to Closing, except as otherwise provided in the last paragraph of this Section 16.01:

(a) by the mutual written consent of HoldCo and the Seller;

(b) by HoldCo upon written notice to the Seller:

(i) if the Transaction is not consummated as a result of the failure of one of the conditions set forth in Section 14.01 to be satisfied prior to March 31, 2009, or if any of such conditions becomes incapable of satisfaction, unless such failure or incapability is a result of a breach by HoldCo, Intermediate HoldCo or their Affiliates of this Agreement or any of the other Definitive Agreements (including a failure to act by HoldCo, Intermediate HoldCo or their Affiliates);

(ii) in the event of a material breach of this Agreement by the Seller, which breach was not or cannot be cured within ten (10) days of receipt by the Seller of written notice from HoldCo specifying the nature of such breach and requesting that it be cured; or

(iii) if the Transaction is not consummated prior to March 31, 2009, provided that (x) such failure to close is not the result of a breach of a representation, warranty, covenant or other agreement contained in this Agreement or any of the other Definitive Agreements by HoldCo, Intermediate HoldCo or their Affiliates and (y) this Agreement has not otherwise been terminated pursuant to Section 16.01(b)(i) or Section 16.01(b)(ii).

(c) by the Seller upon written notice to HoldCo:

(i) if the Transaction is not consummated as a result of the failure of one of the conditions set forth in Section 14.02 to be satisfied prior to March 31, 2009, or if any of such conditions becomes incapable of satisfaction, unless such failure or incapability is a result of a breach by the Seller or its Affiliates of this Agreement or the other Definitive Agreements (including a failure to act by the Seller or its Affiliates);

(ii) in the event of a material breach of this Agreement by HoldCo, which breach was not or cannot be cured within ten (10) days of receipt by HoldCo of written notice from the Seller specifying the nature of such breach and requesting that it be cured; or

(iii) if the Transaction is not consummated prior to March 31, 2009, provided that (x) such failure to close is not the result of a breach of a representation, warranty, covenant or other agreement contained in this Agreement or the other Definitive Agreements by the Seller and (y) this Agreement has not otherwise been terminated pursuant to Section 16.01(c)(i) or Section 16.01(c)(ii).

Notwithstanding anything in this Section 16.01 to the contrary, if the conditions set forth in Section 14.01(n) and Section 14.02(n) have not been satisfied or have become incapable of satisfaction, or if the transactions contemplated by the Consent and Collateral Assignment shall not have been consummated, prior to the close of business on March 23, 2009, neither party shall have the right to terminate this Agreement unless such party has complied with the obligation set forth in Section 10.04 and, notwithstanding the good faith efforts of the parties, the Reformed Agreements shall not have been executed and delivered and the Transaction shall not have been consummated prior to March 31, 2009.

Section 16.02 Effect of Termination. In the event of termination of this Agreement pursuant to Section 16.01, none of the parties hereto (nor any of their respective former, current or future general or limited partners, direct or indirect equity holders, managers, members, directors, officers, Affiliates, representatives or agents) will have any liability or further obligation to any other party, except for liabilities or obligations arising from or in connection with any breach under this Agreement or any of the other Definitive Agreements, or as otherwise provided in Section 16.03.

Section 16.03 Survival. Notwithstanding anything to the contrary in Section 16.02, each of the following Sections of this Agreement shall survive termination of this Agreement: Section 16.04 (Deposit Refund), Section 16.05 (Backstop Purchase), Section 16.06 (Failure to Close), Section 16.07 (Investor Liability), Section 19.02 (Governing Law), Section 19.03 (Costs and Expenses), Section 19.06 (Entire Agreement), Section 19.07 (Jurisdiction and Venue), Section 19.08 (Waiver of Jury Trial) and Section 19.15 (Confidentiality; Disclosures).

Section 16.04 Deposit Refund. The Seller shall refund the Deposit to HoldCo if this Agreement is terminated pursuant to any subsection of Section 16.01 other than Section 16.01(c)(ii); provided, however, that in the event of termination pursuant to Section 16.01(c)(i), the Seller shall not refund the Deposit if, subject to the introductory paragraph of Article XIV, the failure of one of the conditions set forth in Section 14.02 to be satisfied (or to be capable of satisfaction) is a result of a breach by HoldCo, Intermediate HoldCo

or their Affiliates of this Agreement or any of the other Definitive Agreements (including a failure to act by HoldCo, Intermediate HoldCo or their Affiliates). Except as otherwise provided in Section 16.05, if HoldCo is not entitled to a refund of the Deposit under this Section 16.04, the Deposit shall be retained by the Seller, and none of the Purchaser, Intermediate HoldCo or HoldCo shall have any right of claim therefor. The Seller's retention of the Deposit pursuant to this Section 16.04 shall in no way preclude, or constitute a waiver of, any other remedy the Seller may have against the Purchaser, Intermediate HoldCo or HoldCo at law or in equity for breach of this Agreement.

Section 16.05 Backstop Purchase. If the Transaction is not completed on the terms set forth in this Agreement by March 31, 2009, or if this Agreement is terminated in accordance with Section 16.01, Holdings and Paulson & Co. Inc., on behalf of the Investors listed on Schedule 16.05 (collectively, the "**Backstop Purchasers**") shall acquire the assets and liabilities included in Group 4 and Group 5 on the terms, and at the final purchase price, as adjusted, specified in, the Securities Sale Agreement and the Loan Sale Agreement, respectively (the "**Backstop Purchase**"); provided, however, that the Seller shall have no obligation to enter into the Backstop Purchase; provided, further, that if the Seller does not provide written notice of its intent to enter into the Backstop Purchase within ten (10) Business Days of date of termination of this Agreement in accordance with Section 16.01, the obligation of the Backstop Purchasers under this Section 16.05 shall terminate and be of no further effect. In the event the Seller agrees to the Backstop Purchase, (i) such acquisition shall be subject to the execution and delivery of definitive agreements containing terms and conditions that are, to the extent applicable, substantially the same as those set forth in this Agreement, the Securities Sale Agreement and the Loan Sale Agreement, including only those closing conditions specified in Article XIV hereof, to the extent relevant; provided, however, that such definitive agreements shall contain a structure for the Backstop Purchase that is mutually agreed upon by the Backstop Purchasers and the Seller and (ii) such definitive agreements will be executed within ten (10) Business Days of the Seller's notice to enter into the Backstop Purchase and such Backstop Purchase shall be consummated within fourteen (14) calendar days of the date of execution of such definitive agreements; provided, further, that under the Mortgage Loan Master Repurchase Agreement, a form of which is attached as Exhibit M hereto, REO Property shall be treated no differently with respect to Applicable Percentage and Asset Value Amount than Loans (as such terms are defined in the Mortgage Loan Master Repurchase Agreement). The Backstop Purchase shall not affect any liability that HoldCo may have for any breach of this Agreement or otherwise entitle HoldCo to any refund of the Deposit, except that, if the Transaction is not consummated under circumstances that would permit the Seller to retain the Deposit under Section 16.04, the entire Deposit shall be applied to pay, in part, the amount due at the closing of the Backstop Purchase and, if such Backstop Purchase is completed, HoldCo shall have no further liability under this Agreement or any of the other Definitive Agreements.

Section 16.06 Failure to Close. If this Agreement is terminated (a) because any condition set forth in Section 14.02(a) (only with respect to the failure of a representation and warranty to be true when made), Section 14.02(b), Section 14.02(d), Section 14.02(f), Section 14.02(i) hereof that is required to be satisfied by HoldCo or Intermediate HoldCo has not been satisfied (and HoldCo's or Intermediate HoldCo's inability to satisfy such condition is not due to a breach by the Seller of any of the Seller's delivery obligations under this Agreement), (b) because of HoldCo's or Intermediate HoldCo's failure to comply with any reasonable request

of either the Seller or any third party whose consent or approval is required to effect the transfer of the Assets, or (c) because of HoldCo's failure to pay, in a timely manner, amounts due from HoldCo pursuant to this Agreement, each of HoldCo and Intermediate HoldCo specifically acknowledges and agrees that the Seller shall be entitled to exercise any or all of the following remedies, separately or in combination: (i) retain the Deposit to the extent provided in Section 16.04; (ii) disqualify HoldCo, Intermediate HoldCo and the Investors from participating in any future sales of any kind by the Seller or the FDIC, including as receiver or conservator for any entity; and (iii) such other remedies as may be available to the Seller at law or in equity for a breach of this Agreement.

Section 16.07 Investor Liability. The Seller's sole recourse for breach of this Agreement shall be against HoldCo, except in the case of a breach of the obligation of HoldCo in respect of the Minimum Equity Capital described in Section 10.01(d) hereof in which case no provision of this Agreement shall be construed to preclude any remedy available to the Seller against the Investors; provided, however, that the Seller acknowledges and agrees that, if the Transaction is not consummated, in no event shall the Investors or any of their respective former, current or future general or limited partners, stockholders, managers, members, directors, officers, affiliates or agents have aggregate liability with respect to the Transaction in excess of the Minimum Equity Capital.

