

NEW YORK MORTGAGE TRUST INC

FORM 10-K (Annual Report)

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Industry	Real Estate Operations
Sector	Services
Fiscal Year	12/31

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

Form 10-K

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

For the Fiscal Year Ended December 31, 2004

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

For the Transition Period From to

Commission File Number 001-32216

NEW YORK MORTGAGE TRUST, INC.

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of incorporation or organization)

47-0934168
(I.R.S. Employer Identification No.)

1301 Avenue of the Americas, New York, New York 10019
(Address of principal executive office) (Zip Code)

(Registrant's telephone number, including area code)
(212) 634-9400

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2). Yes No

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2004 was approximately \$130.2 million based on the closing price on such date of the registrant's common stock as reported by the New York Stock Exchange Composite Transactions.

The number of shares of the Registrant's Common Stock outstanding on February 28, 2005 was 17,797,375.

DOCUMENTS INCORPORATED BY REFERENCE

Document	Where Incorporated
1. Proxy Statement for Annual Meeting of Stockholders to be held on May 31, 2005, to be filed with the Securities and Exchange Commission	Part III

NEW YORK MORTGAGE TRUST, INC.

FORM 10-K

For the Fiscal Year Ended December 31, 2004

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PART I

Item 1. BUSINESS

General

New York Mortgage Trust, Inc. (“NYMT” and the “Company”) is a fully integrated, self-advised residential mortgage finance company that originates, acquires and retains investments in adjustable and variable rate mortgage (“ARM”) assets. The Company earns net interest income from residential mortgage-backed securities and adjustable-rate mortgage loans and securities originated primarily through our wholly-owned subsidiary, The New York Mortgage Company, LLC (“NYMC”).

Our residential mortgage investments are comprised of adjustable rate loans, adjustable rate securities and floating rate collateralized mortgage obligations. The adjustable rate loans and securities (collectively, “ARM”) are comprised of traditional ARM securities and loans, which have interest rates that reset in a year or less and “hybrid” ARM securities and loans, which have a fixed interest rate for an initial period of two to five years before converting to ARMs whose rate will reset for their remaining terms to maturity. ARM securities represent interests in pools of whole ARM loans. The ARM securities are rated by at least one of two nationally recognized rating agencies, Standard & Poor’s, Inc. or Moody’s Investors Service, Inc. (the “Rating Agencies”), or issued by Freddie Mac (“FHLMC”) or FannieMae (“FNMA”). ARM loans consist of residential loans held for future securitization. The securitization will result in a series of rated mortgage securities backed by the ARM loans. The floating rate collateralized mortgage obligations (“CMO Floaters”) are mortgage securities backed by a pool of FNMA or FHLMC fixed rate mortgage loans which have interest rates that adjust monthly. As an investor in residential mortgage assets, our net income is generated primarily from the difference between the interest income we earn on our mortgage assets and the cost of our borrowings (net of hedging expenses), commonly referred as the “Net Spread.” Through the following strategies, our goal is to maximize the long-term sustainable difference between the yield on our investments and the cost of financing these assets:

- focusing on originating high credit quality residential mortgage loans through NYMC that we believe can either be retained in our portfolio or sold at a profit;
- focusing on maximizing our lending to home buyers rather than to home owners seeking to refinance their mortgage loans, which we believe makes our business less vulnerable to declines in loan origination volume resulting from increases in interest rates;
- leveraging our portfolio to increase its size with the intent to enhance our returns while at the same time managing the increased risk of loss associated with this leverage;
- utilizing hedging strategies that we consider appropriate to minimize exposure to interest rate changes; and
- expanding our retail and wholesale mortgage banking business through hiring of additional loan officers, the opening of new retail branch offices in new markets and selectively pursuing strategic acquisitions in the mortgage banking industry.

In order to be a full service provider to our customers, we originate mortgage loans through NYMC. Licensed or exempt from licensing in 40 states and the District of Columbia and through a network of 34 full service branch loan origination locations and 32 satellite loan origination locations, NYMC offers a broad range of residential mortgage products, with a primary focus on prime, or high credit quality, residential mortgage loans. Generally, we sell the fixed-rate loans that we originate to third parties and retain and finance in our portfolio selected adjustable-rate and hybrid mortgage loans that we originate. Any adjustable-rate and hybrid mortgage loans we originate that do not meet our investment criteria or portfolio requirements are also sold to third parties. Our portfolio of loans is held at the REIT level or by a qualified REIT subsidiary. We rely on our own underwriting criteria with respect to the mortgage loans we retain and rely on the underwriting criteria of the institutions to which we sell our loans with respect to the loans we intend to sell. In either case, we directly perform the underwriting of such loans with our own experienced underwriters.

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Upon completion of our initial public offering (“IPO”) in June 2004, we purchased and invested on a leveraged basis in residential mortgage-backed securities guaranteed by FNMA or FHLMC or rated investment grade-AAA. Over time, as these securities amortize and pay-off, they will be replaced by adjustable-rate and hybrid mortgage loans that we originate and may be supplemented by loans originated through our correspondent network or purchased from third parties. We believe that our return is enhanced by retaining loans that we originate as the basis for our portfolio. Mortgage investors that do not have their own origination capabilities (a “passive portfolio investor”) must purchase their mortgage loans from third parties at higher premiums than our cost of originating the mortgage loans that we retain.

We finance the purchases and originations of our ARM assets with equity capital, unsecured debt and short-term borrowings such as reverse repurchase agreements, securitizations resulting in floating-rate long-term collateralized debt obligations (“CDOs”) and other collateralized financings. We enter into swap agreements whereby we receive floating rate payments in exchange for fixed rate payments, effectively converting the borrowings to a fixed rate. We believe our exposure and risks related to changes in interest rates can be prudently managed through holding ARM assets and attempting to match the duration of our liabilities with the duration of our ARM assets. From a credit risk perspective, we retain high quality assets and follow strict credit underwriting standards.

Unlike banks, savings and loans or most mortgage originators, we are structured as a real estate investment trust (“REIT”) for federal income tax purposes. We hold our investment in ARM assets directly or in qualified REIT subsidiaries (each a “QRS”). Accordingly, the net interest income we earn on our ARM investment portfolio is generally not subject to federal income tax as long as we distribute at least 90% of our REIT taxable income in the form of a dividend to our stockholders each year and comply with various other requirements.

Our mortgage banking operations are performed at NYMC, a taxable REIT subsidiary (“TRS”). The activities we conduct in our TRS, including sourcing and selling mortgage loans sold to third parties, are subject to federal and state corporate income tax. We may elect to retain any after tax income generated by the TRS, and, as a result, may increase our consolidated capital and grow our business through retained earnings or distribute all or a portion of our after-tax TRS earnings to our stockholders.

As used herein, references to the “Company,” “NYMT,” “we,” “our” and “us” refer to New York Mortgage Trust, Inc., collectively with its subsidiaries.

Access to our Periodic SEC Reports and Other Corporate Information

Our internet website address is www.nymtrust.com. We make available free of charge, through our internet website, our annual report on Form 10-K, our quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments thereto that we file or furnish pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission (the “SEC”). Our Corporate Governance Guidelines and Code of Business Conduct and Ethics and the charters of our Audit, Compensation and Nominating and Corporate Governance Committees are also available on our website and are available in print to any stockholder upon request in writing to New York Mortgage Trust, Inc., c/o Chief Financial Officer and Secretary, 1301 Avenue of the Americas, 7th floor, New York, New York 10019. Information on our website is neither part of nor incorporated into this report on Form 10-K.

Corporate Governance

We operate our business with a focus on high standards in business practices and professional conduct. The results of our actions are objectively quantifiable but how we reach those benchmarks is often based on

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qualitative judgments we feel are equally important. Accordingly, we would like to highlight the following facts relating to corporate governance:

- Our board of directors is composed of a super-majority of independent directors. As per guidelines established by the SEC and NYSE, the Audit, Nominating/ Governance and Compensation Committees are composed exclusively of independent directors.
- We have adopted a Code of Business Conduct and Ethics and Corporate Governance Guidelines that apply to all officers, directors and employees (as well as a supplemental Code of Ethics for Senior Financial Officers) to promote the highest standard of conduct and ethics in our dealings with our customers, shareholders, vendors, the public and our employees.
- Our Insider Trading Policy prohibits any of the directors, officers or employees of the Company from buying or selling our stock on the basis of material nonpublic information, and in conjunction with our Regulation FD policy, prohibits communicating material nonpublic information to others. Trading of our securities by directors, officers or employees is allowed only during a discreet narrow open period after our quarterly report on Form 10-Q or annual report on Form 10-K is filed with the SEC.
- Generally, we will “early adopt” new accounting standards promulgated by the Financial Accounting Standards Board (“FASB”), the SEC or other standard setting accounting body.
- We have established a formal internal audit function to monitor and test the efficiency of our internal controls and procedures as well as the implementation of Section 404 of the Sarbanes-Oxley Act of 2002.
- We have made publicly available, through our website www.nymtrust.com, the charters of the independent committees of our Board of Directors (Audit Committee, Compensation Committee, Nominating and Corporate Governance Committee) and other corporate governance materials, including our Business Code of Conduct and Ethics, our Corporate Governance Guidelines, our Insider Trading Policy, and other Corporate Governance Policies.

Company History

NYMT was formed as a Maryland corporation in September 2003. In January 2004, the Company capitalized New York Mortgage Funding, LLC (“NYMF”) as a wholly-owned qualified REIT subsidiary of the Company. In June 2004, the Company sold 15 million shares of its common stock in an IPO at a price to the public of \$9.00 per share, for net proceeds of approximately \$122 million after deducting the underwriters’ discount and other offering expenses. Concurrent with the Company’s IPO, the Company issued 2,750,000 shares of common stock in exchange for the contribution to the Company of 100% of the equity interests of NYMC. Subsequent to the IPO and the contribution of NYMC, the Company has 18,114,445 shares of common stock issued and 17,797,375 shares outstanding at December 31, 2004. Prior to the IPO, NYMT and NYMF did not have recurring business operations.

Prior to being acquired by NYMT, NYMC’s business strategy was to sell or broker all of the loans it originated to third parties and the largest component of NYMC’s net income was generated by the gain on sale of such loans. For accounting purposes and reporting purposes, the combination of the Company and NYMC is accounted for as a reverse merger and the related transfer of loans originated by NYMC to the Company is accounted for as a transfer of assets between entities under common control. Accordingly, the Company has recorded assets and liabilities transferred from NYMC at their carrying amounts in the accounts of NYMC at the date of transfer. The consolidated financial statements include the accounts of the Company subsequent to the IPO and also include the accounts of NYMC and NYMF prior to the IPO. As a result, our historical financial results reflect the financial operations of this prior business strategy of selling virtually all of the loans originated by NYMC to third parties. Furthermore, to the degree we retain for investment selected ARM loans that we originate, these loans are recorded at cost and no gain on sale, as would otherwise be recognized if sold to a third party, is recorded. Since our IPO, our business strategy of investing in ARM assets and the securitization of loans that we originate will result in net interest income

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generated by such a portfolio as being the largest component of our net income. As a result, our historic operations and financial operations are not necessarily comparable.

Our Industry

Generally, the residential mortgage industry is segmented by the size of the mortgage loans and credit characteristics of the borrowers. Mortgage loans that conform to the guidelines of entities such as Fannie Mae, Freddie Mac or Ginnie Mae, for both size and credit characteristics, are often referred to as “conforming” mortgage loans. All other mortgage loans are often referred to as non-conforming loans either because the size of the loan exceeds the guideline limit or the credit profiles of the borrowers do not meet the guideline requirements. Our strategy focuses on adjustable- and fixed-rate and hybrid first lien mortgage loans to borrowers with strong credit profiles, which we refer to as prime mortgage loans. We believe the adjustable-rate and hybrid segment of the prime residential mortgage loan industry and our ability to originate such loans provides us the opportunity to build a portfolio of our own well-originated and well-serviced prime adjustable-rate and hybrid loans with the goal of generating higher risk-adjusted returns on investment than would be available from a portfolio based either on purchased loans or on fixed-rate or non-prime loans. We believe that our experience as a mortgage loan originator with a comprehensive and sophisticated process for credit evaluation, risk-based pricing and loss mitigation will, over time, provide us with a significant advantage over other portfolio investors who do not have comparable origination capabilities.

We believe fundamental changes are occurring in the U.S. mortgage industry, resulting in the shifting of investment capital and mortgage assets out of traditional lending and savings institutions and into new forms of mortgage banking and mortgage investment firms, including those that qualify as REITs under the Internal Revenue Code. We believe that, while traditional mortgage investment companies, such as banks, thrifts and insurance companies, generally have greater diversification in their investments than we have as a REIT, they provide less attractive investment structures for investing in mortgage assets because of the costs associated with regulation, infrastructure and corporate level taxation. As a REIT, we are generally able to pass through our REIT earnings to our stockholders without incurring entity-level federal income tax, thereby allowing us to make relatively larger distributions than institutions with similar investments because they are subject to federal income tax on their earnings.

Additionally, with the development of highly competitive national mortgage markets (which we believe is partly due to expansion of Fannie Mae, Freddie Mac and Ginnie Mae), local and regional mortgage originators have lost market share to more efficient mortgage originators who compete nationally. The growth of the secondary mortgage market, including new securitization techniques, has also resulted in financing structures that can be utilized efficiently to fund leveraged mortgage portfolios and better manage interest rate risk.

Operating Policies, Strategies and Business Segments

The Company operates two segments:

- *Mortgage Portfolio Management* — long-term investment in high-quality, adjustable-rate mortgage loans and residential mortgage-backed securities; and
- *Mortgage Lending* — mortgage loan originations as conducted by NYMC.

Our mortgage portfolio management operations primarily invest in adjustable-rate agency and “AAA”- rated residential mortgage-backed securities and high-quality mortgages that are originated by our mortgage operations or that may be acquired from third parties. The Company’s equity capital and borrowed funds are used to invest in residential mortgage-backed securities and loans held for subsequent securitization, thereby producing net interest income.

The mortgage lending segment originates residential mortgage loans through the Company’s taxable REIT subsidiary, NYMC. Loans are originated through NYMC’s retail and internet branches as well as from independent mortgage brokers and generate gain on sale revenue when the loans are sold to third parties or revenue from brokered loans when the loans are brokered to third parties.

Mortgage Portfolio Management

Prior to the completion of our IPO on June 29, 2004, our operations were limited to the mortgage operations described in the following section, "Mortgage Lending". Beginning in July 2004, we began to implement our business plan of investing in high quality, adjustable rate mortgage loan securities. Our portfolio management strategy is to originate and acquire ARM assets to hold in our portfolio, fund them using equity capital and borrowings and to generate net interest income from the difference, or spread, between the yield on these assets and our cost of financing.

- Proceeds from large amounts of equity capital are immediately invested in acquired ARM securities in order to generate returns on the equity investment.
- Acquired ARM securities are quickly replaced with high-quality, higher-yielding, lower cost ARM loans self-originated through NYMC retail channels and possibly supplemented by NYMC's correspondent network.
- Our mortgage portfolio management operates with a long-term investment outlook.
- Short-term financing of ARM loans to be securitized is provided by secured warehouse and aggregation lines.
- Ultimate financing for ARM loans is provided by issuing asset-backed bonds for higher liquidity and more cost efficient financing provided by reverse repurchase financing facilities.

We believe that there is a cost advantage obtained from self-originating loans and holding such loans in securitized form in the REIT or our QRS:

- through self-origination, we avoid the intermediation costs associated with purchasing mortgage assets in the capital markets; and
- the net interest income generated in the REIT or our QRS generally will not be subject to tax, whereas, had we sold our loans in the capital markets through our TRS, we would have been subject to tax on the gain on sale of loans.

This strategy and the use of borrowings to produce the mortgage-backed securities we hold will produce an attractive return for our stockholders relative to a purchased securities portfolio. This attractive return is accomplished by a combination of the recognition of the incremental lower cost to originate such loans and/or the ability to better afford appropriate interest rate hedging strategies in order to provide a similar return to a purchased securities portfolio but with a lower risk profile.

We seek to have a portfolio consisting of high quality mortgage-backed securities and loans. We believe that retaining high quality assets in our portfolio helps us mitigate risks associated with market disruptions. Our investment guidelines define the following classifications for securities we own:

- Category I investments are mortgage-backed securities that are either rated within one of the two highest rating categories by at least one of the Rating Agencies, or have their repayment guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae.
- Category II investments are mortgage-backed securities with an investment grade rating of BBB/ Baa or better by at least one of the Rating Agencies.
- Category III investments are mortgage-backed securities that have no rating from, or are rated below investment grade by at least one of the Rating Agencies.

We retain on our balance sheet a majority of the residential first lien adjustable-rate and hybrid mortgage loans originated by NYMC that we believe have a low risk of default and resulting loss and are of the following types:

- 1 month adjustable-rate (various total terms);
- 6 month adjustable-rate (various total terms);

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- 1 year adjustable-rate (various total terms);
- 2 year fixed-rate, adjustable-rate hybrid (various total terms);
- 3 year fixed-rate, adjustable-rate hybrid (various total terms); and
- 5 year fixed-rate, adjustable-rate hybrid (various total terms).

The investment policy adopted by our Board of Directors provides, among other things, that:

- no investment shall be made which would cause us to fail to qualify as a REIT;
- no investment shall be made which would cause us to be regulated as an investment company;
- at least 70% of our assets will be Category I investments or loans that back or will back such investments; and
- no more than 7.5% of our assets will be Category III investments.

Our board of directors may amend or waive compliance with this investment policy at any time without the consent of our stockholders.

We seek to avoid many of the risks typically associated with companies that purchase mortgage-backed securities in the capital markets.

- For our self-originated loan portfolio, we perform our own underwriting rather than rely on the underwriting of others.
- We attempt to closely match the duration of our assets with the duration of our liabilities (we strive to maintain a net duration, or duration gap, of one year or less on our ARM portfolio, related borrowings and hedging instruments).
- We structure our liabilities to mitigate potential negative effects of changes in the relationship between short- and longer-term interest rates.
- We may purchase or structure credit enhancements to mitigate potential losses from borrower defaults.
- Substantially all of the Company's securities are backed by ARM loans. Because we are focused on holding ARM loans rather than fixed-rate loans, we believe we will be less adversely affected by early repayments due to falling interest rates or a reduction in our net interest income due to rising interest rates.

Our board of directors has also established an investment and leverage committee for the purpose of approving certain investment transactions and the incurrence of indebtedness that is comprised of our co-chief executive officers, our president and chief investment officer, our chief financial officer and our chief operating officer. The committee has the authority to approve, without the need of further approval of our board of directors, the following transactions from time to time, any of which may be entered into by us or any of our subsidiaries:

- the purchase and sale of agency and private label mortgage-backed securities, subject to the limitations described above;
- securitizations of our mortgage loan portfolio;
- the purchase and sale of agency debt;
- the purchase and sale of U.S. Treasury securities;
- the purchase and sale of overnight investments;
- the purchase and sale of money market funds;

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- hedging arrangements using:
 - interest rate swaps and Eurodollar contracts;
 - caps, floors and collars;
 - financial futures; and
 - options on any of the above; and
- the incurrence of indebtedness using:
 - repurchase and reverse repurchase agreements;
 - bank loans, up to an aggregate of \$100 million; and
 - term repurchase agreements

Initially, the loans held for investment are funded through warehouse facilities and reverse repurchase agreements. We ultimately finance the loans that we retain in our portfolio through securitization transactions. Upon securitization, we expect that a vast majority of the resulting mortgage-backed securities will become eligible for inclusion in Category I.

The only subordinate classes of mortgage-backed securities that we will hold (Category III investments) are subordinate classes that result from securitizations of the mortgage loans in our portfolio. We do not seek to acquire subordinated mortgage-backed securities as investments but instead acquire them only in connection with our mortgage loan securitizations or in order to help us meet our asset tests as a REIT.

The Company generally maintains an overall debt-to-equity ratio ranging from 8:1 to 12:1 on the financing of its ARM investments. Our liabilities are primarily termed repurchase agreements with maturities ranging from one to twelve months. A significant risk to our operations, relating to our portfolio management, is the risk that interest rates on our assets will not adjust at the same times or amounts that rates on our liabilities adjust. Even though we retain and invest in ARMs, many of the hybrid ARM loans in our portfolio have fixed rates of interest for a period of time ranging from two to five years. Our funding costs are generally not constant or fixed. As a result, we use interest rate swaps to extend the duration of our liabilities to attempt to match the duration of our assets and we use termed repurchase agreements with laddered maturities to reduce the risk of a disruption in the repurchase market. Since we hold primarily ARM securities rated AAA and agency securities (Fannie Mae or Freddie Mac) we believe we are less susceptible to a disruption in the repurchase market as these types of securities have typically been eligible for repurchase market financing even when repurchase financing was not available for other classes of mortgage assets or asset backed bonds.

Mortgage Lending

The origination of mortgage loans through our mortgage lending operations is significant to our financial results in that it:

- originates the high quality mortgage loans that we retain and ultimately collateralize as mortgage securities that we hold in portfolio;
- allows us to be competitive by offering a broad range of residential mortgage loan products; and
- generates gain on sale income at the TRS with the ability to sell to third parties any fixed-rate and ARM loans that are not eligible for retention and investment in the Company's portfolio.

Furthermore, we believe our ability to originate ARM loans for securitization benefits us by providing:

- the ability to originate ARM assets at lower cost, so that the amount of premium (net cost over par) to be amortized will be reduced in the event of prepayment;
- generally higher yielding investments as our cost basis is lower; providing the ability to generate a higher return to shareholders and/or the ability to absorb the cost of additional interest rate hedges and thus reduce the inherent interest rate risk in our portfolio;

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- greater control over the quality and types of ARM loans in our portfolio as we directly perform our own underwriting of such loans and can encourage our loan officers to focus on certain types of ARM products.

Our correspondent network provides additional sources of ARM loans.

Through NYMC, the Company's loan origination business originates primarily first mortgages on one-to-four family dwellings through the Company's retail loan production offices and is supplemented by our wholesale division and internet channel (MortgageLine.com).

We believe that the substantial growth of NYMC's mortgage banking business since its inception has resulted from its commitment to providing exemplary service to its customers and its concentration on retail, referral-based, mortgage banking to borrowers with strong credit profiles. Based on our past experience and our knowledge of the mortgage industry, we believe that referrals from realtors, attorneys, accountants and other professionals and business from repeat customers tend to generate a higher percentage of purchase mortgage loan applications than refinance applications as compared to the loan applications generated by advertising and other mass marketing efforts. For the year ended December 31, 2004, our purchase loan originations represented 58.7% of NYMC's total residential mortgage loan originations as measured by principal balance, as compared to an industry-wide percentage of 55.7% for one-to-four family mortgage loans, according to the February 15, 2005 report of the Mortgage Bankers Association of America, or MBAA.

In addition, we believe that the market for mortgage loans for home purchases is less susceptible than the refinance market to downturns during periods of increasing interest rates, because borrowers seeking to purchase a home do not generally base their decision to purchase on changes in interest rates alone, while borrowers that refinance their mortgage loans often make their decision as a direct result of changes in interest rates. Consequently, while our referral-based marketing strategy may cause our overall loan origination volume during periods of declining interest rates to lag our competitors who rely on mass marketing and advertising and who therefore capture a greater percentage of loan refinance applications during those periods, we believe our strategy will enable us to sustain stronger home purchase loan origination volumes than those same competitors during periods of flat to rising interest rates. In addition, we believe that our referral-based business results in relatively higher gross margins and lower advertising costs and loan generation expenses than most other mortgage companies whose business is not referral-based.

MORTGAGE LOAN ORIGINATION SUMMARY For the fiscal year ended December 31, 2004

	Number of Loans	Dollar Value	% of Total
Payment Stream			
<i>Fixed Rate</i>			
FHA/ VA	1,830	\$ 226,932,582	12.30%
Conventional Conforming	2,628	459,081,075	24.88%
Conventional Jumbo	345	192,735,635	10.44%
Total Fixed Rate	<u>4,803</u>	<u>878,749,292</u>	<u>47.62%</u>
<i>ARMs</i>			
FHA/ VA	231	30,377,303	1.65%
Conventional	3,019	936,378,188	50.73%
Total ARMs	<u>3,250</u>	<u>966,755,491</u>	<u>52.38%</u>
Annual Total	<u>8,053</u>	<u>\$ 1,845,504,783</u>	<u>100.00%</u>

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	<u>Number of Loans</u>	<u>Dollar Value</u>	<u>% of Total</u>
Loan Purpose			
Conventional	5,992	\$ 1,588,194,898	86.06%
FHA/ VA	2,061	257,309,885	13.94%
Total	<u>8,053</u>	<u>\$ 1,845,504,783</u>	<u>100.00%</u>
Documentation Type			
Full Doc	5,438	\$ 1,257,080,181	68.12%
Reduced Doc	621	170,501,077	9.24%
Stated/ Stated	428	117,244,311	6.35%
No Doc	449	91,193,970	4.94%
No Ratio	287	69,858,488	3.79%
Other	830	139,626,756	7.56%
Total	<u>8,053</u>	<u>\$ 1,845,504,783</u>	<u>100.00%</u>

Retail Loan Origination

Our loan origination strategy is predominantly retail, referral-based, mortgage banking. Our loan officers rely primarily on the various relationships they have established with their clientele, realtors, attorneys and others who routinely interact with those who may need mortgage financing. Retail loan origination allows us to provide a variety of attractive and innovative mortgage products at competitive rates. Unlike many banks and financial institutions which focus solely on loan products to retain in their portfolios, we offer a wide range of product — product that we can retain in portfolio and products that we will sell to third parties if such loans do not meet our investment parameters.

Because we are predominately referral-based, our cost of sourcing potential retail clients is less than an organization that relies heavily on concentrated broadcast, print or internet media advertising. In order to remain compliant with the Real Estate Settlement Procedures Act (“RESPA”), we do not pay referral fees or enter into above market co-branding, co-marketing or shared facilities relationships. By eliminating intermediaries between the borrower and us, we can both originate high quality mortgage loans for retention in our portfolio at attractive yields or offer loans that may be sold to third parties, while at the same time offering our customers a variety of mortgage products at competitive rates and fees.

We originate mortgage loans through our wholly-owned TRS, NYMC. As of December 31, 2004, NYMC was authorized to originate loans in 40 states and the District of Columbia.

Wholesale Loan Origination

Our wholesale lending strategy has historically been a small component of our loan origination operations. We have a network of non-affiliated wholesale loan brokers and mortgage lenders who submit loans to us. We maintain relationships with these wholesale brokers and, as with retail loan originations, will underwrite, process, and fund wholesale loans through our centralized facilities and processing systems. In order to further diversify our origination network, in March 2005, we began to expand our wholesale loan origination capacity.

Correspondent Lending

Through our correspondent lending channels, we may acquire mortgage loans from Company-approved correspondent lenders. We review our correspondents for the soundness of their in-house mortgage lending procedures and their ability to fulfill their representations and warranties to us. Generally, loans acquired from correspondents are originated to our approved specifications including our internally developed loan products, credit and property guidelines, and underwriting criteria. In addition, correspondents may sell their own loan

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products to us that are originated according to the correspondents' product specifications and underwriting guidelines that we have approved and accepted.

To verify product quality and compliance with our underwriting and investment guidelines, we perform a full review of all of the loans generated by the correspondent prior to the purchase thereof. A full underwriting review of each loan file, including all credit and appraisal information, is performed as well as documentation sufficiency and compliance. Similar to loans originated through our retail and wholesale channels, these loans are also subjected to our quality control reviews.

Underwriting

Historically, NYMC's underwriting philosophy has been to underwrite loans according to the guidelines established by the available purchasers of its loans. However, now that the Company is retaining select ARM loans for its investment portfolio, we believe that proper underwriting for such loans is critical to managing the credit risk inherent in a loan portfolio. While difficult to quantify, we believe that there is substantial qualitative benefit to directly performing our own underwriting of loans in portfolio as compared to a purchased securities portfolio.

Typically, mortgage underwriting guidelines provide a framework for determining whether a proposed mortgage loan to a potential borrower will be approved. The key points in this framework are the borrower's credit scores and other indicia of the borrower's ability and willingness to repay the loan, such as the borrower's employment and income, the amount of the borrower's equity in and the value of the borrower's property securing the loan, the borrower's debt to income and other debt ratios, the loan to value ("LTV") of the loan, the amount of funds available to the borrower for closing and the borrower's post-closing liquidity.

We continue to follow the underwriting guidelines established by available purchasers with respect to the loans we intend to sell. Furthermore, for mortgage loans we intend to retain, we follow a specific underwriting methodology based on the following philosophy — first evaluate the borrower's ability and willingness to repay the loan, and then evaluate the value of the property securing the loan. We seek only to retain mortgage loans that we believe have low risk of default and resultant loss. As underwriting basically seeks to predict future borrower payment patterns and ability based on the borrower's history and current financial information and the lender's ability to be made whole in the future through foreclosure in the event a default does occur, no assurance can be made that every loan originated or purchased will perform as anticipated.

The key aspects of our underwriting guidelines are as follows:

Borrower — In evaluating the borrower's ability and willingness to repay a loan, we review and analyze the following aspects of the borrower: credit score, income and its source, employment history, debt levels in revolving, installment and other mortgage loans, credit history and use of credit in the past, and finally the ability and/or willingness to provide verification for the above. Credit scores, credit history, use of credit in the past and information as to debt levels can be typically obtained from a third party credit report through a credit repository. Those sources are used in all cases, as available. In certain cases, borrowers have little or no credit history that can be tracked by one of the primary credit repositories. In these cases, the reason for the lack of history is considered and taken into account. In our experience, more than 95% of prospective borrowers have accessible credit histories.

Property — In evaluating a potential property to be used as collateral for a mortgage loan, we consider all of the following aspects of the property: the loan balance versus the property value, or LTV, the property type, how the property will be occupied (a primary residence, second home or investment property), if the property's apparent value is supported by recent sales of similar properties in the same or a nearby area, any unique characteristics of the property and our confidence in the above data and their sources.

Other Considerations — Other considerations that impact our decision regarding a borrower's loan application include the borrower's purpose in requesting the loan (purchase of a home as opposed to cashing equity out of the home through a refinancing for example), the loan type (adjustable-rate, including adjustment periods and loan life rate caps, or fixed-rate), and any items unique to a loan that we believe could affect credit performance.

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In addition, we work with nationally recognized providers of appraisal, credit, and title insurance. We oversee the activities of these service providers through on-site visits, report monitoring, customer service surveys, post-closing quality control, and periodic direct participation and conversations with our customers. A significant amount of our settlement services are performed by in-house professionals. We have an extensive quality control review process that is contracted with a third party in order to verify that selected loans were properly underwritten, executed and documented. All loans retained in portfolio and a selection of other loans sold to third parties also are quality control reviewed internally as well.

Our Loan Origination Financing Strategy

We finance our loan originations utilizing warehouse and reverse repurchase agreements as well as other similar financing arrangements. The agreements are each renewable annually, but are not committed, meaning that the counterparties to the agreements may withdraw access to the credit facilities at any time.

Warehouse Facilities — Non-depository mortgage lenders, such as NYMC, typically rely on credit facilities for capital needed to fund new mortgage loans. These facilities are typically lines of credit from other financial institutions that the mortgage banker can draw from in order to fund new mortgage loans. These facilities are referred to as warehouse lines or warehouse facilities.

Warehouse lines are typically collateralized loans made to mortgage bankers that in turn pledge the resulting loans to the warehouse lender. Third-party mortgage custodians, usually large banks, typically hold the mortgage loans, including the notes, mortgages and other important loan documentation, for the benefit of the mortgage lender who is deemed to own the loan and, if there is a default under the warehouse line, for the benefit of the warehouse lender.

We currently have a \$150 million syndicated line of credit with HSBC Bank USA and a \$250 million warehouse facility with Greenwich Capital Financial Products, Inc.

Master Repurchase Agreement — Mortgage bankers use repurchase agreements or reverse repurchase agreements to finance the mortgage loans they originate. Under those agreements, the mortgage banker sells a mortgage loan to a counterparty and agrees to repurchase the loan from the counterparty at a price equal to the original sale price plus an interest factor.

We currently have a master repurchase agreement, also referred to as a reverse repurchase agreement, with Credit Suisse First Boston Mortgage Capital, LLC, pursuant to which we may enter into up to \$100 million (this facility will increase to \$200 million on March 31, 2005) in aggregate loan repurchase arrangements. We currently utilize this master repurchase agreement essentially like a warehouse line to finance mortgage loans originations.

Loan Servicing

Loan servicing is the administration function of a mortgage loan whereby an entity collects monthly payments from a mortgage borrower and disburses those funds to the appropriate parties. The servicer has to account for all payments, maintain balances in certain accounts for each loan, maintain escrow accounts for real estate taxes and insurance, remit the correct amount of principal and interest monthly to the holder of the loan and handle foreclosures as required.

Loans that we originate that are retained by us for our portfolio have their servicing handled by Cenlar Federal Savings Bank (“Cenlar”), a wholesale bank specializing in mortgage sub-servicing nationwide. Under this arrangement, Cenlar acts as an intermediary between us and the borrower. It collects payments from borrowers, handles accounting and remittance of the payments, handles escrow accounts and does certain tax reporting. As our retained loans are securitized, Cenlar continues to service those loans and reports to the securities trustee or master servicer, as appropriate.

For a loan originated and sold to third parties, the servicing rights are sold upon the sale of the loan. We may choose to own, for periods usually no more than 90 days, certain loans designated as held for sale to third parties in order to increase earnings. In these cases, we believe there is a large enough spread between the

mortgage loan interest rate and the interest rate paid on the applicable warehouse line to make any additional risk in carrying those loans on our balance sheet worthwhile. In these cases, and during the interim period between the time we fund (and subsequently own) a loan and sell the loan to a third party, we service loans through Cenlar as well.

Loan servicing provided by Cenlar is provided on a private label basis, meaning that Cenlar employees will identify themselves as being our representatives and correspondence regarding loans is on our letterhead. The benefit to us of this arrangement is that we pay for loan services as we use them, without a significant investment in personnel, systems and equipment. In addition, since Cenlar sub-services on our behalf and reports directly to us, we are quickly made aware of any customer wishing for an early payoff of their loan through refinancing or sale of their home. As a result, we can quickly respond to customer needs and make immediate efforts reestablishing customer contact in order to capture the potential payoff of a customer's loan with another loan product (potential refinancing, modification or new purchase mortgage) that suits their needs.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K contains certain forward-looking statements. Forward looking statements are those which are not historical in nature. They can often be identified by their inclusion of words such as “will,” “anticipate,” “estimate,” “should,” “expect,” “believe,” “intend” and similar expressions. Any projection of revenues, earnings or losses, capital expenditures, distributions, capital structure or other financial terms is a forward-looking statement. Certain statements regarding the following particularly are forward-looking in nature:

- our business strategy;
- future performance, developments, market forecasts or projected dividends;
- projected acquisitions or joint ventures; and
- projected capital expenditures.

It is important to note that the description of our business in general and our investment in mortgage loans and mortgage-backed securities holdings in particular, is a statement about our operations as of a specific point in time. It is not meant to be construed as an investment policy, and the types of assets we hold, the amount of leverage we use, the liabilities we incur and other characteristics of our assets and liabilities are subject to reevaluation and change without notice.

Our forward-looking statements are based upon our management's beliefs, assumptions and expectations of our future operations and economic performance, taking into account the information currently available to us. Forward-looking statements involve risks and uncertainties, some of which are not currently known to us that might cause our actual results, performance or financial condition to be materially different from the expectations of future results, performance or financial condition we express or imply in any forward-looking statements. Some of the important factors that could cause our actual results, performance or financial condition to differ materially from expectations are:

- our limited operating history with respect to our portfolio strategy;
- our proposed portfolio strategy may be changed or modified by our management without advance notice to stockholders, and that we may suffer losses as a result of such modifications or changes;
- impacts of a change in demand for mortgage loans on our net income and cash available for distribution;
- our ability to originate prime and high-quality adjustable-rate and hybrid mortgage loans for our portfolio;
- risks associated with the use of leverage;

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- interest rate mismatches between our mortgage-backed securities and our borrowings used to fund such purchases;
- changes in interest rates and mortgage prepayment rates;
- effects of interest rate caps on our adjustable-rate mortgage-backed securities;
- the degree to which our hedging strategies may or may not protect us from interest rate volatility;
- potential impacts of our leveraging policies on our net income and cash available for distribution;
- our board's ability to change our operating policies and strategies without notice to you or stockholder approval;
- the other important factors described in this Annual Report on Form 10-K, including those under the captions "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Risk Factors," and "Quantitative and Qualitative Disclosures about Market Risk."

We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. In light of these risks, uncertainties and assumptions, the events described by our forward-looking events might not occur. We qualify any and all of our forward-looking statements by these cautionary factors. In addition, you should carefully review the risk factors described in other documents we file from time to time with the Securities and Exchange Commission, including the Company's registration statement on Form S-11 (File No. 333-111668).

This Annual Report on Form 10-K contains market data, industry statistics and other data that have been obtained from, or compiled from, information made available by third parties. We have not independently verified their data.

RISK FACTORS

Management recognizes the following primary risks associated with our business and the industry in which we conduct business:

- Interest rate and market (fair value) risk
- Credit spread risk
- Liquidity and funding risk
- Prepayment risk
- Credit risk

Interest Rate Risk

Our primary interest rate exposure relates to the portfolio of adjustable-rate mortgage loans and mortgage-backed securities we acquire, as well as our variable-rate borrowings and related interest rate swaps and caps. Interest rate risk is defined as the sensitivity of our current and future earnings to interest rate volatility, variability of spread relationships, the difference in re-pricing intervals between our assets and liabilities and the effect that interest rates may have on our cash flows, especially prepayment speeds on our residential mortgage related assets.

Changes in the general level of interest rates can affect our net interest income, which is the difference between the interest income earned on interest earning assets and our interest expense incurred in connection with our interest bearing debt and liabilities. Changes in interest rates can also affect, among other things, our ability to originate and acquire loans and securities, the value of our loans, mortgage pools and mortgage-backed securities, and our ability to realize gains from the resale and settlement of such originated loans.

In our investment portfolio our primary market risk is interest rate risk. Interest rate risk can be defined as the sensitivity of our portfolio, including future earnings potential, prepayments, valuations and overall

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liquidity. The Company attempts to manage interest rate risk by adjusting portfolio compositions, liability maturities and utilizing interest rate derivatives including interest rate swaps and caps. Management's goal is to maximize the earnings potential of the portfolio while maintaining long term stable portfolio valuations.