ARTICLE XVII

REIMBURSEMENT FOR LOSSES

Section 17.01 Reimbursement Related to the Seller's Assets, Acts or Omissions. From and after the Closing Date and subject to the limitations set forth in this Section 17.01 and Section 17.08 and compliance by the Reimbursed Parties with Section 17.04, the Seller shall reimburse the Reimbursed Parties as follows:

(a) The Seller will reimburse the Reimbursed Parties for Losses incurred as a result of any Third Party Claims relating to liabilities arising from assets of or the acts or omissions of the Failed Thrift, IndyMac Federal or the Seller prior to the Closing, including Losses resulting from any settlement of any such Third Party Claim to which the Seller has provided its prior written consent; provided, however, that any Third Party Claim with respect to which reimbursement is sought pursuant to this Section 17.01(a) must be commenced within two (2) years after the Closing Date (three (3) years after the Closing Date if the Third Party Claim is brought by the FHLB under any Contract entered into by the Seller or the Failed Thrift governing the assumed FHLB Advances and assumed by the Purchaser hereunder; provided, however, that the Seller shall have no obligation hereunder following the date that is two (2) years after the Closing Date to reimburse any Reimbursed Party for a Third Party Claim brought by the FHLB after the occurrence of an "Event of Default" by the Purchaser, as such term is used in the Consent and Collateral Assignment).

(b) Notwithstanding anything to the contrary set forth in this Agreement or the other Definitive Agreements, the Seller will not reimburse the Reimbursed Parties for:

(i) Excluded Losses, unless such Losses are incurred as a direct result of a final, nonappealable order of a court of competent jurisdiction awarding damages in connection with a Third Party Claim;

(ii) Losses arising from or in connection with any Third Party Claim in which the claimant is a mortgagor unless (x) such Third Party Claim is asserted as a part of a class action lawsuit, (y) a court of competent jurisdiction has rendered a final, nonappealable order in favor of the mortgagor finding that the related mortgage loan or mortgage note is rescinded, void or unenforceable, or (z) a court of competent jurisdiction has, in a final, nonappealable order, awarded damages to the mortgagor that are in excess of the then unpaid principal balance of the related mortgage loan;

(iii) Losses attributable to or arising from overhead allocations or general internal and administrative costs or the costs of administering or complying with the preapproval, submission or reporting requirements imposed by the Seller in connection with the asset sale (i.e., in-house counsel costs);

(iv) Losses reimbursable or payable by any Person other than the Seller or the FDIC, including but not limited to recovery in the form of insurance proceeds;

(v) Losses attributable solely to or arising solely from any violation or alleged violation by any Reimbursed Party (other than the Acquired Subsidiary prior to the Closing Date) of any Law, including the antitrust, branching, banking or bank holding company or securities laws of any Governmental Authority; provided, that reimbursement of Losses attributable solely to or arising solely from any such alleged violation will not be restricted by this clause if there is a final, nonappealable, affirmative finding of a court of competent jurisdiction that no violation of Law related to such allegation exists (other than as a result of any settlement or consent order or decree unless the Seller has consented to the same in writing);

(vi) Losses arising from or in connection with a claim based on the rights of any present or former shareholder, member, partner or equityholder of the Purchaser or any Subsidiary or Affiliate of the Purchaser regardless of whether any such Person is also a former shareholder of the Failed Thrift;

(vii) Losses arising from or in connection with any liability for Taxes or fees assessed with respect to the consummation of the Transaction, including any subsequent transfer of any assets or assumption of any liabilities to any Subsidiary or Affiliate of the Purchaser, except as expressly provided herein or in the other Definitive Agreements;

(viii) except as expressly provided in this Article XVII or in the other Definitive Agreements, Losses attributable to or arising from any claim based on any action or inaction of any Reimbursed Party (other than the Acquired Subsidiary prior to the Closing Date), and nothing in this Agreement shall be construed to provide reimbursement for Losses incurred by (x) the Failed Thrift or the Seller, (y) any Subsidiary or Affiliate of the Failed Thrift or the Seller, or (z) any present or former

director, officer, employee or agent of the Failed Thrift or the Seller or its Subsidiaries or Affiliates; provided that the Seller, in its discretion, may provide reimbursement hereunder for any Losses incurred by any present or former director, officer, employee or agent of the Failed Thrift or the Seller, or its Subsidiaries or Affiliates who is also or becomes a director, officer, employee or agent of the Purchaser or its Subsidiaries or Affiliates;

(ix) Losses caused solely by any inaccuracy or breach by the Purchaser or any Subsidiary or Affiliate of the Purchaser of any of the representations and warranties contained in Section 15.02 or Section 15.03 of this Agreement or in the other Definitive Agreements; or

(x) except as expressly provided in the other Definitive Agreements, Losses arising out of or relating to the condition of or generated by an Asset arising from or relating to the presence, storage or release of any hazardous or toxic substance, or any pollutant or contaminant, or condition of such Asset which violate any applicable Federal, State or local law or regulation concerning environmental protection;

(xi) Losses based on, related to or arising from any asset, including a loan, acquired or liability assumed by the Purchaser or any Subsidiary or Affiliate of the Purchaser, other than pursuant to this Agreement or the other Definitive Agreements.

The Reimbursed Party's failure to settle or enter into a consent decree or order shall not constitute a failure to mitigate Losses with respect to any alleged violation of the type referred to in clause (v) of this Section 17.01(b) if the Reimbursed Party has provided the Seller with written notice of, and a request that the Seller consent to, such proposed settlement, order or consent decree and the Seller fails to provide such consent within ten (10) Business Days after having received such notice and request.

Section 17.02 Tax Reimbursement. Notwithstanding Section 17.01, the Seller shall reimburse and hold harmless the Reimbursed Parties for any Taxes imposed with respect to the Failed Thrift, IndyMac Federal, the Acquired Subsidiary or the Seller for any taxable periods (or portions thereof) ending on or before the Closing Date, including as a result of the Failed Thrift, IndyMac Federal or the Acquired Subsidiary being treated at any time prior to the Closing as a member of a consolidated, combined, unitary or similar group of companies pursuant to Treasury Regulation Section 1.1502-6 or any similar provision of Law or as a result of any Tax allocation, indemnification or sharing agreement or arrangement in effect prior to the Closing. For purposes of the Definitive Agreements, any Taxes for a Tax period that includes but does not end on the Closing Date shall be allocated between (i) the portion thereof ending on the Closing Date and (ii) the portion thereof ending after the Closing Date on a closing of the books basis, except that in the case of Taxes, deductions or credits determined on a periodic basis, the amount of Tax, deduction or credit shall be allocated on a daily pro rata basis. Notwithstanding anything in this Agreement or any of the other Definitive Agreements to the contrary, the Seller's obligations under this Section 17.02 shall survive for the duration of the statute of limitations for such tax liabilities; provided, however, that the Reimbursed Parties may not take any action to toll the statute of limitations for such Taxes, unless (i) such Reimbursed Parties are requested in writing

to do so by the Internal Revenue Service or any relevant taxing authority, or (ii) the Seller provides its written consent, not to be unreasonably withheld or delayed.

Section 17.03 Failure to Obtain Third-Party Consents Reimbursement; GSE Reimbursement.

(a) Notwithstanding Section 17.01, the Seller shall reimburse the Reimbursed Parties for any Losses (other than Excluded Losses) incurred as a result of the (i) Seller's failure to obtain the consent of all third parties (other than the consents referred to in Section 14.01(d) and Section 14.02(e)) whose consents are required in order to consummate the Transaction and (ii) any breach or alleged breach of a contract or agreement otherwise requiring such third party consent by the Purchaser solely as a result of such failure, regardless of whether the Seller requests a consent that is not received or the Seller does not request a consent consistent with its statutory authority, provided, however, that (i) there shall be no reimbursement to the extent that such Loss has resulted in a reimbursement of a pro-rata portion of the Group 3 Final Purchase Price pursuant to the Reverse Mortgage Business Asset Purchase Agreement or an adjustment to the Aggregate Final Purchase Price, including an adjustment to the Group 2 Final Purchase Price pursuant to the Servicing Business Asset Purchase Agreement, and (ii) such Losses shall have been incurred and a claim for the same made in accordance with the claims procedures specified in Section 17.04 within two (2) years after the Closing Date.

(b) Notwithstanding Section 17.01, the Seller shall reimburse the Reimbursed Parties for any Losses (other than Excluded Losses) incurred as a result of the following Third Party Claims:

(i) Third Party Claims made by Fannie Mae or Freddie Mac relating to any liabilities or obligations imposed on the seller of Mortgage Loans under the applicable Servicing Agreements (as each such term is defined in the Servicing Business Asset Purchase Agreement), in any case only with respect to Mortgage Loans acquired by Fannie Mae or Freddie Mac from the Seller, IndyMac Federal or the Failed Thrift after July 11, 2008, which claims are commenced within five (5) years after the Closing Date;

(ii) Third Party Claims made by Ginnie Mae relating to any liabilities or obligations imposed on the seller of Mortgage Loans under the applicable Servicing Agreements (as each such term is defined in the Servicing Business Asset Purchase Agreement), in any case only with respect to Mortgage Loans acquired by Ginnie Mae from the Seller, IndyMac Federal or the Failed Thrift at any time, which claims are commenced within five (5) years after the Closing Date; and

(iii) Third Party Claims made by Fannie Mae, Freddie Mac or Ginnie Mae relating to any liabilities or obligations imposed on the seller of MSR Mortgage Loans under the applicable Servicing Agreements (as each such term is defined in the Reverse Mortgage Business Asset Purchase Agreement), in any case only with respect to MSR Mortgage Loans acquired by Fannie Mae, Freddie Mac or Ginnie Mae from Seller, Financial Freedom, IndyMac Federal or the Failed Thrift, which claim is commenced within ten (10) years after the Closing Date; provided, however, that the time period shall

be reduced to five (5) years after the Closing Date, with respect to MSR Mortgage Loans acquired by Fannie Mae from the Seller, IndyMac Federal or the Failed Thrift, at such time as the Seller provides to the Purchaser evidence of an agreement by Fannie Mae to release, or to agree not to make a claim against or otherwise pursue, the Purchaser with respect to any liabilities or obligations imposed on the seller of such MSR Mortgage Loans under the applicable Servicing Agreements.

Section 17.04 Conditions Precedent to Reimbursement. It shall be a condition precedent to the obligation of the Seller to reimburse any Person pursuant to this Article XVII that such Person shall, with respect to any Third Party Claim against such Person for which such Person is or may be entitled to reimbursement hereunder:

(a) give written notice to the Seller in the manner and at the address provided in Article XVIII of such Third Party Claim as soon as practicable, but in no event later than ten (10) Business Days, after such Person becomes aware of such Third Party Claim; provided that, such notice shall describe in reasonable detail the facts giving rise to any claim for reimbursement hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Person being reimbursed and as the Seller may reasonably request; provided, further, that any failure to give such notice within the 10-Business Day time period will not affect the reimbursement provided hereunder except to the extent that (i) any defense or other rights available to the Seller have been materially prejudiced as a result of such failure or delay or (ii) the Loss to be reimbursed as a result of such Third Party Claim has increased as a result of such failure or delay (in which case the reimbursement to which any Person is entitled under this Article XVII shall be reduced by the amount of such increase);

(b) provide to the Seller such information and cooperation with respect to such claim as the Seller may reasonably require;

(c) cooperate and take all steps, as the Seller may reasonably require, to preserve and protect any defense to such Third Party Claim;

(d) in the event suit or other proceeding is brought against such Person with respect to such Third Party Claim, upon reasonable prior notice, afford to the Seller the right, which the Seller may exercise in its sole discretion, to conduct the investigation, control the defense and effect settlement of any such Third Party Claim raised in such suit or proceeding, including the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of any such claim with respect thereto, all of which shall be at the expense of the Seller; provided that (x) the Seller shall have notified the Person claiming reimbursement in writing that such suit or proceeding is a Third Party Claim with respect to which the Person claiming reimbursement is entitled to reimbursement under this Article XVII, (y) if the Person claiming reimbursement hereunder reasonably determines, based on an opinion of counsel, that representation by the Seller's counsel of both the Seller and such Person would present such counsel with a conflict of interest under applicable ethics rules, then such Person may employ separate counsel to represent or defend it in any suit or proceeding and the Seller shall pay the reasonable fees and disbursements of such separate counsel, and (z) the Seller shall obtain the prior written approval of the Reimbursed Party

before entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon the Reimbursed Party or any of its Affiliates;

(e) not incur any costs or expenses in connection with any response or suit with respect to such Third Party Claim, unless such costs or expenses were incurred upon the written direction of the Seller or the Seller does not elect to control the defense of such Third Party Claim or otherwise in accordance with Section 17.04(d); provided that the Seller shall not be obligated to reimburse the amount of any such costs or expenses unless such costs or expenses were incurred upon the written direction of the Seller or the Seller does not elect to control the defense of such Third Party Claim or otherwise in accordance with Section 17.04(d);

(f) not release or settle such Third Party Claim or make any payment or admission with respect thereto, unless the Seller consents in writing thereto, which consent shall not be unreasonably withheld; provided that the Seller shall not be obligated to reimburse the amount of any such settlement or payment unless such settlement or payment was effected with the written consent of the Seller; and

(g) take reasonable action as the Seller may request in writing as necessary to preserve, protect or enforce the rights of the reimbursed Person against any Primary Indemnitor.

Section 17.05 No Additional Warranty. Nothing in this Article XVII shall be construed or deemed to (i) expand or otherwise alter any warranty or disclaimer thereof provided under Section 5.10 or any other provision of this Agreement with respect to, among other matters, the title, value, collectability, genuineness, enforceability or condition of any (x) Asset, or (y) asset of the Seller purchased by the Purchaser or any Subsidiary or Affiliate of the Purchaser pursuant to this Agreement or subsequent to the execution hereof, or (ii) create any warranty not expressly provided under this Agreement with respect thereto.

Section 17.06 Indemnification of the Seller.

(a) From and after the Closing Date, each of HoldCo, Intermediate HoldCo, the Purchaser and its Affiliates (each, a "**Purchaser Indemnitor**") shall indemnify and hold harmless the Seller Indemnitees, from and against any Losses, arising out of or resulting from (x) any breach by any Purchaser Indemnitor or any of its officers, directors, employees, partners, principals, agents or contractors of any of the Purchaser Indemnitor's obligations under or covenants, representations or agreements contained in this Agreement or any other Definitive Agreement or such other related agreements to which such Purchaser Indemnitor is a party (including any claim asserted by the Seller against any Purchaser Indemnitor to enforce its rights hereunder or thereunder or by any third party), or (y) any third-party allegation or claim based upon facts alleged that, if true, would constitute such a breach, or any gross negligence, bad faith or willful misconduct (including any act or omission constituting theft, embezzlement, breach of trust or violation of any Law). Such indemnity shall survive the termination of this Agreement. In order for a Seller Indemnitee to be entitled to any indemnification provided for under this Agreement involving a Loss arising out of a Third

Party Claim, such Seller Indemnitee shall deliver notice thereof to the Purchaser Indemnitor promptly after receipt by such Seller Indemnitee of written notice of the Third Party Claim, describing in reasonable detail the facts giving rise to any claim for indemnification hereunder, the amount of such claim (if known) and such other information with respect thereto as is available to the Seller Indemnitee and as the Purchaser Indemnitor may reasonably request. The failure or delay to provide such notice, however, shall not release the Purchaser Indemnitor from any of its obligations under this Section 17.06 except to the extent that (i) any defense or other rights available to the Purchaser Indemnitor have been materially prejudiced as a result of such failure or delay or (ii) the Loss to be reimbursed as a result of such Third Party Claim has increased as a result of such failure or delay (in which case the indemnification to which the Seller Indemnitee is entitled under this Article XVII shall be reduced by the amount of such increase).

(b) If for any reason the indemnification provided for herein is unavailable or insufficient to hold harmless the Seller Indemnitees, the Purchaser Indemnitor shall contribute to the amount paid or payable by the Seller Indemnitees as a result of the Losses of the Seller Indemnitees in such proportion as is appropriate to reflect the relative fault of the Seller Indemnitees, on the one hand, and the Purchaser Indemnitor, on the other hand, in connection with a breach of the Purchaser Indemnitor's obligations under this Agreement.

(c) If the Purchaser Indemnitor confirms in writing to the Seller Indemnitee within fifteen (15) Business Days after receipt of the notice described in Section 17.06(a) its responsibility to indemnify and hold harmless the Seller Indemnitee therefor, the Purchaser Indemnitor may elect to assume control over the compromise or defense of such Third Party Claim at the Purchaser Indemnitor's expense and by the Purchaser Indemnitor's counsel, which counsel must be reasonably satisfactory to the Seller Indemnitee, provided that (i) the Seller Indemnitee may, if such Seller Indemnitee so desires, employ counsel at such Seller Indemnitee's own expense to assist in the handling (but not control the defense) of any Third Party Claim; (ii) the Purchaser Indemnitor shall keep the Seller Indemnitee advised of all material events with respect to any Third Party Claim; (iii) the Purchaser Indemnitor shall obtain the prior written approval of the Seller Indemnitee before ceasing to defend against any Third Party Claim or entering into any settlement, adjustment or compromise of such Third Party Claim involving injunctive or similar equitable relief being imposed upon the Seller Indemnitee or any of its Affiliates; and (iv) the Purchaser Indemnitor will not, without the prior written consent of the Seller Indemnitee, settle or compromise or consent to the entry of any judgment in any pending or threatened action in respect of which indemnification may be sought hereunder (whether or not any such Seller Indemnitee is a party to such action), unless such settlement, compromise or consent by its terms obligates the Purchaser Indemnitor to satisfy the full amount of the liability in connection with such Third Party Claim and includes an unconditional release of such Seller Indemnitee from all liability arising out of such Third Party Claim.

(d) Notwithstanding anything contained herein to the contrary, no Purchaser Indemnitor shall be entitled to control (and if the Seller Indemnitee so desires, it shall have sole control over) the defense, settlement, adjustment or compromise of (but the Purchaser Indemnitor shall nevertheless be required to pay all Losses incurred by the Seller Indemnitee in connection with such defense, settlement or compromise): (i) any Third Party Claim that seeks

an order, injunction or other equitable relief against the Seller Indemnitee or any of its Affiliates; (ii) any action in which the Purchaser Indemnitor (or any Affiliate) and the Seller Indemnitee are named as parties and either the Purchaser Indemnitor (or such Affiliate) or the Seller Indemnitee determines with advice of counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the other party or that a conflict of interest between such parties may exist in respect of such action; and (iii) any matter that raises or implicates any issue relating to any power, right or obligation of the FDIC under any Law. If the Purchaser Indemnitor elects not to assume the compromise or defense against the Third Party Claim, fails to timely and properly notify the Seller Indemnitee of its election as herein provided, or, at any time after assuming such defense, fails to diligently defend against such Third Party Claim in good faith, the Seller Indemnitee may pay, compromise or defend against such Third Party Claim (but the Purchaser Indemnitor shall nevertheless be required to pay all Losses incurred by the Seller Indemnitee in connection with such defense, settlement or compromise). In connection with any defense of a Third Party Claim (whether the Purchaser Indemnitor or the Seller Indemnitee), all of the parties hereto shall, and shall cause their respective Affiliates to, cooperate in the defense or prosecution thereof and to in good faith retain and furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested by a party hereto in connection therewith.