See the "Derivative Financial Instruments" section of "Management's Discussion and Analysis of Financial Condition and Results of Operations" for further information regarding interest rate risk.

Market (Fair Value) Risk

The market value of our interest-bearing portfolio assets, most notably mortgage-backed securities and originated or purchased residential mortgage loans and any related hedging instruments, may move inversely with changes in interest rates. We note that the values of our investments in mortgage-backed securities, and in derivative instruments, primarily interest rate hedges on our debt, will be sensitive to changes in market interest rates, interest rate spreads, credit spreads and other market factors. The value of these investments can vary and has varied materially from period to period. Historically, the values of our mortgage loan portfolio have tended to vary inversely with those of its derivative instruments.

A decline in the market value of our investments may limit our ability to borrow or result in lenders requiring additional collateral or initiating margin calls under our reverse repurchase agreements. As a result, we could be required to sell some of our investments under adverse market conditions in order to maintain liquidity. If such sales are made at prices lower than the amortized costs of such investments, we will incur losses. A default under our reverse repurchase agreements could also result in the liquidation of the underlying investments used as collateral and result in a loss equal to the difference between the value of the collateral and the amount owed under our reverse repurchase agreements.

Credit Spread Risk

The mortgage-backed securities we will own are also subject to spread risk. The majority of these securities will be adjustable-rate securities valued based on a market credit spread to U.S. Treasury security yields. In other words, their value is dependent on the yield demanded on such securities by the market based on their credit relative to U.S. Treasury securities. Excessive supply of such securities combined with reduced demand will generally cause the market to require a higher yield on such securities, resulting in the use of a higher or wider spread over the benchmark rate (usually the applicable U.S. Treasury security yield) to value such securities. Under such conditions, the value of our securities portfolio would tend to decline. Conversely, if the spread used to value such securities were to decrease or tighten, the value of our securities portfolio would tend to increase. Such changes in the market value of our portfolio may affect our net equity, net income or cash flow directly through their impact on unrealized gains or losses on available-for-sale securities, and therefore our ability to realize gains on such securities, or indirectly through their impact on our ability to borrow and access capital.

Furthermore, shifts in the U.S. Treasury yield curve, which represents the market's expectations of future interest rates, would also affect the yield required on our securities and therefore their value. This would have similar effects on our portfolio and our financial position and results of operations as a change in spreads would.

Liquidity and Funding Risk

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available for our operating businesses and our investment in mortgage loans until the settlement or sale of mortgages with us or with other investors. It is our policy to have adequate liquidity at all times to cover normal cyclical swings in funding availability and mortgage demand and to allow us to meet abnormal and unexpected funding requirements. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds.

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Our mortgage lending operations require significant cash to fund loan originations. Our warehouse lending arrangements, including repurchase agreements, support the mortgage lending operation. Generally, our warehouse mortgage lenders allow us to borrow between 98% and 100% of the outstanding principal. Funding for the difference — generally 2% of the principal — must come from other cash inflows. Our operating cash inflows are predominantly from cash flow from mortgage securities, principal and interest on mortgage loans, third party sales of originated loans that do not fit our portfolio investment criteria, and fee income from loan originations. Other than access to our financing facilities, proceeds from equity offerings have been used to support operations.

Our investment portfolio uses reverse repurchase agreements as the primary source of liquidity. The company maintains reverse repurchase borrowing lines with numerous counterparties to ensure adequate capacity at all times. The company may borrow up to 95%-97% of the security value depending on the type of underlying collateral. The company operates its leverage within an intended guideline to ensure adequate liquidity for prepayments and unexpected interest rate moves in the market place.

Securities or loans financed with warehouse, aggregation, repurchase credit facilities or reverse repurchase agreements are subject to changing market valuations and margin calls. The market value of our securities or loans is dependent on a variety of economic conditions, including interest rates (and borrower demand) and end investor desire and capacity. There is no certainty that market values will remain constant. To the extent the value of the securities or loans declines significantly, we would be required to repay portions of the amounts we have borrowed or post additional margin in the form of cash or securities. The derivative financial instruments we use also subject us to “margin call” risk based on their market values. Under our interest rate swaps, we pay a fixed rate to the counterparties while they pay us a floating rate. When floating rates are low, on a net basis we pay the counterparty and visa-versa. In a declining interest rate environment, we would be subject to additional exposure for cash margin calls. However, the asset side of the balance sheet should increase in value in a further declining interest rate scenario. Most of our interest rate swap agreements provide for a bi-lateral posting of margin, the effect being that on either side of the valuation for such swaps, the counterparty can call/post margin. Unlike typical unilateral posting of margin only in the direction of the swap counterparty, this provides us with additional flexibility in meeting our liquidity requirements as we can call margin on our counterparty as swap values increase.

Incoming cash on our mortgage loans and securities is a principal source of cash. The volume of cash depends on, among other things, interest rates. The volume and quality of such incoming cash flows can be impacted by severe and immediate changes in interest rates. If rates increase dramatically, our short-term funding costs will increase quickly. While many of our loans are hybrid ARMs, they typically will not reset as quickly as our funding costs creating a reduction in incoming cash flow. Our derivative financial instruments are used to mitigate the effect of interest rate volatility.

Prepayment Risk

When borrowers repay the principal on their mortgage loans before maturity or faster than their scheduled amortization, the effect is to shorten the period over which interest is earned, and therefore, reduce the cash flow and yield on our mortgage assets. Furthermore, prepayment speeds exceeding or lower than our reasonable estimates for similar assets, impact the effectiveness of any hedges we have in place to mitigate financing and/or fair value risk. Generally, when market interest rates decline, borrowers have a tendency to refinance their mortgages. The higher the interest rate a borrower currently has on his or her mortgage the more incentive he or she has to refinance the mortgage when rates decline. Additionally, when a borrower has a low loan-to-value ratio, he or she is more likely to do a “cash-out” refinance. Each of these factors increases the chance for higher prepayment speeds during the term of the loan.

We generally do not originate loans that provide for a prepayment penalty if the loan is fully or partially paid off prior to scheduled maturity. We mitigate prepayment risk by constantly evaluating our mortgage portfolio at a range of reasonable market prepayment speeds observed at the time for assets with a similar structure, quality and characteristics. Furthermore, we stress-test the portfolio as to prepayment speeds and interest rate risk in order to develop an effective hedging strategy.

Credit Risk

Credit risk is the risk that we will not fully collect the principal we have invested in mortgage loans or securities. As previously noted, we are predominately a high-quality loan originator and our underwriting guidelines are intended to evaluate the credit history of the potential borrower, the capacity and willingness of the borrower to repay the loan, and the adequacy of the collateral securing the loan.

We mitigate credit risk by directly underwriting our own loan originations and re-underwriting any loans originated through our correspondent networks. For our mortgage securities that are directly purchased, we rely on the agency and AAA-rating of the securities supplemented with additional due diligence.

With regard to loan originations, factors such as FICO (“FICO” is a credit score, ranging from 300 to 850, with 850 being the best score, based upon the credit evaluation methodology developed by Fair, Isaac and Company, a consulting firm specializing in creating credit evaluation models) score, LTV, debt-to-income ratio, and other borrower and collateral factors are evaluated. Credit enhancement features, such as mortgage insurance may also be factored into the credit decision. In some instances, when the borrower exhibits strong compensating factors, exceptions to the underwriting guidelines may be approved.

Our loan originations are concentrated in geographic markets that are generally supply constrained. We believe that these markets have less exposure to sudden declines in housing values than those markets which have an oversupply of housing. In addition, in the supply constrained housing markets we focus on, housing values tend to be high and, generally, underwriting standards for higher value homes require lower LTVs and thus more owner equity further mitigating credit risk. Finally, the higher housing value/mortgage loan financing markets allow for more cost efficient origination volume in terms of dollars and units.

Other Risk Factors

Our business strategy partially depends on our ability to originate prime adjustable-rate and hybrid mortgage loans for our portfolio.

Our portfolio of prime adjustable-rate and hybrid mortgage loans will, over time, be comprised primarily of mortgage loans that we originate through NYMC. If NYMC is not able to originate prime adjustable-rate and hybrid mortgage loans that meet our investment criteria at the volumes we expect, the time required for, and the cost associated with, building our portfolio may be greater than expected, which could have an adverse effect on our results of operations and our ability to make distributions to our stockholders.

Our mortgage loan originations historically have been concentrated in specific geographic regions and any adverse market or economic conditions in those regions may have a disproportionately adverse effect on the ability of our customers to make their loan payments.

Our mortgage loan originations have been and may in the future be concentrated in specific geographic regions — predominantly in the mid-Atlantic, Northeast and New England regions of the United States. Adverse market or economic conditions in a particular region may disproportionately increase the risk that borrowers in that region will be unable to make their mortgage payments. In addition, the market value of the real estate securing those mortgage loans could be adversely affected by adverse market and economic conditions in that region. Any sustained period of increased payment delinquencies, foreclosures or losses caused by adverse market or economic conditions in that geographic region could adversely affect both our net interest income from loans in our portfolio as well as our ability to originate, sell and securitize loans, which would significantly harm our revenues, results of operations, financial condition, and business prospects.

A prolonged economic slowdown, a lengthy or severe recession or declining real estate values could harm our operations.

We believe the risks associated with our business will be more acute during periods of economic slowdown or recession if these periods are accompanied by declining real estate values. Declining real estate values will likely reduce our level of new mortgage loan originations, since borrowers often use increases in the value of their existing home to support the refinancing of their existing mortgage loans or the purchase of new

homes at higher levels of borrowings. Further, declining real estate values significantly increase the likelihood that we will incur losses on our loans in the event of default. Any sustained period of increased payment delinquencies, foreclosures or losses could adversely affect both our net interest income from loans in our portfolio as well as our ability to originate, sell and securitize loans, which would significantly harm our revenues, results of operations, financial condition, and business prospects.

Our hedging transactions may limit our gains or result in losses.

We use derivatives, primarily interest rate swaps and caps, to hedge our liabilities and this has certain risks, including the risk that losses on a hedging transaction will reduce the amount of cash available for distribution to our stockholders and that such losses may exceed the amount invested in such instruments. Our board of directors has adopted a general policy with respect to the use of derivatives, and which generally allows us to use derivatives when we deem appropriate for risk management purposes, but does not set forth specific guidelines. To the extent consistent with maintaining our status as a REIT, we may use derivatives, including interest rate swaps and caps, options, term repurchase contracts, forward contracts and futures contracts, in our risk management strategy to limit the effects of changes in interest rates on our operations. However, a hedge may not be effective in eliminating the risks inherent in any particular position. Our profitability may be adversely affected during any period as a result of the use of derivatives in a hedging transaction.

We may be subject to losses due to fraudulent and negligent acts on the part of loan applicants, mortgage brokers, other vendors and our employees.

When we originate mortgage loans, we rely upon information supplied by borrowers and other third parties, including information contained in the applicant's loan application, property appraisal reports, title information and employment and income documentation. If any of this information is misrepresented or falsified and if we do not discover it prior to funding a loan, the actual value of such loan may be significantly lower than anticipated. As a practical matter, we generally bear the risk of loss associated with a misrepresentation whether it is made by the loan applicant, the mortgage broker, another third party or one of our employees. A loan subject to a material misrepresentation is typically unsaleable or is subject to repurchase or substitution if it is sold or securitized prior to detection of the misrepresentation. Although we may have rights against persons and entities who made or knew about the misrepresentation, those persons and entities may be difficult to locate, and it is often difficult to collect any monetary losses from them that we may have suffered.

Our operations are subject to a body of complex laws and regulations at the federal, state and local levels.

We must comply with the laws, rules and regulations, as well as judicial and administrative decisions, of all jurisdictions in which we originate mortgage loans, as well as an extensive body of federal laws, rules and regulations. The volume of new or modified laws, rules and regulations applicable to our business has increased in recent years and individual municipalities have also begun to enact laws, rules and regulations that restrict or otherwise affect loan origination activities, and in some cases loan servicing activities. The laws, rules and regulations of each of these jurisdictions are different, complex and, in some cases, in direct conflict with each other. It may be more difficult to identify comprehensively, to interpret accurately, to program properly our information systems and to effectively train our personnel with respect to all of these laws, rules and regulations, thereby potentially increasing the risks of non-compliance with these laws, rules and regulations.

Our failure to comply with these laws, rules and regulations can lead to:

- civil and criminal liability, including potential monetary penalties;
- loss of state licenses or permits required for continued lending and servicing operations;

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- legal defenses causing delay or otherwise adversely affecting our ability to enforce loans, or giving the borrower the right to rescind or cancel the loan transaction;
- demands for indemnification or loan repurchases from purchasers of our loans;
- class action lawsuits; and
- administrative enforcement actions.

Seasonality

Loan originations and payoffs are typically at their lowest levels during the first and fourth quarters of the year due to a reduced level of home buying activity during the colder months and while schools are in session. Loan originations and payoffs generally increase during the warmer months, beginning in March and continuing through October. The Company typically experiences higher earnings in the second and third quarters and lower earnings in the first and fourth quarters from its loan origination segment.

Competition

We face intense competition from finance and mortgage banking companies, other mortgage REITs, internet-based lending companies where entry barriers are relatively low, and, to a growing extent, from traditional bank and thrift lenders that have increased their participation in the mortgage industry. As we expand our loan origination business further and build a portfolio of mortgage loans and mortgage-backed securities, we face a significant number of additional competitors, many of whom will be well established in the markets we seek to operate. Some of our competitors are much larger than we are, have better name recognition than we do and have far greater financial and other resources than we do.

We anticipate that the majority of our competition will be in the mortgage industry. In addition to mortgage banking companies, internet-based lending companies, traditional banks and thrift lenders, the government sponsored entities Fannie Mae and Freddie Mac are also expanding their participation in the mortgage industry. While the government sponsored entities presently do not have the legal authority to originate mortgage loans, they do have the authority to buy loans. If as a result of their purchasing practices, these government sponsored entities experience significantly higher-than-expected losses, the experience could adversely affect overall investor perception of the mortgage industry.

Competition in the industry can take many forms, including lower interest rates and fees, less stringent underwriting standards, convenience in obtaining a loan, customer service, amount and term of a loan and marketing and distribution channels. The need to maintain mortgage loan volume in this competitive environment creates a risk of price and quality competition in the mortgage industry. Price competition could cause us to lower the interest rates that we charge borrowers, which could lower the value of our loans we sell or retain in our portfolio. If our competitors adopt less stringent underwriting standards, we will be pressured to do so as well. If we do not relax underwriting standards in response to our competitors, we may lose market share. If we relax our underwriting standards in response to price competition, we may be exposed to higher credit risk without receiving higher pricing to compensate for the higher risk. Any increase in these pricing and underwriting pressures could reduce the volume of our loan originations and sales and significantly harm our business, financial condition, liquidity and results of operations.

Personnel

The Company recruits, hires and retains individuals with the specific skills that complement its corporate growth and business strategies. As of December 31, 2004, we employed 782 people. Of this number, 344 were loan officers dedicated to originating loans. The number of employees at December 31, 2003 was 335, of which 142 were loan officers dedicated to originating loans.

Certain Federal Income Tax Considerations and Our Status as a REIT

We have elected to be taxed as a REIT under the federal income tax laws. As such, we operate in such a manner as to qualify for taxation as a REIT under the federal income tax laws, and we intend to continue to operate in such a manner, but no assurance can be given that we will operate in a manner so as to qualify or remain qualified as a REIT.

As a REIT, we generally will not be subject to federal income tax on the REIT taxable income that we distribute to our stockholders, but taxable income generated by NYMC, our taxable REIT subsidiary, is subject to regular corporate income tax. The benefit of REIT tax status is a tax treatment that avoids “double taxation,” or taxation at both the corporate and stockholder levels, that generally applies to distributions by a corporation to its stockholders.

Summary Requirements for Qualification

Organizational Requirements

A REIT is a corporation, trust, or association that meets each of the following requirements:

- 1) It is managed by one or more trustees or directors.
- 2) Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.
- 3) It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.
- 4) It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.
- 5) At least 100 persons are beneficial owners of its shares or ownership certificates.
- 6) Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year.
- 7) It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status.
- 8) It meets certain other qualification tests, described below, regarding the nature of its income and assets.

We must meet requirements 1 through 4 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

Qualified REIT Subsidiaries. A corporation that is a “qualified REIT subsidiary” is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a “qualified REIT subsidiary” are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A “qualified REIT subsidiary” is a corporation, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described herein, any “qualified REIT subsidiary” that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit.

Taxable REIT Subsidiaries. A REIT is permitted to own up to 100% of the stock of one or more “taxable REIT subsidiaries,” or TRSs. A TRS is a fully taxable corporation that may earn income that would not be qualifying income if earned directly by the parent REIT. Overall, no more than 20% of the value of a REIT’s assets may consist of stock or securities of one or more TRSs.

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A TRS will pay income tax at regular corporate rates on any income that it earns. In addition, the TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. We have elected for NYMC to be treated as a TRS. NYMC is subject to corporate income tax on its taxable income, which is its net income from loan originations and sales.

Qualified REIT Assets

On the last day of each calendar quarter, at least 75% of the value of our assets (which includes any assets held through a qualified REIT subsidiary) must consist of qualified REIT assets — primarily, real estate, mortgage loans secured by real estate, and certain mortgage-backed securities (“Qualified REIT Assets”), government securities, cash, and cash items. We believe that substantially all of our assets are and will continue to be Qualified REIT Assets. On the last day of each calendar quarter, of the assets not included in the foregoing 75% asset test, the value of securities that we hold issued by any one issuer may not exceed 5% in value of our total assets and we may not own more than 10% of the voting power or value of any one issuer’s outstanding securities (with an exception for securities of a qualified REIT subsidiary or of a taxable REIT subsidiary). In addition, the aggregate value of our securities in taxable REIT subsidiaries is limited to 20% or less of our total assets. We monitor the purchase and holding of our assets in order to comply with the above asset tests.

We may from time to time hold, through one or more taxable REIT subsidiaries, assets that, if we held directly, could generate income that would have an adverse effect on our qualification as a REIT or on certain classes of our stockholders.

Gross Income Tests

We must meet the following separate income-based tests each year:

1. The 75% Test. At least 75% of our gross income for the taxable year must be derived from Qualified REIT Assets including interest (other than interest based in whole or in part on the income or profits of any person) on obligations secured by mortgages on real property or interests in real property. The investments that we have made and will continue to make will give rise primarily to mortgage interest qualifying under the 75% income test.

2. The 95% Test. At least 95% of our gross income for the taxable year must be derived from the sources that are qualifying for purposes of the 75% test, and from dividends, interest or gains from the sale or disposition of stock or other assets that are not dealer property. We intend to limit substantially all of the assets that we acquire to Qualified REIT Assets. Our strategy to maintain REIT status may limit the type of assets, including hedging contracts and other assets that we otherwise might acquire.

Distributions

We must distribute to our stockholders on a pro rata basis each year an amount equal to at least (i) 90% of our taxable income before deduction of dividends paid and excluding net capital gain, plus (ii) 90% of the excess of the net income from foreclosure property over the tax imposed on such income by the Internal Revenue Service Tax Code, less (iii) any “excess non-cash income.” We intend to make distributions to our stockholders in sufficient amounts to meet the distribution requirement for REIT qualification.

Item 2. PROPERTIES

Our principal executive and administrative offices are located at 1301 Avenue of the Americas, 7th floor, New York, New York 10019. We also operate retail loan origination sales offices at 66 (34 branches and 32 branch satellite locations) locations in 12 states. All of our facilities are leased. The aggregate annual rent for these locations is approximately \$3.2 million.

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Item 3. LEGAL PROCEEDINGS

The Company is at times subject to various legal proceedings arising in the ordinary course of business. The Company does not believe that any of its current legal proceedings, individually or in the aggregate, will have a material adverse effect on its operations or financial condition.

Item 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None

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

Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters

Our common stock is traded on the New York Stock Exchange under the trading symbol "NTR". As of March 21, 2005, we had 17,797,375 shares of common stock outstanding, held by 2,943 holders of record.

The following table sets forth, for the periods indicated, the high, low and closing sales prices per share of common stock on the NYSE and the cash dividends paid or payable per share of common stock.

	Common Stock Prices			Cash Dividends		
	High	Low	Close	Declared	Paid or Payable	Amount per Share
Year Ended December 31, 2004						
Fourth quarter	\$ 11.34	\$8.90	\$ 11.20	12/16/04	1/26/05	\$ 0.24
Third quarter	9.90	8.55	9.35	9/16/04	10/26/04	0.16
Second quarter	9.15	8.69	8.86	¹	¹	¹

¹ The Company closed its IPO on June 29, 2004. As a result, no dividend for the two days of the quarter ended June 30, 2004 was declared or paid.

In order to qualify for the tax benefits accorded to a REIT under the Code, we intend to pay quarterly dividends such that all or substantially all of our taxable income each year (subject to certain adjustments) is distributed to our stockholders. All of the distributions that we make will be at the discretion of our Board of Directors and will depend on our earnings and financial condition, maintenance of REIT status and any other factors that the Board of Directors deems relevant.

Recent Sales of Unregistered Securities

On March 15, 2005 the Company closed an offering of 25,000 shares of trust preferred securities to Taberna Preferred Funding I, Ltd., a pooled investment vehicle, raising cash proceeds of approximately \$24.2 million after deducting a \$0.8 million underwriting discount. The securities were issued by NYM Preferred Trust I and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities have a floating interest rate equal to three-month LIBOR plus 375 basis points, resetting quarterly. The securities mature on March 15, 2035 and may be called at par by the Company any time after March 15, 2010. These securities were offered and sold in a private placement under Section 4(2) of the Securities Act of 1933, as amended. Cohen Bros. & Company acted as the underwriter.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

The Company has not purchased any of its registered equity securities in the twelve months ended December 31, 2004.

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Securities Authorized for Issuance Under Equity Compensation Plans

The following table sets forth information as of December 31, 2004 with respect to compensation plans under which equity securities of the Company are authorized for issuance. The Company has no such plans that were not approved by security holders.

<u>Plan Category</u>	<u>Number of Securities to be Issued upon Exercise of Outstanding Options, Warrants and Rights</u>	<u>Weighted Average Exercise Price of Outstanding Options, Warrants and Rights</u>	<u>Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans</u>
Equity compensation plans approved by security holders	556,500	\$ 9.57	224,216

Item 6. SELECTED FINANCIAL DATA

The following selected consolidated financial data is derived from our audited consolidated financial statements and the notes thereto for the periods presented and should be read in conjunction with the more detailed information therein and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included elsewhere in this annual report. Operating results are not necessarily indicative of future performance.

The following selected financial data is derived from our audited consolidated financial statements. The selected financial data as of and for the year ended December 31, 2004 includes the operations of NYMT and its consolidated subsidiaries. Included in the selected financial data for the year ended December 31, 2004 are the results of NYMT for the year-to-date period beginning June 29, 2004 (the closing date of NYMT’s IPO) and NYMC for the year-to-date period beginning January 1, 2004. Prior to the IPO of NYMT, NYMT had no operations and, as a result, for all years prior to 2004, the financial data presented is for NYMC only.

You should not assume that the results below indicate results that we will achieve in the future, particularly because in the future we expect net interest income, rather than gain on sales of loans, to be the principal component of our revenues. The operating data are derived from unaudited financial information that we compiled.

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You should read the information below along with all the other financial information and analysis presented in this report, including our financial statements and related notes, and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Selected Consolidated Financial and Other Data

	For the Year Ended December 31,				
	2004	2003	2002	2001	2000
	(Dollars in thousands, except per share amounts)				
Operating Data:					
Revenues:					
Gains on sales of mortgage loans	\$ 20,835	\$ 23,031	\$ 9,858	\$ 6,429	\$ 3,336
Interest income	27,298	7,610	2,986	1,570	625
Brokered loan fees	6,895	6,682	5,241	3,749	4,317
Gain on sale of marketable securities	774	—	—	—	—
Miscellaneous	227	45	15	48	20
Total revenue	<u>56,029</u>	<u>37,368</u>	<u>18,100</u>	<u>11,796</u>	<u>8,298</u>
Salaries, commissions, and benefits	17,118	9,247	5,788	3,644	2,891
Interest expense	16,013	3,266	1,673	1,289	476
Brokered loan expenses	5,276	3,734	2,992	2,174	2,235
General and administrative expenses	13,935	7,395	3,897	2,808	2,169
Total expenses	<u>52,342</u>	<u>23,642</u>	<u>14,350</u>	<u>9,915</u>	<u>7,771</u>
Income before income tax benefit	3,687	13,726	3,750	1,881	527
Income tax benefit	1,260	—	—	—	—
Net income	<u>\$ 4,947</u>	<u>\$ 13,726</u>	<u>\$ 3,750</u>	<u>\$ 1,881</u>	<u>\$ 527</u>
Basic income per share	\$ 0.28	—	—	—	—
Diluted income per share	\$ 0.27	—	—	—	—
Balance Sheet Data:					
Cash and cash equivalents	\$ 7,613	\$ 4,047	\$ 2,746	\$ 1,549	\$ 52
Investment securities available for sale	1,204,745	—	—	—	—
Loans held for investment	190,153	—	—	—	—
Loans held for sale	85,385	36,169	34,039	9,894	3,784
Due from loan purchasers	79,904	58,862	40,621	20,707	—
Total assets	1,614,762	110,081	83,004	34,561	12,592
Financing arrangements	1,475,012	90,425	73,016	29,705	10,050
Subordinated notes due to members	—	14,707	—	—	—
Total liabilities	1,495,280	110,555	76,504	30,891	10,538
Equity (deficit)	119,482	(474)	6,500	3,670	2,054

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	For the Year Ended December 31,				
	2004	2003	2002	2001	2000
	(Dollars in thousands, except per share amounts)				
Other Data:					
Purchase originations	\$ 1,089,499	\$ 803,446	\$ 469,404	\$ 374,454	\$ 352,634
Refinancing originations	756,006	796,879	407,827	209,748	45,753
Total originations	<u>\$ 1,845,505</u>	<u>\$ 1,600,325</u>	<u>\$ 877,231</u>	<u>\$ 584,202</u>	<u>\$ 398,387</u>
Fixed-rate originations	\$ 878,749	\$ 890,172	\$ 518,382	\$ 398,056	\$ 191,981
Adjustable-rate originations	966,756	710,153	358,849	186,146	206,406
Total originations	<u>\$ 1,845,505</u>	<u>\$ 1,600,325</u>	<u>\$ 877,231</u>	<u>\$ 584,202</u>	<u>\$ 398,387</u>
Weighted average middle credit score non-FHA ¹	\$ 715	—	—	—	—
Weighted average middle credit score all originations	\$ 703	719	716	713	714
Total mortgage sales (\$000)	\$ 1,435,340	\$ 1,234,848	\$ 633,223	\$ 404,470	\$ 170,574
Brokered originations (\$000)	\$ 410,052	\$ 365,477	\$ 244,008	\$ 179,732	\$ 209,345
Weighted average whole loan sales price over par	2.02%	1.75%	1.52%	1.37%	1.27%
Salaries, general and administrative expense as a percentage of total loans originated	1.68%	1.04%	1.10%	1.10%	1.27%
Number of locations at period end	66	15	13	7	3
Number of employees at period end	782	335	184	147	117
Dividends declared per common share	\$ 0.40	—	—	—	—

¹ Beginning near the end of the first quarter of 2004, our volume of FHA loans increased; prior to such time the volume of FHA loan originations was immaterial. Generally, FHA loans have lower average balances and FICO scores which are reflected in the statistics above. All FHA loans are currently and will be in the future sold or brokered to third parties.

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

General

The following discussion and analysis of the Company's financial condition and results of operations should be read in conjunction with the consolidated financial statements and notes thereto appearing elsewhere in this Form 10-K. The discussion and analysis is derived from the consolidated operating results and activities of New York Mortgage Trust, Inc. (also referred to hereinafter as the "Company," "we," "us," and "our").

We are a fully integrated, self-advised residential mortgage finance company, formed to initiate a residential mortgage securitization business through our acquisition of NYMC, a residential mortgage banking company, concurrently with our initial public offering ("IPO"). NYMC, our wholly-owned taxable REIT subsidiary, originates mortgage loans of all types, with a particular focus on prime adjustable- and fixed-rate, first lien, residential purchase mortgage loans. Historically, NYMC has sold all of the loans it originates to third parties, and has also brokered loans to other mortgage lenders prior to funding. NYMC, which originates residential mortgage loans through a network of 34 full service branch loan origination locations and 32 satellite loan origination locations, is presently licensed or authorized to do business in 40 states and the District of Columbia. On June 29, 2004, we closed our IPO, selling 15 million shares of our common stock at a price to the public of \$9.00 per share and raising net proceeds of approximately \$122.0 million after deducting the underwriters' discount and other offering expenses. We have elected to be taxed as a REIT for federal income tax purposes.

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Since the completion of our IPO and acquisition of NYMC, our primary business focus has been to build a leveraged portfolio of residential mortgage loans comprised largely of prime adjustable-rate mortgage loans that we originate and that meet our investment objectives and portfolio requirements, including adjustable-rate loans that have an initial fixed-rate period, which we refer to as hybrid mortgage loans. We used a substantial portion of the net proceeds from our IPO to purchase, on a leveraged basis, approximately \$1.2 billion of residential mortgage-backed securities. Over time, we expect that these securities will be replaced by adjustable-rate and hybrid mortgage loans that we originate, although we may continue to purchase securities from third parties. We believe that our ability to originate mortgage loans as the basis for our portfolio will enable us to build a portfolio that generates a higher return than the returns realized by mortgage investors that do not have their own origination capabilities, because the cost to originate and retain such mortgage loans for securitization is generally less than the premiums paid to purchase similar assets from third parties.

Generally, we intend to continue to sell the fixed-rate loans that we originate to third parties, and to retain in our portfolio and finance selected adjustable-rate and hybrid mortgage loans that we originate. Our portfolio loans will be held at the REIT level or by a qualified REIT subsidiary. Any adjustable-rate and hybrid mortgage loans we originate that do not meet our investment criteria or portfolio requirements will be sold to third parties. We rely on our own underwriting criteria with respect to the mortgage loans we retain and will continue to rely on the underwriting criteria of the institutions to which we sell our loans with respect to the loans we sell.

As we aggregate a large enough portfolio comprised mainly of retained mortgage loans originated by us, we intend to securitize such loans. We anticipate that the securitization transactions through which we finance the adjustable-rate and hybrid mortgage loans that we retain will be structured as financings for both tax and financial accounting purposes. Therefore, we do not expect to generate a gain or loss on sales from these activities, and, following the securitizations, the loans will remain on our consolidated balance sheet as assets with the securitization debt recorded as a liability. Our first securitization of such loans occurred on February 25, 2005.

Our Company earns net interest income from purchased residential mortgage-backed securities and adjustable-rate mortgage loans and securities originated through NYMC. We have acquired and will seek to acquire additional assets that will produce competitive returns, taking into consideration the amount and nature of the anticipated returns from the investment, our ability to pledge the investment for secured, collateralized borrowings and the costs associated with origination, financing, managing, securitizing and reserving for these investments.

Our business is affected by a variety of economic and industry factors which management considers. The most significant risk factors management considers while managing the business and which could have a materially adverse effect on the financial condition and results of operations are:

- a decline in the market value of our assets due to rising interest rates;
- increasing or decreasing levels of prepayments on the mortgages underlying our mortgage-backed securities;
- a decrease in the demand for mortgage loans due to a period of rising interest rates may adversely affect our earnings;
- our ability to originate prime adjustable-rate and hybrid mortgage loans for our portfolio;
- the overall leverage of our portfolio and the ability to obtain financing to leverage our equity;
- the potential for increased borrowing costs and its impact on net income;
- our ability or inability to use derivatives to mitigate our interest rate and prepayment risks;
- a prolonged economic slow down, a lengthy or severe recession or declining real estate values could harm our operations;

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- if our assets are insufficient to meet the collateral requirements of our lenders, we might be compelled to liquidate particular assets at inopportune times and at disadvantageous prices;
- if we are disqualified as a REIT, we will be subject to tax as a regular corporation and face substantial tax liability; and
- compliance with REIT requirements might cause us to forego otherwise attractive opportunities.

Post IPO Acquisition

On November 15, 2004, the Company acquired 15 full service and 26 satellite retail mortgage banking offices located in the Northeast and Mid-Atlantic states from Guaranty Residential Lending, Inc. The Company acquired an existing pipeline of approximately \$300 million in locked and unlocked mortgage applications in conjunction with the branch acquisition. The mortgage pipeline and other assets (primarily furniture, fixtures and computer hardware and software) had a purchase price of approximately \$550,000 and \$760,000, respectively. In addition, the Company will pay a \$250,000 contingency premium to the seller provided that the former loan officers of the seller become employed by the Company and originate, close and fund \$2 billion in mortgage loans during the twelve month period after the closing date of the transaction. The Company also assumed selected monthly lease obligations of approximately \$142,000 and hired approximately 275 new loan origination and support personnel. As a result of this acquisition, the Company's annual mortgage originations are expected to approximately double.

Recent Developments

On February 25, 2005, the Company completed its first loan securitization of approximately \$419 million of high-credit quality, first-lien, adjustable rate mortgages and hybrid adjustable rate mortgages (collectively "ARM" loans) through New York Mortgage Trust 2005-1 (the "Trust").

On March 15, 2005, the Company closed a private offering of \$25 million of trust preferred securities to Taberna Preferred Funding I, Ltd., a pooled investment vehicle. The securities were issued by NYM Preferred Trust I and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities have a floating interest rate resetting quarterly equal to three-month LIBOR plus 375 basis points. The securities mature on March 15, 2035 and may be called at par by the Company any time after March 15, 2010.

Overview of Performance

For the year ended December 31, 2004, we reported net income of approximately \$4.9 million, or \$0.27 per diluted share, as compared to net income of \$13.7 million for the same period of 2003. Our revenues were driven largely from loan originations during the period. The decline in net income is attributed to a decrease in gain on sale revenues as a result of decreased gain on sale margins in 2004, the execution of our core business strategy to retain selected originated loans in portfolio (thus forgoing the gain on sale premiums we would have otherwise received when such loans are sold to third parties), and increased expenses incurred for and subsequent to the acquisition of multiple retail loan origination locations during 2004 and infrastructure enhancements to accommodate increased loan origination capacity. For the quarter and year ended December 31, 2004, we originated \$632.6 million and \$1.8 billion in residential mortgage loans, respectively, as compared to \$340.0 million and \$1.6 billion for the same periods of 2003. The increase in our loan origination levels for the quarter and year ended December 31, 2004 as compared to the quarter and year ended December 31, 2003 is the result of the addition of sales personnel and branch offices primarily in new and underserved markets. Total employees increased to 782 at December 31, 2004 from 335 at December 31, 2003. Included in the total number of employees, the number of loan officers dedicated to originating loans increased to 344 at December 31, 2004 from 142 at December 31, 2003. Full service loan origination locations increased to 34 offices and 32 satellite loan origination locations at December 31, 2004 from 15 locations at December 31, 2003.

Summary of Operations and Key Performance Measurements

For the year ended December 31, 2003, our net income was highly dependent upon our mortgage lending operations and originations (our “mortgage lending segment”), which include the mortgage loan sales (“mortgage banking”) and mortgage brokering activities on residential mortgages sold or brokered to third parties. Subsequent to our IPO our net income was dependent on self-originated and purchased investments in residential mortgage loans and securities (“portfolio management segment”). Our mortgage banking activities generate sizable revenues in the form of gains on sales of mortgage loans to third parties and ancillary fee income and interest revenue from borrowers. Our mortgage brokering operations generate brokering fee revenues from third party buyers.

A breakdown of our loan originations for the year ended December 31, 2004 follows:

Description	Number of Loans	Aggregate Principal Balance (\$000's)	Percentage of Total Principal	Weighted Average Interest Rate	Average Loan Size
Purchase mortgages	4,404	\$ 1,089.5	59.0%	5.625%	\$ 247,388
Refinancings	3,649	756.0	41.0%	5.638%	207,182
Total	8,053	\$ 1,845.5	100.0%	5.631%	\$ 229,170
Adjustable rate or hybrid	3,250	\$ 966.8	52.4%	5.016%	\$ 297,463
Fixed rate	4,803	878.7	47.6%	6.307%	182,958
Total	8,053	\$ 1,845.5	100.0%	5.631%	\$ 229,170
Bankered	6,882	\$ 1,435.4	77.8%	5.802%	\$ 208,597
Brokered	1,171	410.1	22.2%	5.030%	350,076
Total	8,053	\$ 1,845.5	100.0%	5.631%	\$ 229,170

The key performance measures for our origination activities are:

- dollar volume of mortgage loans originated;
- relative cost of the loans originated;
- characteristics of the loans, including but not limited to the coupon and credit quality of the loan, which will indicate their expected yield; and
- return on our mortgage asset investments and the related management of interest rate risk.

Management’s discussion and analysis of financial condition and results of operations, along with other portions of this report, are designed to provide information regarding our performance and these key performance measures.

Known Material Trends and Commentary

The U.S. residential mortgage market has experienced considerable growth during the past ten years, with total outstanding U.S. mortgage debt growing from approximately \$3.2 trillion at the end of 1993 to approximately \$7.3 trillion as of December 31, 2003, according to The Bond Market Association and the Federal Reserve. The residential mortgage loan market is the largest consumer finance market in the United States. According to the 1-to-4 Family Mortgage Originations, 1990-2002: Total, Refi Share, and ARM Share, Annual, 1990 to 2002, Report of the Mortgage Bankers Association (“MBAA”), lenders in the United States originated more than \$2.85 trillion in one to four family mortgage loans in 2002, while the February 15, 2005 Mortgage Finance Forecast of the MBAA estimated that lenders originated approximately \$2.86 trillion in 2004. In the February forecast, the MBAA projects mortgage loan volumes will fall to \$2.60 trillion in 2005

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and \$2.27 trillion in 2006, respectively, primarily attributable to an expected continued decline in the volume of refinancing of existing loans relative to 2003 and 2004:

Total U.S. 1-to-4 Family	Mortgage Originations	2003	2004	Forecasted
			Forecast	Percentage Change
			(Dollars in billions)	
Purchase mortgages		\$ 1,280	\$ 1,597	24.8%
Refinancings		2,530	1,268	(49.9)%
Total		<u>\$ 3,810</u>	<u>\$ 2,865</u>	<u>(24.8)%</u>

Source: February 15, 2005 Mortgage Finance Forecast of the MBAA

The following table summarizes the Company's loan origination volume and characteristics for the year ended December 31, 2004 relative to our prior year historical origination production and expected industry trends for total U.S. 1-to-4 family mortgage originations as forecast in the February 15, 2005 Mortgage Finance Forecast of the MBAA. For the year ended December 31, 2004, our total loan originations increased 15.3% over the comparable period for 2003. This increase contrasts favorably with the decline forecasted in the February 15, 2005 Mortgage Finance Forecast of the MBAA, which estimates an industry decline for the period of (24.8)% for total originations:

Our Total Mortgage Originations

	Total Mortgage Originations		Percentage Change from Prior Year	
	2003	2004	NYMC Actual	MBAA Industry Forecast
	(\$ Million)			
1 st Quarter	\$ 361.4	\$ 283.5	(21.6)%	(19.5)%
2 nd Quarter	412.9	514.0	24.5%	(9.4)%
3 rd Quarter	486.3	415.4	(14.6)%	(44.0)%
4 th Quarter	339.8	632.6	86.2%	6.0%
Full Year	<u>\$ 1,600.4</u>	<u>\$ 1,845.5</u>	15.3%	(24.8)%

With regard to purchase mortgage originations, statistics from the MBAA indicate that the volume of purchase mortgages year after year steadily increase throughout various economic and interest rate cycles. While management is unable to predict borrowing habits, historical trends indicate that the purchase mortgage market is relatively stable and growing. For the year ended December 31, 2004, our purchase mortgage originations have increased by \$280.2 million or 34.9% over the comparable period for the prior year. This increase presently exceeds the 24.8% increase forecasted by the February 15, 2005 Mortgage Finance Forecast of the MBAA for total U.S. 1-to-4 family purchase mortgage originations for the full year 2004.

Our Total Purchase Mortgage Originations

	Total Purchase Mortgage Originations		Percentage Change from Prior Year
	2003	2004	
	(\$ Million)		
1 st Quarter	\$ 208.5	\$ 169.3	(18.8)%
2 nd Quarter	173.7	273.3	57.3%
3 rd Quarter	218.2	274.6	25.8%
4 th Quarter	203.2	366.6	80.4%
Full Year	<u>\$ 803.6</u>	<u>\$ 1,083.8</u>	34.9%

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For the year ended December 31, 2004, our originations of mortgage refinancings have decreased by \$35.0 million or 4.4% versus the comparable period for the prior year. This 4.4% decline in our origination of mortgage refinancings is less severe than the 49.9% decline for total U.S. 1-to-4 family refinance mortgage originations for the full year 2004 estimated in the February 15, 2005 Mortgage Finance Forecast of the MBAA.

Our Total Refinance Mortgage Originations

	Total Refinance Mortgage Originations		Percentage Change from Prior Year
	2003	2004	
	(\$ Million)		
1 st Quarter	\$ 152.9	\$ 114.2	(25.3)%
2 nd Quarter	239.2	240.7	0.6%
3 rd Quarter	268.1	140.8	(47.5)%
4 th Quarter	136.6	260.3	90.6%
Full Year	<u>\$ 796.8</u>	<u>\$ 756.0</u>	(5.1)%

For the year ended December 31, 2004, NYMC's purchase loan originations represented 58.7% of NYMC's total residential mortgage loan originations as measured by principal balance, as compared to an industry-wide percentage of 55.7% for one-to-four family mortgage loans as estimated in the February 15, 2005 Mortgage Finance Forecast of the MBAA. We believe that our concentration on purchase loan originations has caused our loan origination volume to be less susceptible to the expected industry-wide decline in origination volume. We believe that the market for mortgage loans for home purchases is less susceptible than the refinance market to downturns during periods of increasing interest rates, because borrowers seeking to purchase a home do not generally base their decision to purchase on changes in interest rates alone, while borrowers that refinance their mortgage loans often make their decision as a direct result of changes in interest rates. Consequently, while our referral-based marketing strategy may cause our overall loan origination volume during periods of declining interest rates to lag our competitors who rely on mass marketing and advertising and who therefore capture a greater percentage of loan refinance applications during those periods, we believe this strategy enables us to sustain stronger home purchase loan origination volumes than those same competitors during periods of flat to rising interest rates. In addition, we believe that our referral-based business results in relatively higher gross margins and lower advertising costs and loan generation expenses than most other mortgage companies whose business is not referral-based.

We depend on the capital markets to finance the mortgage loans we originate. In the short-term, we finance our mortgage loans using "warehouse" lines of credit and "aggregation" lines provided by commercial and investment banks. As we execute our business plan of securitizing self-originated mortgage loans, we will issue bonds from our loan securitizations and will own such bonds although we may sell the bonds to large, institutional investors at some point in the future. These bonds and some of our mortgage loans may be financed with reverse repurchase agreements with well capitalized commercial and investment banks. Commercial and investment banks have provided significant liquidity to finance our operations through these various financing facilities. While management cannot predict the future liquidity environment, we are currently unaware of any material reason to prevent continued liquidity support in the capital markets for our business. See "Liquidity and Capital Resources" below for further discussion of liquidity risks and resources available to us.

Within the past year, the mortgage REIT industry has seen a significant increase in the desire for raising capital in the public markets. Additionally, there have been several new entrants, including ourselves, to the mortgage REIT business and other mortgage lender conversions (or proposed conversions) to REIT status. While many of these entrants focus on sub-prime and nonconforming mortgage lending, there are also entrants which will compete with our focus on the high-quality and prime mortgage marketplace. This increased activity may impact the pricing and underwriting guidelines within the high-quality and prime marketplace.

We have not changed our guidelines or pricing in response to this activity nor do we have any plans to make such changes at this time.

State and local governing bodies are focused on the mortgage lending business and the fees borrowers incur in obtaining a mortgage loan — generally termed “predatory lending” within the mortgage industry. In several instances, states or local governing bodies have imposed strict laws on lenders to curb such practices. To date, these laws have had an insignificant impact on our business. We have capped fee structures consistent with those adopted by federal mortgage agencies and have implemented rigid processes to ensure that our lending practices are not predatory in nature.

Description of Businesses

Mortgage Lending

Our mortgage lending operations are significant to our financial results as they produce the loans that ultimately will collateralize the mortgage securities that we will hold in our portfolio. We primarily originate prime, first lien residential mortgage loans and, to a lesser extent second mortgage loans, home equity lines of credit, and bridge loans. We originate all types of mortgage loan products including adjustable-rate mortgages (“ARM”) which may have an initial fixed rate period, and fixed-rate mortgages. Since the completion of our IPO, we have begun to retain and aggregate our self-originated, high-quality, shorter-term ARM loans in order to pool them into mortgage securities. The fixed rate loans we originate and any ARM loans not meeting our investment criteria continue to be sold to third parties. For the years ended December 31, 2004 and 2003, we originated \$1.4 billion and \$1.2 billion in mortgage loans for sale to third parties, respectively. We recognized gains on sales of mortgage loans totaling \$20.8 million and \$23.0 million for the years ended December 31, 2004 and 2003, respectively.

We also broker loans to third party mortgage lenders for which we receive a broker fee. For the years ended December 31, 2004 and 2003, we originated \$410.1 million and \$365.5 million in brokered loans, respectively. We recognized net brokering income totaling \$1.6 million and \$2.9 million during the years ended December 31, 2004 and 2003, respectively.

Our wholly-owned subsidiary, NYMC, originates all of the mortgage loans we retain, sell or broker. On mortgages to be sold, we underwrite, process and fund the mortgages originated by NYMC.

A significant risk to our mortgage lending operations is liquidity risk — the risk that we will not have financing facilities and cash available to fund and hold loans prior to their sale or securitization. We maintain lending facilities with large banking and investment institutions to reduce this risk. On a short-term basis, we finance mortgage loans using warehouse lines of credit and repurchase agreements. Details regarding available financing arrangements and amounts outstanding under those arrangements are included in “Liquidity and Capital Resources” below.

Mortgage Portfolio Management

Prior to the completion of our IPO on June 29, 2004, our operations were limited to the mortgage operations described in the preceding section. Beginning in July 2004, we began to implement our business plan of investing in high quality, adjustable rate mortgage related securities and residential loans. Our mortgage portfolio, consisting primarily of residential mortgage-backed securities and mortgages loans held for investment generates a substantial portion of our earnings. In managing our investment in a mortgage portfolio, we:

- invest in mortgage-backed securities originated by others, including ARM securities and CMO floaters;
- invest in assets generated primarily from our self-origination of high-quality, single-family, residential mortgage loans;
- operate as a long-term portfolio investor;

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- finance our portfolio by entering into reverse repurchase agreements and as we aggregate mortgage loans for investment, will issue mortgage-backed bonds from time to time; and
- generate earnings from the return on our mortgage securities and spread income from the mortgage loan portfolio.

A significant risk to our operations, relating to our portfolio management, is the risk that interest rates on our assets will not adjust at the same times or amounts that rates on our liabilities adjust. Even though we retain and invest in ARMs, many of the hybrid ARM loans in our portfolio have fixed rates of interest for a period of time ranging from two to five years. Our funding costs are generally not constant or fixed. As a result, we use derivative instruments (interest rate swaps and interest rate caps) to mitigate the risk of our cost of funding increasing or decreasing at a faster rate than the interest on the loans (both those on the balance sheet and those that serve as collateral for mortgage securities).

As of December 31, 2004 our mortgage securities portfolio consisted of 100% AAA- rated or FNMA/ FHLMC mortgage securities. This allows the company to obtain excellent financing rates as well as enhanced liquidity. The loans held for securitization consisted of high quality prime adjustable rate mortgages with initial reset periods of no greater than 5 years. The loan portfolio has had no credit losses to date. As the loan portfolio is only 8 months old we understand that this statistic will have more meaning over time. Our portfolio strategy for ARM loan originations is to acquire only high credit quality ARM loans for our securitization process thereby limiting any future potential losses.

Investment Securities-Available For Sale Characteristics

The following tables present various characteristics of our investment securities and mortgage loan portfolios as of December 31, 2004.

Characteristics of Our Investment Securities:

	<u>Carrying Value</u>	<u>Sponsor or Rating</u>	<u>% of Portfolio</u>
<i>Credit</i>			
Agency REMIC CMO Floating Rate	\$ 65,557,917	FNMA/FHLMC	5%
FHLMC Agency ARMs	145,376,012	FHLMC	12%
FNMA Agency ARMs	452,913,944	FNMA	38%
Private Label ARMs	<u>540,896,841</u>	AAA	<u>45%</u>
Total	<u>\$ 1,204,744,714</u>		<u>100%</u>

	<u>Carrying Value</u>	<u>% of Portfolio</u>	<u>Weighted Average Coupon</u>
<i>Interest Rate Repricing</i>			
<6 Months	\$ 117,405,155	10%	3.29
<24 Months	96,652,835	8%	3.39
<36 Months	684,075,544	57%	4.32
<60 Months	<u>306,611,180</u>	<u>25%</u>	<u>4.75</u>
Total	<u>\$ 1,204,744,714</u>	<u>100%</u>	<u>4.26</u>

Characteristics of Our Mortgage Loans Held for Investment:

	<u>Average</u>	<u>High</u>	<u>Low</u>
General Loan Characteristics:			
Original Loan Balance	\$ 718,657	\$ 3,000,000	\$ 70,000
Coupon Rate	4.62%	6.00%	2.50%
Gross Margin	2.41%	3.25%	1.13%
Lifetime Cap	10.84%	11.88%	9.25%
Original Term (Months)	360	360	360
Remaining Term (Months)	356	360	340
		<u>Percentage</u>	
Arm Loan Type			
Traditional ARMs		15.3%	
2/1 Hybrid ARMs		2.0	
3/1 Hybrid ARMs		58.2	
5/1 Hybrid ARMs		24.5	
Total		<u>100.0%</u>	
<i>Percent of ARM loans that are Interest Only</i>		<u>92.4%</u>	
		<u>Percentage</u>	
Traditional ARMs — Periodic Caps			
None		69.8%	
1%		28.6	
Over 1%		1.6	
Total		<u>100.0%</u>	
		<u>Percentage</u>	
Hybrid ARMs — Initial Cap			
3.00% or less		61.4%	
3.01%-4.00%		1.4	
4.01%-5.00%		9.3	
5.01%-6.00%		27.9	
Total		<u>100.0%</u>	
		<u>Percentage</u>	
FICO Scores			
650 or less		4.5%	
651 to 700		19.0	
701 to 750		34.1	
751 to 800		40.1	
801 and over		2.3	
Total		<u>100.0%</u>	
Average FICO Score		<u>739</u>	

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	<u>Percentage</u>
<i>Loan to Value (LTV)</i>	
50% or less	8.4%
50.01%-60.00%	10.6
60.01%-70.00%	22.8
70.01%-80.00%	<u>58.2</u>
Total	<u><u>100.0%</u></u>
Average LTV	68.1%
	<u>Percentage</u>
<i>Property Type</i>	
Single Family	63.3%
Condominium	14.1
Cooperative	9.0
Planned Unit Development	8.7
Two to Four Family	<u>4.9</u>
Total	<u><u>100.0%</u></u>
	<u>Percentage</u>
<i>Occupancy Status</i>	
Primary	86.8%
Secondary	9.7
Investor	<u>3.5</u>
Total	<u><u>100.0%</u></u>
	<u>Percentage</u>
<i>Documentation Type</i>	
Full	53.3%
Reduced	40.3
Stated	4.6
No Ratio	0.9
No Documentation	<u>0.9</u>
Total	<u><u>100.0%</u></u>
	<u>Percentage</u>
<i>Loan Purpose</i>	
Purchase	74.4%
Cash out refinance	19.5
Rate & term refinance	<u>6.1</u>
Total	<u><u>100.0%</u></u>

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	<u>Percentage</u>
Geographic Distribution: 5% or more in any one state	
CA	51.3%
NY	30.7
NJ	5.5
Other (less than 5% individually)	<u>12.5</u>
Total	<u><u>100.0%</u></u>

The following table presents the components of our net interest income on our investment portfolio of mortgage securities and loans for the year ended December 31, 2004:

<u>Net Interest Income Components</u>	<u>Amount</u>	<u>Average Balance</u> (\$ Millions)	<u>Effective Rate</u>
Interest Income			
Investment securities	\$ 21,265,292		
Mortgage loans held for investment	723,473		
Amortization of premium	<u>(1,666,863)</u>		
Net investment securities and loans	20,321,902	\$ 1,041.8	3.90%
Cash and cash equivalents	<u>72,075</u>	<u>9.3</u>	<u>2.45%</u>
Total net interest income	\$ 20,393,977	\$ 1,051.1	3.89%
Interest Expense			
Reverse repurchase agreements	\$ 8,759,132	\$ 930.1	1.78%
Warehouse borrowings	487,683	32.7	2.72%
Interest rate swaps and caps	<u>3,222,764</u>		<u>1.15%</u>
Total interest expense	\$ 12,469,579	\$ 962.8	2.52%
Net Interest Income	\$ 7,924,398		1.37%

Significance of Estimates and Critical Accounting Policies

We prepare our financial statements in conformity with accounting principles generally accepted in the United States of America, ("GAAP"), many of which require the use of estimates, judgments and assumptions that affect reported amounts. These estimates are based, in part, on our judgment and assumptions regarding various economic conditions that we believe are reasonable based on facts and circumstances existing at the time of reporting. The results of these estimates affect reported amounts of assets, liabilities and accumulated other comprehensive income at the date of the consolidated financial statements and the reported amounts of income, expenses and other comprehensive income during the periods presented. The following summarizes the components of our consolidated financial statements where understanding accounting policies is critical to understanding and evaluating our reported financial results, especially given the significant estimates used in applying the policies. Changes in the estimates and assumptions could have a material effect on these financial statements. Management has discussed the development and selection of these critical accounting estimates with the audit committee of our Board of Directors and the audit committee has reviewed our disclosure.

Beginning with the completion of our acquisition of NYMC and closing of our IPO on June 29, 2004, we commenced a change in the way we conduct business. We have continued to originate all types of residential mortgage loans and will continue to sell or broker such production to third parties. However, we also began to retain selected self-originated, shorter-term, high quality ARM loan production in our investment portfolio for subsequent securitization. We also have invested in investment-grade, shorter-term ARM securities.

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Investment Securities Available for Sale. Our investment in agency and “AAA” - rated adjustable-rate residential mortgage-backed securities are classified as available for sale securities. Available for sale securities are reported at fair value with unrealized gains and losses reported in other comprehensive income (“OCI”). Gains and losses recorded on the sale of investment securities available for sale are based on the specific identification method and included in gain on sale of securities. Purchase premiums or discounts on investment securities are accreted or amortized to interest income over the estimated life of the investment securities using the interest method. Investment securities may be subject to interest rate, credit and/or prepayment risk.

The fair values of the Company’s residential mortgage-backed securities are generally based on market prices provided by five to seven dealers who make markets in these financial instruments. If the fair value of a security is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that the Company receives from the issuer and on available market information.

In March 2004, the EITF reached a consensus on Issue No 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. When the fair value of an available for sale security is less than amortized cost, management considers whether there is an other-than-temporary impairment in the value of the security (e.g., whether the security will be sold prior to the recovery of fair value). If, in management’s judgment, an other-than-temporary impairment exists, the cost basis of the security is written down to the then-current fair value, and the unrealized loss is transferred from accumulated other comprehensive income as an immediate reduction of current earnings (i.e., as if the loss had been realized in the period of impairment). Even though no credit concerns exist with respect to an available for sale security, an other-than-temporary impairment may be evident if management determines that the Company does not have the intent and ability to hold an investment until a forecasted recovery of the value of the investment.

Mortgage Loans Held for Sale. Mortgage loans held for sale represent mortgage loans originated and held pending sale to interim and permanent investors. The mortgage loans are carried at the lower of cost or market value. Market value is determined by examining outstanding commitments from investors or current investor yield requirements, calculated on the aggregate loan basis, less an estimate of the costs to close the loan, less the deferral of fees and points received, plus the deferral of direct origination costs. Gains or losses on sales are recognized at the time title transfers to the investor which is typically concurrent with the transfer of the loan files and related documentation and are based upon the difference between the sales proceeds from the final investor and the adjusted book value of the loan sold.

Transfers of Assets. A transfer of mortgage loans or mortgage securities in which we surrender control over the financial assets is accounted for as a sale. Gains and losses on the assets transferred are recognized based on the carrying amount of the financial assets involved in the transfer, allocated between the assets transferred and the retained interests, if any, based on their relative fair value at the date of transfer. To determine fair value, we estimate fair value based on the present value of future expected cash flows using management’s best estimate of the key assumptions, including credit losses, prepayment speeds, forward yield curves, and discount rates commensurate with the risks involved. When we retain control over transferred mortgage loans or mortgage securities (such as under a repurchase agreement), the transaction is accounted for as a secured borrowing.

The following is a description of the methods we have historically used to transfer assets, including the related accounting treatment under each method.

- *Whole Loan Sales.* Whole loan sales represent loans sold on a servicing released basis wherein the servicing rights with respect to the loans are transferred to the purchaser concurrently with the sale of the loan. Gains and losses on whole loan sales are recognized in the period the sale occurs and we have determined that the criteria for sale treatment has been achieved primarily by the surrender of control over the assets transferred. We generally have an obligation to repurchase whole loans sold in circumstances in which the borrower fails to make one of the first three payments. Additionally, we are also generally required to repay all or a portion of the premium we receive on the sale of whole loans in the event that the loan prepays in its entirety within a period of one year after origination.

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- *Loans and Securities Sold Under Repurchase Agreements.* Repurchase agreements represent legal sales of loans or mortgage securities and an agreement to repurchase the loans or mortgage securities at a later date. Repurchase agreements are accounted for as secured borrowings because the company has not surrendered control of the transferred assets.

Mortgage Loans Held for Investment. We retain in our portfolio substantially all of the adjustable-rate mortgage loans that we originate and that meet our investment criteria and portfolio requirements. We service loans that we originate and retain in our portfolio through a servicer. Servicing is the function primarily consisting of collecting monthly payments from mortgage borrowers, and disbursing those funds to the appropriate loan investors.

We may also include in our portfolio loans acquired in bulk pools from other originators and securities dealers. Mortgage loans held for investment are recorded net of deferred loan origination fees and associated direct costs and are stated at amortized cost. Mortgage loan origination fees and associated direct mortgage loan origination costs on mortgage loans held-in-portfolio are deferred and amortized over the life of the loan as an adjustment to yield using the level yield method. This amortization includes the effect of projected prepayments; such prepayment projections involve significant management judgments.

Interest is recognized as revenue when earned according to the terms of the mortgage loans and when, in the opinion of management, it is collectible. The accrual of interest on loans is discontinued when, in management's opinion, the interest is not collectible in the normal course of business, but in no case beyond when payment on a loan becomes 90 days delinquent. Interest collected on loans for which accrual has been discontinued is recognized as income upon receipt.

We establish an allowance for loan losses based on our estimate of credit losses inherent in the Company's investment portfolio of residential loans held for investment. Our portfolio mortgage loans held for investment are collectively evaluated for impairment as the loans are homogeneous in nature. The allowance is based upon the assessment of management of various factors affecting our mortgage loan portfolio, including current economic conditions, the makeup of the portfolio based on credit grade, loan-to-value ratios, delinquency status, historical credit losses, purchased mortgage insurance and other factors deemed to warrant consideration. The allowance is maintained through ongoing provisions charged to operating income and is reduced by loans that are charged off. Determining the allowance for loan losses is subjective in nature due to the estimation required and the potential for imprecision.

Accounting for Transfers and Servicing of Financial Assets. We may regularly securitize mortgage loans by transferring mortgage loans to independent trusts which issue securities to investors. These securities are collateralized by the mortgage loans transferred into these independent trusts. We will generally retain interests in all or some of the securities issued by the trusts. Certain of the securitization agreements may require us to repurchase loans that are found to have legal deficiencies, subsequent to the date of transfer. The accounting treatment for transfers of assets upon securitization depends on whether or not we have surrendered control over the transferred assets. We will service, through a servicer, loans that we originate and retain in our portfolio.

As we retain a portfolio of loans for securitization, we will comply with the provisions of Statement of Financial Accounting Standards No. 140 *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, or SFAS No. 140, related to each securitization. Depending on the structure of the securitization, it will either be treated as a sale or secured financing for financial statement purposes. We anticipate that our securitizations will be treated as secured financings under SFAS No. 140. Our strategy of retaining on our balance sheet certain mortgage loans held for investment and included in our securitization pools will reduce the number of loans NYMC sells and, therefore, our total gains on sales of mortgage loans for financial accounting purposes will be lower than NYMC has historically recognized.

Derivative Financial Instruments. We generally hedge only the risk related to changes in the benchmark interest rate used in the variable rate index, usually a London Interbank Offered Rate, known as LIBOR, or a U.S. Treasury rate.

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In order to reduce these risks, we enter into interest rate swap agreements whereby we receive floating rate payments in exchange for fixed rate payments, effectively converting the borrowing to a fixed rate. We also enter into interest rate cap agreements whereby, in exchange for a fee, we are reimbursed for interest paid in excess of a certain capped rate.

To qualify for cash flow hedge accounting, interest rate swaps and caps must meet certain criteria, including:

- (1) that the items to be hedged expose us to interest rate risk, and
- (2) that the interest rate swaps or caps are highly effective in reducing our exposure to interest rate risk.

Correlation and effectiveness of the interest rate swaps and caps are periodically assessed based upon a comparison of the relative changes in the fair values or cash flows of the interest rate swaps and caps and the items being hedged.

For derivative instruments that are designated and qualify as a cash flow hedge (meaning hedging the exposure to variability in expected future cash flows that is attributable to a particular risk), the effective portion of the gain or loss, and net payments received or made, on the derivative instrument is reported as a component of other comprehensive income and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instrument in excess of the cumulative change in the present value of future cash flows of the hedged item, if any, is recognized in current earnings during the period of change.

With respect to interest rate swaps and caps that have not been designated as hedges, any net payments under, or fluctuations in the fair value of, these swaps and caps will be recorded to current income.

Derivative financial instruments contain credit risk to the extent that the institutional counterparties may be unable to meet the terms of the agreements. We minimize this risk by using multiple counterparties and limiting our counterparties to major financial institutions with good credit ratings. In addition, we regularly monitor the potential risk of loss with any one party resulting from this type of credit risk. Accordingly, we do not expect any material losses as a result of default by other parties.

We enter into derivative transactions solely for risk management purposes. The decision of whether or not a given transaction (or portion thereof) is hedged is made on a case-by-case basis, based on the risks involved and other factors as determined by senior management, including the financial impact on income and asset valuation and the restrictions imposed on REIT hedging activities by the Internal Revenue Code, among others. In determining whether to hedge a risk, we may consider whether other assets, liabilities, firm commitments and anticipated transactions already offset or reduce the risk. All transactions undertaken as a hedge are entered into with a view towards minimizing the potential for economic losses that could be incurred by us. Generally, all derivatives entered into are intended to qualify as hedges in accordance with GAAP, unless specifically precluded under SFAS No. 133 *Accounting for Derivative Instruments and Hedging Activities*. To this end, terms of the hedges are matched closely to the terms of hedged items.

We have also developed risk management programs and processes designed to manage market risk associated with normal mortgage banking and mortgage-backed securities investment activities.

In the normal course of our mortgage loan origination business, we enter into contractual interest rate lock commitments, or IRLCs, to extend credit to finance residential mortgages. These commitments, which contain fixed expiration dates, become effective when eligible borrowers lock-in a specified interest rate within time frames established by our origination, credit and underwriting practices. Interest rate risk arises if interest rates change between the time of the lock-in of the rate by the borrower and the sale of the loan. The IRLCs are considered undesignated or free-standing derivatives. Accordingly, IRLCs are recorded at fair value with changes in fair value recorded to current earnings. Mark to market adjustments on IRLCs are recorded from the inception of the interest rate lock through the date the underlying loan is funded. The fair value of the IRLCs is determined by an estimate of the ultimate gain on sale of the loans net of estimated net costs to originate the loan. Beginning in the second quarter of 2004, the fair value of IRLCs are valued in accordance

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with SEC Staff Accounting Bulletin 105 which requires the exclusion of servicing rights cash flows prior to mortgage loans sold with servicing retained. The company currently sells all of its mortgage loans servicing released.

To mitigate the effect of the interest rate risk inherent in issuing an IRLC from the lock-in date to the funding date of a loan, we generally enter into forward sale loan contracts, or FSLCs. Since the FSLCs are committed prior to mortgage loan funding and thus there is no owned asset to hedge, the FSLCs in place prior to the funding of a loan are undesignated derivatives under SFAS No. 133 and are marked to market with changes in fair value recorded to current earnings.

We use other derivative instruments, including treasury, agency or mortgage-backed securities and notes forward sale contracts, which are also classified as free-standing, undesignated derivatives and thus are recorded at fair value with the changes in fair value recorded to current earnings.

Once a loan has been funded, our risk management objective for our mortgage loans held for sale is to protect earnings from an unexpected charge due to a decline in value of its mortgage loans. Our strategy is to engage in a risk management program involving the designation of FSLCs (the same FSLCs entered into at the time of the IRLC) to hedge most of our mortgage loans held for sale. Provided that the FSLCs have been designated as qualifying hedges for the funded loans and the notional amount of the forward delivery contracts, along with the underlying rate and critical terms of the contracts, are equivalent to the unpaid principal amount of the mortgage loans being hedged, the forward delivery contracts effectively fix the forward sales price and thereby offset interest rate and price risk to us. We evaluate this relationship quarterly and classify and account for FSLCs which are deemed effective as fair value hedges.

We employ a number of risk management monitoring procedures that are designed to ensure that the designated hedging relationships are demonstrating, and are expected to continue to demonstrate, a high level of effectiveness. Hedge accounting is discontinued on a prospective basis if it is determined that the hedging relationship is no longer highly effective or expected to be highly effective in offsetting changes in fair value of the hedged item. Additionally, we may elect to de-designate a hedge relationship during an interim period and re-designate upon the rebalancing of a hedge profile and the corresponding hedge relationship. When hedge accounting is discontinued, we continue to carry the derivative instruments on our balance sheet at fair value with changes in their value recorded to current earnings.

Recognition of Interest Income and Impairment on Purchased and Retained Beneficial Interests in Securitized Financial Assets. As previously described herein, we plan to regularly securitize our mortgage loans and retain beneficial interests created. In addition, we may purchase such beneficial interests from third parties. For certain of our purchased and retained beneficial interests in securitized financial assets we will follow the guidance in Financial Accounting Standards Board Emerging Issues Task Force Issue No. 99-20, "Recognition of Interest Income and Impairment on Purchased and Retained Beneficial Interests in Securitized Financial Assets," or EITF 99-20. Accordingly, on a quarterly basis, when significant changes in estimated cash flows generated from the securitized asset's underlying collateral from the cash flows previously estimated occur due to actual prepayment and credit loss experience, we will calculate revised yields based on the current amortized cost of the investment (including any other-than-temporary impairments recognized to date) and the revised cash flows. The revised yields are then applied prospectively to recognize interest income.

Additionally, when significant changes in estimated cash flows from the cash flows previously estimated occur due to actual prepayment and credit loss experience, and the present value of the revised cash flows using the current expected yield is less than the present value of the previously estimated remaining cash flows (adjusted for cash receipts during the intervening period), an other-than-temporary impairment is deemed to have occurred. Accordingly, the security is written down to the fair value with the resulting change being included in income, and a new cost basis established. In both instances, the original discount or premium is written off when the new cost basis is established. After taking into account the effect of the impairment charge, income is recognized under EITF 99-20, as applicable, using the market yield for the security used in establishing the write-down. These estimates will involve significant management judgment.

Financial Highlights for the Year Ended December 31, 2004

- IPO of 15 million shares at \$9.00 per share raising approximate net proceeds of \$122 million;
- Full investment of IPO proceeds with initial investment of approximately \$1.2 billion in AAA-rated and/or FNMA or FHLMC residential mortgage-backed securities;
- Total assets increased to \$1.6 billion as of December 31, 2004 from \$110.1 million as of December 31, 2003; and
- Approximately 15.6% growth in loan originations of \$1.85 billion for the year ended December 31, 2004 as compared to \$1.60 billion for the year ended December 31, 2003 and relative to an overall industry decline of 24.8% for 2004 as projected by the MBAA.

Results of Operations and Financial Condition

Our results of operations for our mortgage lending segment during a given period typically reflect the total volume of loans originated and closed by us during that period. The volume of closed loan originations generated by us in any period is impacted by a variety of factors. These factors include:

- *The demand for new mortgage loans.* Reduced demand for mortgage loans causes closed loan origination volume to decline. Demand for new mortgage loans is directly impacted by current interest rate trends and other economic conditions. Rising interest rates tend to reduce demand for new mortgage loans, particularly demand for loan refinancings, and falling interest rates tend to increase demand for new mortgage loans, particularly loan refinancings.
- *Loan refinancing and home purchase trends.* As discussed above, the volume of loan refinancings tends to increase following declines in interest rates and to decrease when interest rates rise. The volume of home purchases is also affected by interest rates, although to a lesser extent than refinancing volume. Home purchase trends are also affected by other economic changes such as inflation, improvements in the stock market, unemployment rates and other similar factors.
- *Seasonality.* Historically, according to the MBAA, loan originations during late November, December, January and February of each year are typically lower than during other months in the year due, in part, to inclement weather, fewer business days (due to holidays and the short month of February), and the fact that home buyers tend to purchase homes during the warmer months of the year. As a result, loan volumes tend to be lower in the first and fourth quarters of a year than in the second and third quarters.
- *Occasional spikes in volume resulting from isolated events.* Mortgage lenders may experience spikes in loan origination volume from time to time due to non-recurring events or transactions. For example, we were able to complete an unusually large and non-recurring mass closing of 347 condominium unit mortgage loans for which we negotiated a bulk end-loan commitment for condominium buyers in the Ruppert Homes Project in the first quarter of 2003. This one time event increased our closed loan origination volume during the first quarter of 2003 by over 30%.

The mortgage banking industry witnessed record levels of closed loan originations beginning in mid-2002 and continuing throughout 2003, due primarily to the availability of historically low interest rates during that period. These historically low interest rates caused existing home owners to refinance their mortgages at record levels and induced many first-time home buyers to purchase homes and many existing home owners to purchase new homes. We, like most industry participants, enjoyed a record increase in our volume of closed loan originations during that period. During the first quarter of 2004, the Federal Reserve Bank of the United States signaled that moderate increases in interest rates were likely to occur during and after the second quarter of 2004 and followed up with its first increase in interest rates in four years with measured, continued increases to-date. This reduced the volume and pace of refinance activity from the peak levels experienced by the industry in 2003.

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The September 17, 2004 Mortgage Finance Forecast of the MBAA indicated that closed loan originations in the industry for 2003 totaled \$3.81 trillion. In its February 15, 2005 Mortgage Finance Forecast, the MBAA forecast that closed loan originations in the industry will decline to approximately \$2.86 trillion in 2004 and \$2.60 trillion in 2005. These forecasts predict growth in purchase originations and a decline in refinancings during 2004 and subsequent years. Although our origination volumes to date have continued to trend upward, these projected industry declines in the overall volume of closed loan originations may have a negative affect on our loan origination volume and net income. We believe that our concentration on purchase loan originations has caused our loan origination volume to be less susceptible to the expected industry-wide decline in origination volume.

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The volume and cost of our loan production is critical to our financial results. The loans we produce generate gains as they are sold to third parties. Loans we retain for securitization serve as collateral for our mortgage securities and generate revenues through their maturity and ultimate repayment. The cost of our production is also critical to our financial results as it is a significant factor in the gains we recognize. The following table summarizes our loan production for each quarter of fiscal years 2004 and 2003.

	<u>Number of Loans</u>	<u>Aggregate Principal Balance</u> (\$ In millions)	<u>Average Principal Balance</u>	<u>Weighted Average</u>	
				<u>LTV ¹</u>	<u>FICO</u>
2004:					
<i>Fourth Quarter ²</i>					
ARM	1,094	\$ 330.1	\$ 301,765	71	714
Fixed-rate	956	206.8	216,266	72	714
Subtotal — non-FHA	<u>2,050</u>	<u>\$ 536.9</u>	<u>\$ 261,893</u>	72	714
FHA	749	95.7	127,868	92	623
Total	<u><u>2,799</u></u>	<u><u>\$ 632.6</u></u>	<u><u>\$ 226,029</u></u>	75	700
Purchase mortgages	1,426	\$ 353.3	\$ 247,722	75	724
Refinancings	624	183.6	294,278	64	694
Subtotal — non-FHA	<u>2,050</u>	<u>\$ 536.9</u>	<u>\$ 261,893</u>	72	714
FHA	749	95.7	127,868	92	623
Total	<u><u>2,799</u></u>	<u><u>\$ 632.6</u></u>	<u><u>\$ 226,029</u></u>	75	700
<i>Third Quarter ²</i>					
ARM	692	\$ 208.9	\$ 301,875	71	718
Fixed-rate	639	145.7	228,034	71	714
Subtotal — non-FHA	<u>1,331</u>	<u>\$ 354.6</u>	<u>\$ 266,425</u>	71	716
FHA	481	60.8	126,445	92	610
Total	<u><u>1,812</u></u>	<u><u>\$ 415.4</u></u>	<u><u>\$ 229,267</u></u>	74	701
Purchase mortgages	1,019	\$ 265.9	\$ 260,933	73	725
Refinancings	312	88.7	284,360	63	691
Subtotal — non-FHA	<u>1,331</u>	<u>\$ 354.6</u>	<u>\$ 266,425</u>	71	716
FHA	481	60.8	126,445	92	610
Total	<u><u>1,812</u></u>	<u><u>\$ 415.4</u></u>	<u><u>\$ 229,267</u></u>	74	701
<i>Second Quarter ²</i>					
ARM	781	\$ 253.4	\$ 324,450	70	722
Fixed-rate	797	167.2	209,781	71	720
Subtotal — non-FHA	<u>1,578</u>	<u>\$ 420.6</u>	<u>\$ 266,534</u>	70	721
FHA	793	93.4	117,751	92	655
Total	<u><u>2,371</u></u>	<u><u>\$ 514.0</u></u>	<u><u>\$ 216,772</u></u>	74	709
Purchase mortgages	1,021	\$ 262.7	\$ 257,283	75	728
Refinancings	557	157.9	283,492	62	711
Subtotal — non-FHA	<u>1,578</u>	<u>\$ 420.6</u>	<u>\$ 117,751</u>	70	721
FHA	793	93.4	117,751	92	655
Total	<u><u>2,371</u></u>	<u><u>\$ 514.0</u></u>	<u><u>\$ 216,772</u></u>	74	709
<i>First Quarter</i>					
ARM	458	\$ 145.5	\$ 317,667	70	703
Fixed-rate	613	138.0	225,057	71	704
Total	<u>1,071</u>	<u>\$ 283.5</u>	<u>\$ 264,661</u>	71	703
Purchase mortgages	650	\$ 169.3	\$ 260,469	75	711
Refinancings	421	114.2	271,132	64	692
Total	<u><u>1,071</u></u>	<u><u>\$ 283.5</u></u>	<u><u>\$ 264,661</u></u>	71	703

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	Number of Loans	Aggregate Principal Balance (\$ In millions)	Average Principal Balance	<u>Weighted Average</u>	
				LTV ¹	FICO
2003:					
<i>Fourth Quarter</i>					
ARM	502	\$ 181.1	\$ 360,691	69	708
Fixed-rate	705	158.7	225,127	70	707
Total	<u>1,207</u>	<u>\$ 339.8</u>	\$ 281,509	70	707
Purchase mortgages	749	\$ 203.2	\$ 271,209	75	712
Refinancings	458	136.6	298,353	61	699
Total	<u>1,207</u>	<u>\$ 339.8</u>	\$ 281,509	70	707
<i>Third Quarter</i>					
ARM	585	\$ 224.1	\$ 383,018	68	714
Fixed-rate	1,062	262.2	246,880	67	707
Total	<u>1,647</u>	<u>\$ 486.3</u>	\$ 295,235	67	711
Purchase mortgages	772	\$ 218.2	\$ 282,537	75	717
Refinancings	875	268.1	306,439	60	706
Total	<u>1,647</u>	<u>\$ 486.3</u>	\$ 295,235	67	711
<i>Second Quarter</i>					
ARM	452	\$ 158.1	\$ 349,624	66	691
Fixed-rate	1,051	254.8	242,478	67	713
Total	<u>1,503</u>	<u>\$ 412.9</u>	\$ 274,700	67	705
Purchase mortgages	647	\$ 173.7	\$ 268,487	74	691
Refinancings	856	239.2	279,397	61	715
Total	<u>1,503</u>	<u>\$ 412.9</u>	\$ 274,700	67	705
<i>First Quarter</i>					
ARM	399	\$ 144.1	\$ 361,230	70	719
Fixed-rate	948	217.3	229,203	71	707
Total	<u>1,347</u>	<u>\$ 361.4</u>	\$ 268,311	70	712
Purchase mortgages	845	\$ 208.5	\$ 246,756	78	722
Refinancings	502	152.9	304,590	60	699
Total	<u>1,347</u>	<u>\$ 361.4</u>	\$ 268,311	70	712

¹ Loan-to-value calculations are on first lien mortgage loans only.