Section 17.07 Obligations Supplemental. The obligations of the parties hereto, and the FDIC in its corporate capacity as guarantor under the FDIC Guaranty, to provide reimbursement or indemnification under this Article XVII are to supplement any amount payable by any Primary Indemnitor to the Person being reimbursed or indemnified under this Article XVII. Consistent with that intent, each party hereto agrees to make payments pursuant to such reimbursement only to the extent not payable by a Primary Indemnitor. If the aggregate amount of payments by the Seller, or the FDIC as guarantor pursuant to the FDIC Guaranty, and all Primary Indemnitors with respect to any item of reimbursement under this Article XVII, or by the Purchaser Indemnitors and all Primary Indemnitors with respect to any item of indemnification under this Article XVII, exceeds the amount payable with respect to such item, such Person being reimbursed or indemnified shall notify the Person obligated to make the reimbursement or indemnification payment thereof and, upon request, shall promptly pay to the Seller, or the FDIC as appropriate, or the Purchaser Indemnitor the amount of the Seller's (or FDIC's) or the Purchaser Indemnitor's payments to the extent of such excess.

Section 17.08 Criminal Claims. Notwithstanding any provision of this Article XVII to the contrary, in the event that any Person being reimbursed under this Article XVII shall become involved in any criminal action, suit or proceeding, whether judicial, administrative or investigative, the Seller shall have no obligation hereunder to reimburse such Person for liability with respect to any criminal act or to the extent any costs or expenses are attributable to the defense against the allegation of any criminal act, unless (i) the Person is successful on the merits or otherwise in the defense against any such action, suit or proceeding, or (ii) such action, suit or proceeding is terminated without the imposition of liability on such Person or (iii) such criminal act was solely the act of the Seller, IndyMac Federal, the Failed Thrift or their predecessors-in-interest.

Section 17.09 Subrogation. Upon the making of any payment pursuant to the reimbursement and indemnification obligations under this Article XVII, the party making such payment shall become subrogated to all rights of party receiving such payment against any other Person to the extent of such payment.

Section 17.10 Further Cooperation. For so long as the Seller has reimbursement obligations under Sections 17.01, 17.02 and 17.03 of this Agreement or under any of the other Definitive Agreements, the Purchaser shall cooperate with the Seller and provide the Seller with a copy of the following reports in order to facilitate the Seller's monitoring and assessment of the Seller's potential liability for claims made or that may be made pursuant to Sections 17.01, 17.02 and 17.03 of this Agreement or the reimbursement obligations of the Seller under any other Definitive Agreements: (i) with respect to any loans serviced for Ginnie Mae and with respect to any loans serviced for Fannie Mae or Freddie Mac that were sold to Fannie Mae or Freddie Mac on or after July 11, 2008 by the Seller (such loans, collectively, the "**GSE Loans**"), monthly servicing reports showing the performance of the GSE Loans, including unpaid principal balances, liquidations, payoffs, delinquencies, etc.; (ii) with respect to the GSE Loans, quarterly reports identifying repurchase and make whole requests and, with respect to each such request, whether the Purchaser has agreed to the repurchase or make whole request, as well as the results of appeals and rescission rates; and (iii) with respect to all loans serviced for Ginnie Mae, Fannie Mae or Freddie Mac, annual reports containing loan-level information of the type provided in the monthly and quarterly reports required by clauses (i) and (ii).

ARTICLE XVIII

NOTICES

All notices, requests, demands and other communications required or permitted to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be given by certified or registered mail, postage prepaid, or delivered by hand or by nationally recognized air courier service, in any case directed to the address of such Person as set forth below.

If to the Seller: Manager, Structured Transactions
 c/o Federal Deposit Insurance Corporation
 550 17th Street, NW (Room F-7008)
 Washington, D.C. 20429-0002
 Attention: George Alexander

with a copy to: Senior Counsel
 FDIC Legal Division
 Litigation and Resolutions Branch, Receivership Section
 Special Issues Unit
 3501 Fairfax Drive (Room E-7056)
 Arlington, Virginia 22226
 Attention: David Gearin

If to HoldCo,
Intermediate HoldCo
or the Purchaser: IMB HoldCo LLC
 888 East Walnut Street
 Pasadena, California 91101-7211
 Attention: Steven Mnuchin

with a copy to: Cleary Gottlieb Steen & Hamilton LLP
 One Liberty Plaza
 New York, New York 10006
 Attention: Paul E. Glotzer

Any such notice shall become effective when received (or receipt is refused) by the addressee, provided that any notice or communication that is received (or refused) other than during regular business hours of the recipient shall be deemed to have been given at the opening of business on the next Business Day of the recipient. From time to time, any Person may designate a new address for purposes of notice hereunder by notice to such effect to the other Persons identified in this Article XVIII.

ARTICLE XIX

MISCELLANEOUS PROVISIONS

Section 19.01 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable in such jurisdiction only as to a particular Person or Persons and/or under any particular circumstance or circumstances, such provision shall be ineffective, but only in such jurisdiction and only with respect to such particular Person or Persons and/or under such particular circumstance or circumstances, as the case may be; (ii) without limitation of clause (i), such provision shall in any event be ineffective only as to such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any of the remaining provisions of this Agreement. Without limitation of the preceding sentence, it is the intent of the parties to this Agreement that in the event that in any court proceeding, such court determines that any provision of this Agreement is prohibited or unenforceable in any jurisdiction (because of the duration or scope (geographic or otherwise) of such provision, or for any other reason) such court shall have the power to, and shall, (x) modify such provision (including, to the extent applicable, by limiting the duration or scope of such provision and/or the Persons against whom, and/or the circumstances under which, such provision shall be effective in such jurisdiction) for purposes of such proceeding to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. Nothing in this Section 19.01 is intended to, or shall, limit (1) the ability of any party to this Agreement to appeal any court ruling or the effect of any favorable ruling on appeal or (2) the intended effect of Section 19.02.

Section 19.02 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL LAW, BUT IF FEDERAL LAW DOES NOT PROVIDE A RULE OF DECISION IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK (EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION). Nothing in this Agreement shall require any unlawful action or inaction by any party hereto.

Section 19.03 Cost, Fees and Expenses. Each of HoldCo and the Seller will be responsible for and bear all of its own costs and expenses (including any broker's or finder's fees and the expenses of its representatives) incurred at any time in connection with pursuing or consummating the Transaction, except that HoldCo shall be responsible for and bear all of the documented reasonable out-of-pocket expenses (including reasonable fees, disbursements and other charges of counsel) incurred by the Seller in connection with (i) the preparation, execution, delivery and consummation of the Seller Financing Agreements and (ii) any appraisals conducted by a third party appraiser for the purpose of determining the Fair Market Value of any asset or liability to be acquired by the Purchaser pursuant to this Agreement or any other Definitive Agreement. In addition, notwithstanding the foregoing, HoldCo and the Seller shall pay equally (x) all fees, costs and expenses of the Independent Accounting Firm under Section 3.03(c) and (y) the fees, costs and expenses referred to in Section 3.04 and Section 5.11 of the Servicing Business Asset Purchase Agreement, Section 3.04 of the Reverse Mortgage Business Asset Purchase Agreement, Section 8.05 of the Securities Sale Agreement, and Section 3.02, Section 3.04, Section 3.05 and Section 3.06 of the Loan Sale Agreement; provided that the Seller's obligation under clause (y) shall not exceed FOUR MILLION THREE HUNDRED FIFTY THOUSAND Dollars (\$4,350,000). In addition, and notwithstanding the foregoing, HoldCo and the Seller shall pay equally all fees, costs and expenses of any trustee in connection with the transfer of servicing rights under the Definitive Agreements and of any rating agency in connection with obtaining "no downgrade" letters.

Section 19.04 Waivers; Amendment and Assignment. No provision of this Agreement may be amended or waived except in writing executed by all of the parties to this Agreement. This Agreement and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof shall be binding upon, and shall inure to the benefit, of the undersigned parties and their respective heirs, executors, administrators, representatives, successors and permitted assigns, and no other Person or Persons shall have any rights or remedies under or by reason of this Agreement. Notwithstanding the foregoing, this Agreement may not be transferred or assigned without the express prior written consent of the Seller and any attempted assignment without such consent shall be void *ab initio*.

Section 19.05 No Presumption. This Agreement shall be construed fairly as to each party hereto and if at any time any such term or condition is desired or required to be interpreted or construed, no consideration shall be given to the issue of who actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

Section 19.06 Entire Agreement. This Agreement, the other Definitive Agreements and the Confidentiality Agreement contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersede any and all other prior agreements, whether oral or written. In the event of a conflict between the terms of this Agreement and the terms of any other Definitive Agreement or other document or instrument executed in connection herewith or in connection with the Transaction, including any translation into a foreign language of this Agreement for the purpose of any other Definitive Agreement or any other document or instrument executed in connection herewith which is prepared for notarization, filing or any other purpose, the terms of this Agreement shall control, and furthermore, the terms of this Agreement shall in no way be or be deemed to be amended, modified or otherwise affected in any manner by the terms of such other Definitive Agreement or other document or instrument.

Section 19.07 Jurisdiction; Venue and Service. Each of HoldCo, Intermediate HoldCo and the Purchaser, for itself and its Affiliates, and the Seller hereby irrevocably and unconditionally:

(a) (i) agrees that any suit, action or proceeding instituted against it by any other party with respect to this Agreement may be instituted, and that any suit, action or proceeding by it against any other party with respect to this Agreement shall be instituted, only in the United States District Court for the Southern District of New York or the United States District Court for the District of Columbia (and appellate courts from any of the foregoing), (ii) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by any other party and (iii) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law;

(b) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Section 19.07(a) may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to its address for notices pursuant to Article XVIII (with copies to such other Persons as specified therein); provided, however, that nothing contained in this Section 19.07 shall affect its ability to be served process in any other manner permitted by Law;

(c) (i) waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in Section 19.07(a), (ii) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (iii) agrees not to plead or claim either of the foregoing; and

(d) agrees that nothing contained in this Section 19.07 shall be construed as a limitation on any removal rights the FDIC may have.