² Beginning near the end of the first quarter of 2004, our volume of FHA loans increased. Generally, FHA loans have lower average balances and FICO scores which are reflected in the statistics above. All FHA loans are currently and will be in the future sold or brokered to third parties.

Cash and Cash Equivalents

We had unrestricted cash and cash equivalents of \$7.6 million at December 31, 2004 versus \$4.0 million at December 31, 2003. This increase results from our larger operating platform as a result of our IPO and the timing of our mortgage loan closings and receipt of interest and principal payments on our securities and loan investment portfolio.

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Investment Securities Available for Sale

The following table summarizes our residential mortgage-backed securities owned at December 31, 2004, classified by type of issuer and by ratings categories:

<u>Category</u>	<u>Par Value</u>	<u>Coupon</u>	<u>Carrying Value</u>	<u>Portfolio Mix</u>	<u>Yield</u>
FNMA or FHLMC ARMs	\$ 591,372,079	4.24%	\$ 598,289,982	50%	3.84%
“AAA”- rated	537,105,436	4.39%	540,896,815	45%	4.07%
CMO floating rate security	65,577,825	3.35%	65,557,917	5%	3.56%
Total	<u>\$ 1,194,055,340</u>	<u>4.26%</u>	<u>\$ 1,204,744,714</u>	<u>100%</u>	<u>3.93%</u>

Nearly all of these securities were purchased during the three months ended September 30, 2004 using our IPO proceeds on a leveraged basis to build our initial investment portfolio.

Mortgage Loans Held for Sale

Loans we have originated, but have not yet sold or securitized, are classified as “held-for-sale”. We had mortgage loans held for sale of approximately \$85.4 million at December 31, 2004. Mortgage loans held for sale represent mortgage loans originated and held pending sale to interim and permanent investors and are carried at the lower of cost or market value. We use warehouse lines of credit to finance our held-for-sale loans. As such, the fluctuations in mortgage loans — held-for-sale and short-term borrowings between December 31, 2004 and December 31, 2003 are dependent on loans we have originated during the period as well as loans we have sold outright.

Mortgage Loans Held for Investment

Loans we have originated and that meet our investment criteria are transferred into our investment portfolio and are classified as “held-for-investment”. We had mortgage loans held for investment of approximately \$190.2 million at December 31, 2004. Mortgage loans held for investment represent mortgage loans originated and aggregated in portfolio and which are intended to be securitized.

Due from Loan Purchasers and Escrow Deposits — Pending Loan Closing

We had amounts due from loan purchasers totaling approximately \$79.9 million and escrow deposits pending loan closing of approximately \$16.2 million as of December 31, 2004. Amounts due from loan purchasers are a receivable for the principal and premium due to us for loans that have been shipped but for which payment has not yet been received at period end. Escrow deposits pending loan closing are advance cash fundings by us to escrow agents to be used to close loans within the next one to three business days.

Prepaid and Other Assets

Prepaid and other assets totaled approximately \$4.4 million as of December 31, 2004. Other assets consist primarily of loans held by us which are pending remedial action (such as updating loan documentation) or which do not currently meet third-party investor criteria.

Financing Arrangements, Mortgage Loans Held for Sale/for Investment

We have debt outstanding on our financing facilities of approximately \$359.2 million as of December 31, 2004 which finance our mortgage loans held for sale. The current weighted average borrowing rate on these financing facilities is 3.28%. We use warehouse lines of credit to finance our held-for-sale loans. As such, the fluctuations in mortgage loans — held-for-sale and short-term borrowings between December 31, 2004 and December 31, 2003 are dependent on loans we have originated during the period as well as loans we have sold outright.

Financing Arrangements, Portfolio Investments

We have arrangements to enter into reverse repurchase agreements, a form of collateralized borrowings, with 20 different financial institutions having a total line capacity of approximately \$4.2 billion. As of December 31, 2004, there were approximately \$1.1 billion reverse repurchase borrowings outstanding. Our reverse repurchase agreements typically have terms less than one-year.

Stockholders' Equity

Stockholders' equity at December 31, 2004 was approximately \$119.5 million and included \$256,000 of unrealized gain on available for sale securities and cash flow hedges presented as accumulated other comprehensive income.

Comparison of the year ended December 31, 2004 to the year ended December 31, 2003

Net Income

For the year ended December 31, 2004, we had net income of approximately \$4.9 million compared with net income of \$13.7 million for 2003.

Our primary sources of revenue are gain on sale of mortgage loans, fees from borrowers, fees earned on brokered loans, interest earned on portfolio investments and interest earned on mortgage loans held for sale during the interim period of funding a loan to a borrower and the ultimate sale of the loan to a third party. For the year ended December 31, 2004, total revenues increased approximately 49.7% to \$56.0 million from \$37.4 million for 2003.

Interest income from our portfolio investment activities contributed approximately \$20.4 million to total revenues for the year ended December 31, 2004. The third quarter of 2004 was the first quarter in which we began the execution of our portfolio investment strategy.

Loan originations for the year ended December 31, 2004 increased to approximately \$1.85 billion from \$1.60 billion for 2003. The closing of a non-recurring mass closing of 347 condominium mortgage loans for the Ruppert Homes Project in the first quarter of 2003 favorably skewed the results of our gain on sale revenue in the first half of 2003 relative to the first half of 2004. In addition, some of the new branches we assumed from SIB Mortgage Corp., or SIB, in mid-March of 2004 do not charge closing costs on FHA mortgages, which reduces the fee revenue we typically would earn had these loans been other than FHA mortgage loans. During December 2004, loan originations increased due to our acquisition of GRL branches and their employees and a related loan origination pipeline of approximately \$300 million.

For the year ended December 31, 2004, total operating expenses before taxes increased approximately 121.6% to \$52.3 million from \$23.6 million for 2003. Interest expenses were higher for the year ended December 31, 2004, relative to the prior year as a result of the commencement of our portfolio investment strategy and the financing, through reverse repurchase arrangements, and the hedging of the \$1.2 billion in mortgage securities held in our portfolio. Overall general and administrative expenses were higher for the year ended December 31, 2004, relative to the prior year, primarily from increased occupancy costs associated with NYMC's relocation to a new corporate headquarters, increased personnel costs associated with an expansion of NYMC's information technology, accounting, operations and marketing departments in connection with our IPO, and a non-cash charge of approximately \$2.0 million in compensation expense for restricted shares issued in connection with our IPO and the issuance of performance shares to GRL employees for retention and incentive compensation for meeting certain production benchmarks as a result of our assignment and assumption of 15 GRL branches in November 2004. In addition, we had increased personnel, occupancy and promotional expenses relating to the assignment and assumption agreements with SIB and GRL with regard to a total of 23 loan origination branches and our hiring of an additional 134 employees in March 2004 and 275 employees in November 2004 — for which we incurred expenses with little offsetting revenues due to lag time in closing the new originations associated with the assumption of these branches and employees. In addition, during the third quarter of 2004, we began to incur additional expenses in order to improve and grow our operational infrastructure (increased data processing and software costs for new systems and analytical

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software for the mortgage securities business as well as higher general and administrative expenses) to accommodate our increased production capacity. The GRL transaction alone is expected to approximately double our current origination volume during 2005.

Our closed loan originations for the year ended December 31, 2004 totaled 8,053 loans, a 41.2% increase over the 5,704 loans that NYMC closed during 2003. As measured by principal balance, total closed loan originations for the year ended December 31, 2004 increased approximately 15.6% to \$1.85 billion from \$1.60 billion during 2003, reflecting a decrease in the average balance of loans originated to approximately \$229,000 in 2004 from \$281,000 in 2003. The increase in loan originations during the year ended December 31, 2004 is due to increased loan origination personnel and branch offices as compared to 2003. The decrease in average loan balance is attributable primarily to the low average loan balance originated by one of the assumed SIB branches which does a relatively high volume of low balance FHA streamline refinance loans as compared to the historic loan production of NYMC in 2003.

We do not expect to benefit from historically low interest rates in 2005. We expect to mitigate the predicted declines in loan origination volume across the industry throughout 2005 by increasing the percentage of market share we capture. We plan to accomplish this increase in market share by increasing our loan origination staff, as we did in 2004 when we hired new employees in connection with our assumption of eight branch offices from SIB at the end of the first quarter of 2004 and the hiring of personnel from 15 GRL branches during the fourth quarter of 2004. We cannot assure you; however, that an increase in the number of loan origination officers we have will successfully mitigate the decline in loan origination volume that is expected to occur as a result of reduced demand for new loans throughout the industry.

Revenues

Gain on Sales of Mortgage Loans. During the year ended December 31, 2004, we had gains on sales of mortgage loans of approximately \$20.8 million compared to \$23.0 million for 2003. The 9.6% decrease in the gains on sales of mortgage loans for the year ended December 31, 2004 as compared to 2003 is attributed, in part, to a tightening of approximately 40 basis points on gain on sale spreads during 2004 relative to 2003, higher margins on loans originated for the Ruppert Homes Project in 2003 (as a result of a predictable closing date and a mass closing, we were able to sell these loans primarily in “mandatory” or bulk sales which provides for a higher premium relative to “best effort” or flow sales) and lower fee revenue from an increase in FHA mortgage loan production for which we incur closing costs rather than the borrower (since our assumption of the SIB branches in March 2004, approximately 15% of our total loan originations per month are FHA loans). The decrease in gain on sale revenues was also impacted by the initial execution of our core business strategy following our IPO in June 2004: retaining selected adjustable rate mortgages for our investment portfolio. The execution of this strategy requires that we forgo the gain on sale premiums (revenues) we would otherwise receive when we sell these loans to third-parties. Instead, the cost basis of these loans, which is far lower than the loan and its associated third-party premium, is retained on our investment portfolio with the inherent value of the loan realized over time.

The number of mortgage loans sold during the year ended December 31, 2004 increased 44.3% to 6,881 loans from 4,770 mortgage loans sold during 2003. Mortgage loan volume, as measured by aggregate principal balance of mortgage loans sold, increased approximately 17.1% to \$1.4 billion for the year ended December 31, 2004 from \$1.2 billion for the comparable period in 2003. The increase in the number of mortgage loans sold during the year ended December 31, 2004 is due to increased loan origination personnel and branch offices as compared to 2003. The slighter increase in the mortgage loan volume as measured by principal balance is due to higher FHA loan volumes which have an average balance of approximately \$125,000 as compared to the average balance of approximately \$209,000 for all other loans sold during the year ended December 31, 2004.

Interest Income — Mortgage Loans Held for Sale. During the year ended December 31, 2004, we had interest income on loans that were held for sale of approximately \$6.9 million compared with interest income of \$7.6 million for 2003. This decrease was due to a lower weighted average of days that loans were held prior to sale to third parties offset by a slightly higher average yield due to higher prevailing interest rates relative to

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2003. For the year ended December 31, 2004, the average number of days a loan was held prior to sale to a third party was 30 days as compared to 34 days for 2003. For the year ended December 31, 2004, the average interest rate for mortgage loans sold increased to 5.76% from 5.73% for 2003.

Interest Income — Investment Securities and Loans. The following table highlights the components of net interest spread and the annualized yield on net interest-earning assets as of each applicable quarter end since we began our portfolio investment activities:

Components of Net Interest Spread and Yield on Net Interest-Earning Assets

<u>As of the Quarter Ended</u>	<u>Average Interest Earning Assets</u>	<u>Historical Weighted Average Coupon</u>	<u>Yield on Interest Earning Assets</u>	<u>Cost of Funds</u>	<u>Net Interest Spread</u>
		(Dollar amounts in millions)			
September 30, 2004	\$ 776.5	4.04%	3.86%	2.45%	1.41%
December 31, 2004	\$ 1,325.7	4.29%	3.84%	2.58%	1.26%

As of December 31, 2004 the current yield on the investment portfolio, including mortgage securities and loans held for investment is approximately 3.93%; the related cost of funds including hedges totaled 2.73% resulting in a current net spread of 1.20%.

Brokered Loan Fees. During the year ended December 31, 2004, we had revenues from brokered loans of approximately \$6.9 million compared to \$6.7 million for 2003. The number of brokered loans increased approximately 25.5% to 1,171 loans for the year ended December 31, 2004 from 934 loans for 2003. The aggregate principal balance of such brokered loans increased by approximately 12.2% to \$410.1 million for the year ended December 31, 2004 from \$365.5 million in 2003. The slight increase in brokered loan fees relative to the increase in brokered loan production was a function of lower broker commissions earned due to spread tightening in the industry during 2004.

Gain on Sale of Securities. During the year ended December 31, 2004, we realized gains on the sale of marketable securities of \$774,000 as compared to no loss or gain on the sale of marketable securities during 2003. Of this amount, a net gain of \$607,000 was realized in the second quarter due to the disposition of marketable securities in anticipation of our IPO so as to avoid owning a legacy portfolio of securities which (i) did not meet our new investment guidelines, (ii) are equity securities, (iii) cannot be appropriately hedged or (iv) do not generate qualified REIT income.

Expenses

Salaries, Commissions and Benefits. During the year ended December 31, 2004, salaries, commissions and associated payroll costs increased to \$17.1 million from \$9.2 million for 2003, an increase of 85.9%. The increase was primarily due to an increase of 447 new employees to 782 employees at the end of December 31, 2004 from 335 employees at the end of December 31, 2003. New employees include loan officers, support staff (information technology, marketing, processing, underwriting and closing employees) and additional corporate management hired in connection with the Company's transition to a public company. In addition, for the year ended December 31, 2004, we recognized approximately \$2.0 million in non-cash compensation expense related to restricted stock grants to our executive officers in connection with our IPO and performance shares and options granted to new GRL employees for retention and incentive compensation for meeting certain future loan origination production benchmarks.

Brokered Loan Expenses. During the year ended December 31, 2004, we had costs of brokered loans of approximately \$5.3 million as compared to \$3.7 million for 2003, an increase of 43.2%. The increase was due to increased brokered loan origination volume and the increased cost during 2004 of brokered loan originations, particularly payroll related costs.

Interest Expense — Mortgage Loans Held for Sale. During the year ended December 31, 2004, we had interest expense on the warehouse financing lines for our mortgage loans held for sale of approximately \$3.5 million compared with interest expense of \$3.3 million for 2003, an increase of 6.1%. The average daily

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outstanding balance of financing facilities for the year ended December 31, 2004 was \$136.3 million at an average interest rate of 2.65% as compared to an average daily outstanding balance of \$116.6 million at an average rate of 2.54% for 2003. Our financing facilities are indexed at LIBOR. The slightly higher average in 2004 was primarily attributable to a higher relative change in the LIBOR index to 2.29% at December 31, 2004 from 1.17% at December 31, 2003 and was mitigated by the lower spread over the index rate negotiated on new and renewed facilities during 2004 relative to 2003.

Interest Expense — Investment Securities and Loans. During the year ended December 31, 2004 we had interest expense on our reverse repurchase facilities that finance our residential mortgage backed securities portfolio including net interest expense from hedging of approximately \$12.5 million.

Occupancy and Equipment Expense. During the year ended December 31, 2004, we had occupancy and equipment expense of approximately \$3.5 million compared to \$2.0 million for 2003, an increase of 75.0%. The increase reflects the expansion of new full service origination offices to 34 and 32 satellite locations (66 locations in total) as of December 31, 2004 from a total of 15 locations as of December 31, 2003 and the significant expansion and relocation of NYMC's principal offices in New York City in July 2003 and the recent relocation and expansion of our Astoria, Queens office in June 2004.

Marketing and Promotion Expense. During the year ended December 31, 2004, we had marketing and promotion expense of \$3.2 million compared to \$1.0 million for the same period of 2003, an increase of 220.0%. This increase was primarily due to increased marketing and promotion expenses incurred to promote newly-opened loan origination offices and related newly-hired loan origination personnel. In addition, in connection with our assumption of the SIB and GRL branches, we undertook a significant direct mail campaign to market our loan products in 2004.

Data Processing and Communications Expense. During the year ended December 31, 2004, we had data processing and communications expense of \$1.6 million compared to \$608,000 for 2003, an increase of 163.2%. This increase was primarily due to increased personnel and expenses related to the opening of new loan origination offices. In addition, since June 30, 2003, NYMC entered into leases for its new principal office phone system and high speed office printers. During the second and third quarter of 2004, we incurred additional costs related to analytical and market research software and systems in order to accommodate our mortgage securities business and to upgrade our current loan accounting software. In addition, during the third quarter of 2004, we began to incur additional costs related to new loan operating system software.

Office Supplies and Expense. During the year ended December 31, 2004, we had office supplies and expenses of \$1.5 million compared to \$803,000 for the same period of 2003, an increase of 86.8%. This increase was primarily a result of the increase in personnel and new origination offices, as well as the supplies needed to accommodate the bulk hiring of 134 and 275 new employees formerly with SIB and GRL, respectively, as well as other incremental employees hired during 2004.

Professional Fees Expense. During the year ended December 31, 2004, we had professional fees expense of \$2.0 million compared to \$959,000 for 2003, an increase of 108.6%. This increase was primarily due to increases in dues, licenses and permits in states where NYMC has a new presence and the use of regulatory counsel to assist in the structuring and licensing of our various affiliates in certain states in conjunction with our IPO.

Travel and Entertainment Expense. During the year ended December 31, 2004, we had travel and entertainment expense of \$612,000 compared to \$666,000 for 2003, a decrease of 8.1%. The decrease was primarily due to new expense guidelines and less travel for conventions and other activities.

Depreciation and Amortization Expense. During the year ended December 31, 2004, we had depreciation and amortization expense of \$690,000 compared to \$412,000 for 2003, an increase of 67.5%. This increase was primarily due to opening of new origination offices and increased investments in computer networks and systems.

Comparison of the year ended December 31, 2003 to the year ended December 31, 2002

Net Income

Net income increased approximately 260.5% to \$13.7 million for the year ended December 31, 2003 from \$3.8 million for 2002. The increase in net income in 2003 was primarily the result of increased loan origination production resulting in increased loan sales volume and net interest income. Two primary factors contributed to this increase in loan origination production: a successful effort by NYMC to increase significantly its loan origination staff and low prevailing interest rates, which resulted in an increase in refinance mortgage loan volume. Total revenue increased 106.5% with a corresponding 65.0% increase in total expenses during the year ended December 31, 2003, as compared to 2002, indicating loan origination efficiencies at higher production volumes. Total loan origination volume for the year ended December 31, 2003 increased 76.0% to 5,704 loans from 3,241 for 2002. Total loan origination volume, as measured by principal balance, increased approximately 82.4% to \$1.6 billion for the year ended December 31, 2003 from \$877.2 million for 2002.

Revenues

Gain on Sales of Mortgage Loans. Net gain on sales of mortgage loans increased approximately 132.3% to \$23.0 million for the year ended December 31, 2003 from \$9.9 million for 2002. Gross gain on sale of mortgage loans increased approximately 116.1% to \$29.6 million for the year ended December 31, 2003 from \$13.7 million for 2002. These increases in net and gross gain on sales of mortgage loans are due to increased sales volume of loans for the year ended December 31, 2003 and due to the fact that increased mortgage loan origination volume enabled NYMC to begin selling pools of loans, typically resulting in NYMC receiving higher prices than it historically received selling loans on a whole loan or flow basis.

The number of mortgage loans sold during the year ended December 31, 2003 increased 83.5% to 4,770 loans from 2,600 mortgage loans sold during 2002. Mortgage loan volume, as measured by aggregate principal balance of mortgage loans sold, increased approximately 89.5% to \$1.2 billion for the year ended December 31, 2003 from \$633.2 million for 2002.

Interest Income. Interest income increased approximately 153.3% to \$7.6 million for the year ended December 31, 2003 from \$3.0 million in 2002. This increase is due to increased originations of loans held for sale and thus an increased volume of earning assets and is partially offset by a declining average yield due to lower prevailing interest rates in the year ended December 31, 2003.

The aggregate principal balance of loans sold increased approximately 89.5% to \$1.2 billion for the year ended December 31, 2003 from \$633.2 million in 2002. Additionally, NYMC's loan pool sale strategy resulted in NYMC holding loans longer on its credit facilities. The average holding period of mortgage loans sold (the period from the closing of the loan to the sale to a third party) increased to 34 days in the year ended December 31, 2003 from 31 days in 2002. The combination of increased principal balances and holding periods allowed for higher interest revenue during the year ended December 31, 2003 and is offset in part by a decrease in the average interest rate for the mortgage loans sold by approximately 75 basis points to 5.73% in 2003 from 6.48% in 2002.

Revenue from Brokered Loans. Revenue from brokered loans increased approximately 28.8% to \$6.7 million for the year ended December 31, 2003 from \$5.2 million in 2002 as a result of increased origination volume for loans brokered for other institutions. The number of brokered loans increased approximately 45.7% to 934 loans for the year ended December 31, 2003 from 641 loans in 2002. The aggregate principal balance of such brokered loans increased approximately 49.8% to \$365.5 million for the year ended December 31, 2003 from \$244.0 million in 2002. The percentage of brokered loans to total originations closed during the year end December 31, 2003 decreased to 16.4% from 19.8% in 2002. This was due to NYMC's efforts to migrate more of its business from mortgage brokering to mortgage banking, which typically has been significantly more profitable.

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Expenses

Total Expenses. Total expenses increased approximately 65.0% to \$23.6 million for the year ended December 31, 2003 from \$14.3 million in 2002. This increase is primarily due to the increase in salaries, commissions and associated payroll costs, much of which is a variable cost (commissions) and directly related to the increase in loan originations. Occupancy and other general and administrative expenses also increased due to higher loan origination volume and an increase in the number of branch locations.

Salaries, Commissions and Benefits. Salaries, commissions and associated payroll costs increased approximately 58.6% to \$9.2 million for the year ended December 31, 2003 from \$5.8 million in 2002. The increase was primarily due to an increase in commissions paid, which is a variable expense, and directly correlated to increased loan origination volume, as well as increases in support staff (processing, underwriting and closing employees) necessary to support the increased origination volume. Total employees increased to 335 on December 31, 2003 from 184 on December 31, 2002.

Cost of Brokered Loans. Cost of brokered loans increased approximately 23.3% to \$3.7 million for the year ended December 31, 2003 from \$3.0 million in 2002. This increase in cost correlates to the increase in origination volume of brokered loans and the revenues earned from brokered loans.

Interest Expense. Interest expense increased approximately 94.1% to \$3.3 million for the year ended December 31, 2003 from \$1.7 million in 2002. This increase is due to increased originations of loans held for sale and the period of time NYMC elected to hold such loans prior to their sale and thus an increase in financing costs, which is partially offset by lower prevailing interest rates in the year ended December 31, 2003. The average monthly outstanding balance of financing facilities during the year ended December 31, 2003 was \$116.6 million at an average interest rate of 2.54% as compared to an average monthly outstanding balance of \$48.8 million at an average rate of 3.17% in 2002.

Occupancy and Equipment Expense. Occupancy and equipment expense increased approximately 100.0% to \$2.0 million for the year ended December 31, 2003 from \$1.0 million in 2002. The increase reflects the expansion of new origination offices to 15 on December 31, 2003 from 13 on December 31, 2002 and the significant expansion and relocation of NYMC's principal offices in New York City in July 2003.

Marketing and Promotion Expense. Marketing and promotion expense increased approximately 104.9% to \$1.0 million for the year ended December 31, 2003 from \$488,000 in 2002. This increase was primarily due to increased marketing and promotion expenses incurred to promote newly-opened loan origination offices and related newly-hired loan origination personnel.

Data Processing and Communication Expense. Data processing and communication expense increased approximately 66.1% to \$608,000 for the year ended December 31, 2003 from \$366,000 in 2002. This increase was primarily due to increased loan volume and expenses related to the opening of new origination offices. In addition, during the year ended December 31, 2003, NYMC entered into leases for its new principal office phone system and high speed office printers.

Office Supplies and Expense. Office supplies and expense increased approximately 59.0% to \$803,000 for the year ended December 31, 2003 from \$505,000 in 2002. This increase was primarily a result of the increase in personnel and new origination offices, as well as the supplies needed to service increased loan volume during the period.

Professional Fees Expense. Professional fees expense increased approximately 88.0% to \$959,000 for the year ended December 31, 2003 from \$510,000 in 2002. This increase was primarily due to increases in dues, licenses and permits and placement search fees for increased personnel levels and the opening of new loan origination offices. In addition, NYMC incurred certain non-recurring professional fees (consulting, technology, architectural) for its relocation of its principal offices.

Travel and Entertainment Expense. Travel and entertainment expense increased 58.6% to \$666,000 for the year ended December 31, 2003 from \$420,000 in 2002. This increase was primarily due to increased meals and travel expense due to increased personnel levels and the opening of new origination offices.

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Depreciation and Amortization Expense. Depreciation and amortization expense increased approximately 52.0% to \$412,000 for the year ended December 31, 2003 from \$271,000 in 2002. This increase was primarily due to opening of new origination offices and increased investments in computer networks and systems.

Off-Balance Sheet Arrangements

Since inception, we have not maintained any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Further, we have not guaranteed any obligations of unconsolidated entities nor do we have any commitment or intent to provide funding to any such entities. Accordingly, we are not materially exposed to any market, credit, liquidity or financing risk that could arise if we had engaged in such relationships.

Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available for our operating businesses and our investment in mortgage loans until the settlement or sale of mortgages with us or with other investors. It is our policy to have adequate liquidity at all times to cover normal cyclical swings in funding availability and mortgage demand and to allow us to meet abnormal and unexpected funding requirements. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds.

We believe our existing cash balances and funds available under our credit facilities and cash flows from operations will be sufficient for our liquidity requirements for at least the next 12 months. Unused borrowing capacity will vary as the market values of our securities vary. Our investments and assets will also generate liquidity on an ongoing basis through mortgage principal and interest payments, pre-payments and net earnings held prior to payment of dividends. Should our liquidity needs ever exceed these on-going or immediate sources of liquidity discussed above, we believe that our securities could be sold to raise additional cash in most circumstances. We do, however, expect to expand our mortgage origination operations and may have to arrange for additional sources of capital through the issuance of debt or equity or additional bank borrowings to fund that expansion. We currently have no commitments for any additional financings, and we cannot ensure that we will be able to obtain any additional financing at the times required and on terms and conditions acceptable to us.

To finance our investment portfolio, we generally seek to borrow between eight and 12 times the amount of our equity. Our leverage ratio, defined as total financing facilities outstanding divided by total stockholders' equity, at December 31, 2004 was 12.3.

Since the IPO, the Company has purchased approximately \$1.2 billion in mortgage-backed securities. These securities were financed with a combination of IPO proceeds and reverse repurchase agreements. Currently the Company has approximately \$1.1 billion in outstanding reverse repurchase agreements.

The Company has arrangements to enter into reverse repurchase agreements, a form of collateralized short-term borrowing, with 20 different financial institutions and as of December 31, 2004 had borrowed money from seven of these firms. These agreements are secured by our mortgage-backed securities and bear interest rates that have historically moved in close relationship to LIBOR.

Under these reverse repurchase agreements the financial institutions lend money versus the market value of our mortgage-backed securities portfolio, and, accordingly, an increase in interest rates can have a negative impact on the valuation of these securities, resulting in a potential margin call from the financial institution. The Company monitors the market valuation fluctuation as well as other liquidity needs to ensure there is adequate collateral available to meet any additional margin calls or liquidity requirements.

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The Company enters into interest rate swap agreements to extend the maturity of the reverse repurchase agreements as a mechanism to reduce the interest rate risk of the securities portfolio. The Company currently has \$670 million in interest rate swaps outstanding with five different financial institutions. The weighted average maturity of the swaps is 577 days. The impact of the interest swaps extends the maturity of the reverse repurchase agreements to one year.

To originate a mortgage loan, we may draw against a \$100 million (facility has been approved to increase to \$200 million on March 31, 2005) reverse repurchase facility with Credit Suisse First Boston Mortgage Capital, LLC, or CSFB, and a \$125 million (increased to \$150 million on February 1, 2005) warehouse facility led by HSBC Bank USA, or HSBC. These facilities are secured by the mortgage loans owned by us and by certain of our other assets. Advances drawn under these facilities bear interest at rates that vary depending on the type of mortgage loans securing the advances. These facilities are subject to sub-limits, advance rates and terms that vary depending on the type of mortgage loans securing these financings and the ratio of our liabilities to our tangible net worth. As of December 31, 2004, the aggregate outstanding balance under these facilities was \$143.6 million and the aggregate maximum amount available for additional borrowings was \$81.4 million. These agreements are not committed facilities and may be terminated at any time at the discretion of the counterparties.

In addition to these facilities, we entered into a \$250 million master loan and security agreement with Greenwich Capital. Under this agreement, Greenwich Capital provides financing to us for the origination or acquisition of certain mortgage loans, which then will be sold to third parties or contributed for future securitization to one or more trusts or other entities sponsored by us or an affiliate. We will repay advances under this credit facility with a portion of the proceeds from the sale of all mortgage-backed securities issued by the trust or other entity, along with a portion of the proceeds resulting from permitted whole loan sales. Advances under this facility bear interest at a floating rate initially equal to LIBOR plus 0.75%. Advances under this facility are subject to lender approval of the mortgage loans intended for origination or acquisition, advance rates and the then ratio of our liabilities to our tangible net worth. This facility is not a committed facility and may be terminated at any time at the discretion of Greenwich Capital. As of December 31, 2004, the outstanding balance of this facility was approximately \$215.6 million with the maximum amount available for additional borrowings of \$34.4 million.

The documents governing these facilities contain a number of compensating balance requirements and restrictive financial and other covenants that, among other things, require us to maintain a maximum ratio of total liabilities to tangible net worth, of 20 to 1 in the case of the CSFB facility, 15 to 1 in the case of the HSBC facility and 20 to 1 in the case of the Greenwich Capital facility, as well as to comply with applicable regulatory and investor requirements. The Company is in compliance with all such covenants as of December 31, 2004. The agreements also contain covenants limiting the ability of our subsidiaries to:

- transfer or sell assets;
- create liens on the collateral; or
- incur additional indebtedness, without obtaining the prior consent of the lenders, which consent may not be unreasonably withheld.

These limits may in turn restrict our ability to pay cash or stock dividends on our stock. In addition, under our warehouse facilities, we cannot continue to finance a mortgage loan that we hold through the warehouse facility if:

- the loan is rejected as “unsatisfactory for purchase” by the ultimate investor and has exceeded its permissible warehouse period which varies by facility;
- we fail to deliver the applicable note, mortgage or other documents evidencing the loan within the requisite time period;
- the underlying property that secures the loan has sustained a casualty loss in excess of 5% of its appraised value; or

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- the loan ceases to be an eligible loan (as determined pursuant to the warehouse facility agreement).

We expect that these credit facilities will be sufficient to meet our capital and financing needs during the next twelve months. The balances of these facilities fluctuate based on the timing of our loan closings (at which point we may draw upon the facilities) and the near-term subsequent sale of these loans to third parties or the alternative financing thereof through repurchase agreements or, in the future, securitizations for mortgage loans we intend to retain (at which point these facilities are paid down). The current availability under these facilities and our current and projected levels of loan origination volume are consistent with our historic ability to manage our pipeline of mortgage loans, the subsequent sale thereof and the related pay down of the facilities.

As of December 31, 2004, our aggregate warehouse and reverse repurchase facility borrowings under these facilities were \$359.2 million and \$1.1 billion, respectively, at an average rate of approximately 2.57%.

Our financing arrangements are short-term facilities secured by the underlying investment in residential mortgage loans, the value of which may move inversely with changes in interest rates. A decline in the market value of our investments in the future may limit our ability to borrow under these facilities or result in lenders requiring additional collateral or initiating margin calls under our repurchase agreements. As a result, we could be required to sell some of our investments under adverse market conditions in order to maintain liquidity. If such sales are made at prices lower than the amortized costs of such investments, we will incur losses.

Our ability to originate loans depends in large part on our ability to sell the mortgage loans we originate at cost or for a premium in the secondary market so that we may generate cash proceeds to repay borrowings under our warehouse facilities and our reverse repurchase agreement. The value of our loans depends on a number of factors, including:

- interest rates on our loans compared to market interest rates;
- the borrower credit risk classification;
- loan-to-value ratios, loan terms, underwriting and documentation; and
- general economic conditions.

We make certain representations and warranties, and are subject to various affirmative and negative financial and other covenants, under the agreements covering the sale of our mortgage loans regarding, among other things, the loans' compliance with laws and regulations, their conformity with the ultimate investors' underwriting standards and the accuracy of information. In the event of a breach of these representations, warranties or covenants or in the event of an early payment default, we may be required to repurchase the loans and indemnify the loan purchaser for damages caused by that breach. We have implemented strict procedures to ensure quality control and conformity to underwriting standards and minimize the risk of being required to repurchase loans. We have been required to repurchase loans we have sold from time to time; however, these repurchases have not had a material impact on our results of operations.

We intend to make distributions to our stockholders to comply with the various requirements to maintain our REIT status and to minimize or avoid corporate income tax and the nondeductible excise tax. However, differences in timing between the recognition of REIT taxable income and the actual receipt of cash could require us to sell assets or to borrow funds on a short-term basis to meet the REIT distribution requirements and to avoid corporate income tax and the nondeductible excise tax.

Certain of our assets may generate substantial mismatches between REIT taxable income and available cash. These assets could include mortgage-backed securities we hold that have been issued at a discount and require the accrual of taxable income in advance of the receipt of cash. As a result, our REIT taxable income may exceed our cash available for distribution and the requirement to distribute a substantial portion of our net taxable income could cause us to:

- sell assets in adverse market conditions;
- borrow on unfavorable terms; or

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• distribute amounts that would otherwise be invested in future acquisitions, capital expenditures or repayment of debt, in order to comply with the REIT distribution requirements.

Inflation

For the periods presented herein, inflation has been relatively low and we believe that inflation has not had a material effect on our results of operations. The impact of inflation is primarily reflected in the increased costs of our operations. Virtually all our assets and liabilities are financial in nature. Our consolidated financial statements and corresponding notes thereto have been prepared in accordance with GAAP, which require the measurement of financial position and operating results in terms of historical dollars without considering the changes in the relative purchasing power of money over time due to inflation. As a result, interest rates and other factors influence our performance far more than inflation. Inflation affects our operations primarily through its effect on interest rates, since interest rates typically increase during periods of high inflation and decrease during periods of low inflation. During periods of increasing interest rates, demand for mortgages and a borrower's ability to qualify for mortgage financing in a purchase transaction may be adversely affected. During periods of decreasing interest rates, borrowers may prepay their mortgages, which in turn may adversely affect our yield and subsequently the value of our portfolio of mortgage assets.

Contractual Obligations

The Company had the following contractual obligations (excluding derivative financial instruments) at December 31, 2004:

	<u>Total</u>	<u>Less Than 1 Year</u>	<u>1 to 3 Years</u>	<u>4 to 5 Years</u>	<u>After 5 Years</u>
Reverse repurchase agreements	\$ 1,115,809,285	\$ 1,115,809,285	—	—	—
Warehouse facilities	359,202,980	359,202,980	—	—	—
Operating leases	17,473,990	4,150,604	6,699,940	4,745,446	1,878,000
Employment agreements ¹	9,521,900	2,209,200	7,312,700	—	—

¹ Represents base cash compensation of executive officers.

New Accounting Pronouncements

In December, 2004 the Financial Accounting Standards Board ("FASB") issued SFAS No. 123R, "Share-Based payment," ("SFAS No. 123R") which will require all companies to measure compensation costs for all share-based payments, including employee stock options, at fair value. This statement will be effective for the Company with the quarter beginning July 1, 2005. The Company has elected to expense share based compensation in accordance with SFAS No. 123, therefore proactively adopting the requirements of SFAS No. 123R.

On March 9, 2004, the SEC issued SAB 105, which provides guidance regarding loan commitments that are accounted for as derivative instruments under SFAS No. 133. In SAB 105, the SEC stated that the value of expected future cash flows related to servicing rights should be excluded when determining the fair value of derivative interest rate lock commitments. This guidance must be applied to rate locks initiated after March 31, 2004. Under this new guidance, the value of the expected future cash flow related to servicing rights is not recognized until the underlying loans are sold. The Company sells its loans "servicing released" and values its IRLCs based strictly on the interest rate differential between the contractual interest rate for the loan and current market rates. The application of SAB 105 did not have a material impact on the Company's consolidated financial statements for the fiscal year ended December 31, 2004.

In March 2004, the EITF reached a consensus on Issue No 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. This Issue provides clarification with respect to the meaning of other-than-temporary impairment and its application to investments classified as

either available-for-sale or held-to-maturity under SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, (including individual securities and investments in mutual funds), and investments accounted for under the cost method. The guidance for evaluating whether an investment is other-than-temporarily impaired in EITF 03-1, except for paragraphs 10-20, must be applied in other-than-temporary impairment evaluations made in reporting periods beginning after June 15, 2004. This Issue did not have a material impact on the Company's financial condition or results of operations.

Item 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk is the exposure to loss resulting from changes in interest rates, credit spreads, foreign currency exchange rates, commodity prices and equity prices. Because we are invested solely in U.S.-dollar denominated instruments, primarily residential mortgage instruments, and our borrowings are also domestic and U.S. dollar denominated, we are not subject to foreign currency exchange, or commodity and equity price risk; the primary market risk that we are exposed to is interest rate risk and its related ancillary risks. Interest rate risk is highly sensitive to many factors, including governmental monetary and tax policies, domestic and international economic and political considerations and other factors beyond our control. All of our market risk sensitive assets, liabilities and related derivative positions are for non-trading purposes only.