Section 19.08 Waiver of Jury Trial. EACH OF HOLDCO, INTERMEDIATE HOLDCO AND THE PURCHASER, FOR ITSELF AND ITS AFFILIATES, AND THE SELLER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING OUT OF OR RELATING TO

THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

Section 19.09 Counterparts; Facsimile Signatures. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement. This Agreement and any amendments hereto, to the extent signed and delivered by facsimile or other electronic means, shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No signatory to this Agreement shall raise the use of a facsimile machine or other electronic means to deliver a signature or the fact that any signature or agreement was transmitted or communicated through the use of a facsimile machine or other electronic means as a defense to the formation or enforceability of a contract and each such Person forever waives any such defense.

Section 19.10 Headings. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions hereof. All Section and paragraph references contained herein shall refer to Sections and paragraphs in this Agreement unless otherwise specified.

Section 19.11 Compliance with Law. Except as otherwise specifically provided herein, each party to this Agreement shall, at its own cost and expense, obey and comply with all Laws, as they may pertain to such party's performance of its obligations hereunder.

Section 19.12 Use of the FDIC's Name and Reservation of Statutory Powers. None of HoldCo, Intermediate HoldCo or the Purchaser shall use or permit the use by its agents, successors, assigns or Affiliates of any name or combination of letters that is similar to "FDIC" or "Federal Deposit Insurance Corporation." None of HoldCo, Intermediate HoldCo or the Purchaser will represent or imply that it is affiliated with, authorized by or in any way related to the FDIC. The Purchaser and its Subsidiaries that are party to any of the other Definitive Agreements shall be entitled to assert (and claim the benefit of) the statute of limitations established under 12 U.S.C. § 1821(d)(14). However, each of HoldCo, Intermediate HoldCo and the Purchaser acknowledges and agrees that the assignment of any rights or other assets pursuant to the terms of this Agreement or the other Definitive Agreements shall not constitute the assignment of any other rights, powers or privileges granted to the Seller pursuant to the provisions the FDIA, including those granted pursuant to 12 U.S.C. § 1821(d), 12 U.S.C. § 1823(e) and 12 U.S.C. § 1825, all such rights and powers being expressly reserved by the Seller, nor shall HoldCo, Intermediate HoldCo or the Purchaser assert or attempt to assert any such right, power or privilege in any pending or future litigation involving any asset transferred hereunder or under the other Definitive Agreements.

Section 19.13 Right to Specific Performance. EACH OF HOLDCO, INTERMEDIATE HOLDCO AND THE PURCHASER, FOR ITSELF AND ITS AFFILIATES, HEREBY ACKNOWLEDGES AND AGREES THAT THE DAMAGES TO BE INCURRED BY THE SELLER AS A RESULT OF HOLDCO'S, INTERMEDIATE HOLDCO'S OR THE PURCHASER'S BREACH OF THIS AGREEMENT WILL BE DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN, THAT DAMAGES WILL NOT BE AN ADEQUATE

REMEDY AND THAT ANY BREACH OR THREATENED BREACH OF ANY OF THE PROVISIONS OF THIS AGREEMENT BY HOLDCO, INTERMEDIATE HOLDCO OR THE PURCHASER MAY CAUSE IMMEDIATE IRREPARABLE HARM FOR WHICH THERE MAY BE NO ADEQUATE REMEDY AT LAW. ACCORDINGLY, THE PARTIES AGREE THAT, IN THE EVENT OF ANY SUCH BREACH OR THREATENED BREACH, THE SELLER SHALL BE ENTITLED TO (I) IMMEDIATE AND PERMANENT EQUITABLE RELIEF (INCLUDING INJUNCTIVE RELIEF AND SPECIFIC PERFORMANCE OF THE PROVISIONS OF THIS AGREEMENT) FROM A COURT OF COMPETENT JURISDICTION (IN ADDITION TO ANY OTHER REMEDY TO WHICH IT MAY BE ENTITLED AT LAW OR IN EQUITY), AND (II) SOLELY IN THE CASE OF A BREACH OF SECTION 19.12 HEREOF, LIQUIDATED DAMAGES IN THE AMOUNT OF \$25,000 FOR EACH BREACH OF SUCH SECTION. THE PARTIES AGREE AND STIPULATE THAT THE SELLER SHALL BE ENTITLED TO EQUITABLE (INCLUDING INJUNCTIVE) RELIEF WITHOUT POSTING A BOND OR OTHER SECURITY AND HOLDCO, INTERMEDIATE HOLDCO AND THE PURCHASER EACH FURTHER WAIVES ANY DEFENSE IN ANY SUCH ACTION FOR SPECIFIC PERFORMANCE OR INJUNCTIVE RELIEF THAT A REMEDY AT LAW WOULD BE ADEQUATE AND ANY REQUIREMENT UNDER LAW TO POST SECURITY AS A PREREQUISITE TO OBTAINING EQUITABLE RELIEF. NOTHING CONTAINED IN THIS SECTION SHALL LIMIT ANY PARTY'S RIGHT TO ANY REMEDIES AT LAW, INCLUDING THE RECOVERY OF DAMAGES FOR BREACH OF THIS AGREEMENT.

Section 19.14 No Third Party Beneficiaries. This Agreement is made for the sole benefit of the Seller, HoldCo, Intermediate HoldCo and the Purchaser and their respective successors and permitted assigns, and no other Person or Persons, including any Seller Employees or Transferred Employees shall have any rights or remedies under or by reason of this Agreement. Notwithstanding the foregoing, the FDIC shall be considered a third party beneficiary of this Agreement.

No provision of this Agreement shall modify or amend any Seller Employee Plan unless this Agreement explicitly states that the provision "amends" such Seller Employee Plan. This shall not prevent the parties entitled to enforce this Agreement from enforcing any provision in this Agreement, but no other party shall be entitled to enforce any provision in this Agreement on the grounds that it is an amendment to such Seller Employee Plan.

Section 19.15 Confidentiality; Disclosures. No party to this Agreement shall disclose the existence or terms of this Agreement to any third party, other than its respective financial, legal and other professional advisors and its members, limited partners or other investors, without the prior written consent of the other parties except as may be required by Law, including the FDIC's obligations under the Freedom of Information Act. The Seller, HoldCo, Intermediate HoldCo and the Purchaser shall mutually agree to the timing and content of any announcements, press releases or public statements concerning the Transaction. Except as expressly modified hereby, the Confidentiality Agreement shall remain in full force and effect.

Section 19.16 Manner of Payment. All payments due under this Agreement shall be in lawful money of the United States of America in immediately available funds as each party hereto may specify to the other parties; provided that, in the event the any party is obligated to

make any payment hereunder in the amount of \$25,000.00 or less, such payment may be made by check.

Section 19.17 Survival of Covenants, Etc. The covenants, representations and warranties in this Agreement shall survive the execution of this Agreement and the consummation of the Transaction, unless otherwise contemplated herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Master Purchase Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS CONSERVATOR FOR
INDYMAC FEDERAL BANK, FSB**

By: Mitchell L. Glassman
Name: Mitchell L. Glassman
Title: Director, DRB-FDIC

IMB HOLDCO LLC

By: _____
Steven T. Mnuchin
Chief Executive Officer

ONEWEST BANK GROUP LLC

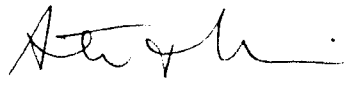
By: _____
Steven T. Mnuchin
Chief Executive Officer

IN WITNESS WHEREOF, the parties hereto have caused this Master Purchase Agreement to be executed by their duly authorized representatives as of the date first above written.

**FEDERAL DEPOSIT INSURANCE
CORPORATION AS CONSERVATOR FOR
INDYMAC FEDERAL BANK, FSB**

By: _____
Name:
Title:

IMB HOLDCO LLC

By:  _____
Steven T. Mnuchin
Chief Executive Officer

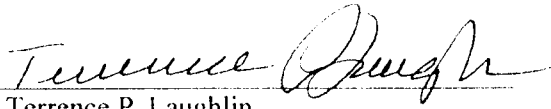
ONEWEST BANK GROUP LLC

By:  _____
Steven T. Mnuchin
Chief Executive Officer

JOINDER

By its execution and delivery of this signature page, the undersigned hereby joins in and agrees to be bound by the terms and conditions of the Master Purchase Agreement, dated as of March 18, 2009, by and among the Federal Deposit Insurance Corporation as conservator for IndyMac Federal Bank, FSB, IMB HoldCo LLC and OneWest Bank Group LLC as the “Purchaser” thereunder and authorizes this signature page to be attached to the Master Purchase Agreement or counterparts thereof.

ONEWEST BANK, FSB

By: 
Name: Terrence P. Laughlin
Title: Chief Executive Officer and President

JOINDER

By its execution and delivery of this signature page, the undersigned hereby joins in and agrees to be bound by the terms and conditions of the Master Purchase Agreement, dated as of March 18, 2009, by and among the Federal Deposit Insurance Corporation as conservator for IndyMac Federal Bank, FSB, IMB HoldCo LLC and OneWest Bank Group LLC as the "Seller" thereunder and authorizes this signature page to be attached to the Master Purchase Agreement or counterparts thereof.

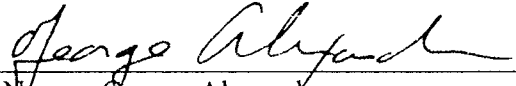
FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
INDYMAC FEDERAL BANK, FSB

By: Mitchell L. Glassman
Name: Mitchell L. Glassman
Title: Director, DRR- FDIC

JOINDER

By its execution and delivery of this signature page, the undersigned hereby joins in and agrees to be bound by the terms and conditions of the Master Purchase Agreement, dated as of March 18, 2009, by and among the Federal Deposit Insurance Corporation as conservator for IndyMac Federal Bank, FSB, IMB HoldCo LLC and OneWest Bank Group LLC, solely with respect to Section 11.04 thereunder and authorizes this signature page to be attached to the Master Purchase Agreement or counterparts thereof.

INDYMAC RESOURCES, INC.

By: 
Name: George Alexander
Title: Attorney-in-Fact

SCHEDULE 1.01
LIST OF INVESTORS

IMB MANAGEMENT HOLDINGS LP

PAULSON & CO. INC.

JCF III HOLDCO I L.P.

MSD FINANCIAL INVESTMENTS, LLC

TRIDENT IV, L.P.

SSP OFFSHORE LLC

AMERICAN CAPITAL PARTNERS, LLC

SILAR MCF-I, LLC

TRIDENT IV PROFESSIONALS FUND, L.P.

JCF III CO-INVEST PARTNERS I L.P.

SCHEDULE 5.02

EXCLUDED ASSETS

1. Class B & Class L certificates issued pursuant to any securitization of home equity lines of credit
2. The three servers listed below, which house the HRMS and TEI application and employee data for IndyMac Resources, Inc. to process the payroll and to defend litigation as needed:

| SI No | Server Name | Vendor | Model | Specs | Storage | FDIC Use/ Description | Asset Tag | Serial # | Physical Location |
|-------|-------------|--------|------------|------------|------------|--------------------------|------------|------------|-------------------|
| 1 | [REDACTED] | HP | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 2 | [REDACTED] | HP | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| 3 | [REDACTED] | HP | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

3. All furniture located at 192 Technology Parkway, Norcross, GA, including the following:

| Bidg | Floor | Class | QTY | Description | Serial No | Manufacturer | Model | Total Fair Market Value |
|------|-------|-------|-----|--|-----------|--------------|-------|-------------------------|
| 10 | 1 | 13 | 0 | THROUGHOUT | | | | \$0 |
| 10 | 1 | 42 | 1 | ITEM OF 223 MODULAR WORK STATIONS, CONSISTING OF 208 - HERMAN MILLER MODULAR OFFICE UNITS, 6 X 8, WITH COUNTERS, FILES, PEDESTALS, CABINET, DIVIDERS 15 - HERMAN MILLER MODULAR OFFICE UNITS, 8 X 12, WITH COUNTERS, FILES, PEDESTALS, CABINET, DIVIDERS | | | | \$160,560 |
| 10 | 1 | 42 | 8 | WOOD SINGLE PEDESTAL MODULAR DESK UNITS, U SHAPED, 84", WITH 54" BRIDGE, 120" BACK SECTION, 4 DRAWER LATERAL FILE, 36" | | HERMAN MIL | | \$8,200 |

SCHEDULE 16.05

BACKSTOP PURCHASERS

PAULSON & CO. INC.

TRIDENT IV, L.P.

TRIDENT IV PROFESSIONALS FUND, L.P.

SSP OFFSHORE LLC

J.C. FLOWERS III L.P.

IMB MANAGEMENT HOLDINGS LP

MSD FINANCIAL INVESTMENTS, LLC

EXHIBIT A-1

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is made and entered into as of the ___ day of _____, 2009 by and between the FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR INDYMAC FEDERAL BANK, FSB ("Assignor") and ONEWEST BANK, FSB ("Assignee").

WHEREAS, pursuant to the Master Purchase Agreement, dated March 18, 2009, by and among the Conservator (and, on the date hereof, following the appointment of the FDIC as receiver for IndyMac Federal, the Receiver by joinder as of the date hereof), IMB HoldCo LLC, OneWest Bank Group LLC and the Purchaser (by joinder as of the date hereof) (the "Master Purchase Agreement"), Assignor has agreed to sell, transfer and assign to the Assignee certain assets and Assignee has agreed to assume certain obligations:

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

1. Assignor's Assignment. Assignor hereby transfers, grants, conveys and assigns to Assignee all of Assignor's right, title and interest in the Group 1 Assets.
2. Assignee's Acceptance. Assignee does hereby accept such assignment from Assignor and assumes all obligations arising from and after the date hereof.
3. Excluded Assets. Other than the Assumed Group 1 Liabilities, Assignee is not assuming and shall not be liable for or bound by any liabilities of Assignor. Nothing contained in this Agreement shall transfer or assign to Assignee any right to any of the Excluded Assets.
4. Incorporation of terms of the Sales Agreement. This Agreement is made, executed and delivered pursuant to the Master Purchase Agreement, and is subject to all the terms, provisions and conditions thereof. To the extent of any conflict between the terms of the Master Purchase Agreement and this Agreement, the Master Purchase Agreement shall be controlling. Initially capitalized terms used and not defined herein have the meanings given them in the Master Purchase Agreement.
5. Beneficiaries of this Assignment. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns, and the Federal Deposit Insurance Corporation in its corporate capacity shall be a third-party beneficiary with respect hereto.
6. Controlling Law. Federal law of the United States shall control this Agreement. To the extent that federal law does not supply a rule of decision, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York. Nothing in this Agreement will require any unlawful action or inaction by either party.

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

IN WITNESS WHEREOF, each of the parties has caused this Assignment and Assumption Agreement to be executed and delivered by its duly authorized officer or agent as of the day and year first written above.

ASSIGNOR:

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
INDYMAC FEDERAL BANK, FSB

WITNESS

By: _____
Name:
Its:

ASSIGNEE:

ONEWEST BANK, FSB

WITNESS

By: _____
Name:
Its:

EXHIBIT A-2

ASSIGNMENT AND ASSUMPTION OF LEASES

(Note to FDIC Preparer: When preparing the actual Assignment, delete this instruction and the reference to Exhibit A-2 above.)

THIS ASSIGNMENT AND ASSUMPTION OF LEASES ("Assignment") is made and entered into as of the ____ day of _____, 20__ by and between the Federal Deposit Insurance Corporation as Receiver for IndyMac Federal Bank, FSB ("Assignor") and OneWest Bank, FSB ("Assignee").

Whereas, Assignor and Assignee have entered into that certain Master Purchase Agreement, dated March 18, 2009 (the "MPA"), pursuant to which Assignor has agreed to sell, assign, transfer and convey to Assignee certain assets. Capitalized terms used herein but not defined herein shall have the meanings set forth in the MPA.

Whereas, part of the Assets consist of those certain leases, subleases and other agreements relating to rights of use or occupancy described in Exhibit A attached to this Assignment (the "Leases").

Whereas, under the MPA, Assignor has agreed to assign and convey to Assignee all of Assignor's right, title and interest to the Leases.

Whereas, Assignee has agreed to accept and assume all of Assignor's duties, obligations and liabilities under the Leases (the "Obligations").

NOW THEREFORE, in consideration of the foregoing and the sum of ten dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor's Assignment. Assignor hereby transfers, grants, conveys and assigns to Assignee all of Assignor's right, title and interest in the Leases. This Assignment is made (i) without any representations or warranties by Assignor with respect to the Leases, and (ii) without recourse to Assignor, except in each case as otherwise expressly provided in the MPA.

2. Assignee's Acceptance. Assignee does hereby accept such assignment from Assignor and assumes all Obligations arising from and after the date hereof.

3. Beneficiaries of this Assignment. This Assignment shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and permitted assigns, and the Federal Deposit Insurance Corporation in its corporate capacity shall be a third-party beneficiary with respect hereto.

4. Incorporation of terms of MPA. This Assignment is made, executed and delivered pursuant to the MPA, and is subject to all of the terms, provisions and conditions

thereof. In the event of any conflict between the MPA and this Assignment, the MPA shall govern.

5. Controlling Law. Federal law of the United States shall control this Assignment. To the extent that federal law does not supply a rule of decision, this Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of New York. Nothing in this Agreement will require any unlawful action or inaction by either party.

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

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties has caused this Assignment and Assumption of Leases to be executed and delivered by its duly authorized officer or agent as of the day and year first written above.

ASSIGNOR:

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
INDYMAC FEDERAL BANK, FSB

By: _____

Name:

Title:

ASSIGNEE:

ONEWEST BANK, FSB

By: _____

Name:

Title:

EXHIBIT B

BILL OF SALE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the terms and conditions of the Master Purchase Agreement, dated as of March 18, 2009, by and among the Federal Deposit Insurance Corporation (the "**FDIC**") as Conservator for IndyMac Federal Bank, FSB ("**IndyMac Federal**") (and, on the date hereof, following the appointment of the FDIC as receiver (the "**Seller**") for IndyMac Federal, the Seller by joinder as of the date hereof), IMB HoldCo LLC, OneWest Bank Group LLC and OneWest Bank, FSB (the "**Purchaser**") (by joinder as of the date hereof) (the "**Agreement**"), the Seller does hereby bargain, sell, assign, transfer, set over and convey to the Purchaser, its successors and assigns all right, title and interest of the Seller in and to the Group 1 Assets, as defined in the Agreement, for all purposes, in accordance with Article V of the Agreement.

THIS BILL OF SALE IS EXECUTED AND DELIVERED WITHOUT RECOURSE AND WITHOUT REPRESENTATION OR WARRANTY, WHETHER EXPRESS, IMPLIED OR CREATED BY OPERATION OF LAW, EXCEPT AS PROVIDED IN THE AGREEMENT.