Management recognizes the following primary risks associated with our business and the industry in which we conduct business:

- Interest rate and market (fair value) risk
- Credit spread risk
- Liquidity and funding risk
- Prepayment risk
- Credit risk

Interest Rate Risk

Our primary interest rate exposure relates to the portfolio of adjustable-rate mortgage loans and mortgage-backed securities we acquire, as well as our variable-rate borrowings and related interest rate swaps and caps. Interest rate risk is defined as the sensitivity of our current and future earnings to interest rate volatility, variability of spread relationships, the difference in re-pricing intervals between our assets and liabilities and the effect that interest rates may have on our cash flows, especially the speed at which prepayments occur on our residential mortgage related assets.

Changes in the general level of interest rates can affect our net interest income, which is the difference between the interest income earned on interest earning assets and our interest expense incurred in connection with our interest bearing debt and liabilities. Changes in interest rates can also affect, among other things, our ability to originate and acquire loans and securities, the value of our loans, mortgage pools and mortgage-backed securities, and our ability to realize gains from the resale and settlement of such originated loans.

In our investment portfolio, our primary market risk is interest rate risk. Interest rate risk can be defined as the sensitivity of our portfolio, including future earnings potential, prepayments, valuations and overall liquidity. The Company attempts to manage interest rate risk by adjusting portfolio compositions, liability maturities and utilizing interest rate derivatives including interest rate swaps and caps. Management's goal is to maximize the earnings potential of the portfolio while maintaining long term stable portfolio valuations.

The Company utilizes a model based risk analysis system to assist in projecting portfolio performances over a scenario of the interest rates. The model incorporates shifts in interest rates, changes in prepayments and other factors impacting the valuations of our financial securities, including mortgage-backed securities, reverse repurchase agreements, interest rate swaps and interest rate caps.

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Based on the results of this model, as of December 31, 2004, an instantaneous shift of 100 basis points in interest rates would result in no material change in earnings as compared to our base line projections over the next year.

The following tables set forth information about financial instruments:

	December 31, 2004		
	Notional Amount	Carrying Amount	Estimated Fair Value
Investment securities available for sale	\$ 1,194,055,340	\$ 1,204,744,714	\$ 1,204,744,714
Mortgage loans held for investment	188,858,607	190,153,103	190,608,241
Mortgage loans held for sale	85,105,027	85,384,927	86,097,867
Commitments and contingencies:			
Interest rate lock commitments	156,110,472	37,867	37,867
Forward loan sales contracts	97,080,482	(164,816)	(164,816)
Interest rate swaps	670,000,000	3,228,457	3,228,457
Interest rate caps	250,000,000	411,248	411,248
	December 31, 2003		
	Notional Amount	Carrying Amount	Estimated Fair Value
Mortgage loans held for sale	\$ 36,168,003	\$ 36,169,307	\$ 38,020,465
Commitments and contingencies:			
Interest rate lock commitments	71,375,732	316,435	316,435
Forward loan sales contracts	54,522,057	(261,511)	(261,511)

The impact of changing interest rates may be mitigated by portfolio prepayment activity that we closely monitor and the portfolio funding strategies we employ. First, our adjustable rate borrowings may react to changes in interest rates before our adjustable rate assets because the weighted average next repricing dates on the related borrowings may have shorter time periods than that of the adjustable rate assets. Second, interest rates on adjustable rate assets may be limited to a “periodic cap” or an increase of typically 1% or 2% per adjustment period, while our borrowings do not have comparable limitations. Third, our adjustable rate assets typically lag changes in the applicable interest rate indices by 45 days, due to the notice period provided to adjustable rate borrowers when the interest rates on their loans are scheduled to change.

In a period of declining interest rates or nominal differences between long-term and short-term interest rates, the rate of prepayment on our mortgage assets may increase. Increased prepayments would cause us to amortize any premiums paid for our mortgage assets faster, thus resulting in a reduced net yield on our mortgage assets. Additionally, to the extent proceeds of prepayments cannot be reinvested at a rate of interest at least equal to the rate previously earned on such mortgage assets, our earnings may be adversely affected.

Conversely, if interest rates rise or if the difference between long-term and short-term interest rates increase, the rate of prepayment on our mortgage assets may decrease. Decreased prepayments would cause us to amortize the premiums paid for our ARM assets over a longer time period, thus resulting in an increased net yield on our mortgage assets. Therefore, in rising interest rate environments where prepayments are declining, not only would the interest rate on the ARM assets portfolio increase to re-establish a spread over the higher interest rates, but the yield also would rise due to slower prepayments. The combined effect could significantly mitigate other negative effects that rising short-term interest rates might have on earnings.

Interest rates can also affect our net return on hybrid adjustable rate (“hybrid ARM”) securities and loans net of the cost of financing hybrid ARMs. We continually monitor and estimate the duration of our hybrid ARMs and have a policy to hedge the financing of the hybrid ARMs such that the net duration of the hybrid ARMs, our borrowed funds related to such assets, and related hedging instruments are less than one year. During a declining interest rate environment, the prepayment of hybrid ARMs may accelerate (as borrowers may opt to refinance at a lower rate) causing the amount of fixed-rate financing to increase relative

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to the amount of hybrid ARMs, possibly resulting in a decline in our net return on hybrid ARMs as replacement hybrid ARMs may have a lower yield than those being prepaid. Conversely, during an increasing interest rate environment, hybrid ARMs may prepay slower than expected, requiring us to finance a higher amount of hybrid ARMs than originally forecast and at a time when interest rates may be higher, resulting in a decline in our net return on hybrid ARMs. Our exposure to changes in the prepayment speed of hybrid ARMs is mitigated by regular monitoring of the outstanding balance of hybrid ARMs and adjusting the amounts anticipated to be outstanding in future periods and, on a regular basis, making adjustments to the amount of our fixed-rate borrowing obligations for future periods.

Interest rate changes can also affect the availability and pricing of adjustable rate assets, which affects our origination activity and investment opportunities. During a rising interest rate environment, there may be less total loan origination activity, particularly for refinancings. At the same time, a rising interest rate environment may result in a larger percentage of adjustable rate products being originated, mitigating the impact of lower overall loan origination activity. In addition, our focus on purchase mortgages as opposed to refinancings also mitigates the volatility of our origination volume as refinancing volume is typically a function of lower interest rates, whereas, purchase mortgage volume has historically remained relatively static during interest rate cycles. Conversely, during a declining interest rate environment total loan origination activity may rise with many of the borrowers desiring fixed-rate mortgage products. Although adjustable rate product origination as a percentage of total loan origination may decline during these periods, the increased loan origination and refinancing volume in the industry may produce sufficient investment opportunities. Additionally, a flat yield curve may be an adverse environment for adjustable rate products because the incentive for a borrower to choose an adjustable rate product over a longer term fixed-rate mortgage loan is minimized and, conversely, in a steep yield curve environment, adjustable rate products may enjoy an above average advantage over longer term fixed-rate mortgage loans, increasing our investment opportunities.

As the rate environment changes, the impact on origination volume and the type of loan product that is favored is mitigated, in part, by our ability to operate in our two business segments. In periods where adjustable rate product is favored, our mortgage portfolio management segment, which invests in such mortgage loans, will benefit from a larger selection of loan product for its portfolio and the inherent lower cost basis and resultant wider net margin. Our mortgage lending segment, regardless of whether adjustable rate or fixed rate product is favored, will continue to originate such loans and will continue to sell to third parties all fixed rate product; as a result, in periods where fixed rate product is favored, our origination segment may see increased revenues as such fixed product is sold to third parties.

Interest rate changes may also impact our net book value as our securities, certain mortgage loans and related hedge derivatives are marked-to-market each quarter. Generally, as interest rates increase, the value of our fixed income investments, such as mortgage loans and mortgage-backed securities, decreases and as interest rates decrease, the value of such investments will increase. We seek to hedge to some degree changes in value attributable to changes in interest rates by entering into interest rate swaps and other derivative instruments. In general, we would expect that, over time, decreases in value of our portfolio attributable to interest rate changes will be offset to some degree by increases in value of our interest rate swaps, and vice versa. However, the relationship between spreads on securities and spreads on swaps may vary from time to time, resulting in a net aggregate book value increase or decline. However, unless there is a material impairment in value that would result in a payment not being received on a security or loan, changes in the book value of our portfolio will not directly affect our recurring earnings or our ability to make a distribution to our stockholders.

In order to minimize the negative impacts of changes in interest rates on earnings and capital, we closely monitor our asset and liability mix and utilize interest rate swaps and caps, subject to the limitations imposed by the REIT qualification tests.

Movements in interest rates can pose a major risk to us in either a rising or declining interest rate environment. We depend on substantial borrowings to conduct our business. These borrowings are all made at variable interest rate terms that will increase as short term interest rates rise. Additionally, when interest rates rise, mortgage loans held for sale and any applications in process with interest rate lock commitments, or

IRLCs, decrease in value. To preserve the value of such loans or applications in process with IRLCs, we may enter into forward sale loan contracts, or FSLCs, to be settled at future dates with fixed prices.

When interest rates decline, loan applicants may withdraw their open applications on which we have issued an IRLC. In those instances, we may be required to purchase loans at current market prices to fulfill existing FSLCs, thereby incurring losses upon sale. We monitor our mortgage loan pipeline closely and on occasion may choose to renegotiate locked loan terms with a borrower to prevent withdrawal of open applications and mitigate the associated losses.

In the event that we do not deliver the FSLCs or exercise our option contracts, the instruments can be settled on a net basis. Net settlement entails paying or receiving cash based upon the change in market value of the existing instrument. All FSLCs and option contracts to buy securities are to be contractually settled within six months of the balance sheet date. FSLCs and options contracts for individual loans generally must be settled within 60 days.

Our hedging transactions using derivative instruments also involve certain additional risks such as counterparty credit risk, the enforceability of hedging contracts and the risk that unanticipated and significant changes in interest rates will cause a significant loss of basis in the contract. The counterparties to our derivative arrangements are major financial institutions and securities dealers that are well capitalized with high credit ratings and with which we may also have other financial relationships. While we do not anticipate nonperformance by any counterparty, we are exposed to potential credit losses in the event the counterparty fails to perform. Our exposure to credit risk in the event of default by a counterparty is the difference between the value of the contract and the current market price. There can be no assurance that we will be able to adequately protect against the foregoing risks and will ultimately realize an economic benefit that exceeds the related expenses incurred in connection with engaging in such hedging strategies.

While we have not experienced any significant credit losses, in the event of a significant rising interest rate environment and/or economic downturn, mortgage and loan defaults may increase and result in credit losses that would adversely affect our liquidity and operating results.

Credit Spread Exposure

The mortgage-backed securities we will own are also subject to spread risk. The majority of these securities will be adjustable-rate securities that are valued based on a market credit spread to U.S. Treasury security yields. In other words, their value is dependent on the yield demanded on such securities by the market based on their credit relative to U.S. Treasury securities. Excessive supply of such securities combined with reduced demand will generally cause the market to require a higher yield on such securities, resulting in the use of a higher or wider spread over the benchmark rate (usually the applicable U.S. Treasury security yield) to value such securities. Under such conditions, the value of our securities portfolio would tend to decline. Conversely, if the spread used to value such securities were to decrease or tighten, the value of our securities portfolio would tend to increase. Such changes in the market value of our portfolio may affect our net equity, net income or cash flow directly through their impact on unrealized gains or losses on available-for-sale securities, and therefore our ability to realize gains on such securities, or indirectly through their impact on our ability to borrow and access capital.

Furthermore, shifts in the U.S. Treasury yield curve, which represents the market's expectations of future interest rates, would also affect the yield required on our securities and therefore their value. These shifts, or a change in spreads, would have a similar effect on our portfolio, financial position and results of operations.

Market (Fair Value) Risk

For certain of the financial instruments that we own, fair values will not be readily available since there are no active trading markets for these instruments as characterized by current exchanges between willing parties. Accordingly, fair values can only be derived or estimated for these investments using various valuation techniques, such as computing the present value of estimated future cash flows using discount rates commensurate with the risks involved. However, the determination of estimated future cash flows is inherently

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subjective and imprecise. Minor changes in assumptions or estimation methodologies can have a material effect on these derived or estimated fair values. These estimates and assumptions are indicative of the interest rate environments as of December 31, 2004 and do not take into consideration the effects of subsequent interest rate fluctuations.

We note that the values of our investments in mortgage-backed securities, and in derivative instruments, primarily interest rate hedges on our debt, will be sensitive to changes in market interest rates, interest rate spreads, credit spreads and other market factors. The value of these investments can vary and has varied materially from period to period. Historically, the values of our mortgage loan portfolio have tended to vary inversely with those of its derivative instruments.

The following describes the methods and assumptions we use in estimating fair values of our financial instruments:

Fair value estimates are made as of a specific point in time based on estimates using present value or other valuation techniques. These techniques involve uncertainties and are significantly affected by the assumptions used and the judgments made regarding risk characteristics of various financial instruments, discount rates, estimates of future cash flows, future expected loss experience and other factors.

Changes in assumptions could significantly affect these estimates and the resulting fair values. Derived fair value estimates cannot be substantiated by comparison to independent markets and, in many cases, could not be realized in an immediate sale of the instrument. Also, because of differences in methodologies and assumptions used to estimate fair values, the fair values used by us should not be compared to those of other companies.

The fair values of the Company's residential mortgage-backed securities are generally based on market prices provided by five to seven dealers who make markets in these financial instruments. If the fair value of a security is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that the Company receives from the issuer and on available market information.

The fair value of loans held for investment are determined by the loan pricing sheet which is based on internal management pricing and third party competitors in similar products and markets.

The fair value of commitments to fund with agreed upon rates are estimated using the fees and rates currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the present creditworthiness of the counterparties. For fixed rate loan commitments, fair value also considers the difference between current market interest rates and the existing committed rates.

The fair value of commitments to deliver mortgages is estimated using current market prices for dealer or investor commitments relative to our existing positions.

The market risk management discussion and the amounts estimated from the analysis that follows are forward-looking statements that assume that certain market conditions occur. Actual results may differ materially from these projected results due to changes in our ARM portfolio and borrowings mix and due to developments in the domestic and global financial and real estate markets. Developments in the financial markets include the likelihood of changing interest rates and the relationship of various interest rates and their impact on our ARM portfolio yield, cost of funds and cash flows. The analytical methods that we use to assess and mitigate these market risks should not be considered projections of future events or operating performance.

As a financial institution that has only invested in U.S.-dollar denominated instruments, primarily residential mortgage instruments, and has only borrowed money in the domestic market, we are not subject to foreign currency exchange or commodity price risk. Rather, our market risk exposure is largely due to interest rate risk. Interest rate risk is defined as the sensitivity of our current and future earnings to interest rate volatility, variability of spread relationships, the difference in repricing intervals between our assets and liabilities and the effect that interest rates may have on our cash flows, especially ARM portfolio prepayments. Interest rate risk impacts our interest income, interest expense and the market value on a large portion of our assets and liabilities. The management of interest rate risk attempts to maximize earnings and to preserve

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capital by minimizing the negative impacts of changing market rates, asset and liability mix, and prepayment activity.

The table below presents the sensitivity of the market value of our portfolio using a discounted cash flow simulation model. Application of this method results in an estimation of the percentage change in the market value of our assets, liabilities and hedging instruments per 100 basis point (“bp”) shift in interest rates expressed in years — a measure commonly referred to as duration. Positive portfolio duration indicates that the market value of the total portfolio will decline if interest rates rise and increase if interest rates decline. The closer duration is to zero, the less interest rate changes are expected to affect earnings. Included in the table is a “Base Case” duration calculation for an interest rate scenario that assumes future rates are those implied by the yield curve as of December 31, 2004. The other two scenarios assume interest rates are instantaneously 100 and 200 bps higher than those implied by market rates as of December 31, 2004.

The use of hedging instruments is a critical part of our interest rate risk management strategies, and the effects of these hedging instruments on the market value of the portfolio are reflected in the model’s output. This analysis also takes into consideration the value of options embedded in our mortgage assets including constraints on the repricing of the interest rate of ARM assets resulting from periodic and lifetime cap features, as well as prepayment options. Assets and liabilities that are not interest rate-sensitive such as cash, payment receivables, prepaid expenses, payables and accrued expenses are excluded. The duration calculated from this model is a key measure of the effectiveness of our interest rate risk management strategies.

Changes in assumptions including, but not limited to, volatility, mortgage and financing spreads, prepayment behavior, defaults, as well as the timing and level of interest rate changes will affect the results of the model. Therefore, actual results are likely to vary from modeled results.

Net Portfolio Duration December 31, 2004

	Base	Basis point increase	
		+100	+200
Mortgage Portfolio	1.13 years	1.65 years	1.93 years
Borrowings (including hedges)	.70	.70	.70
Net	.42 years	.95 years	1.23 years

It should be noted that the model is used as a tool to identify potential risk in a changing interest rate environment but does not include any changes in portfolio composition, financing strategies, market spreads or changes in overall market liquidity.

Based on the assumptions used, the model output suggests a very low degree of portfolio price change given increases in interest rates, which implies that our cash flow and earning characteristics should be relatively stable for comparable changes in interest rates.

Although market value sensitivity analysis is widely accepted in identifying interest rate risk, it does not take into consideration changes that may occur such as, but not limited to, changes in investment and financing strategies, changes in market spreads, and changes in business volumes. Accordingly, we make extensive use of an earnings simulation model to further analyze our level of interest rate risk.

There are a number of key assumptions in our earnings simulation model. These key assumptions include changes in market conditions that affect interest rates, the pricing of ARM products, the availability of ARM products, and the availability and the cost of financing for ARM products. Other key assumptions made in using the simulation model include prepayment speeds and management’s investment, financing and hedging strategies, and the issuance of new equity. We typically run the simulation model under a variety of hypothetical business scenarios that may include different interest rate scenarios, different investment strategies, different prepayment possibilities and other scenarios that provide us with a range of possible earnings outcomes in order to assess potential interest rate risk. The assumptions used represent our estimate of the likely effect of changes in interest rates and do not necessarily reflect actual results. The earnings

simulation model takes into account periodic and lifetime caps embedded in our ARM assets in determining the earnings at risk.

Liquidity and Funding Risk

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay dividends to our stockholders and other general business needs. We recognize the need to have funds available for our operating businesses and our investment in mortgage loans until the settlement or sale of mortgages with us or with other investors. It is our policy to have adequate liquidity at all times to cover normal cyclical swings in funding availability and mortgage demand and to allow us to meet abnormal and unexpected funding requirements. We plan to meet liquidity through normal operations with the goal of avoiding unplanned sales of assets or emergency borrowing of funds.

Our mortgage lending operations require significant cash to fund loan originations. Our warehouse lending arrangements, including repurchase agreements, support the mortgage lending operation. Generally, our warehouse mortgage lenders allow us to borrow between 98% and 100% of the outstanding principal. Funding for the difference — generally 2% of the principal — must come from other cash inflows. Our operating cash inflows are predominately from cash flow from mortgage securities, principal and interest on mortgage loans, third party sales of originated loans that do not fit our portfolio investment criteria, and fee income from loan originations. Other than access to our financing facilities, proceeds from equity offerings have been used to support operations.

Loans financed with warehouse, aggregation and repurchase credit facilities are subject to changing market valuations and margin calls. The market value of our loans is dependent on a variety of economic conditions, including interest rates (and borrower demand) and end investor desire and capacity. There is no certainty that market values will remain constant. To the extent the value of the loans declines significantly, we would be required to repay portions of the amounts we have borrowed. The derivative financial instruments we use also subject us to “margin call” risk based on their market values. Under our interest rate swaps, we pay a fixed rate to the counterparties while they pay us a floating rate. When floating rates are low, on a net basis we pay the counterparty and visa-versa. In a declining interest rate environment, we would be subject to additional exposure for cash margin calls. However, the asset side of the balance sheet should increase in value in a further declining interest rate scenario. Most of our interest rate swap agreements provide for a bi-lateral posting of margin, the effect being that on either side of the valuation for such swaps, the counterparty can call/post margin. Unlike typical unilateral posting of margin only in the direction of the swap counterparty, this provides us with additional flexibility in meeting our liquidity requirements as we can call margin on our counterparty as swap values increase.

Incoming cash on our mortgage loans and securities is a principal source of cash. The volume of cash depends on, among other things, interest rates. The volume and quality of such incoming cash flows can be impacted by severe and immediate changes in interest rates. If rates increase dramatically, our short-term funding costs will increase quickly. While many of our loans are hybrid ARMs, they typically will not reset as quickly as our funding costs creating a reduction in incoming cash flow. Our derivative financial instruments are used to mitigate the effect of interest rate volatility.

We manage liquidity to ensure that we have the continuing ability to maintain cash flows that are adequate to fund operations and meet commitments on a timely and cost-effective basis. Our principal sources of liquidity are the reverse repurchase agreement market, the issuance of CDOs, whole loan financing facilities as well as principal and interest payments from ARM assets. We believe that our liquidity level is in excess of that necessary to satisfy our operating requirements and we expect to continue to use diverse funding sources to maintain our financial flexibility.

Prepayment Risk

When borrowers repay the principal on their mortgage loans before maturity or faster than their scheduled amortization, the effect is to shorten the period over which interest is earned, and therefore, reduce

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the cash flow and yield on our ARM assets. Furthermore, prepayment speeds exceeding or lower than our reasonable estimates for similar assets, impact the effectiveness of any hedges we have in place to mitigate financing and/or fair value risk. Generally, when market interest rates decline, borrowers have a tendency to refinance their mortgages. The higher the interest rate a borrower currently has on his or her mortgage the more incentive he or she has to refinance the mortgage when rates decline. Additionally, when a borrower has a low loan-to-value ratio, he or she is more likely to do a “cash-out” refinance. Each of these factors increases the chance for higher prepayment speeds during the term of the loan.

We generally do not originate loans that provide for a prepayment penalty if the loan is fully or partially paid off prior to scheduled maturity. We mitigate prepayment risk by constantly evaluating our ARM portfolio at a range of reasonable market prepayment speeds observed at the time for assets with a similar structure, quality and characteristics. Furthermore, we stress-test the portfolio as to prepayment speeds and interest rate risk in order to develop an effective hedging strategy.

For the quarter ended December 31, 2004, our mortgage assets paid down at an approximate average annualized Constant Paydown Rate (“CPR”) of 24%, compared to 16% for the quarter ended September 30, 2004. The constant prepayment rate averaged approximately 20% during the first six months of operations ended December 31, 2004. When prepayment experience increases, we have to amortize our premiums over a shorter time period, resulting in a reduced yield to maturity on our ARM assets. Conversely, if actual prepayment experience decreases, we would amortize the premium over a longer time period, resulting in a higher yield to maturity. We monitor our prepayment experience on a monthly basis and adjust the amortization of the net premium, as appropriate.

Credit Risk

Credit risk is the risk that we will not fully collect the principal we have invested in mortgage loans or securities. As previously noted, we are predominately a high-quality loan originator and our underwriting guidelines are intended to evaluate the credit history of the potential borrower, the capacity and willingness of the borrower to repay the loan, and the adequacy of the collateral securing the loan.

We mitigate credit risk by directly underwriting our own loan originations and re-underwriting any loans originated through our correspondent networks. With regard to the purchased mortgage security portfolio, we rely on the guaranties of FNMA, FHLMC or the AAA/Aaa rating established by the Rating Agencies.

With regard to loan originations, factors such as FICO score, LTV, debt-to-income ratio, and other borrower and collateral factors are evaluated. Credit enhancement features, such as mortgage insurance may also be factored into the credit decision. In some instances, when the borrower exhibits strong compensating factors, exceptions to the underwriting guidelines may be approved.

Our loan originations are concentrated in geographic markets that are generally supply constrained. We believe that these markets have less exposure to sudden declines in housing values than those markets which have an oversupply of housing. In addition, in the supply constrained housing markets we focus on, housing values tend to be high and, generally, underwriting standards for higher value homes require lower LTVs and thus more owner equity further mitigating credit risk. Finally, the higher housing value/mortgage loan financing markets allow for more cost efficient origination volume in terms of dollars and units. For our mortgage securities that are purchased, we rely on the FNMA or FHLMC and AAA-rating of the securities supplemented with additional due diligence.

Item 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The financial statements of the Company and the related notes and schedules to the financial statements, together with the Report of Independent Registered Public Accounting Firm thereon, as required by this Item 8, are set forth beginning on page F-1 of this annual report on Form 10-K.

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

None.

Item 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures. We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in the reports that we file or submit under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management timely. An evaluation was performed under the supervision and with the participation of our management, including our Co-Chief Executive Officers and our Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of December 31, 2004. Based upon that evaluation, our management, including our Co-Chief Executive Officers and our Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of December 31, 2004. There was no change in our internal control over financial reporting during the fourth quarter of 2004 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. OTHER INFORMATION

On December 2, 2004, and March 10, 2005, the Compensation Committee of the Company's Board of Directors granted 2004 cash incentive bonuses to and established 2005 annual salaries for each of the Company's executive officers. The 2004 cash incentive bonuses and 2005 annual salaries, which were ratified by the Company's Board on the same dates, are summarized in the following table:

	<u>2004 Cash Incentive Bonus</u>	<u>2005 Annual Salary(1)</u>
Steven B. Schnall Chairman of the Board and Co-Chief Executive Officer	\$ 195,000	\$ 409,500
David A. Akre Co-Chief Executive Officer	\$ 195,000	\$ 409,500
Raymond A. Redlingshafer, Jr. President and Chief Investment Officer	\$ 195,000	\$ 409,500
Michael I. Wirth Executive Vice President and Chief Financial Officer	\$ 160,000	\$ 336,000
Joseph V. Fierro Chief Operating Officer of NYMC	\$ 157,000	\$ 329,700
Steven R. Mumma Vice President and Chief Operating Officer	\$ 150,000	\$ 300,000

(1) Pursuant to each of the executive officer's employment agreements, 2005 base salaries reflect a 5% increase over base salary as established in 2004, except in the case of Steven R. Mumma whose employment agreement was amended on December 2, 2004.

There was no change to the fees payable to the Company's directors. The Company's Board approved the grant of 2,500 shares of restricted stock on March 10, 2005 to each of the Company's non-employee directors. These restricted stock awards vest immediately upon issuance.

On December 2, 2004, the Compensation Committee approved and the Company's Board ratified an amendment to Steven R. Mumma's employment agreement with the Company. Mr. Mumma's employment agreement was amended for the purpose of increasing Mr. Mumma's 2005 annual salary to \$300,000 from \$212,000 and is filed as Exhibit 10.98 to this annual report on Form 10-K.

PART III

Item 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Information on the Company's directors and executive officers is incorporated by reference from the Company's Proxy Statement (under the headings "Proposal 1: Election of Directors," "Information on Our Board of Directors and its Committees," "Section 16(a) Beneficial Ownership Reporting Compliance" and "Executive Officers and Significant Employees") to be filed with respect to the Annual Meeting of Stockholders to be held May 31, 2005 (the "2005 Proxy Statement").

Because our common stock is listed on the NYSE, our Co-Chief Executive Officers are required to make an annual certification to the NYSE stating that they are not aware of any violation by us of the corporate governance listing standards of the NYSE. Our Co-Chief Executive Officers will make their annual certification to that effect to the NYSE within 30 days after the first anniversary of the listing of our common stock on the NYSE as required by the NYSE's rules. In addition, we have filed, as an exhibit to this Annual Report on Form 10-K, the certification of our principal executive officers and principal financial officer required under Section 302 of the Sarbanes Oxley Act of 2002 to be filed with the Securities and Exchange Commission regarding the quality of our public disclosure.

Item 11. EXECUTIVE COMPENSATION

The information presented under the headings "Compensation of Directors" and "Executive Compensation" in the Company's 2005 Proxy Statement (excluding, however, the information presented under the subheading "Audit Committee Report") is incorporated herein by reference.

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

The information presented under the heading "Security Ownership of Certain Beneficial Owners and Management" in the Company's 2005 Proxy Statement is incorporated herein by reference.

The information presented under the heading "Market for the Registrant's Common Equity and Related Stockholder Matters — Securities Authorized for Issuance Under Equity Compensation Plans" in Item 5 of Part II of this Form 10-K is incorporated herein by reference.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information presented under the heading "Certain Relationships and Related Transactions" in the Company's 2005 Proxy Statement is incorporated herein by reference.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information presented under the headings "Principal Accountant Fees and Services" and "Audit Committee Pre-Approval Policy" in the Company's 2005 Proxy Statement is incorporated herein by reference.

PART IV

Item 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements and Schedules. The following financial statements and schedules are included in this report:

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FINANCIAL STATEMENTS:	
Report of Independent Registered Public Accounting Firm	F-2
Consolidated Balance Sheets	F-3
Consolidated Statements of Income	F-4
Consolidated Statements of Stockholders’/ Members’ Equity (Deficit)	F-5
Consolidated Statements of Cash Flows	F-6
Notes to Consolidated Financial Statements	F-7

Exhibits.

The exhibits required by Item 601 of Regulation S-K are listed below. Management contracts or compensatory plans are filed as Exhibits 10.55, 10.92, 10.93, 10.94, 10.95, 10.96, 10.97 and 10.98.

<u>Exhibit</u>	<u>Description</u>
3.1	Articles of Amendment and Restatement of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.1 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
3.2	Bylaws of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.2 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
4.1	Form of Common Stock Certificate. (Incorporated by reference to Exhibit 4.1 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.1	Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as amended and restated, on December 23, 2003, in the principal amount of \$2,574,352.00, payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.1 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.2	Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as amended and restated, on December 23, 2003, in the principal amount of \$12,132,550.00 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.2 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.3	Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 2, 2002. (Incorporated by reference to Exhibit 10.3 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.4	Amendment No. 1 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 4, 2002. (Incorporated by reference to Exhibit 10.4 to the Company’s Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.5	Amendment No. 2 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated February 20, 2003. (Incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.6	Amendment No. 3 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated April 22, 2003. (Incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.7	Amendment No. 4 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 1, 2003. (Incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.8	Amendment No. 5 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 7, 2003. (Incorporated by reference to Exhibit 10.8 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.9	Amendment No. 6 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 31, 2003. (Incorporated by reference to Exhibit 10.9 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.10	Amendment No. 7 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 4, 2003. (Incorporated by reference to Exhibit 10.10 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.11	Amendment No. 8 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 9, 2003. (Incorporated by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.12	Amendment No. 9 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 28, 2003. (Incorporated by reference to Exhibit 10.12 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.13	Amendment No. 10 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated September 17, 2003. (Incorporated by reference to Exhibit 10.13 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.14	Amendment No. 11 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 1, 2003. (Incorporated by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.15	Amendment No. 12 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 31, 2003. (Incorporated by reference to Exhibit 10.15 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.16	Amendment No. 13 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 19, 2003. (Incorporated by reference to Exhibit 10.16 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.17	Credit Note between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.17 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.18	Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.18 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.19	First Amended Credit Note, dated as of May 24, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.19 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.20	First Amended Credit and Security Agreement, dated as of May 24, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.20 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.21	Second Amended Credit Note, dated as of June 18, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.21 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.22	Second Amended Credit and Security Agreement, dated June 18, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.22 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.23	Third Amended Credit Note, dated as of November 13, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.23 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.24	Third Amended Credit and Security Agreement, dated as of November 13, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.24 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.25	Fourth Amended Credit Note, dated as of January 16, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.25 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.26	Fourth Amended Credit and Security Agreement, dated as of January 16, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.26 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.27	Fifth Amended Credit Note, dated as of April 29, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.27 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.28	Fifth Amended Credit and Security Agreement, dated as of April 29, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.28 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.29	Extension Letter, dated August 26, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.29 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.30	Extension Letter, dated September 11, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.30 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.31	Extension Letter, dated October 28, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.31 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.32	Extension Letter, dated November 27, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.32 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.33	Extension Letter, dated April 15, 2003, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.33 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.34	Extension Letter, dated June 24, 2003, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.34 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.35	Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.35 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.36	Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.36 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.37	First Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of May 24, 2001. (Incorporated by reference to Exhibit 10.37 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.38	First Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of May 24, 2001. (Incorporated by reference to Exhibit 10.38 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.39	Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.39 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.40	First Amendment, dated April 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.40 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.41	Second Amendment, dated June 3, 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.41 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.42	Third Amendment, dated November , 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.42 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.43	Fourth Amendment, dated June 15, 2003, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.43 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.44	Warehouse Promissory Note, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.44 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.45	Amended and Restated Warehouse Promissory Note, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated June 3, 2002. (Incorporated by reference to Exhibit 10.45 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.46	Warehousing Credit Agreement, between New York Mortgage Company, LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated as of January 25, 2002. (Incorporated by reference to Exhibit 10.46 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.47	Pledge and Security Agreement, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated as of January 25, 2002. (Incorporated by reference to Exhibit 10.47 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.48	Unconditional and Continuing Guaranty of Payment by Steven B. Schnall to National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.48 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.49	Unconditional and Continuing Guaranty of Payment by Joseph V. Fierro to National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.49 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.50	Amended and Restated Unconditional and Continuing Guaranty of Payment by Steven B. Schnall to National City Bank of Kentucky, dated June 15, 2003. (Incorporated by reference to Exhibit 10.50 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.51	Amended and Restated Unconditional and Continuing Guaranty of Payment by Joseph V. Fierro to National City Bank of Kentucky, dated June 15, 2003. (Incorporated by reference to Exhibit 10.51 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.52	Inter-Creditor Agreement, between National City Bank of Kentucky and HSBC Bank USA, dated January 25, 2002. (Incorporated by reference to Exhibit 10.52 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.53	Whole Loan Purchase and Sale Agreement/ Mortgage Loan Purchase and Sale Agreement between The New York Mortgage Company, LLC and Greenwich Capital Financial Products, Inc., dated as of September 1, 2003. (Incorporated by reference to Exhibit 10.53 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.54	Whole Loan Custodial Agreement/ Custodial Agreement between Greenwich Capital Financial Products, Inc., The New York Mortgage Company, LLC and LaSalle Bank National Association, dated as of September 1, 2003. (Incorporated by reference to Exhibit 10.54 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.55	Form of New York Mortgage Trust, Inc. 2004 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.55 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.56	Contribution Agreement by and among Steven B. Schnall and Joseph V. Fierro and New York Mortgage Trust, Inc., dated December 22, 2003. (Incorporated by reference to Exhibit 10.56 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.57	Agreement by and among New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 23, 2003. (Incorporated by reference to Exhibit 10.57 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.58	Sixth Amended Credit and Security Agreement, dated as of August 11, 2003, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.58 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.59	Temporary Overadvance Note, dated as of August 11, 2003, between HSBC Bank USA and the New York Mortgage Company LLC. (Incorporated by reference to Exhibit 10.59 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.60	Second Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of June 18, 2001. (Incorporated by reference to Exhibit 10.60 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.61	Second Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of June 18, 2001. (Incorporated by reference to Exhibit 10.61 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.62	Third Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of November 13, 2001. (Incorporated by reference to Exhibit 10.62 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.63	Third Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of November 13, 2001. (Incorporated by reference to Exhibit 10.63 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.64	Fourth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of January 16, 2002. (Incorporated by reference to Exhibit 10.64 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.65	Fourth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of January 16, 2002. (Incorporated by reference to Exhibit 10.65 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.66	Fifth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of April 29, 2002. (Incorporated by reference to Exhibit 10.66 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.67	Fifth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of April 29, 2002. (Incorporated by reference to Exhibit 10.67 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.68	Sixth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of August 11, 2003. (Incorporated by reference to Exhibit 10.68 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.69	Sixth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of August 11, 2003. (Incorporated by reference to Exhibit 10.69 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.70	Credit and Security Agreement by and among HSBC Bank USA, National City Bank of Kentucky and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.70 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.71	Guaranty between HSBC Bank USA, National City Bank of Kentucky, The New York Mortgage Company LLC and Steven B. Schnall, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.71 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.72	Guaranty between HSBC Bank USA, National City Bank of Kentucky, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.72 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.73	Credit Note by and between HSBC Bank USA and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.73 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.74	Credit Note by and between National City Bank of Kentucky and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.74 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.75	Swingline Note by and between HSBC Bank USA and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.75 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.76	Custodial Agreement by and among Greenwich Capital Financial Products, Inc., The New York Mortgage Corporation LLC and Deutsche Bank Trust Company Americas, dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.76 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.77	Master Mortgage Loan Purchase and Interim Servicing Agreement by and between The New York Mortgage Company L.L.C. and Greenwich Capital Financial Products, Inc., dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.77 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.78	Subordination and Pledge Agreement by and between HSBC Bank USA and Steven B. Schnall, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.78 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.79	Subordination and Pledge Agreement by and between HSBC Bank USA and Joseph V. Fierro, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.79 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.80	Second Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003 and February 26, 2004, in the principal amount of \$11,432,550 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.80 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.81	Second Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003 and February 26, 2004, in the principal amount of \$2,274,352, payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.81 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.82	Promissory Note, issued by New York Mortgage Funding, LLC on January 9, 2004 in the principal amount of \$100,000,000.00, payable to Greenwich Capital Financial Products, Inc. (Incorporated by reference to Exhibit 10.82 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.83	Guaranty between the New York Mortgage Company, LLC and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.83 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.84	Master Loan and Security Agreement between New York Mortgage Funding, LLC and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.84 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.85	Custodial Agreement between New York Mortgage Funding, LLC, Deutsche Bank Trust Company Americas and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.85 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.86	Amendment Number One, dated November 24, 2003, to the Master Mortgage Loan Purchase and Interim Servicing Agreement, dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.86 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.87	Amended and Restated Contribution Agreement, by and among Steven B. Schnall, Steven B. Schnall Annuity Trust U/ A 3/25/04, Joseph V. Fierro, 2004 Joseph V. Fierro Grantor Retained Annuity Trust and New York Mortgage Trust, Inc., dated March 25, 2004. (Incorporated by reference to Exhibit 10.87 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.88	Second Amended and Restated Contribution Agreement, by and among Steven B. Schnall, Steven B. Schnall Annuity Trust U/A 3/25/04, Joseph V. Fierro, 2004 Joseph V. Fierro Grantor Retained Annuity Trust and New York Mortgage Trust, Inc., dated April 29, 2004. (Incorporated by reference to Exhibit 10.88 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.89	Amended and Restated Agreement by and among New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated April 29, 2004. (Incorporated by reference to Exhibit 10.89 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.90	Third Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated on December 23, 2003, February 26, 2004 and May 26, 2004, in the principal amount of \$11,432,550 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.90 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.91	Third Amended and Restated Promissory Note, issued by the New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003, February 26, 2004 and May 26, 2004, in the principal amount of \$2,274,352 payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.91 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.92	Form of Employment Agreement between New York Mortgage Trust, Inc. and Steven B. Schnall. (Incorporated by reference to Exhibit 10.92 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.93	Form of Employment Agreement between New York Mortgage Trust, Inc. and David A. Akre. (Incorporated by reference to Exhibit 10.93 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.94	Form of Employment Agreement between New York Mortgage Trust, Inc. and Raymond A. Redlingshafer, Jr. (Incorporated by reference to Exhibit 10.94 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.95	Form of Employment Agreement between New York Mortgage Trust, Inc. and Michael I. Wirth. (Incorporated by reference to Exhibit 10.95 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.96	Form of Employment Agreement between New York Mortgage Trust, Inc. and Joseph V. Fierro. (Incorporated by reference to Exhibit 10.96 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.97	Form of Employment Agreement between New York Mortgage Trust, Inc. and Steven R. Mumma. (Incorporated by reference to Exhibit 10.97 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.98	Amendment No. 1 to Employment Agreement between New York Mortgage Trust, Inc. and Steven R. Mumma, dated December 2, 2004.
10.99	Amended and Restated Credit and Security Agreement between HSBC Bank USA, National Association, National City Bank of Kentucky, JP Morgan Chase Bank, N.A. and The New York Mortgage Company LLC, dated as of February 1, 2005.
10.100	Amended and Restated Master Loan and Security Agreement between New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc. and Greenwich Capital Financial Products, Inc., dated as of December 6, 2004.
21.1	List of Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm (Deloitte & Touche LLP).
31.1	Section 302 Certification of Co-Chief Executive Officer.
31.2	Section 302 Certification of Co-Chief Executive Officer.
31.3	Section 302 Certification of Chief Financial Officer.
32.1	Section 906 Certification of Co-Chief Executive Officers.
32.2	Section 906 Certification of Chief Financial Officer.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED FINANCIAL STATEMENTS
AND
REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

For Inclusion in Form 10-K

Filed with

Securities and Exchange Commission

December 31, 2004

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
New York Mortgage Trust, Inc.
New York, NY

We have audited the accompanying consolidated balance sheets of New York Mortgage Trust, Inc. and subsidiaries (“the Company”) as of December 31, 2004 and 2003, and the related consolidated statements of income, stockholders’/members’ equity (deficit), and cash flows for each of the three years in the period ended December 31, 2004. These financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company has determined it is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Company’s internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of New York Mortgage Trust, Inc. and subsidiaries as of December 31, 2004 and 2003, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2004, in conformity with accounting principles generally accepted in the United States of America.

/s/ Deloitte & Touche LLP

New York, New York
March 24, 2005

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	<u>December 31,</u> <u>2004</u>	<u>December 31,</u> <u>2003</u>
ASSETS		
Cash and cash equivalents	\$ 7,613,106	\$ 4,047,260
Restricted cash	2,341,712	217,330
Marketable securities — available for sale	—	3,588,562
Investment securities — available for sale	1,204,744,714	—
Due from loan purchasers	79,904,315	58,862,433
Escrow deposits — pending loan closings	16,235,638	—
Accounts and accrued interest receivable	15,554,201	2,707,517
Mortgage loans held for sale	85,384,927	36,169,307
Mortgage loans held for investment	190,153,103	—
Prepaid and other assets	4,351,869	2,140,907
Derivative assets	3,677,572	316,435
Property and equipment, net	4,801,302	2,031,697
TOTAL ASSETS	<u>\$ 1,614,762,459</u>	<u>\$ 110,081,448</u>
LIABILITIES AND STOCKHOLDERS'/ MEMBERS' EQUITY (DEFICIT)		
LIABILITIES:		
Financing arrangements, portfolio investments	\$ 1,115,809,285	\$ —
Financing arrangements, loans held for sale/for investment	359,202,980	90,425,133
Due to loan purchasers	350,884	753,720
Accounts payable and accrued expenses	19,485,241	4,277,241
Subordinated notes due to members	—	14,706,902
Derivative liabilities	164,816	261,511
Other liabilities	267,034	130,566
Total liabilities	<u>1,495,280,240</u>	<u>110,555,073</u>
COMMITMENTS AND CONTINGENCIES (Note 9)		
STOCKHOLDERS'/ MEMBERS' EQUITY (DEFICIT):		
Common stock, \$0.01 par value, 400,000,000 shares authorized 18,114,445 shares issued and 17,797,375 outstanding at December 31, 2004	180,621	—
Additional paid-in capital	119,045,450	—
Members' deficit	—	(1,338,625)
Accumulated earnings	—	—
Accumulated other comprehensive income	256,148	865,000
Total stockholders'/members' equity (deficit)	<u>119,482,219</u>	<u>(473,625)</u>
TOTAL LIABILITIES AND STOCKHOLDERS'/ MEMBERS' EQUITY (DEFICIT)	<u>\$ 1,614,762,459</u>	<u>\$ 110,081,448</u>

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME

	For the Year Ended December 31,		
	2004	2003	2002
REVENUE:			
Gain on sales of mortgage loans	\$ 20,835,387	\$ 23,030,669	\$ 9,858,183
Interest income:			
Loans held for sale	6,904,651	7,609,631	2,986,248
Investment securities and loans	20,393,977	—	—
Brokered loan fees	6,894,629	6,682,571	5,241,070
Gain on sale of securities	774,415	—	—
Miscellaneous income	226,677	45,579	14,417
Total revenue	<u>56,029,736</u>	<u>37,368,450</u>	<u>18,099,918</u>
EXPENSES:			
Salaries, commissions and benefits	17,118,321	9,246,869	5,787,834
Interest expense:			
Loans held for sale	3,542,939	3,266,438	1,673,108
Investment securities and loans	12,469,579	—	—
Brokered loan expenses	5,276,333	3,733,666	2,992,231
Occupancy and equipment	3,528,679	2,017,804	1,013,102
Marketing and promotion	3,189,969	1,008,418	488,339
Data processing and communications	1,598,132	607,897	366,182
Office supplies and expenses	1,518,927	802,954	505,119
Professional fees	2,005,388	958,922	509,980
Travel and entertainment	611,944	666,213	419,758
Depreciation and amortization	690,489	411,812	271,011
Other	791,465	921,381	322,975
Total expenses	<u>52,342,165</u>	<u>23,642,374</u>	<u>14,349,639</u>
INCOME BEFORE INCOME TAX BENEFIT	3,687,571	13,726,076	3,750,279
Income tax benefit	1,259,534	—	—
NET INCOME	<u>\$ 4,947,105</u>	<u>\$ 13,726,076</u>	<u>\$ 3,750,279</u>
Basic income per share	<u>\$ 0.28</u>	<u>\$ —</u>	<u>—</u>
Diluted income per share	<u>\$ 0.27</u>	<u>\$ —</u>	<u>—</u>
Weighted average shares outstanding-basic ¹	<u>17,797,375</u>	<u>—</u>	<u>—</u>
Weighted average shares outstanding-diluted ¹	<u>18,114,737</u>	<u>—</u>	<u>—</u>

¹ Weighted average shares outstanding-basic and diluted assume the shares outstanding upon the Company's initial public offering are outstanding for the full year.

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
STATEMENTS OF STOCKHOLDERS'/ MEMBERS' EQUITY (DEFICIT)
For the Years Ended December 31, 2004, 2003 and 2002

	Common Stock	Additional Paid-In Capital	Stockholders' Members' Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Comprehensive Income (Loss)	Total
BALANCE,						
JANUARY 1, 2002 —						
Members' Equity			\$ 3,671,709	\$ (1,980)		\$ 3,669,729
Net income			3,750,279	—	\$ 3,750,279	3,750,279
Contributions			635,758	—	—	635,758
Distributions			(1,588,765)	—	—	(1,588,765)
Increase in net unrealized gain on available for sale securities			—	33,254	33,254	33,254
Comprehensive income			—	—	<u>\$ 3,783,533</u>	—
BALANCE, DECEMBER 31, 2002 — Members' Equity			6,468,981	31,274		6,500,255
Net income			13,726,076	—	\$ 13,726,076	13,726,076
Distributions			(21,533,682)	—	—	(21,533,682)
Increase associated with cash flow hedges			—	51,069	51,069	51,069
Increase in net unrealized gain on available for sale securities			—	782,657	782,657	782,657
Comprehensive income			—	—	<u>\$ 14,559,802</u>	—
BALANCE, DECEMBER 31, 2003 — Members' Deficit	—	—	(1,338,625)	865,000	—	(473,625)
Net income	—	—	4,947,105	—	4,947,105	4,947,105
Contributions	—	—	2,309,448	—	—	2,309,448
Distributions	—	—	(3,134,807)	—	—	(3,134,807)
Forfeiture of 47,680 shares	—	(492,536)	—	—	—	(492,536)
Dividends declared	—	(4,470,286)	(2,783,121)	—	—	(7,253,407)
Initial public offering — Common stock	180,621	121,910,479	—	—	—	122,091,100
Vested restricted stock	—	1,742,749	—	—	—	1,742,749
Vested performance shares	—	249,296	—	—	—	249,296
Vested stock options	—	105,748	—	—	—	105,748
Decrease in net unrealized gain on available for sale securities and derivative instruments	—	—	—	(608,852)	(608,852)	(608,852)
Comprehensive income	—	—	—	—	<u>\$ 4,338,253</u>	—
BALANCE, DECEMBER 31, 2004 — Stockholders' Equity	<u>\$180,621</u>	<u>\$119,045,450</u>	<u>\$ 0</u>	<u>\$ 256,148</u>		<u>\$ 119,482,219</u>

See notes to financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS

	<u>2004</u>	<u>2003</u>	<u>2002</u>
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income	\$ 4,947,105	\$ 13,726,076	\$ 3,750,279
Adjustments to reconcile net income to net cash used in operating activities:			
Depreciation and amortization	690,489	411,812	271,011
Principal amortization on investment securities	1,666,862	—	—
Gain on sale of investment securities	(165,189)	—	20,374
Gain on sale of marketable securities	(774,415)	—	—
Origination of mortgage loans held for sale	(1,435,339,540)	(1,234,847,453)	(593,146,346)
Proceeds from sales of mortgage loans	1,386,123,920	1,232,710,820	569,001,035
Deferred compensation restricted stock-non cash	1,742,749	—	—
Vesting of restricted shares-compensation expense	249,296	—	—
Stock option grants — compensation expense	105,748	—	—
Deferred tax benefit	(1,309,534)	—	—
Forfeited shares-non cash	(492,536)	—	—
Change in value of derivatives	(313,565)	(107,431)	135,320
(Increase) decrease in operating assets:			
Restricted cash	(2,124,382)	(15,199)	(114,370)
Due from loan purchasers	(21,041,882)	(18,241,661)	(19,913,973)
Due from affiliate	—	(153,171)	—
Escrow deposits-pending loan closings	(16,235,638)	—	—
Accounts and accrued interest receivable	(12,846,684)	(1,499,105)	(1,094,930)
Prepaid and other assets	(2,210,962)	(1,115,603)	(949,867)
Increase (decrease) in operating liabilities:			
Due to loan purchasers	(402,836)	(356,605)	944,556
Accounts payable and accrued expenses	12,170,067	2,737,390	798,684
Other liabilities	136,468	(374,787)	463,162
Net cash used in operating activities	<u>(85,424,459)</u>	<u>(7,124,917)</u>	<u>(39,835,065)</u>
CASH FLOWS FROM INVESTING ACTIVITIES:			
Purchase of marketable securities	—	(2,006,575)	(1,520,576)
Purchase of investment securities	(1,533,511,116)	—	—
Purchase of mortgage loans held for investment	(190,153,103)	—	—
Proceeds from sale of marketable securities	3,580,320	1,353,069	713,912
Sale of investment securities	197,350,620	—	—
Principal paydown on investment securities	126,943,647	—	—
Purchases of property and equipment	(3,460,094)	(1,471,705)	(519,015)
Net cash used in investing activities	<u>(1,399,249,726)</u>	<u>(2,125,211)</u>	<u>(1,325,679)</u>
CASH FLOWS FROM FINANCING ACTIVITIES:			
Proceeds from issuance of common stock	122,091,100	—	—
Members' contributions	1,309,448	—	635,758
Increase in financing arrangements, net	1,384,587,132	17,408,965	43,311,688
Payments on debt	(13,706,902)	—	—
Dividends paid	(2,905,940)	—	—
Cash distributions to members	(3,134,807)	(6,858,054)	(1,588,765)
Net cash provided by financing activities	<u>1,488,240,031</u>	<u>10,550,911</u>	<u>42,358,681</u>
NET INCREASE IN CASH AND CASH EQUIVALENTS	<u>3,565,846</u>	<u>1,300,783</u>	<u>1,197,937</u>
CASH AND CASH EQUIVALENTS — Beginning of period	<u>4,047,260</u>	<u>2,746,477</u>	<u>1,548,540</u>
CASH AND CASH EQUIVALENTS — End of period	<u>\$ 7,613,106</u>	<u>\$ 4,047,260</u>	<u>\$ 2,746,477</u>
SUPPLEMENTAL DISCLOSURE			
Cash paid for interest	<u>\$ 11,709,159</u>	<u>\$ 2,987,853</u>	<u>\$ 1,619,715</u>
NON CASH FINANCING ACTIVITIES			
Distribution to members in the form of subordinated notes	<u>\$ —</u>	<u>\$ 14,706,902</u>	<u>\$ —</u>
Contribution from Members' made from subordinated notes	<u>\$ 1,000,000</u>	<u>\$ —</u>	<u>\$ —</u>
Dividends declared to be paid in subsequent period	<u>\$ 4,347,467</u>	<u>\$ —</u>	<u>\$ —</u>
Grant of restricted stock	<u>\$ 1,974,401</u>	<u>\$ —</u>	<u>\$ —</u>

See notes to consolidated financial statements.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Summary of Significant Accounting Policies

Organization — New York Mortgage Trust, Inc. (“NYMT” or the “Company”) is a fully integrated, self-advised residential mortgage finance company formed as a Maryland corporation in September 2003. The Company earns net interest income from residential mortgage-backed securities and fixed rate and adjustable-rate mortgage loans and securities originated through its wholly-owned subsidiary, The New York Mortgage Company, LLC (“NYMC”). The Company will also earn net interest income from its investment in and planned securitization of certain self-originated adjustable rate mortgage loans that meet the Company’s investment criteria. Licensed or exempt from licensing in 40 states and through a network of 34 full service loan origination locations and 32 satellite loan origination locations, NYMC originates all types of mortgage loans, with a primary focus on prime, residential mortgage loans.

On January 9, 2004, the Company capitalized New York Mortgage Funding, LLC (“NYMF”) as a wholly-owned subsidiary of the Company. In June 2004, the Company sold 15 million shares of its common stock in an initial public offering (“IPO”) at a price to the public of \$9.00 per share, for net proceeds of approximately \$122 million after deducting the underwriters’ discount and other offering expenses. Concurrent with the Company’s IPO, the Company issued 2,750,000 shares of common stock in exchange for the contribution to the Company of 100% of the equity interests of NYMC. Subsequent to the IPO and the contribution of NYMC, the Company had 18,114,445 shares of common stock issued and 17,797,375 shares outstanding. Prior to the IPO, NYMT did not have recurring business operations.

The Company is organized and conducts its operations to qualify as a real estate investment trust (“REIT”) for federal income tax purposes. As such, the Company will generally not be subject to federal income tax on that portion of its income that is distributed to stockholders if it distributes at least 90% of its REIT taxable income to its stockholders by the due date of its federal income tax return and complies with various other requirements.

As of December 31, 2004, NYMC had \$11.9 million in equity and NYMF had \$502,613 in equity.

As used herein, references to the “Company,” “NYMT,” “we,” “our” and “us” refer to New York Mortgage Trust, Inc., collectively with its subsidiaries.

Basis of Presentation — The consolidated financial statements include the accounts of the Company subsequent to the IPO and also include the accounts of NYMC and NYMF prior to the IPO. As a result, our historical financial results reflect the financial operations of this prior business strategy of selling virtually all of the loans originated by NYMC to third parties. All intercompany accounts and transactions are eliminated in consolidation. Certain prior period amounts have been reclassified to conform to current period classifications.

The combination of the Company and NYMC was accounted for as a transfer of assets between entities under common control. Accordingly, the Company has recorded assets and liabilities transferred from NYMC at their carrying amounts in the accounts of NYMC at the date of transfer. The consolidated financial statements include the accounts of the Company subsequent to the IPO and also include the accounts of NYMC and NYMF prior to such date.

Upon the closing of the Company’s IPO, of the 2,750,000 shares exchanged for the equity interests of NYMC, 100,000 shares were held in escrow through December 31, 2004 and were available to satisfy any indemnification claims the Company may have had against the contributors of NYMC for losses incurred as a result of defaults on any residential mortgage loans originated by NYMC and closed prior to the completion of the IPO. As of December 31, 2004, the amount of escrowed shares was reduced by 47,680 shares, representing \$492,536 for estimated losses on loans closed prior to the Company’s IPO. Furthermore, the contributors of NYMC entered into a new escrow agreement, which extended the escrow period to December 31, 2005 for the remaining 52,320 shares.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Use of Estimates — The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (“GAAP”) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The Company’s estimates and assumptions primarily arise from risks and uncertainties associated with interest rate volatility, prepayment volatility, credit exposure and regulatory changes. Although management is not currently aware of any factors that would significantly change its estimates and assumptions in the near term, future changes in market conditions may occur which could cause actual results to differ materially.

Cash and Cash Equivalents — Cash and cash equivalents include cash on hand, amounts due from banks and overnight deposits. The Company maintains its cash and cash equivalents in highly rated financial institutions, and at times these balances exceed insurable amounts.

Restricted Cash — Restricted cash predominantly represents amounts held by counterparties as collateral for hedging instruments.

Marketable Securities — Marketable securities included debt and equity securities classified as available for sale and accordingly are carried at fair value with unrealized gains and losses reported in other comprehensive income (“OCI”). Realized gains and losses on marketable securities occurring from the sales of such investments are determined using the specific identification method.

Investment Securities Available for Sale — The Company’s investment securities are residential mortgage-backed securities comprised of FannieMae (“FNMA”), Freddie Mac (“FHLMC”) and “AAA”- rated adjustable-rate loans, including adjustable-rate loans that have an initial fixed-rate period. Investment securities are classified as available for sale securities and are reported at fair value with unrealized gains and losses reported in OCI. Realized gains and losses recorded on the sale of investment securities available for sale are based on the specific identification method and included in gain (loss) on sale of securities. Purchase premiums or discounts on investment securities are accreted or amortized to interest income over the estimated life of the investment securities using the interest method. Investment securities may be subject to interest rate, credit and/or prepayment risk.

When the fair value of an available for sale security is less than amortized cost, management considers whether there is an other-than-temporary impairment in the value of the security (e.g., whether the security will be sold prior to the recovery of fair value). Management considers at a minimum the following factors that, both individually or in combination, could indicate the decline is “other-than-temporary:” 1) the length of time and extent to which the market value has been less than book value; 2) the financial condition and near-term prospects of the issuer; or 3) the intent and ability of the Company to retain the investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value. If, in management’s judgment, an other-than-temporary impairment exists, the cost basis of the security is written down to the then-current fair value, and the unrealized loss is transferred from accumulated other comprehensive income as an immediate reduction of current earnings (i.e., as if the loss had been realized in the period of impairment). Even though no credit concerns exist with respect to an available for sale security, an other-than-temporary impairment may be evident if management determines that the Company does not have the intent and ability to hold an investment until a forecasted recovery of the value of the investment.

Mortgage Loans Held for Sale — Mortgage loans held for sale represent originated mortgage loans held for sale to third party investors. The loans are initially recorded at cost based on the principal amount outstanding net of deferred direct origination costs and fees. The loans are subsequently carried at the lower of cost or market value. Market value is determined by examining outstanding commitments from investors or current investor yield requirements, calculated on the aggregate loan basis, less an estimate of the costs to close the loan, and the deferral of fees and points received, plus the deferral of direct origination costs. Gains or losses on sales are recognized at the time title transfers to the investor which is typically concurrent with the

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

transfer of the loan files and related documentation and are based upon the difference between the sales proceeds from the final investor and the adjusted book value of the loan sold.

Mortgage Loans Held for Investment — The Company retains substantially all of the adjustable-rate mortgage loans originated that meet specific investment criteria and portfolio requirements. Loans originated and retained in the Company’s portfolio are serviced through a subservicer. Servicing is the function primarily consisting of collecting monthly payments from mortgage borrowers, and disbursing those funds to the appropriate loan investors.

Mortgage loans held for investment are recorded net of deferred loan origination fees and associated direct costs and are stated at amortized cost. Net loan origination fees and associated direct mortgage loan origination costs are deferred and amortized over the life of the loan as an adjustment to yield. This amortization includes the effect of projected prepayments.

Interest income is accrued and recognized as revenue when earned according to the terms of the mortgage loans and when, in the opinion of management, it is collectible. The accrual of interest on loans is discontinued when, in management’s opinion, the interest is not collectible in the normal course of business, but in no case when payment becomes greater than 90 days delinquent. Loans return to accrual status when principal and interest become current and are anticipated to be fully collectible.

Credit Risk and Allowance for Loan Losses — The Company limits its exposure to credit losses on its portfolio of residential adjustable-rate mortgage-backed securities by purchasing securities that are guaranteed by a government-sponsored or federally-chartered corporation (“Fannie Mae” or “Freddie Mac”) (collectively “Agency Securities”) or that have an “AAA” investment grade rating by at least one of two nationally recognized rating agencies, Standard & Poor’s, Inc. or Moody’s Investors Service, Inc. at the time of purchase.

The Company seeks to limit its exposure to credit losses on its portfolio of residential adjustable-rate mortgage loans held for investment by originating and investing in loans primarily to borrowers with strong credit profiles, which are evaluated by analyzing the borrower’s credit (“FICO” is a credit score, ranging from 300 to 850, with 850 being the best score, based upon the credit evaluation methodology developed by Fair, Isaac and Company, a consulting firm specializing in creating credit evaluation models) score, employment, income and assets and related documentation, the amount of equity in and the value of the property securing the borrower’s loan, debt to income ratio, credit history, funds available for closing and post-closing liquidity.

The Company estimates an allowance for loan losses based on management’s assessment of probable credit losses in the Company’s investment portfolio of residential mortgage loans held for investment. Mortgage loans held for investment are collectively evaluated for impairment as the loans are homogeneous in nature. The allowance is based upon management’s assessment of various credit-related factors, including current economic conditions, the credit diversification of the portfolio, loan-to-value ratios, delinquency status, historical credit losses, purchased mortgage insurance and other factors deemed to warrant consideration. If the credit performance of mortgage loans held for investment deviates from expectations, the allowance for loan losses is adjusted to a level deemed appropriate by management to provide for estimated probable losses in the portfolio.

The allowance will be maintained through ongoing provisions charged to operating income and will be reduced by loans that are charged off. Determining the allowance for loan losses is subjective in nature due to the estimation required.

Property and Equipment, Net — Property and equipment have lives ranging from three to seven years, and are stated at cost less accumulated depreciation and amortization. Depreciation is determined in amounts sufficient to charge the cost of depreciable assets to operations over their estimated service lives using the straight-line method. Leasehold improvements are amortized over the lesser of the life of the lease or service lives of the improvements using the straight-line method.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Derivative Financial Instruments — The Company has developed risk management programs and processes, which include investments in derivative financial instruments designed to manage market risk associated with its mortgage banking and its mortgage-backed securities investment activities.

All derivative financial instruments are reported as either assets or liabilities in the consolidated balance sheet at fair value. The gains and losses associated with changes in the fair value of derivatives not designated as hedges are reported in current earnings. If the derivative is designated as a fair value hedge and is highly effective in achieving offsetting changes in the fair value of the asset or liability hedged, the recorded value of the hedged item is adjusted by its change in fair value attributable to the hedged risk. If the derivative is designated as a cash flow hedge, the effective portion of change in the fair value of the derivative is recorded in OCI and is recognized in the income statement when the hedged item affects earnings. The Company calculates the effectiveness of these hedges on an ongoing basis, and, to date, has calculated effectiveness of approximately 100%. Ineffective portions of changes in the fair value of cash flow hedges are recognized in earnings. (See Note 12).

In accordance with a Securities and Exchange Commission (“SEC”) Staff Accounting Bulletin No. 105, “Application of Accounting Principles to Loan Commitments” (“SAB 105”) issued on March 9, 2004, beginning in the second quarter of 2004, the fair value of interest rate lock commitments (“IRLCs”) excludes future cash flows related to servicing rights, if such rights are retained upon the sale of originated mortgage loans. Since the Company sells all of its originated loans with servicing released, SAB 105 had no effect on the value of its IRLC’s.

Risk Management — Derivative transactions are entered into by the Company solely for risk management purposes. The decision of whether or not an economic risk within a given transaction (or portion thereof) should be hedged for risk management purposes is made on a case-by-case basis, based on the risks involved and other factors as determined by senior management, including the financial impact on income, asset valuation and restrictions imposed by the Internal Revenue Code among others. In determining whether to hedge a risk, the Company may consider whether other assets, liabilities, firm commitments and anticipated transactions already offset or reduce the risk. All transactions undertaken to hedge certain market risks are entered into with a view towards minimizing the potential for economic losses that could be incurred by the Company. Under Statement of Financial Accounting Standards No. 133, “Accounting for Derivative Instruments and Hedging Activities” (“SFAS No. 133”), the Company is required to formally document its hedging strategy before it may elect to implement hedge accounting for qualifying derivatives. This documentation was completed in the third quarter of 2003. Accordingly, all qualifying derivatives entered into after July 1, 2003 are intended to qualify as fair value, or cash flow hedges, or free standing derivatives. To this end, terms of the hedges are matched closely to the terms of hedged items with the intention of minimizing ineffectiveness. Prior to July 1, 2003, all derivatives entered into by the Company were treated as free-standing derivatives, with changes in fair value included in interest expense.

In the normal course of its mortgage loan origination business, the Company enters into contractual interest rate lock commitments to extend credit to finance residential mortgages. These commitments, which contain fixed expiration dates, become effective when eligible borrowers lock-in a specified interest rate within time frames established by the Company’s origination, credit and underwriting practices. Interest rate risk arises if interest rates change between the time of the lock-in of the rate by the borrower and the sale of the loan. Under SFAS No. 133, the IRLCs are considered undesignated or free-standing derivatives. Accordingly, such IRLCs are recorded at fair value with changes in fair value recorded to current earnings. Mark to market adjustments on IRLCs are recorded from the inception of the interest rate lock through the date the underlying loan is funded. The fair value of the IRLCs is determined by the interest rate differential between the contracted loan rate and the currently available market rates as of the reporting date.

To mitigate the effect of the interest rate risk inherent in providing IRLCs from the lock-in date to the funding date of a loan, the Company generally enters into forward sale loan contracts (“FSLC”). The FSLCs

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

in place prior to the funding of a loan are undesignated derivatives under SFAS No. 133 and are marked to market through current earnings.

Derivative instruments contain an element of risk in the event that the counterparties may be unable to meet the terms of such agreements. The Company minimizes its risk exposure by limiting the counterparties with which it enters into contracts to banks, investment banks and certain private investors who meet established credit and capital guidelines. Management does not expect any counterparty to default on its obligations and, therefore, does not expect to incur any loss due to counterparty default. These commitments and option contracts are considered in conjunction with the Company's lower of cost or market valuation of its mortgage loans held for sale.

The Company uses other derivative instruments, including treasury, agency or mortgage-backed securities forward sale contracts which are also classified as free-standing, undesignated derivatives and thus are recorded at fair value with the changes in fair value recognized in current earnings.

Once a loan has been funded, the Company's primary risk objective for its mortgage loans held for sale, is to protect earnings from an unexpected charge due to a decline in value. The Company's strategy is to engage in a risk management program involving the designation of FSLCs (the same FSLCs entered into at the time of rate lock) to hedge most of its mortgage loans held for sale. Provided that the FSLCs were entered into after July 1, 2003, they have been designated as qualifying hedges for the funded loans and the notional amount of the forward delivery contracts, along with the underlying rate and critical terms of the contracts, are equivalent to the unpaid principal amount of the mortgage loan being hedged. The FSLCs effectively fix the forward sales price and thereby offset interest rate and price risk to the Company. Accordingly, the Company evaluates this relationship quarterly and, at the time the loan is funded, classifies and accounts for the FSLCs as fair value hedges.

Interest Rate Risk — The Company hedges the aggregate risk of interest rate fluctuations with respect to its borrowings, regardless of the form of such borrowings, which require payments based on a variable interest rate index. The Company generally intends to hedge only the risk related to changes in the benchmark interest rate (London Interbank Offered Rate ("LIBOR") or a Treasury rate).

In order to reduce such risks, the Company enters into swap agreements whereby the Company receives floating rate payments in exchange for fixed rate payments, effectively converting the borrowing to a fixed rate. The Company also enters into cap agreements whereby, in exchange for a fee, the Company is reimbursed for interest paid in excess of a certain capped rate.

To qualify for cash flow hedge accounting, interest rate swaps and caps must meet certain criteria, including:

- the items to be hedged expose the Company to interest rate risk; and
- the interest rate swaps or caps are expected to be and continue to be highly effective in reducing the Company's exposure to interest rate risk.

The fair values of the Company's interest rate swap agreements and interest rate cap agreements are based on market values provided by dealers who are familiar with the terms of these instruments. Correlation and effectiveness are periodically assessed at least quarterly based upon a comparison of the relative changes in the fair values or cash flows of the interest rate swaps and caps and the items being hedged.

For derivative instruments that are designated and qualify as a cash flow hedge (i.e. hedging the exposure to variability in expected future cash flows that is attributable to a particular risk), the effective portion of the gain or loss, and net payments received or made, on the derivative instrument are reported as a component of

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

OCI and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instrument in excess of the cumulative change in the present value of future cash flows of the hedged item, if any, is recognized in current earnings during the period of change.

With respect to interest rate swaps and caps that have not been designated as hedges, any net payments under, or fluctuations in the fair value of, such swaps and caps, will be recognized in current earnings.

Derivative financial instruments contain credit risk to the extent that the issuing counterparties may be unable to meet the terms of the agreements. The Company minimizes such risk by using multiple counterparties and limiting its counterparties to major financial institutions with investment grade credit ratings. In addition, the potential risk of loss with any one party resulting from this type of credit risk is constantly monitored. Management does not expect any material losses as a result of default by other parties.

Termination of Hedging Relationships — The Company employs a number of risk management monitoring procedures to ensure that the designated hedging relationships are demonstrating, and are expected to continue to demonstrate, a high level of effectiveness. Hedge accounting is discontinued on a prospective basis if it is determined that the hedging relationship is no longer highly effective or expected to be highly effective in offsetting changes in fair value of the hedged item.

Additionally, the Company may elect to undesignate a hedge relationship during an interim period and re-designate upon the rebalancing of a hedge profile and the corresponding hedge relationship. When hedge accounting is discontinued, the Company continues to carry the derivative instruments at fair value with changes recorded in current earnings.

Comprehensive Income — Comprehensive income is comprised primarily of net income (loss), changes in value of the Company's available for sale securities, and the impact of deferred gains or losses on changes in the fair value of derivative contracts hedging future cash flows. Other comprehensive income (loss) during 2004 was \$(608,852); \$(3,753,118) related to the reclassification adjustment for gains included in income of \$(950,097) and an unrealized holding loss arising during the period of \$(2,803,021) from the Company's available for sale securities, which was offset by \$3,144,266 related to reclassification adjustment for gains included in income of \$(150,898) and an unrealized holding gain arising during the period of \$3,295,164 from the Company's cash flow hedges. Other comprehensive income (loss) during 2003 was \$833,726; \$782,657 related to an unrealized holding gain arising during the period from the Company's available for sale securities, and \$51,069 related to reclassification adjustment for gains included in income of \$(238,606) and an unrealized holding gain arising during the period of \$289,675 from the Company's cash flow hedges. Other comprehensive income (loss) during 2002 related to an increase in the net unrealized holding gains arising during the period on available for sale securities of \$33,254.

Gain on Sale of Mortgage Loans — The Company recognizes gain on sale of loans sold to third parties as the difference between the sales price and the adjusted cost basis of the loans when title transfers. The adjusted cost basis of the loans includes the original principal amount adjusted for deferrals of origination and commitment fees received, net of direct loan origination costs paid.

Loan Origination Fees and Direct Origination Cost — The Company records loan fees, discount points and certain incremental direct origination costs as an adjustment of the cost of the loan and such amounts are included in gain on sales of loans when the loan is sold. Accordingly, salaries, compensation, benefits and commission costs have been reduced because they are considered incremental direct loan origination costs, by approximately \$20,457,000, \$13,700,000 and \$7,953,000 for the years ended December 31, 2004, 2003 and 2002 respectively.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Brokered Loan Fees and Expenses — The Company records commissions associated with brokered loans when such loans are closed with the borrower. Costs associated with brokered loans are expensed when incurred.

Loan Commitment Fees — Mortgage loans held for sale: fees received for the funding of mortgage loans to borrowers at pre-set conditions are deferred and recognized at the date at which the loan is sold. Mortgage loans held for investment: such fees are deferred and recognized into interest income over the life of the loan based on the effective yield method.

Employee Benefits Plans — The Company sponsors a defined contribution plan (the “Plan”) for all eligible domestic employees. The Plan qualifies as a deferred salary arrangement under Section 401(k) of the Internal Revenue Code. Under the Plan, participating employees may defer up to 25% of their pre-tax earnings, subject to the annual Internal Revenue Code contribution limit. The Company matches contributions up to a maximum of 25% of the first 5% of salary. Employees vest immediately in their contribution and vest in the Company’s contribution at a rate of 25% after two full years and then an incremental 25% per full year of service until fully vested at 100% after five full years of service. The Company’s total contributions to the Plan were \$157,235, \$121,931 and \$74,686 for the years ended December 31, 2004, 2003 and 2002 respectively.

Stock Based Compensation. The Company follows the provisions of SFAS No. 123, “Accounting for Stock-Based Compensation” (“SFAS No. 123”) and SFAS No. 148, “Accounting for Stock-Based Compensation, Transition and Disclosure” (“SFAS No. 148”). The provisions of SFAS 123 allow companies either to expense the estimated fair value of stock options or to continue to follow the intrinsic value method set forth in Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB No. 25”) and disclose the pro forma effects on net income (loss) had the fair value of the options been expensed. The Company has elected not to apply APB No. 25 in accounting for its stock option incentive plans and has expensed stock based compensation in accordance with SFAS No. 123.

In December, 2004 the Financial Accounting Standards Board (“FASB”) issued SFAS No. 123R, “Share-Based payment,” (“SFAS No. 123R”) which will require all companies to measure compensation costs for all share-based payments, including employee stock options, at fair value. This statement will be effective for the Company with the quarter beginning July 1, 2005. The Company has elected to expense share based compensation in accordance with SFAS No. 123, therefore proactively adopting the requirements of SFAS No. 123R. See Note 15 for the disclosures required by SFAS No. 123 and SFAS No. 148.

Marketing and Promotion — The Company charges the costs of marketing, promotion and advertising to expense in the period incurred.

Income Taxes — The Company operates so as to qualify as a REIT under the requirements of the Internal Revenue Code. Requirements for qualification as a REIT include various restrictions on ownership of the Company’s stock, requirements concerning distribution of taxable income and certain restrictions on the nature of assets and sources of income. A REIT must distribute at least 90% of its taxable income to its stockholders of which 85% plus any undistributed amounts from the prior year must be distributed within the taxable year in order to avoid the imposition of an excise tax. The remaining balance may extend until timely filing of the Company’s tax return in the subsequent taxable year. Qualifying distributions of taxable income are deductible by a REIT in computing taxable income.

NYMC changed its tax status upon completion of the IPO from a non-taxable limited liability company to a taxable REIT subsidiary and therefore subsequent to the IPO, is subject to corporate income taxes. Accordingly, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax base upon the change in tax status. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Earnings Per Share — Basic earnings per share excludes dilution and is computed by dividing net income available to common stockholders by the weighted-average number of shares of common stock outstanding for the period. Diluted earnings per share reflects the potential dilution that could occur if securities or other contracts to issue common stock were exercised or converted into common stock or resulted in the issuance of common stock that then shared in the earnings of the Company.

New Accounting Pronouncements — On March 9, 2004, the SEC issued SAB 105, which provides guidance regarding loan commitments that are accounted for as derivative instruments under SFAS No. 133. In SAB 105, the SEC stated that the value of expected future cash flows related to servicing rights should be excluded when determining the fair value of derivative interest rate lock commitments. This guidance must be applied to rate locks initiated after March 31, 2004. Under this new guidance, the value of the expected future cash flow related to servicing rights is not recognized until the underlying loans are sold. The Company sells its loans “servicing released” and values its IRLCs based strictly on the interest rate differential between the contractual interest rate for the loan and current market rates. The application of SAB 105 did not have a material impact on the Company’s consolidated financial statements for the fiscal year ended December 31, 2004.

In March 2004, the EITF reached a consensus on Issue No 03-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*. This Issue provides clarification with respect to the meaning of other-than-temporary impairment and its application to investments classified as either available-for-sale or held-to-maturity under SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, (including individual securities and investments in mutual funds), and investments accounted for under the cost method. The guidance for evaluating whether an investment is other-than-temporarily impaired in EITF 03-1, except for paragraphs 10-20, must be applied in other-than-temporary impairment evaluations made in reporting periods beginning after June 15, 2004. This Issue did not have a material impact on the Company’s financial condition or results of operations.

2. Investment Securities Available For Sale

Investment securities available for sale consist of the following at December 31, 2004. There were no investment securities available for sale at December 31, 2003:

	December 31, 2004
Amortized cost	\$ 1,207,715,175
Gross unrealized gains	150,682
Gross unrealized losses	(3,121,143)
Fair Value	<u>\$ 1,204,744,714</u>

None of the securities with unrealized losses have been in a loss position for more than one year. The Company has the intent and believes it has the ability to hold such investment securities until recovery of their amortized cost, to maturity if necessary.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

3. Mortgage Loans Held For Sale

Mortgage loans held for sale consist of the following as of December 31, 2004 and December 31, 2003:

	<u>December 31, 2004</u>	<u>December 31, 2003</u>
Mortgage loans principal amount	\$ 85,105,027	\$ 36,168,003
Deferred origination costs — net	279,900	1,304
Mortgage loans held for sale	<u>\$ 85,384,927</u>	<u>\$ 36,169,307</u>

4. Mortgage Loans Held For Investment

Mortgage loans held for investment are recorded at historical cost; however the estimated fair value of mortgage loans for investment at December 31, 2004 was approximately \$190.6 million. There were no mortgage loans held for investment at December 31, 2003.