Executed this _____ day of _____, 2009.

EXHIBIT FF

SELLER CLOSING CERTIFICATIONS AND OTHER DOCUMENTS TO BE DELIVERED TO HOLDCO

Immediately prior to the Closing, the Seller shall deliver to HoldCo, Intermediate HoldCo and the Purchaser:

1. a copy of resolutions of the board of the FDIC authorizing the actions to be taken by the Seller in connection with the Transaction and the Definitive Agreements.
2. a certificate of the Secretary of State of the State of Delaware certifying as to the valid existence and good standing of IndyMac Venture, LLC under the laws of the State of Delaware.
3. a copy of the Certificate of Formation of IndyMac Venture, LLC certified by the Secretary of State of the State of Delaware.

EXHIBIT GG

PURCHASER CLOSING CERTIFICATIONS AND OTHER DOCUMENTS TO BE DELIVERED TO THE SELLER

Immediately prior to the Closing, the Purchaser shall deliver to the Seller:

1. a certificate of the OTS, certifying as to the valid existence of the Purchaser, under the laws of United States of America, or such other evidence from the OTS, reasonably satisfactory to the Seller, confirming the status of the Purchaser as a federally chartered bank as of the Closing Date.
2. a certificate of the Secretary of State of the State of Delaware, certifying as to the valid existence and good standing of Financial Freedom Acquisition LLC, the Purchaser's wholly-owned Subsidiary ("FFA"), under the laws of the State of Delaware.
3. a certificate of the Secretary of State of the State of Delaware, certifying as to the valid existence and good standing of OneWest Investments LLC, the Purchaser's wholly-owned Subsidiary ("OneWest Investments"), under the laws of the State of Delaware.
4. a certificate of the Secretary of State of the State of Delaware, certifying as to the valid existence and good standing of OneWest Ventures Holdings LLC, the Purchaser's wholly-owned Subsidiary ("OneWest Ventures"), under the laws of the State of Delaware.
5. a copy of the order and approval of the Purchaser's application for a federal charter issued by the Office of Thrift Supervision.
6. a copy of the Certificate of Formation of FFA certified by the Secretary of State of the State of Delaware.
7. a copy of the Certificate of Formation of OneWest Investments certified by the Secretary of State of the State of Delaware.
8. a copy of the Certificate of Formation of OneWest Ventures certified by the Secretary of State of the State of Delaware.
9. a copy of the charter and bylaws of the Purchaser, certified by its Secretary or another authorized officer of the Purchaser.
10. a copy of the Certificate of Formation and Operating Agreement of FFA, certified by its Secretary or another authorized officer of FFA.
11. a copy of the Certificate of Formation and Operating Agreement of OneWest Investments, certified by its Secretary or another authorized officer of OneWest Investments.

12. a copy of the Certificate of Formation and Operating Agreement of OneWest Ventures, certified by its Secretary or another authorized officer of OneWest Ventures.
13. a copy of the FDIC approval of deposit insurance for the Purchaser.
14. a certificate of incumbency for each Person executing this Agreement, any other Definitive Agreement, any other related agreement or any certificate contemplated by any such agreement on behalf of the Purchaser, FFA, OneWest Investments or OneWest Ventures.
15. a copy of resolutions (or other approvals) duly adopted by the board of directors of the Purchaser and certified by the Secretary or other authorized officer of the Purchaser, authorizing all actions to be taken by the Purchaser in connection with the Transaction and the Definitive Agreements and other related agreements to which it is named as a party in accordance with Law and in accordance with the charter, bylaws or other governing documents of the Purchaser so as to give such transactions full force and effect.
16. a copy of resolutions (or other approvals) duly adopted by the sole member of FFA and certified by the Secretary or other authorized officer of the sole member of FFA, authorizing all actions to be taken by FFA in connection with the Transaction and the Definitive Agreements and other related agreements to which it is named as a party in accordance with Law and in accordance with the Certificate of Formation, Operating Agreement or other governing documents of the FFA so as to give such transactions full force and effect.
17. a copy of resolutions (or other approvals) duly adopted by the sole member of OneWest Investments and certified by the Secretary or other authorized officer of the sole member of OneWest Investments, authorizing all actions to be taken by OneWest Investments in connection with the Transaction and the Definitive Agreements and other related agreements to which it is named as a party in accordance with Law and in accordance with the Certificate of Formation, Operating Agreement or other governing documents of the OneWest Investments so as to give such transactions full force and effect.
18. a copy of resolutions (or other approvals) duly adopted by the sole member of OneWest Ventures and certified by the Secretary or other authorized officer of the sole member of OneWest Ventures, authorizing all actions to be taken by OneWest Ventures in connection with the Transaction and the Definitive Agreements and other related agreements to which it is named as a party in accordance with Law and in accordance with the Certificate of Formation, Operating Agreement or other governing documents of the OneWest Ventures so as to give such transactions full force and effect.
19. the legal opinions of Cleary Gottlieb Steen & Hamilton LLP in the form of Exhibit JJ.

EXHIBIT HH

HOLDCO CLOSING CERTIFICATIONS, OPINIONS AND OTHER DOCUMENTS TO BE DELIVERED TO SELLER

Immediately prior to the Closing, HoldCo shall deliver to the Seller:

1. a certificate of good standing or other certificate of valid existence issued by the jurisdiction in which HoldCo is organized.
2. a copy of HoldCo's certificate of formation certified by its Secretary or another authorized officer.
3. a certificate of the Secretary or other authorized officer of HoldCo certifying that (i) the representations and warranties of HoldCo set forth in the Agreement were true and accurate in all material respects as of the date of the Agreement and are true and accurate in all material respects as of the Closing Date; and (ii) HoldCo has performed and complied in all material respects with all covenants and agreements required by the Agreement to be performed or complied with by it on or prior to the Closing Date.
4. a certificate of incumbency for each Person executing this Agreement, any other Definitive Agreement, any other related agreement or any certificate contemplated by any such agreement on behalf of HoldCo.
5. a copy of resolutions (or other approvals) duly adopted by the members or managers of HoldCo, as applicable, and certified by the Secretary or other authorized officer of HoldCo, authorizing all actions to be taken by HoldCo in connection with the Transaction and the Definitive Agreements and other related agreements to which it is named as a party in accordance with Law and in accordance with the operating agreement and other governing documents of HoldCo so as to give such transactions full force and effect.
6. a copy of the OTS approval of HoldCo as a savings and loan holding company.
7. the legal opinions of Cleary Gottlieb Steen & Hamilton LLP in the form of Exhibit JJ.

EXHIBIT II

INTERMEDIATE HOLDCO CLOSING CERTIFICATIONS, OPINIONS AND OTHER DOCUMENTS TO BE DELIVERED TO SELLER

Immediately prior to the Closing, Intermediate HoldCo and shall deliver to the Seller:

1. a certificate of good standing or other certificate of valid existence issued by the jurisdiction in which Intermediate HoldCo is organized.
2. a copy of Intermediate HoldCo's certificate of formation and operating agreement and other applicable governing documents, certified by its Secretary or another authorized officer.
3. a certificate of the Secretary or other authorized officer of Intermediate HoldCo certifying that (i) the representations and warranties of Intermediate HoldCo set forth in the Agreement were true and accurate in all material respects as of the date of the Agreement and are true and accurate in all material respects as of the Closing Date; and (ii) Intermediate HoldCo has performed and complied in all material respects with all covenants and agreements required by the Agreement to be performed or complied with by it on or prior to the Closing Date.
4. a certificate of incumbency for each Person executing this Agreement, any other Definitive Agreement, any other related agreement or any certificate contemplated by any such agreement on behalf of Intermediate HoldCo.
5. a copy of resolutions (or other approvals) duly adopted by the members or managers of Intermediate HoldCo, as applicable, and certified by the Secretary or other authorized officer of Intermediate HoldCo, authorizing all actions to be taken by Intermediate HoldCo in connection with the Transaction and the Definitive Agreements and other related agreements to which it is named as a party in accordance with Law and in accordance with the operating agreement and other governing documents of Intermediate HoldCo so as to give such transactions full force and effect.
6. a copy of the OTS approval of Intermediate HoldCo as a savings and loan holding company.
7. the legal opinions of Cleary Gottlieb Steen & Hamilton LLP in the form of Exhibit JJ.

EXHIBIT JJ

FORM OF CLEARY GOTTLIEB STEEN & HAMILTON LLP OPINIONS

- (a)(1) HoldCo was duly formed and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware.
- (a)(2) Intermediate HoldCo was duly formed and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware.
- (a)(3) The Purchaser is validly chartered by the OTS as a federal savings bank under the laws of the United States.
- (a)(4) FFA was duly formed and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware.
- (a)(5) OneWest Investments was duly formed and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware.
- (a)(6) OneWest Ventures was duly formed and is validly existing and in good standing as a limited liability company under the laws of the State of Delaware.
- (b)(1) HoldCo has the requisite limited liability company power to execute and deliver, and to perform its obligations under, the HoldCo Definitive Acquisition Agreements.¹
- (b)(2) Intermediate HoldCo has the requisite limited liability company power to execute and deliver, and to perform its obligations under, the Intermediate HoldCo Definitive Acquisition Agreements.²
- (b)(3) The Purchaser has the requisite corporate power to execute and deliver, and to perform its obligations under, the Purchaser Definitive Acquisition Agreements.³
- (b)(4) FFA has the requisite limited liability company power to execute and deliver, and to perform its obligations under, the FFA Definitive Acquisition Agreements.⁴
- (b)(5) OneWest Investments has the requisite limited liability company power to execute and deliver, and to perform its obligations under, the OneWest Investments Definitive Acquisition Agreements.⁵

¹ Master Purchase Agreement, Closing Escrow Agreement, Guaranty under the LLC Interest Sale and Assignment Agreement and FDIC Guaranty.