	<u>December 31, 2004</u>
Mortgage loans principal amount	\$ 188,858,607
Deferred origination cost-net	1,294,496
Total mortgage loans held for investment	<u>\$ 190,153,103</u>

5. Property and Equipment — Net

Property and equipment consist of the following as of December 31, 2004 and December 31, 2003:

	<u>December 31, 2004</u>	<u>December 31, 2003</u>
Office and computer equipment	3,191,096	1,433,700
Furniture and fixtures	2,031,778	721,966
Leasehold improvements	1,138,467	789,725
Total premises and equipment	6,361,341	2,945,391
Less: accumulated depreciation and amortization	<u>(1,560,039)</u>	<u>(913,694)</u>
Property and equipment — net	<u>4,801,302</u>	<u>2,031,697</u>

6. Derivative Instruments and Hedging Activities

The Company enters into derivatives to manage its interest rate and market risk exposure associated with its mortgage banking and its mortgage-backed securities investment activities. In the normal course of its mortgage loan origination business, the Company enters into contractual IRLCs to extend credit to finance residential mortgages. To mitigate the effect of the interest rate risk inherent in providing IRLCs from the lock-in date to the funding date of a loan, the Company generally enters into FSLCs. With regard to the Company's mortgage-backed securities investment activities, the Company uses interest rate swaps and caps to mitigate the effects of major interest rate changes on net investment spread.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes the estimated fair value of derivative assets and liabilities as of December 31, 2004 and December 31, 2003:

	December 31, 2004	December 31, 2003
Derivative Assets:		
Interest rate caps	\$ 411,248	\$ —
Interest rate swaps	3,228,457	—
Interest rate lock commitments — loan commitments	5,270	227,513
Interest rate lock commitments — mortgage loans held for sale	32,597	88,922
Total derivative assets	\$ 3,677,572	\$ 316,435
Derivative Liabilities:		
Forward loan sale contracts — loan commitments	\$ (23,557)	\$ (133,682)
Forward loan sale contracts — mortgage loans held for sale	(1,846)	(6,579)
Forward loan sale contracts — TBA securities	(139,413)	(121,250)
Total derivative liabilities	\$ (164,816)	\$ (261,511)

The notional amounts of the Company's interest rate swaps, interest rate caps and forward loan sales contracts as of December 31, 2004 were \$670.0 million, \$250.0 million and \$97.1 million, respectively.

The notional amounts of the Company's interest rate swaps, interest rate caps and forward loan sales contracts as of December 31, 2003 were \$0, \$0 and 54.5 million, respectively.

The Company estimates that over the next twelve months, approximately \$611,000 of the net unrealized gains on the interest rate swaps will be reclassified from accumulated OCI into earnings.

7. Financing Arrangements, Portfolio Investments

The Company has entered into repurchase agreements with third party financial institutions to finance its residential mortgage-backed securities. The repurchase agreements are short-term borrowings that bear interest rates based on a spread to LIBOR, and are secured by the residential mortgage-backed securities which they finance. At December 31, 2004, the Company had repurchase agreements with an outstanding balance of approximately \$1.11 billion and a weighted average interest rate of 2.35%. At December 31, 2004 securities pledged as collateral for repurchase agreements had estimated fair values of approximately \$1.16 billion. As of December 31, 2004 all of the reverse repurchase agreements will mature within 30 days. The Company has available to it \$4.225 billion in commitments to provide financings through such arrangements with 20 different counterparties. Counterparties that will providing repurchase financing to the Company as of December 31, 2004 are: Banc of America Securities LLC, Bear, Stearns & Co. Inc., Cantor Fitzgerald Securities, Citigroup Global Markets Inc., Countrywide Securities Corporation, Credit Suisse First Boston LLC, Daiwa Securities America, Inc., Duetsche Bank Securities, Inc., Goldman, Sachs & Co., Greenwich Capital Markets, Inc., J.P. Morgan Securities, Inc., Lehman Brothers Inc., Merrill Lynch Government Securities, Inc., Morgan Keegan & Company, Morgan Stanley & Co. Incorporated, Nomura Securities International, Inc., RBC Capital Markets Corporation, UBS Securities LLC, Wachovia Capital Markets LLC, and WaMu Capital Corp.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

8. Financing Arrangements, Mortgage Loans Held for Sale or Investment

Financing arrangements consist of the following as of December 31, 2004, and December 31, 2003:

	December 31, 2004	December 31, 2003
\$250 million master repurchase agreement expiring December 5, 2005 bearing interest at one-month LIBOR plus 0.75% (3.14% at December 31, 2004). Principal repayments are required 120 days from the funding date(a)	\$ 215,611,800	\$ —
\$100 million revolving line of credit expiring March 31, 2005 bearing interest at daily LIBOR plus spreads from 1.125% to 2.000% depending on collateral (3.60% at December 31, 2004 and 2.42% as of December 31, 2003). Principal repayments are required 90 days from the funding date	73,751,874	72,461,446
\$125 million (increased to \$150 million on February 1, 2005) revolving line of credit which expires on June 29, 2005 bearing interest at one-month LIBOR plus 1.00% (3.29% at December 31, 2004 and 2.42% as of December 31, 2003)	69,839,306	14,966,814
\$15 million revolving line of credit (terminated and syndicated into \$50 million revolving line above) bearing interest at the lesser of LIBOR plus 1.5% or the prime rate (2.40% as of December 31, 2003)	—	2,996,873
	\$ 359,202,980	\$ 90,425,133

- (a) This credit facility, with Greenwich Capital Financial Products, Inc., requires the Company to transfer specific collateral to the lender under repurchase agreements; however, due to the rate of turnover of the collateral by the Company, the counterparty has not taken title to or recorded their interest in any of the collateral transferred. Interest is paid to the counterparty based on the amount of outstanding borrowings and on the terms provided.

The lines of credit are secured by all of the mortgage loans held by the Company. The lines contain various covenants pertaining, among other things, to maintenance of certain amounts of net worth and working capital. The Company is in compliance with such covenants as of December 31, 2004 and 2003. The agreements are each renewable annually, but are not committed, meaning that the counterparties to the agreements may withdraw access to the credit facilities at any time.

9. Commitments and Contingencies

Loans Sold to Investors — Generally, the Company is not exposed to significant credit risk on its loans sold to investors. In the normal course of business, the Company is obligated to repurchase loans which do not meet certain terms set by investors. Such loans are then generally repackaged and sold to other investors.

Loans Funding and Delivery Commitments — At December 31, 2004 and 2003 the Company had commitments to fund loans with agreed-upon rates totaling approximately \$156.1 million and \$71.4 million, respectively. The Company hedges the interest rate risk of such commitments and the recorded mortgage loans held for sale balances primarily with FSLCs, which totaled approximately \$97.1 million and \$54.5 million at December 31, 2004 and 2003, respectively. The remaining commitments to fund loans with agreed-upon rates are anticipated to be sold through optional delivery contract investor programs. The Company does not anticipate any material losses from such sales.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Net Worth Requirements — NYMC is required to maintain certain specified levels of minimum net worth to maintain its approved status with Fannie Mae, Freddie Mac, HUD and other investors. As of December 31, 2004 NYMC is in compliance with all minimum net worth requirements.

Outstanding Litigation — The Company is involved in litigation arising in the normal course of business. Although the amount of any ultimate liability arising from these matters cannot presently be determined, the Company does not anticipate that any such liability will have a material effect on its consolidated financial statements.

Leases — The Company leases its corporate offices and certain retail facilities and equipment under short-term lease agreements expiring at various dates through 2010. All such leases are accounted for as operating leases. Total rental expense for property and equipment, which is included within the financial statements, amounted to \$3,253,580, \$2,099,496 and \$1,086,495 for the years ended December 31, 2004, 2003 and 2002, respectively.

As of December 31, 2004 obligations under non-cancelable operating leases that have an initial term of more than one year are as follows:

<u>Year Ending December 31,</u>	
2005	\$ 4,150,604
2006	3,566,558
2007	3,133,382
2008	2,747,618
2009	1,997,828
Thereafter	1,878,000
	<u>\$ 17,473,990</u>

Letters of Credit — NYMC maintains a letter of credit in the amount of \$100,000 in lieu of a cash security deposit for office lease dated June 1998 for our former headquarters located at 304 Park Avenue South in New York City. The sole beneficiary of this letter of credit is the owner of the building, 304 Park Avenue South LLC. This letter of credit is secured by cash deposited in a bank account maintained at Signature Bank.

Subsequent to our headquarters move to a new location in New York City in July 2003, in lieu of a cash security deposit for our office lease, we entered into an irrevocable transferable letter of credit in the amount of \$313,000 with PricewaterhouseCoopers, LLP (sublandlord), as beneficiary. This letter of credit is secured by cash deposited in a bank account maintained at HSBC bank.

On February 15, 2005, the Company entered into an irrevocable standby letter of credit in an initial amount of \$500,000 with the beneficiary being CCC Atlantic, L.L.C., the landlord of the Company's leased facility at 500 Burton Avenue, Northfield, New Jersey. The letter of credit will serve as security for leased office property, occupied by employees of our subsidiary company Ivy League Mortgage, L.L.C. The letter of credit is secured by the personal guarantee and a mortgage on the home of the Ivy League Mortgage, L.L.C. branch manager. The initial amount of the letter of credit will be reduced at each of the first four annual anniversary dates by \$50,000, thereafter to remain at a value of \$250,000 until termination on April 1, 2015.

10. Related Party Transactions

Upon completion of the Company's IPO and acquisition of NYMC, Steven B. Schnall and Joseph V. Fierro, the former owners of NYMC, were entitled to a distribution of NYMC's retained earnings through the close of the Company's IPO on June 29, 2004, not to exceed \$4,500,000. As a result, a distribution of

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

\$2,409,323 (\$409,323 of retained earnings as of March 31, 2004 plus an estimate of \$2,000,000 for NYMC's earnings through June 29, 2004) was made to the former owners upon the close of the IPO. The subsequent earnings and elimination of distributions and unrealized gains and losses attributable to NYMC for the period prior to June 29, 2004 equated to a distribution overpayment of \$1,309,448, for which Messrs. Schnall and Fierro reimbursed the Company immediately upon the finalization of the overpayment calculation in July 2004.

Steven B. Schnall owns a 48% membership interest and Joseph V. Fierro owns a 12% membership interest in Centurion Abstract, LLC ("Centurion"), which provides title insurance brokerage services for certain title insurance providers. From time to time, NYMC refers its mortgage loan borrowers to Centurion for assistance in obtaining title insurance in connection with their mortgage loans, although the borrowers have no obligation to utilize Centurion's services. When NYMC's borrowers elect to utilize Centurion's services to obtain title insurance, Centurion collects various fees and a portion of the title insurance premium paid by the borrower for its title insurance. Centurion received \$648,326 in fees and other amounts from NYMC borrowers for the year ended December 31, 2004. NYMC does not economically benefit from such referrals.

11. Concentrations of Credit Risk

The Company has originated loans predominantly in the eastern United States. Loan concentrations are considered to exist when there are amounts loaned to a multiple number of borrowers with similar characteristics, which would cause their ability to meet contractual obligations to be similarly impacted by economic or other conditions. At December 31, 2004 and December 31, 2003, there were geographic concentrations of credit risk exceeding 5% of the total loan balances within mortgage loans held for sale as follows:

	<u>December 31,</u> <u>2004</u>	<u>December 31,</u> <u>2003</u>
New York	70.2%	82.8%
New Jersey	7.4%	2.5%
Massachusetts	6.6%	2.8%
Florida	1.9%	5.7%
Connecticut	5.0%	0.7%

12. Fair Value of Financial Instruments

Fair value estimates are made as of a specific point in time based on estimates using market quotes, present value or other valuation techniques. These techniques involve uncertainties and are significantly affected by the assumptions used and the judgments made regarding risk characteristics of various financial instruments, discount rates, estimates of future cash flows, future expected loss experience, and other factors.

Changes in assumptions could significantly affect these estimates and the resulting fair values. Derived fair value estimates cannot be necessarily substantiated by comparison to independent markets and, in many cases, could not be necessarily realized in an immediate sale of the instrument. Also, because of differences in methodologies and assumptions used to estimate fair values, the Company's fair values should not be compared to those of other companies.

Fair value estimates are based on existing financial instruments and do not attempt to estimate the value of anticipated future business and the value of assets and liabilities that are not considered financial instruments. Accordingly, the aggregate fair value amounts presented below do not represent the underlying value of the Company.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The fair value of certain assets and liabilities approximate cost due to their short-term nature, terms of repayment or interest rate associated with the asset or liability. Such assets or liabilities include cash and cash equivalents, escrow deposits, unsettled mortgage loan sales, and financing arrangements. All forward delivery commitments and option contracts to buy securities are to be contractually settled within six months of the balance sheet date.

The following describes the methods and assumptions used by the Company in estimating fair values of other financial instruments:

a. *Investment Securities Available for Sale* — Fair value is generally estimated based on market prices provided by five to seven dealers who make markets in these financial instruments. If the fair value of a security is not reasonably available from a dealer, management estimates the fair value based on characteristics of the security that the Company receives from the issuer and based on available market information.

b. *Mortgage Loans Held for Sale* — Fair value is estimated using the quoted market prices for securities backed by similar types of loans and current investor or dealer commitments to purchase loans.

c. *Mortgage Loans Held for Investment* — Mortgage loans held for investment are recorded at historical cost; however the estimated fair value of mortgage loans for investment at December 31, 2004 was approximately \$190.6 million. There were no mortgage loans held for investment at December 31, 2003. Fair value is estimated using pricing models and taking into consideration the aggregated characteristics of groups of loans such as, but not limited to, collateral type, index, interest rate, margin, length of fixed-rate period, life cap, periodic cap, underwriting standards, age and credit estimated using the quoted market prices for securities backed by similar types of loans.

d. *Interest Rate Lock Commitments* — The fair value of IRLCs is estimated using the fees and rates currently charged to enter into similar agreements, taking into account the remaining terms of the agreements and the present creditworthiness of the counterparties. For fixed rate loan commitments, fair value also considers the difference between current levels of interest rates and the committed rates. The fair value of IRLCs is determined in accordance with SAB 105.

e. *Forward Sale Loan Contracts* — The fair value of these instruments is estimated using current market prices for dealer or investor commitments relative to the Company's existing positions.

The following tables set forth information about financial instruments, except for those noted above for which the carrying amount approximates fair value:

	December 31, 2004		
	<u>Notional Amount</u>	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>
Investment securities available for sale	\$ 1,194,055,340	\$ 1,204,744,714	\$ 1,204,744,714
Mortgage loans held for investment	188,858,607	190,153,103	190,608,241
Mortgage loans held for sale	85,105,027	85,384,927	86,097,867
Commitments and contingencies:			
Interest rate lock commitments	156,110,472	37,867	37,867
Forward loan sales contracts	97,080,482	(164,816)	(164,816)
Interest rate swaps	670,000,000	3,228,457	3,228,457
Interest rate caps	250,000,000	411,248	411,248

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	December 31, 2003		
	Notional Amount	Carrying Amount	Estimated Fair Value
Mortgage loans held for sale	\$ 36,168,003	\$ 36,169,307	\$ 38,020,465
Marketable securities available for sale		3,588,562	3,588,562
Commitments and contingencies:			
Interest rate lock commitments	71,375,732	316,435	316,435
Forward loan sales contracts	54,522,057	(261,511)	(261,511)

13. INCOME TAXES

NYMT and its taxable subsidiary, NYMC, were S corporations prior to June 29, 2004 pursuant to the Internal Revenue Code of 1986, as amended, and as such did not incur any federal income tax expense. Both were liable for New York State and New York City taxes and that provision is included below under current state provision.

On June 29, 2004, NYMC became a C corporation for federal and state income tax purposes and as such is subject to federal and state income tax on its taxable income for the period June 29 through December 31, 2004. In connection with the change in tax status from an S Corporation to a C corporation, NYMT recognized deferred income tax expense of \$298,553 as of June 29, 2004.

A reconciliation of the statutory income tax provision (benefit) to the effective income tax provision for the period June 29 to December 31, 2004 is as follows.

Tax at statutory rate (35%)	\$ 1,290,650
Non-taxable REIT income	(2,558,892)
Transfer pricing of loans sold to nontaxable parent	292,150
State and local taxes	(372,095)
Change in tax status	298,553
Income earned prior to taxable status	(206,731)
Miscellaneous	(3,169)
Total provision (benefit)	\$ (1,259,534)

The income tax provision (benefit) for the year ended December 31, 2004 is comprised of the following components:

	Current	Deferred	Total
Regular Tax Provision (Benefit)			
Federal	—	\$ (1,251,053)	\$ (1,251,053)
State	\$ 50,000	(327,399)	(277,399)
Total	\$ 50,000	\$ (1,578,452)	\$ (1,528,452)
Change in Tax Status			
Federal	—	\$ 212,800	\$ 212,800
State	—	56,118	56,118
	—	\$ 268,918	\$ 268,918
Total tax expense (benefit)	\$ 50,000	\$ (1,309,534)	\$ (1,259,534)

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The deferred tax asset at December 31, 2004 includes a deferred tax asset of \$1,578,452 and a deferred tax liability of \$268,918 which represents the tax effect of differences between tax basis and financial statement carrying amounts of assets and liabilities. The major sources of temporary differences and their deferred tax effect at December 31, 2004 are as follows:

Deferred tax assets:	
Net operating loss carryover	\$ 1,237,544
Restricted performance stock option expense	329,001
Management compensation	<u>90,461</u>
	1,657,006
Deferred tax liabilities:	
Mark-to-market adjustments	78,554
Depreciation	268,918
	<u>347,472</u>
Net deferred tax asset	<u><u>\$ 1,309,534</u></u>

The net deferred tax asset is included in prepaid and other assets on the accompanying consolidated balance sheet. Although realization is not assured, management believes it is more likely than not that all the deferred tax assets will be realized. The net operating loss carryforward expires at various intervals between 2012 and 2025.

14. Segment Reporting

The Company operates two segments:

- *Mortgage Portfolio Management* — long-term investment in high-quality, adjustable-rate mortgage loans and residential mortgage-backed securities; and
- *Mortgage Lending* — mortgage loan originations as conducted by NYMC.

Our mortgage portfolio management segment primarily invest in adjustable-rate FNMA, FHLMC and “AAA”- rated residential mortgage-backed securities and high-quality mortgages that are originated by our mortgage operations or that may be acquired from third parties. The Company’s equity capital and borrowed funds are used to invest in residential mortgage-backed securities, thereby producing net interest income.

The mortgage lending segment originates residential mortgage loans through the Company’s taxable REIT subsidiary, NYMC. Loans are originated through NYMC’s retail and internet branches and generate gain on sale revenue when the loans are sold to third parties or revenue from brokered loans when the loans are brokered to third parties.

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Prior to June 29, 2004, the Company conducted only mortgage lending operations.

	Year Ended December 31, 2004		
	Mortgage Portfolio Management Segment	Mortgage Lending Segment	Total
REVENUE:			
Gain on sales of mortgage loans	\$ —	\$ 20,835,387	\$ 20,835,387
Interest income:			
Loans held for sale	—	6,904,651	6,904,651
Investment securities and loans	20,393,977	—	20,393,977
Brokered loan fees	—	6,894,629	6,894,629
Gain on sale of securities	167,440	606,975	774,415
Miscellaneous income	—	226,677	226,677
Total revenue	<u>20,561,417</u>	<u>35,468,319</u>	<u>56,029,736</u>
EXPENSES:			
Salaries, commissions and benefits	382,403	16,735,918	17,118,321
Interest expense:			
Loans held for sale	—	3,542,939	3,542,939
Investment securities and loans	12,469,579	—	12,469,579
Brokered loan expenses	—	5,276,333	5,276,333
Occupancy and equipment	9,604	3,519,075	3,528,679
Marketing and promotion	13,872	3,176,097	3,189,969
Data processing and communication	174,089	1,424,043	1,598,132
Office supplies and expenses	3,788	1,515,139	1,518,927
Professional fees	148,997	1,856,391	2,005,388
Travel and entertainment	838	611,106	611,944
Depreciation and amortization	1,960	688,529	690,489
Other	45,167	746,298	791,465
Total expenses	<u>13,250,297</u>	<u>39,091,868</u>	<u>52,342,165</u>
INCOME (LOSS) BEFORE INCOME TAX			
BENEFIT	7,311,120	(3,623,549)	3,687,571
Income tax benefit	—	(1,259,534)	(1,259,534)
NET INCOME (LOSS)	<u>\$ 7,311,120</u>	<u>\$ (2,364,015)</u>	<u>\$ 4,947,105</u>
Segment assets	1,413,954,577	200,807,882	1,614,762,459
Segment equity	107,541,994	11,940,225	119,482,219

15. Capital Stock and Earnings per Share

The Company had 400,000,000 shares of common stock, par value \$0.01 per share, authorized with 18,114,445 shares issued and 17,797,375 outstanding as of December 31, 2004. Of the common stock authorized, 794,250 shares were reserved for issuance as restricted stock awards to employees, officers and directors. As of December 31, 2004, 74,716 shares remain reserved for issuance.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The Company calculates basic net income per share by dividing net income for the period by weighted-average shares of common stock outstanding for that period. Diluted net income per share takes into account the effect of dilutive instruments, such as stock options and unvested restricted stock, but uses the average share price for the period in determining the number of incremental shares that are to be added to the weighted-average number of shares outstanding. For the year ended December 31, 2004, weighted average shares outstanding assume that the shares outstanding upon the Company's IPO are outstanding for the full year ending December 31, 2004. Earnings per share for periods prior to the IPO are not presented as they are not representative of the Company's current capital structure.

The following table presents the computation of basic and diluted net earnings per share as if all stock options were outstanding for the periods indicated (in thousands, except net earnings per share):

	For the Year Ended December 31, 2004
Numerator:	
Net income	\$ 4,947
Denominator:	
Weighted average number of common shares outstanding — basic	17,797
Net effect of unvested restricted stock	224
Performance shares	35
Escrowed shares ¹	53
Net effect of stock options ²	6
Weighted average number of common shares outstanding — dilutive	<u>18,115</u>
Net income per share — basic	\$ 0.28
Net income per share — diluted	\$ 0.27

¹ Upon the closing of the Company's IPO, of the 2,750,000 shares exchanged for the equity interests of NYMC, 100,000 shares were held in escrow through December 31, 2004 and were available to satisfy any indemnification claims the Company may have had against the contributors of NYMC for losses incurred as a result of defaults on any residential mortgage loans originated by NYMC and closed prior to the completion of the IPO. As of December 31, 2004, the amount of escrowed shares was reduced by 47,680 shares, representing \$492,536 for estimated losses on loans closed prior to the Company's IPO. Furthermore, the contributors of NYMC entered into a new escrow agreement, which extended the escrow period to December 31, 2005 for the remaining 52,320 shares.

² The Company has granted 556,500 of the 706,000 stock options available for issuance under the Company's 2004 stock incentive plan.

16. Stock Incentive Plan

Pursuant to the 2004 Stock Incentive Plan (the "Plan"), eligible employees, officers and directors are offered the opportunity to acquire the Company's common shares through the grant of options and the award of restricted stock under the Plan. The maximum number of options that may be issued is 706,000 shares and the maximum number of restricted stock awards that may be granted under the Plan is 794,250.

In connection with the Plan, the Company also awarded shares of stock to employees upon certain performance criteria related to the November 2004 acquisition of Guaranty Residential Lending.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Options

The Plan provides for the exercise price of options to be determined by the Compensation Committee of the Board of Directors (“Compensation Committee”) but not to be less than the fair market value on the date the option is granted. Options expire ten years after the grant date. As of December 31, 2004, 556,500 options have been granted pursuant to the Plan with a vesting period of two years.

The Company accounts for the fair value of its grants in accordance with SFAS No. 123. The compensation cost charged against income during the year ended December 31, 2004 was \$105,748.

A summary of the status of the Company’s options as of December 31, 2004 and changes during the year then ended is presented below:

	Number of Options	Weighted Average Exercise Price
Outstanding at beginning of year	—	—
Granted	556,500	\$ 9.57
Canceled	—	—
Exercised	—	—
Outstanding at end of year	<u>556,500</u>	<u>\$ 9.57</u>
Options exercisable at year-end	<u>303,162</u>	<u>\$ 9.35</u>
Weighted-average fair value of options granted during the year		<u>\$ 9.57</u>

The following table summarizes information about stock options at December 31, 2004:

Range of Exercise Prices	Options Outstanding			Options Exercisable		Fair Value of Options Granted
	Number Outstanding	Weighted- Average Remaining Contractual Life (Years)	Exercise Price	Number Exercisable	Exercise Price	
\$9.00	176,500	9.5	\$ 9.00	176,500	\$ 9.00	\$ 0.39
\$9.83	380,000	9.9	9.83	126,662	9.83	0.29
Total	<u>556,500</u>	<u>9.8</u>	<u>\$ 9.57</u>	<u>303,162</u>	<u>\$ 9.35</u>	<u>\$ 0.32</u>

The fair value of each option grant is estimated on the date of grant using the Binomial option-pricing model with the following weighted-average assumptions:

Risk free interest rate	4.5%
Expected volatility	10%
Expected life	10 years
Expected dividend yield	10.48%

Restricted stock

As of December 31, 2004, the Company has awarded 482,625 shares of restricted stock under the Plan with vesting periods between six and 36 months. During year ended December 31, 2004, the Company recognized non-cash compensation expense of approximately \$1.7 million relating to the vested portion of restricted stock grants. Dividends are paid on all restricted stock issued, whether those shares are vested or not. In general, unvested restricted stock is forfeited upon the recipient’s termination of employment.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Performance based stock awards

In November 2004, the Company acquired 15 full service and 26 satellite retail mortgage banking offices located in the Northeast and Mid-Atlantic states from General Residential Lending, Inc. Pursuant to that transaction, the Company has committed to award 236,909 shares of the Company's stock to certain employees of those branches upon attaining predetermined production levels. The awards range in vesting periods from 6 to 30 months with a share price set at the December 2, 2005 grant date market value of \$9.83 per share. During year ended December 31, 2004, the Company recognized non-cash compensation expense of \$249,296 relating to the vested portion of performance based stock awards. Unvested issued performance share awards have no voting rights and do not earn dividends.

17. Asset Acquisitions

On March 10, 2004 the Company completed a transaction with SIB Mortgage Corporation, acquiring eight loan origination branches — including the locked and unlocked mortgage loan pipelines (meaning in-process mortgage loans with or without locked-in interest rates), furniture, fixtures, equipment, computers, tangible personal property and leasehold improvements (to the extent located in the branches), and certain other assets — in exchange for the Company's assumption of certain expenses and obligations in connection with the operation of these branches from and after March 1, 2004. The Company hired 134 SIB employees who work at these eight branches, which are located in Northfield, New Jersey; Seaville, New Jersey; Haworth, New Jersey; Rockville, Maryland; Virginia Beach, Virginia; Fairfax, Virginia; Terre Haute, Indiana; and Fairfield, Connecticut.

On November 15, 2004, the Company acquired 15 full service and 26 satellite retail mortgage banking offices located in the Northeast and Mid-Atlantic states from Guaranty Residential Lending, Inc. The Company acquired an existing pipeline of approximately \$300 million in locked and unlocked mortgage applications in conjunction with the branch acquisition. The mortgage pipeline and other assets (primarily furniture, fixtures and computer hardware and software) had a purchase price of approximately \$550,000 and \$760,000, respectively. In addition, the Company will pay a \$250,000 contingency premium to the seller provided that the former loan officers of the seller become employed by the Company and originate, close and fund \$2 billion in mortgage loans during the twelve month period after the closing date of the transaction. The Company also assumed selected monthly lease obligations of approximately \$142,000 and hired approximately 275 new loan origination and support personnel. As a result of this acquisition, the Company's annual mortgage originations are expected to approximately double.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

18. QUARTERLY FINANCIAL DATA (UNAUDITED)

The following table is a comparative breakdown of our unaudited quarterly results for the immediately preceding eight quarters. The quarter ended June 30, 2004 has been restated, as explained below, and includes the appropriate adjustments discussed below:

	Three Months Ended				
	<u>Mar. 31, 2004</u>	<u>Jun. 30, 2004</u> As previously reported	<u>Jun. 30, 2004</u> As restated	<u>Sep. 30, 2004</u>	<u>Dec. 31, 2004</u>
Revenues:					
Gain on sales of mortgage loans	\$ 3,506,089	\$ 6,945,082	\$ 6,945,082	\$ 4,482,262	\$ 5,901,954
Interest income	1,261,069	1,885,778	1,885,778	10,290,141	13,941,292
Brokered loan fees	2,182,779	777,694	777,694	1,437,664	2,496,492
Gain (loss) on sale of marketable securities	—	(175,682)	606,975	125,837	41,603
Miscellaneous income	15,769	30,208	30,208	49,620	51,428
Total revenues	<u>6,965,706</u>	<u>9,463,080</u>	<u>10,245,737</u>	<u>16,385,524</u>	<u>22,432,769</u>
Salaries, commissions and related expenses	2,719,178	4,171,660	4,171,660	4,503,571	5,723,911
Interest expense	608,611	1,206,029	1,123,686	5,465,192	8,815,029
Brokered loan expenses	1,284,219	835,303	835,303	1,016,930	2,139,881
General and administrative expenses	2,236,194	3,724,196	3,724,196	3,179,615	4,794,989
Total expenses	<u>6,848,202</u>	<u>9,937,188</u>	<u>9,854,845</u>	<u>14,165,308</u>	<u>21,473,810</u>
Income (loss) before provision for income taxes	<u>117,504</u>	<u>(474,108)</u>	<u>390,892</u>	<u>2,220,216</u>	<u>958,959</u>
Income tax (expense) benefit	—	(10,000)	(10,000)	231,653	1,037,881
Net income (loss)	<u>\$ 117,504</u>	<u>\$ (484,108)</u>	<u>\$ 380,892</u>	<u>\$ 2,451,869</u>	<u>\$ 1,996,840</u>
Per share basic income (loss)	—	\$ (0.03)	\$ 0.02	\$ 0.14	\$ 0.12
Per share diluted income (loss)	—	\$ (0.03)	\$ 0.02	\$ 0.14	\$ 0.12

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

	Three Months Ended			
	Mar. 31, 2003	Jun. 30, 2003	Sep. 30, 2003	Dec. 31, 2003
Revenues:				
Gain on sales of mortgage loans	\$ 4,757,862	\$ 6,790,049	\$ 6,854,729	\$ 4,628,029
Interest income	1,430,998	2,090,999	1,823,609	2,264,025
Brokered loan fees	1,285,767	1,580,880	1,512,505	2,303,419
Miscellaneous income	34,191	(4,727)	84,390	(68,275)
Total revenues	<u>7,508,818</u>	<u>10,457,201</u>	<u>10,275,233</u>	<u>9,127,198</u>
Salaries, commissions and related expenses	1,721,318	2,133,344	2,762,371	2,629,836
Interest expense	651,504	807,448	1,198,381	609,105
Brokered loan expenses	863,114	1,159,493	926,099	784,960
General and administrative expenses	1,344,442	1,593,577	1,887,704	2,569,678
Total expenses	<u>4,580,378</u>	<u>5,693,862</u>	<u>6,774,555</u>	<u>6,593,579</u>
Net income	<u>2,928,440</u>	<u>4,763,339</u>	<u>3,500,678</u>	<u>2,533,619</u>

On March 16, 2005, the Company's management determined that the accounting for the disposition of marketable securities and certain cash flow hedges owned by NYMC was incorrect and should be restated to reflect the gain of \$865,000 in earnings instead of as a change in other comprehensive income. As a result, the net income reported for the three and six months ended June 30, 2004 and the nine months ended September 30, 2004 as filed in the Company's Quarterly Reports on Form 10-Q for such periods, respectively, was understated by \$865,000.

The marketable securities were disposed of in a transaction during the second quarter of 2004 prior to completion of the Company's IPO so as to avoid owning a legacy portfolio of securities which (i) did not meet the Company's new investment guidelines, (ii) are equity securities, (iii) cannot be appropriately hedged or (iv) do not generate qualifying REIT income. As a result, the impact on the sale of these assets did not impact the Company or its earnings generated during periods after completion of the IPO. However, because the Company's acquisition of NYMC is accounted for as a reverse merger for accounting and financial reporting purposes, the historical financial presentation of net income is affected.

For financial presentation purposes, the restatement increases net income by approximately \$783,000 for the marketable securities and \$82,000 for the cash flow hedges with a corresponding reduction in accumulated other comprehensive income for the periods indicated. There was no impact on total assets, liabilities or equity on the Company's balance sheet, or to net comprehensive income for the periods presented.

19. Subsequent Events

On February 1, 2005, the Company amended a warehouse line of credit facility of \$125 million. The amended facility has an increased limit to \$150 million and retains the maturity date of June 29, 2005. The line will bear interest at one-month LIBOR plus 1 %. Advance sub-limit lines under the facility for repurchase and construction advances will bear interest at one-month LIBOR plus 1.625% and 1.25%, respectively. The Company has been approved for the amendment of its existing revolving line of credit facility of \$100 million that was to expire on March 31, 2005. The amended facility will have an increased limit to \$200 million and a maturity date of March 31, 2006. The line will bear interest at one-month LIBOR plus 0.75 %. Advance sub-limit lines under the facility for sub-prime and construction mortgage loans will bear interest at one-month LIBOR plus 0.90 %.

NEW YORK MORTGAGE TRUST, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

On February 11, 2005, the Company signed a letter of intent to enter into a sub-lease for its former headquarters space at 304 Park Avenue in New York. The Company's remaining contractual obligation to the landlord on this lease is \$1.8 million. The sub-lease tenant will have a contractual rent obligation to the Company under the sub-lease of \$982,000. This transaction is expected to be completed in late March or early April 2005. Accordingly, during the first quarter or early second quarter of 2005, the Company anticipates it will recognize a charge of \$796,000 to earnings.

On February 25, 2005 the Company completed its first loan securitization of approximately \$419 million of high-credit quality, first-lien, ARM loans, New York Mortgage Trust 2005-1. The terms of this securitization were structured so as to not meet the criteria for sale as required in SFAS No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities*. Accordingly, this transaction is accounted for as a non-recourse secured borrowing with the ARM loans pledged as collateral.

The amount of each class of beneficial interest structured as part of the securitization, together with the interest rate and credit ratings for each class as rated by S&P, are set forth below:

<u>Class</u>	<u>Approximate Principal Amount</u>	<u>Interest Rate</u>	<u>Rating</u>
A	\$ 391,761,000	LIBOR + 27 basis points	AAA
M-1	18,854,000	LIBOR + 50 basis points	AA
M-2	6,075,000	LIBOR + 85 basis points	A
Total	\$ 416,690,000		

On March 15, 2005 the Company closed a private placement of \$25 million of its trust preferred securities to Taberna Preferred Funding I, Ltd., a pooled investment vehicle. The securities were issued by NYM Preferred Trust I and are fully guaranteed by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment. These securities have a floating interest rate equal to three-month LIBOR plus 375 basis points, resetting quarterly. The securities mature on March 15, 2035 and may be called at par by the Company any time after March 15, 2010.