² Master Purchase Agreement and FDIC Guaranty.

³ Master Purchase Agreement, Servicing Business Asset Purchase Agreement, Reverse Mortgage Business Asset Purchase Agreement, Securities Sale Agreement, Loan Sale Agreement, Transitional Services Agreement, Shared-Loss Agreement, the Reverse Mortgage Shared-Loss Agreement, Guaranty under the LLC Interest Sale and Assignment Agreement and FDIC Guaranty.

⁴ Reverse Mortgage Business Asset Purchase Agreement, the Reverse Mortgage Shared-Loss Agreement and FDIC Guaranty.

- (b)(6) OneWest Ventures has the requisite limited liability company power to execute and deliver, and to perform its obligations under, the OneWest Definitive Acquisition Agreements.⁶
- (b)(7) IndyMac Venture, LLC (“IndyMac Venture”) has the requisite limited liability company power to execute and deliver, and to perform its obligations under, the FDIC Guaranty.
- (c)(1) The HoldCo Definitive Acquisition Agreements have been duly authorized by all necessary limited liability company action of HoldCo and have been duly executed and delivered by HoldCo and, assuming due authorization, execution and delivery by the other party(s) thereto, constitute valid and binding instruments of HoldCo enforceable against HoldCo in accordance with their respective terms.
- (c)(2) The Intermediate HoldCo Definitive Acquisition Agreements have been duly authorized by all necessary limited liability company action of Intermediate HoldCo and have been duly executed and delivered by Intermediate HoldCo and, assuming due authorization, execution and delivery by the other party(s) thereto, constitute valid and binding instruments of Intermediate HoldCo enforceable against Intermediate HoldCo in accordance with their respective terms.
- (c)(3) The Purchaser Definitive Acquisition Agreements have been duly authorized by all necessary corporate action of the Purchaser and have been duly executed and delivered by the Purchaser and, assuming due authorization, execution and delivery by the other party(s) thereto, constitute valid and binding instruments of the Purchaser enforceable against the Purchaser in accordance with their respective terms.
- (c)(4) The FFA Definitive Acquisition Agreements have been duly authorized by all necessary limited liability company action of FFA and have been duly executed and delivered by FFA and, assuming due authorization, execution and delivery by the other party(s) thereto, constitute valid and binding instruments of FFA enforceable against FFA in accordance with their respective terms.
- (c)(5) The OneWest Investments Definitive Acquisition Agreements have been duly authorized by all necessary limited liability company action of OneWest Investments and have been duly executed and delivered by OneWest Investments and, assuming due authorization, execution and delivery by the other party(s) thereto, constitute valid and binding instruments of OneWest Investments enforceable against OneWest Investments in accordance with their respective terms.
- (c)(6) The OneWest Ventures Definitive Acquisition Agreements have been duly authorized by all necessary limited liability company action of OneWest Ventures and have been duly executed and delivered by OneWest Ventures and, assuming

⁵ Securities Sale Agreement and FDIC Guaranty.

⁶ LLC Interest Sale Assignment Agreement and FDIC Guaranty.

due authorization, execution and delivery by the other party(s) thereto, constitute valid and binding instruments of OneWest Ventures enforceable against OneWest Ventures in accordance with their respective terms.

- (d)(1) The execution, delivery and performance by HoldCo of the HoldCo Definitive Acquisition Agreements and the consummation by HoldCo of the Transaction will not (i) result in any violation of any United States federal or New York State statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the HoldCo Definitive Acquisition Agreements, or (ii) result in any violation of any order of any New York State or United States federal Governmental Authority known to those lawyers currently with this firm who have been actively involved in representing HoldCo in connection with the Transaction to be applicable to HoldCo or that is reflected in this firm's litigation docket as a matter in which HoldCo is a named party.
- (d)(2) The execution, delivery and performance by Intermediate HoldCo of the Intermediate HoldCo Definitive Acquisition Agreements and the consummation by Intermediate HoldCo of the Transaction will not (i) result in any violation of any United States federal or New York State statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the Intermediate HoldCo Definitive Acquisition Agreements, or (ii) result in any violation of any order of any New York State or United States federal Governmental Authority known to those lawyers currently with this firm who have been actively involved in representing Intermediate HoldCo in connection with the Transaction to be applicable to Intermediate HoldCo or that is reflected in this firm's litigation docket as a matter in which Intermediate HoldCo is a named party.
- (d)(3) The execution, delivery and performance by the Purchaser of the Purchaser Definitive Acquisition Agreements and the consummation by Purchaser of the Transaction will not (i) result in any violation of any United States federal statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the Purchaser Definitive Acquisition Agreements, or (ii) result in any violation of any order of any New York State or United States federal Governmental Authority known to those lawyers currently with this firm who have been actively involved in representing the Purchaser in connection with the Transaction to be applicable to the Purchaser or that is reflected in this firm's litigation docket as a matter in which the Purchaser is a named party.
- (d)(4) The execution, delivery and performance by FFA of the FFA Definitive Acquisition Agreements and the consummation by FFA of the Transaction will not (i) result in any violation of any United States federal or New York State statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the FFA Definitive Acquisition Agreements, or (ii) result in any violation of any order of any New

York State or United States federal Governmental Authority known to those lawyers currently with this firm who have been actively involved in representing FFA in connection with the Transaction to be applicable to FFA or that is reflected in this firm's litigation docket as a matter in which FFA is a named party.

- (d)(5) The execution, delivery and performance by OneWest Investments of the OneWest Investments Definitive Acquisition Agreements and the consummation by OneWest Investments of the Transaction will not (i) result in any violation of any United States federal or New York State statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the OneWest Investments Definitive Acquisition Agreements, or (ii) result in any violation of any order of any New York State or United States federal Governmental Authority known to those lawyers currently with this firm who have been actively involved in representing OneWest Investments in connection with the Transaction to be applicable to OneWest Investments or that is reflected in this firm's litigation docket as a matter in which OneWest Investments is a named party.
- (d)(6) The execution, delivery and performance by OneWest Ventures of the OneWest Ventures Definitive Acquisition Agreements and the consummation by OneWest Ventures of the Transaction will not (i) result in any violation of any United States federal or New York State statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the OneWest Ventures Definitive Acquisition Agreements, or (ii) result in any violation of any order of any New York State or United States federal Governmental Authority known to those lawyers currently with this firm who have been actively involved in representing OneWest Ventures in connection with the Transaction to be applicable to OneWest Ventures or that is reflected in this firm's litigation docket as a matter in which OneWest Ventures is a named party.
- (d)(7) The execution, delivery and performance by IndyMac Venture of the FDIC Guaranty will not result in any violation of any United States federal or New York State statute or published rule or regulation that in our experience normally would be applicable to transactions of the type contemplated by the FDIC Guaranty.
- (e)(1) The execution, delivery and performance by HoldCo of the HoldCo Definitive Acquisition Agreements and the consummation by HoldCo of the Transaction will not require any consent, approval or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that in our experience normally would be applicable to transactions of the type contemplated by the HoldCo Definitive Acquisition Agreements, except as have already been obtained or made.
- (e)(2) The execution, delivery and performance by Intermediate HoldCo of the Intermediate HoldCo Definitive Acquisition Agreements and the consummation by Intermediate HoldCo of the Transaction will not require any consent, approval

or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that in our experience normally would be applicable to transactions of the type contemplated by the Intermediate HoldCo Definitive Acquisition Agreements, except as have already been obtained or made.

- (e)(3) The execution, delivery and performance by the Purchaser of the Purchaser Definitive Acquisition Agreements and the consummation by the Purchaser of the Transaction will not require any consent, approval or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that in our experience normally would be applicable to transactions of the type contemplated by the Purchaser Definitive Acquisition Agreements, except as have already been obtained or made.
- (e)(4) The execution, delivery and performance by FFA of the FFA Definitive Acquisition Agreements and the consummation by FFA of the Transaction will not require any consent, approval or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that in our experience normally would be applicable to transactions of the type contemplated by the FFA Definitive Acquisition Agreements, except as have already been obtained or made.
- (e)(5) The execution, delivery and performance by OneWest Investments of the OneWest Investments Definitive Acquisition Agreements and the consummation by OneWest Investments of the Transaction will not require any consent, approval or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that in our experience normally would be applicable to transactions of the type contemplated by the OneWest Investments Definitive Acquisition Agreements, except as have already been obtained or made.
- (e)(6) The execution, delivery and performance by OneWest Ventures of the OneWest Ventures Definitive Acquisition Agreements and the consummation by OneWest Ventures of the Transaction will not require any consent, approval or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that in our experience normally would be applicable to transactions of the type contemplated by the OneWest Ventures Definitive Acquisition Agreements, except as have already been obtained or made.
- (e)(7) The execution, delivery and performance by IndyMac Venture of the FDIC Guaranty will not require any consent, approval or authorization of, or declaration or filing with, any New York State or United States federal Governmental Authority that would be applicable to transactions of the type contemplated by the FDIC Guaranty, except as have already been obtained or made.

- (f) Each of HoldCo and Intermediate HoldCo is authorized to become a savings and loan holding company by acquiring the Purchaser and will be registered as a savings and loan holding company under the Home Owners Loan Act and the rules and regulations promulgated thereunder by the OTS upon registration as such on Registration Statement H-(b)(10) within 90 days of acquiring the Purchaser and meeting the post-Closing conditions set forth in the OTS approval order.