EXHIBIT INDEX

Exhibit	Description
3.1	Articles of Amendment and Restatement of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
3.2	Bylaws of New York Mortgage Trust, Inc. (Incorporated by reference to Exhibit 3.2 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
4.1	Form of Common Stock Certificate. (Incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.1	Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as amended and restated, on December 23, 2003, in the principal amount of \$2,574,352.00, payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.1 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.2	Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as amended and restated, on December 23, 2003, in the principal amount of \$12,132,550.00 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.3	Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 2, 2002. (Incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.4	Amendment No. 1 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 4, 2002. (Incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.5	Amendment No. 2 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated February 20, 2003. (Incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.6	Amendment No. 3 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated April 22, 2003. (Incorporated by reference to Exhibit 10.6 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.7	Amendment No. 4 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 1, 2003. (Incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.8	Amendment No. 5 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 7, 2003. (Incorporated by reference to Exhibit 10.8 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.9	Amendment No. 6 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated July 31, 2003. (Incorporated by reference to Exhibit 10.9 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.10	Amendment No. 7 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 4, 2003. (Incorporated by reference to Exhibit 10.10 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.11	Amendment No. 8 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 9, 2003. (Incorporated by reference to Exhibit 10.11 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.12	Amendment No. 9 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated August 28, 2003. (Incorporated by reference to Exhibit 10.12 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.13	Amendment No. 10 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated September 17, 2003. (Incorporated by reference to Exhibit 10.13 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.14	Amendment No. 11 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 1, 2003. (Incorporated by reference to Exhibit 10.14 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.15	Amendment No. 12 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated October 31, 2003. (Incorporated by reference to Exhibit 10.15 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.16	Amendment No. 13 to Master Repurchase Agreement between Credit Suisse First Boston Mortgage Capital LLC, The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 19, 2003. (Incorporated by reference to Exhibit 10.16 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.17	Credit Note between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.17 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.18	Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.18 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.19	First Amended Credit Note, dated as of May 24, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.19 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.20	First Amended Credit and Security Agreement, dated as of May 24, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.20 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.21	Second Amended Credit Note, dated as of June 18, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.21 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.22	Second Amended Credit and Security Agreement, dated June 18, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.22 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.23	Third Amended Credit Note, dated as of November 13, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.23 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.24	Third Amended Credit and Security Agreement, dated as of November 13, 2001, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.24 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.25	Fourth Amended Credit Note, dated as of January 16, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.25 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.26	Fourth Amended Credit and Security Agreement, dated as of January 16, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.26 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.27	Fifth Amended Credit Note, dated as of April 29, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.27 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.28	Fifth Amended Credit and Security Agreement, dated as of April 29, 2002, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.28 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.29	Extension Letter, dated August 26, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.29 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.30	Extension Letter, dated September 11, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.30 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.31	Extension Letter, dated October 28, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.31 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.32	Extension Letter, dated November 27, 2002, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.32 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.33	Extension Letter, dated April 15, 2003, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.33 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.34	Extension Letter, dated June 24, 2003, to Credit and Security Agreement between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001, as amended. (Incorporated by reference to Exhibit 10.34 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.35	Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.35 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.36	Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.36 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.37	First Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of May 24, 2001. (Incorporated by reference to Exhibit 10.37 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.38	First Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of May 24, 2001. (Incorporated by reference to Exhibit 10.38 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.39	Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.39 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.40	First Amendment, dated April 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.40 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.41	Second Amendment, dated June 3, 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.41 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.42	Third Amendment, dated November 2002, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.42 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.43	Fourth Amendment, dated June 15, 2003, to Warehousing Credit Agreement, among The New York Mortgage Company LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.43 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.44	Warehouse Promissory Note, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.44 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.45	Amended and Restated Warehouse Promissory Note, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated June 3, 2002. (Incorporated by reference to Exhibit 10.45 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.46	Warehousing Credit Agreement, between New York Mortgage Company, LLC, Steven B. Schnall, Joseph V. Fierro and National City Bank of Kentucky, dated as of January 25, 2002. (Incorporated by reference to Exhibit 10.46 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.47	Pledge and Security Agreement, between The New York Mortgage Company, LLC and National City Bank of Kentucky, dated as of January 25, 2002. (Incorporated by reference to Exhibit 10.47 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.48	Unconditional and Continuing Guaranty of Payment by Steven B. Schnall to National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.48 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.49	Unconditional and Continuing Guaranty of Payment by Joseph V. Fierro to National City Bank of Kentucky, dated January 25, 2002. (Incorporated by reference to Exhibit 10.49 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.50	Amended and Restated Unconditional and Continuing Guaranty of Payment by Steven B. Schnall to National City Bank of Kentucky, dated June 15, 2003. (Incorporated by reference to Exhibit 10.50 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.51	Amended and Restated Unconditional and Continuing Guaranty of Payment by Joseph V. Fierro to National City Bank of Kentucky, dated June 15, 2003. (Incorporated by reference to Exhibit 10.51 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.52	Inter-Creditor Agreement, between National City Bank of Kentucky and HSBC Bank USA, dated January 25, 2002. (Incorporated by reference to Exhibit 10.52 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.53	Whole Loan Purchase and Sale Agreement/ Mortgage Loan Purchase and Sale Agreement between The New York Mortgage Company, LLC and Greenwich Capital Financial Products, Inc., dated as of September 1, 2003. (Incorporated by reference to Exhibit 10.53 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.54	Whole Loan Custodial Agreement/ Custodial Agreement between Greenwich Capital Financial Products, Inc., The New York Mortgage Company, LLC and LaSalle Bank National Association, dated as of September 1, 2003. (Incorporated by reference to Exhibit 10.54 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.55	Form of New York Mortgage Trust, Inc. 2004 Stock Incentive Plan. (Incorporated by reference to Exhibit 10.55 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.56	Contribution Agreement by and among Steven B. Schnall and Joseph V. Fierro and New York Mortgage Trust, Inc., dated December 22, 2003. (Incorporated by reference to Exhibit 10.56 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.57	Agreement by and among New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated December 23, 2003. (Incorporated by reference to Exhibit 10.57 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.58	Sixth Amended Credit and Security Agreement, dated as of August 11, 2003, between HSBC Bank USA and The New York Mortgage Company LLC, dated as of March 30, 2001. (Incorporated by reference to Exhibit 10.58 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.59	Temporary Overadvance Note, dated as of August 11, 2003, between HSBC Bank USA and the New York Mortgage Company LLC. (Incorporated by reference to Exhibit 10.59 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.60	Second Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of June 18, 2001. (Incorporated by reference to Exhibit 10.60 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.61	Second Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of June 18, 2001. (Incorporated by reference to Exhibit 10.61 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.62	Third Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of November 13, 2001. (Incorporated by reference to Exhibit 10.62 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.63	Third Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of November 13, 2001. (Incorporated by reference to Exhibit 10.63 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.64	Fourth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of January 16, 2002. (Incorporated by reference to Exhibit 10.64 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.65	Fourth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of January 16, 2002. (Incorporated by reference to Exhibit 10.65 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.66	Fifth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of April 29, 2002. (Incorporated by reference to Exhibit 10.66 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.67	Fifth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of April 29, 2002. (Incorporated by reference to Exhibit 10.67 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.68	Sixth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Steven Schnall, dated as of August 11, 2003. (Incorporated by reference to Exhibit 10.68 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.69	Sixth Amended Guaranty between HSBC Bank USA, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of August 11, 2003. (Incorporated by reference to Exhibit 10.69 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.70	Credit and Security Agreement by and among HSBC Bank USA, National City Bank of Kentucky and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.70 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.71	Guaranty between HSBC Bank USA, National City Bank of Kentucky, The New York Mortgage Company LLC and Steven B. Schnall, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.71 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.72	Guaranty between HSBC Bank USA, National City Bank of Kentucky, The New York Mortgage Company LLC and Joseph V. Fierro, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.72 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.73	Credit Note by and between HSBC Bank USA and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.73 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.74	Credit Note by and between National City Bank of Kentucky and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.74 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.75	Swingline Note by and between HSBC Bank USA and The New York Mortgage Company LLC, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.75 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.76	Custodial Agreement by and among Greenwich Capital Financial Products, Inc., The New York Mortgage Corporation LLC and Deutsche Bank Trust Company Americas, dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.76 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.77	Master Mortgage Loan Purchase and Interim Servicing Agreement by and between The New York Mortgage Company L.L.C. and Greenwich Capital Financial Products, Inc., dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.77 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.78	Subordination and Pledge Agreement by and between HSBC Bank USA and Steven B. Schnall, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.78 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.79	Subordination and Pledge Agreement by and between HSBC Bank USA and Joseph V. Fierro, dated as of December 15, 2003. (Incorporated by reference to Exhibit 10.79 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.80	Second Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003 and February 26, 2004, in the principal amount of \$11,432,550 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.80 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.81	Second Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003 and February 26, 2004, in the principal amount of \$2,274,352, payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.81 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.82	Promissory Note, issued by New York Mortgage Funding, LLC on January 9, 2004 in the principal amount of \$100,000,000.00, payable to Greenwich Capital Financial Products, Inc. (Incorporated by reference to Exhibit 10.82 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.83	Guaranty between the New York Mortgage Company, LLC and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.83 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.84	Master Loan and Security Agreement between New York Mortgage Funding, LLC and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.84 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.85	Custodial Agreement between New York Mortgage Funding, LLC, Deutsche Bank Trust Company Americas and Greenwich Capital Financial Products, Inc., dated as of January 9, 2004. (Incorporated by reference to Exhibit 10.85 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.86	Amendment Number One, dated November 24, 2003, to the Master Mortgage Loan Purchase and Interim Servicing Agreement, dated as of August 1, 2003. (Incorporated by reference to Exhibit 10.86 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.87	Amended and Restated Contribution Agreement, by and among Steven B. Schnall, Steven B. Schnall Annuity Trust U/ A 3/25/04, Joseph V. Fierro, 2004 Joseph V. Fierro Grantor Retained Annuity Trust and New York Mortgage Trust, Inc., dated March 25, 2004. (Incorporated by reference to Exhibit 10.87 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.88	Second Amended and Restated Contribution Agreement, by and among Steven B. Schnall, Steven B. Schnall Annuity Trust U/A 3/25/04, Joseph V. Fierro, 2004 Joseph V. Fierro Grantor Retained Annuity Trust and New York Mortgage Trust, Inc., dated April 29, 2004. (Incorporated by reference to Exhibit 10.88 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.89	Amended and Restated Agreement by and among New York Mortgage Trust, Inc., The New York Mortgage Company, LLC, Steven B. Schnall and Joseph V. Fierro, dated April 29, 2004. (Incorporated by reference to Exhibit 10.89 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.90	Third Amended and Restated Promissory Note, issued by The New York Mortgage Company, LLC on August 31, 2003, as further amended and restated on December 23, 2003, February 26, 2004 and May 26, 2004, in the principal amount of \$11,432,550 payable to Steven B. Schnall. (Incorporated by reference to Exhibit 10.90 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).

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<u>Exhibit</u>	<u>Description</u>
10.91	Third Amended and Restated Promissory Note, issued by the New York Mortgage Company, LLC on August 31, 2003, as further amended and restated, on December 23, 2003, February 26, 2004 and May 26, 2004, in the principal amount of \$2,274,352 payable to Joseph V. Fierro. (Incorporated by reference to Exhibit 10.91 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.92	Form of Employment Agreement between New York Mortgage Trust, Inc. and Steven B. Schnall. (Incorporated by reference to Exhibit 10.92 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.93	Form of Employment Agreement between New York Mortgage Trust, Inc. and David A. Akre. (Incorporated by reference to Exhibit 10.93 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.94	Form of Employment Agreement between New York Mortgage Trust, Inc. and Raymond A. Redlingshafer, Jr. (Incorporated by reference to Exhibit 10.94 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.95	Form of Employment Agreement between New York Mortgage Trust, Inc. and Michael I. Wirth. (Incorporated by reference to Exhibit 10.95 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.96	Form of Employment Agreement between New York Mortgage Trust, Inc. and Joseph V. Fierro. (Incorporated by reference to Exhibit 10.96 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.97	Form of Employment Agreement between New York Mortgage Trust, Inc. and Steven R. Mumma. (Incorporated by reference to Exhibit 10.97 to the Company's Registration Statement on Form S-11 as filed with the Securities and Exchange Commission (Registration No. 333-111668), effective June 23, 2004).
10.98	Amendment No. 1 to Employment Agreement between New York Mortgage Trust, Inc. and Steven R. Mumma, dated December 2, 2004.
10.99	Amended and Restated Credit and Security Agreement between HSBC Bank USA, National Association, National City Bank of Kentucky, JP Morgan Chase Bank, N.A. and The New York Mortgage Company LLC, dated as of February 1, 2005.
10.100	Amended and Restated Master Loan and Security Agreement between New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc. and Greenwich Capital Financial Products, Inc., dated as of December 6, 2004.
21.1	List of Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm (Deloitte & Touche LLP).
31.1	Section 302 Certification of Co-Chief Executive Officer.
31.2	Section 302 Certification of Co-Chief Executive Officer.
31.3	Section 302 Certification of Chief Financial Officer.
32.1	Section 906 Certification of Co-Chief Executive Officers.
32.2	Section 906 Certification of Chief Financial Officer.

**AMENDMENT NO. 1
TO
EMPLOYMENT AGREEMENT OF
STEVEN R. MUMMA**

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT OF STEVEN R. MUMMA, made as of December 2, 2004, between New York Mortgage Trust, Inc., a Maryland corporation (the "Company"), and Steven R. Mumma (the "Executive") ("Amendment No. 1"):

WHEREAS, the Executive and the Company entered into an Employment Agreement dated as of June 29, 2004 (the "Employment Agreement"); and

WHEREAS, the parties desire to amend the Employment Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the parties hereby agree as follows:

1. Section 5(a) of the Employment Agreement is hereby deleted in its entirety and the following is hereby substituted in lieu thereof:

“(a) *Base Salary.* The Company shall pay the Executive a base salary annually (the "Base Salary"), which shall be payable in periodic installments according to the Company's normal payroll practices. The initial Base Salary shall be \$212,000. During the Term, the Board or the Compensation Committee of the Board (the "Compensation Committee") shall review the Base Salary at least once a year to determine whether the Base Salary should be increased effective the following January 1; provided, however, that on January 1, 2005, the initial Base Salary shall be increased to \$300,000, and on each January 1 thereafter during the Term, the Base Salary shall be increased by a minimum positive amount equal to the Base Salary in effect on January 1 of the prior year multiplied by the increase in the Consumer Price Index for such year. The amount of the increase shall be determined before March 31 of each year and shall be retroactive to January 1. The Base Salary, including any increases, shall not be decreased during the Term. For purposes of this Agreement, the term "Base Salary" shall mean the amount established and adjusted from time to time pursuant to this Section 6(a).”

2. Except to the extent hereby amended, the Employment Agreement is hereby confirmed and ratified and shall continue in full force and effect.

3. The effective date of this Amendment No. 1 is December 2, 2004.

[Signatures to appear on the following page]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to Employment Agreement of Steven R. Mumma as of the date first written above.

NEW YORK MORTGAGE TRUST, INC.:

By: /s/ STEVEN B. SCHNALL

Name: Steven B. Schnall

Title: Co-Chief Executive Officer

Dated: December 2, 2004

EMPLOYEE:

/s/ STEVEN R. MUMMA

Name: Steven R. Mumma

Title: Chief Operating Officer
and Vice President

Dated: December 2, 2004

Exhibit 21.1

NEW YORK MORTGAGE TRUST, INC.

List of Subsidiaries

EXHIBIT 10.99

HSBC BANK USA, NATIONAL ASSOCIATION
(SUCCESSOR BY MERGER TO HSBC BANK USA),

NATIONAL CITY BANK OF KENTUCKY,

JPMORGAN CHASE BANK, N.A.

HSBC BANK USA, NATIONAL ASSOCIATION

(SUCCESSOR BY MERGER TO HSBC BANK USA) AS SWINGLINE LENDER

HSBC BANK USA, NATIONAL ASSOCIATION

(SUCCESSOR BY MERGER TO HSBC BANK USA), AS AGENT,

NATIONAL CITY BANK OF KENTUCKY, AS DOCUMENTATION AGENT

AND

THE NEW YORK MORTGAGE COMPANY LLC

AMENDED AND RESTATED
CREDIT AND SECURITY AGREEMENT

DATED AS OF FEBRUARY 1, 2005

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**AMENDED AND RESTATED
CREDIT AND SECURITY AGREEMENT**

THIS AGREEMENT, dated as of the Agreement Date among THE NEW YORK MORTGAGE COMPANY LLC, a New York limited liability company with offices at 1301 Avenue of the Americas, 7th Floor, New York, New York 10019 (the "Company"), HSBC BANK USA, NATIONAL ASSOCIATION, successor by merger to HSBC Bank USA, a national banking association, with offices at c/o Mortgage Warehouse Lending Department, One HSBC Center, 27th Floor, Buffalo, New York 14203 ("HSBC"); NATIONAL CITY BANK OF KENTUCKY, a national banking association, with offices at 101 South 5th Street, Louisville, Kentucky 40202 ("NATIONAL CITY"), and JPMORGAN CHASE BANK, N.A., a national banking association with offices at 707 Travis, 6th Floor North, (P.O. Box 2558) Houston, Texas 77002 ("Chase" and together with HSBC and NATIONAL CITY, "Banks"); HSBC BANK USA, NATIONAL ASSOCIATION, as Swingline Lender; NATIONAL CITY BANK OF KENTUCKY, as Documentation Agent; and HSBC BANK USA, NATIONAL ASSOCIATION, as Agent, evidences:

INTRODUCTION

This Agreement provides for a credit facility to enable the Company to obtain interim financing with which to fund certain mortgage loans originated by the Company. This Agreement sets forth the terms and conditions under which the facility will be advanced, the interest and other charges payable to Agent, Swingline Lender and the Banks, repayment terms, and warranties, representations and covenants in connection with the facility.

ARTICLE I. DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined shall have the meanings set forth below:

Agent: HSBC Bank USA, National Association acting in the manner and to the extent described in Article IX hereof, or a successor thereto appointed in accordance with said Article.

Adjusted Net Worth: Book Net Worth less all assets deemed to be ineligible at the sole discretion of the Banks.

Advance: A disbursement of a portion of the Credit; see Article II.

Agreement Date: As of January 3, 2005

"Alt A" Loan: A Qualifying Mortgage which conforms to the underwriting criteria of Investors generally for loans which are commonly referred to in the secondary market as "Alt A" or "A-minus" loans and has a FICO score of not less than 620.

Bailee Agreement: Letter agreement whereby an Investor agrees to hold one or more Loan Documents as bailee for Agent subject to the Security Interest.

Book Net Worth: An amount equal to the Guarantor's paid-in capital and retained earnings, as determined under GAAP.

Business Day: Any day other than Saturday, Sunday or a day on which banks in New York State are required or authorized to close by law or regulation.

Collateral: As defined in Section 4.1.

Collateral Report: A report, form and content satisfactory to the Banks itemizing the Collateral, including the principal amount of each Qualifying Mortgage, the amount of each

Advance, the date of each Advance and the number of days each Advance has remained outstanding and unpaid.

Collateral Value: As defined in Section 6.13(C).

Commitment: The agreement by an Investor to purchase Qualifying Mortgages.

Conforming Mortgage Loan: A Qualifying Mortgage the principal balance of which does not exceed the then-current maximum loan limits for purchase by FHLMC and Fannie Mae.

Cooperative Loan: A Qualifying Mortgage secured by the pledge of an interest in a cooperative apartment.

Construction Advance shall mean an Advance to fund the initial draw of a loan secured by a Construction Mortgage.

Construction Mortgage shall mean a mortgage loan secured by a first mortgage, the proceeds of which will be used for the purchase of land and/or improvement of a one- to four-family residence which loan is also:

- A. Underwritten and pre-approved by IndyMac Bank (and in any event has a FICO score of not less than 620);
- B. Evidenced, secured and assigned by the Loan Documents, which are delivered to HSBC within the Delivery Period; and
- C. Not in default at the time so submitted.

Credit: The credit facilities governed by this Agreement.

Credit Amount: ONE HUNDRED FIFTY MILLION AND NO/100 DOLLARS

(\$150,000,000.00).

Credit Notes: The Company's promissory notes to the Banks dated the Agreement Date, and any renewal, replacement, extension or amendment thereto.

Default: An event which, with the giving of notice or passage of time or both, would constitute an Event of Default.

Delivery Period: Five Business Days after an Advance.

Documentation Agent: NATIONAL CITY, acting in the manner and to the extent described in Article X of this Agreement, or a successor thereto appointed in accordance with said Article.

"Dry Funding" Advance: An Advance made pursuant to Section 2.3A.

Electronic Tracking Agreement: The Electronic Tracking Agreement dated as of July 19, 2004 among HSBC BANK USA, NATIONAL ASSOCIATION (as successor by merger to HSBC Bank USA), MERS, MERSCORP and The New York Mortgage Company, LLC.

Event of Default: As defined in Article VII.

Facility Fee: Those fees set forth in Section 6.20 hereof.

Financing Statement: UCC-1 financing statement evidencing the pledge to the Company of the lessee's interest in a cooperative apartment securing a Qualifying Mortgage, which financing statement shall have been duly filed in the appropriate UCC records so as to perfect the Company's security interest.

FHA: United States Federal Housing Administration.

FHLMC: Federal Home Loan Mortgage Corporation.

GAAP: Those generally accepted accounting principles and practices which are from time to time recognized as such by the Financial Accounting Standards Board (or any generally recognized successor).

GNMA: Government National Mortgage Association.

Guarantor: New York Mortgage Trust, Inc.

Guaranty: The guaranty of the Guarantor of the repayment of the Credit to the Banks, when and as due.

Investor: A secondary market purchaser of Qualifying Mortgages, which purchaser is approved by Agent.

Loan Documents: The documents relating to a specific Qualifying Mortgage, namely: (a) original note duly endorsed in blank, (b) a copy of said note, (c) a certified copy of the mortgage, (d) an unrecorded but recordable assignment in blank of the mortgage or a MERS assignment of the applicable mortgage in the format as may be prescribed by MERS from time to time executed in recordable form in blank, (e) Investor Commitment in form acceptable to Agent, and (f) such other normal and customary documents as Agent may require. If appropriate filing and recording information regarding the applicable Qualifying Mortgage, including the MERS Identification Number ("MIN") has not been inserted into the assignment and the Agent has determined that such information is necessary to perfect its security interest in such Qualifying Mortgage, the Company shall promptly provide such information to the Agent when available and hereby authorizes the Agent to insert such information as appropriate (whether or not such information is supplied by the Agent or the Company); however, the Agent shall have no obligation to insert such information, and may require the missing information to be completed by the Company. If the Qualifying Mortgage is a Construction Mortgage, Loan Documents mean the documents set forth above as well as a copy of the appraisal and, if applicable, purchase contract for the property to be acquired with the applicable Construction Advance. If the Qualifying Mortgage is a Cooperative Loan, Loan Documents means:

(a) original note duly endorsed in blank; (b) a copy of said note; (c) certified copy of the lessee's shares of stock; (d) certified copy of security agreement between lessee and the Company (e) certified copy of the assignment by lessee to the Company of lessee's proprietary lease; (f) acknowledgement copy of the filed Financing Statement; and (g) original UCC-3 assignment of the Financing Statement by the Company (with assignee blank).

Majority Banks: Banks the stated minimum principal balance of whose Credit Notes equal 66.67% or more of the Credit Amount.

Material Adverse Change: As defined in Section 7.5.

Maximum Advance Amount: (a) Except with respect to Repurchase Advances and Construction Advances, 98% of the lesser of (i) the Investor's purchase price of the Qualifying Mortgage (up to a maximum of par) or (ii) the outstanding principal balance of the Qualifying Mortgage, for which Qualifying Mortgage an Advance has not theretofore been made, (b) with respect to Repurchase Advances, 70% of the least of (i) the Investor's purchase price of the applicable mortgage (up to a maximum of par), (ii) the market value of property secured by the applicable mortgage and (iii) the outstanding principal balance of the Repurchase Loan, for which Repurchase Loan an Advance has not theretofore been made and (c) with respect to Construction Advances, 90% of the lesser of (i) the actual cost of the land and/or improvements for which the initial draw is intended pursuant to IndyMac Bank's approval specifications; or (ii) the appraised value of the property secured by the applicable mortgage.

MERS The Mortgage Electronic Registration System, Inc.

MERSCORP MERSCORP, Inc.

MERS Loan Any Qualifying Mortgage made by the Company that is secured by a MERS Mortgage.

MERS Member: Any entity which is a member of MERS, in good standing and in compliance with all rules, regulations, procedures and requirements set forth by MERS, including, but not limited to the payment of membership dues.

MERS Mortgage: Any Qualifying Mortgage registered by the Company on the MERS System.

MERS System: The Mortgage Electronic Registration System established by MERS.

Non-Conforming Mortgage Loan: A Qualifying Mortgage the principal balance of which exceeds the then-current maximum loan limits for purchase by FHLMC and Fannie Mae.

Notice Address:

a) With respect to the Company:

The New York Mortgage Company LLC 1301 Avenue of the Americas, 7th Floor New York, New York 10019

b) With respect to HSBC as Agent, Swingline Lender, and Bank:

HSBC Bank USA, National Association Mortgage Warehouse Lending Department One HSBC Center, 27th Floor Buffalo, New York 14203
Attention: Manager, Mortgage Warehouse Lending

c) With respect to NATIONAL CITY as Documentation Agent and Bank:

National City Bank of Kentucky 101 S. Fifth Street, 6th Floor Louisville, Kentucky 40202 Attention: Charles Ezell, Vice President

d) With respect to Chase as a Bank:

JPMorgan Chase Bank, N.A.

707 Travis, 6th Floor North
Houston, Texas 77002 (for messenger deliveries)
P.O. Box 2558
Houston, Texas 77252 (for mail deliveries)

Attention: Michael Nicholson Tel: 713-216-5335
Fax: 713-216-1567

Pension Plan: Any pension plan as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974 as amended ("ERISA") which is a multiemployer plan or single employer plan as defined in Section 4001 of ERISA and subject to Title IV of ERISA and which is (a) a plan maintained by the Company or any Subsidiary for employees or former employees of the Company or of any Subsidiary, (b) a plan to which the Company or any Subsidiary contributes or is required to contribute, (c) a plan to which the Company or any Subsidiary was required to make contributions at any time during the five calendar years preceding the Agreement Date, or (d) any other plan with respect to which the Company or any Subsidiary has incurred or may incur liability, including contingent liability, under Title IV of ERISA, to such plan or to the Pension Benefit Guaranty Corporation. For purposes of this definition and for purposes of Sections 5.7, 6.14 and 7.7 hereof, "Company" shall include any trade or business (whether or not incorporated) which, together with the Company or a Subsidiary, is deemed to be a "single employer" within the meaning of Section 4001(b)(1) of ERISA.

Pro Rata Share: The percentage which the outstanding principal amount disbursed by a Bank pursuant hereto bears to the total outstanding principal balance of the Credit Amount, but not including Delinquent Amounts or Excess Contributions as defined in

Section 2.3C hereof, and not including Swingline Advances; provided, however, that for purposes of calculating the obligation of each Bank to make Advances, each Bank's Pro Rata Share shall be the percentage which the face amount of that Bank's Credit Note (not including the Swingline Note) bears to the Credit Amount (i.e., HSBC - 50.0%, NATIONAL CITY -16.67% and Chase -33.33%).

Qualifying Mortgage: A fixed or adjustable rate conventional, FHA or VA mortgage loan secured by a first or second mortgage on a one- to four-family residence (or, in the case of a Cooperative Loan, by a pledge of an interest in a cooperative apartment) which loan is also:

A. Covered by and closed in accordance with a Commitment by an Investor, (or recommitted for purchase at a price not less than the original Commitment);

B. In conformance with FHLMC, Fannie Mae, FHA or VA underwriting standards, as applicable, and the special standards of the respective Investors, and including "Alt A" Loans and Subprime Mortgage Loans;

C. Evidenced, secured and assigned by the Loan Documents, which are delivered to HSBC within the Delivery Period.

D. Fully advanced; not in default at the time so submitted; not subject to any modification, amendment, or waiver; in compliance with all applicable disclosure and consumer protection statutes and regulations including without limitation Truth-In-Lending and Regulation Z; in compliance with secondary market standards respecting fire and casualty insurance; and encumbering property which is insured if and as required under the National Flood Insurance Act of 1968, as amended;

Remittance Account: A depository account owned and maintained by Agent.

Repayment: As defined in Section 2.5.

Reportable Event: Any event with regard to a Pension Plan described in Section 4043(b) of ERISA, or in regulations issued thereunder.

Repurchase Advance shall mean an Advance requested to fund a Repurchase Loan.

Repurchase Loan shall mean a mortgage loan repurchased by the Company from an Investor for reasons other than fraud that meets the following conditions: (i) no notice or other indication has been given by FHA or VA challenging the obligations of FHA or VA to pay the full amount due on any insurance or guaranty certificate in connection with such mortgage loans (and in good faith estimation of the Company, no such challenge is forthcoming); (ii) the mortgage loan does not have any payments more than seven hundred twenty (720) days past due (unless the borrower of such mortgage loan filed a voluntary bankruptcy petition or had an involuntary bankruptcy petition filed against it while the payments on such mortgage loan were past due, in which case such seven hundred twenty (720) day period shall be extended to one thousand eighty (1080) days); (iii) the related Repurchase Advance shall be due and payable no later than one hundred eighty (180) days after the date of such Repurchase Advance, or earlier upon receipt of proceeds from the sale of the property, sale of the mortgage or settlement of the claim with the Investor, insurer or guarantor; (iv) not more than ninety (90) days have passed since reinstatement of the mortgage loan; (v) the mortgage loan is not a Subprime Mortgage Loan and (vi) the mortgage loan shall not be a mortgage loan which in good faith estimation of the Company is deemed to be a "no bid" candidate under the current VA practice, provided that

such estimation by the Company may take into account the amount of any buy down of the principal balance of such mortgage loan which has actually been made by the Company, or is anticipated to be made by the Company, provided that the amount of any such anticipated buy down shall be deducted from the Collateral Value of such mortgage loan.

Request for Advance: As defined in Section 2.3 A(i).

Sale Date: The date on which an Investor is required to make payment pursuant to a Commitment.

Second Mortgage Loan: A Qualifying Mortgage secured by a second-priority lien, including, without limitation, Qualifying Mortgages which secure home equity lines of credit.

Security Interest: The security interest granted by the Company to Agent, on behalf of the Banks, in the Collateral.

Subprime Mortgage Loan: A Qualifying Mortgage which is rated "B", or "C" grade by the applicable Investor and, in any event, a loan that (i) does not conform with Fannie Mae or FHLMC underwriting standards and (ii) has a FICO score ranging from 580 to 619.

Subsidiary: Any corporation of which at least 50% of the voting stock is owned by the Company directly, or indirectly through one or more Subsidiaries. If the Company has no Subsidiaries, the provisions of this Agreement relating to Subsidiaries shall be inapplicable, without affecting the applicability of such provisions to the Company alone.

Swingline: The credit facility governed by Section 2.4 hereof, from which Advances will be funded and to which Repayments will be credited, subject to the terms and conditions of Section 2.4.

Swingline Lender: HSBC, acting in such capacity in accordance with Section 2.4, or a successor thereto appointed in accordance with said section.

Swingline Note: The Credit Note evidencing the Swingline Advances.

Term: As set forth in Section 2.2.

VA: Veterans Administration.

"Wet Funding" Advance: An Advance made pursuant to Section 2.3B.

ARTICLE II. THE CREDIT

2.1 Agreement to Lend. Each of the Banks, to the extent of its Pro Rata Share, agrees on the terms and conditions and relying on the representations and warranties set forth herein to lend to the Company, and the Company agrees to borrow from the Banks, up to the Credit Amount. Individual Advances of the Credit shall be made as requested by the Company from time to time. The aggregate amount of all Advances shall not exceed the Credit Amount. Following repayments of Advances, the Banks will make readvances under the same terms and conditions, provided that Advances outstanding at any time shall not exceed the lesser of the amount of the Credit Amount or the Maximum Advance Amount. The Credit will be evidenced by the Credit Notes.

2.2 Term.

A. This Agreement will be in effect until June 29, 2005, when all amounts outstanding hereunder and under the Credit Notes shall be due and payable; provided, however, that any Bank may earlier terminate this Agreement with respect to the Pro Rata Share of that Bank following at least ninety (90) days prior written notice to the Company, Agent, and the

other Bank(s), but in any event, the foregoing notice requirement shall not obligate any Bank to make Advances beyond June 29, 2005. If any Bank shall give such notice, on the effective date of termination the Company shall pay to such Bank, by wire transfer of immediately available funds, such Bank's Pro Rata Share of outstanding Advances together with accrued and unpaid interest thereon to the date of payment. Upon the effective date of any termination by a Bank of its Pro Rata Share of the Credit Amount, (i) the Credit Amount shall be reduced accordingly, and (ii) the terminating Bank's Share of the Facility Fee will cease to accrue. Agent agrees to utilize its best efforts to replace a withdrawing Bank, but no Bank shall be obligated to purchase the Pro Rata Share of a withdrawing Bank. Any replacement lender proposed by Agent shall be subject to the approval of the Company, which approval the Company agrees not to unreasonably withhold or delay.

B. At any time subsequent to ninety (90) days from the Agreement Date, the Company may terminate this Agreement following at least ninety (90) days prior written notice to the Banks. No such termination shall affect the rights of the parties hereto as to any Advances previously made, which shall continue to be governed hereby, nor shall such termination relieve the Company from its obligation herein to pay fees and expenses (including without limitation accrued and unaccrued Facility Fees) in connection with the Credit.

2.3 Disbursement of the Credit. Subject to the terms and conditions hereof, the Company may request "Dry Funding" Advances and "Wet Funding" Advances.

A. "Dry Funding" Advances.

(i) Before 12:00 noon Agent's local time, one Business Day before a proposed Advance, the Company will request such Advance in writing by providing to

Agent by telefax or electronic mail (i) the information on Agent's "Request For Advance", in the form provided to the Company by Agent ("Request for Advance") which includes: the mortgagors' last names, the property address, the loan amount, loan number, loan type (FHA, VA or conventional, as applicable), loan sub-type, interest rate, commitment number, Investor Sale Date and warehousing amount requested.

(ii) Also before 12:00 noon Agent's local time, one Business Day before a proposed Advance, the Company shall deliver or cause to be delivered to Agent or its designee, the Loan Documents for Agent's review and approval.

(iii) Following said approval, on the date of the requested Advance, and provided that no Default, Event of Default or Material Adverse Change has occurred, Swingline Lender will make an Advance of the requested amount (or so much thereof as has been approved by Agent) to the Company up to the Maximum Advance Amount. Advances shall be made by deposit by Swingline Lender into an Agent account in the name of the Company for further disposition as the Company may direct. Each Advance shall be used only for funding the loans identified on the Request For Advance. If a loan for which an Advance has been made does not close, the Company will notify Agent immediately, and Agent will charge the account for that portion of the Advance attributable to the unclosed loan.

B. "Wet Funding" Advances.

(i) Before 10:00 a.m. Agent's local time on the Business Day of a proposed Advance, the Company will request such Advance in writing by providing to Agent by telefax or electronic mail (i) the information on Agent's "Request For Advance", in the form provided to the Company by Agent, which includes: the mortgagors' last names, the

property address, the loan amount, loan number, loan type (FHA, VA or conventional, as applicable), loan sub-type, interest rate, commitment number, Investor Sale Date and warehousing amount requested.

(ii) On the date of the requested Advance (but not earlier than one day prior to the loan closing date) and provided that no Default, Event of Default or Material Adverse Change has occurred, Swingline Lender will make an Advance of the requested amount (or so much thereof as has been approved by Agent) to the Company up to the Maximum Advance Amount. Advances shall be made by deposit by Swingline Lender into Agent's account in the name of the Company for further disposition as the Company may direct. Each Advance shall be used only for funding the loans identified on the Request for Advance. If a loan for which an Advance has been made does not close, the Company will notify Agent immediately, and Agent will charge the account for that portion of the Advance attributable to the unclosed loan.

(iii) Within the Delivery Period, the Company shall deliver or cause to be delivered to Agent or its designee, the Loan Documents for Agent's review and approval.

C. Conditions to Advancing Funds.

(i) If any Bank fails to make funds available to Swingline Lender according to the terms of Section 2.4 B. hereof as, when and to the full extent required hereunder, such Bank shall be in default of its obligations hereunder until such time as such Bank cures such failure (hereinafter, a Bank that is so in default shall be referred to as a

"Delinquent Party" and the amount which a Delinquent Party is obligated to fund but does not fund will be referred to as the "Delinquent Amount").

(ii) A Delinquent Party shall be deemed to have assigned any and all payments due to it, whether with respect to principal, interest, fees or otherwise (the "Assigned Payments"), to the other Banks if such other Banks contribute amounts in excess of their respective Pro Rata Share of any Advance (the "Excess Contribution") in order to fund the Delinquent Amount. Assigned Payments shall be applied, but only to the extent necessary, to the reduction of any Excess Contributions until the Excess Contributions have been repaid. This assignment and authorization shall be deemed to be a power coupled with an interest and shall be absolute and irrevocable. Notwithstanding anything contained in this Agreement to the contrary, the payment of Excess Contributions shall have priority over all payments (including principal, interest and fees) due to the Delinquent Party until the Bank which made the Excess Contribution receives its allocable portion of the Excess Contribution.

(iii) Nothing contained in this Agreement or otherwise shall (i) create any obligation of any Bank to disburse more than its Pro Rata Share of any Advance, (ii) create any obligation of Swingline Lender to disburse any amount which would cause the unpaid principal balance of the Swingline Note to exceed \$15,000,000.00; (iii) relieve any Bank or Swingline Lender from its obligation to the Company to disburse funds as required hereby, or (iv) prejudice any rights or remedies the Company may have against any Bank or Swingline Lender as the result of such Bank's failure to so disburse.

D. Sublimits.

(i) Notwithstanding anything to the contrary herein, the aggregate amount of "Wet Funding" Advances outstanding at any one time shall not exceed (a) 40% of the Credit Amount during the first and last five (5) Business Days of each calendar month, and (b) 30% of the Credit Amount at any other time.

(ii) Notwithstanding anything to the contrary herein,

(a) the aggregate amount of Advances outstanding at any one time secured by Non-Conforming Mortgage Loans shall not exceed 75% of the Credit Amount, and (b) no Advance in an amount exceeding \$2,000,000 and secured by a Non-Conforming Mortgage Loan (or Non-Conforming Mortgage Loans if the Qualifying Mortgages encumber the same real property) shall be made without prior written notice to, and authorization by, the Agent which authorization shall be in the Agent's sole discretion.

(iii) Notwithstanding anything to the contrary herein,

(a) the aggregate amount of Advances outstanding at any one time secured by Subprime Mortgage Loans shall not exceed 5% of the Credit Amount, and (b) no Advance in an amount exceeding \$500,000 and secured by a Subprime Mortgage Loan or Subprime Mortgage Loans shall be made without prior written notice to, and authorization by, the Agent, which authorization shall be the Agent's sole discretion.

(iv) Notwithstanding anything to the contrary herein, the aggregate amount of Advances outstanding at any one time secured by Cooperative Loans shall not exceed 25% of the Credit Amount.

(v) Notwithstanding anything to the contrary herein, the aggregate amount of Advances outstanding at any one time secured by Second Mortgage Loans shall not exceed 10% of the Credit Amount.

(vi) Notwithstanding anything to the contrary herein, the aggregate amount of Advances outstanding at any one time secured by Qualifying Mortgages for which Loan Documents have been returned to the Company under trust receipt pursuant to Section 12.6 hereof shall not exceed 10% of the Credit Amount.

(vii) Notwithstanding anything to the contrary herein, the aggregate amount of Advances outstanding at any one time secured by Repurchase Loans shall not exceed \$2,500,000.

(viii) Notwithstanding anything to the contrary herein, the aggregate amount of Advances outstanding at any one time secured by Construction Mortgages shall not exceed \$10,000,000.

2.4 Swingline.

A. Swingline Advance: Subject to the terms and conditions of this Agreement, relying upon the representations and warranties set forth in this Agreement, and so long as the aggregate outstanding principal amount of all Advances are less than or equal to the Credit Amount, Swingline Lender agrees to make to the Company Swingline Advances totaling not more than FIFTEEN MILLION DOLLARS (\$15,000,000.00) as requested by the Company by Requests for Advance as provided in Section 2.3 A. or Section 2.3 B., as applicable. Swingline Advances will be evidenced by the Swingline Note and shall bear interest as provided therein.

B. Settlement of Swingline Advances.

(i) Each Bank agrees to purchase an undivided interest in all outstanding Swingline Advances by paying to Swingline Lender such Bank's Pro Rata Share of such Swingline Advances:

(a) On Thursday of each calendar week; or

(b) Whenever the Swingline Lender requires settlement by notice to the Banks;

(ii) Payments to Swingline Lender due pursuant to this

Section shall be made by wire transfer not later than 5 p.m. (Agent's local time) on the Business Day the notice requiring settlement was received by telefax or electronic mail, if such notice was received prior to 3 p.m. (Agent's local time), and not later than 10 a.m. (Agent's local time) on the following Business day if the notice was received after 3 p.m., and shall be promptly applied against outstanding Swingline Advances;

(iii) Amounts paid by each Bank to purchase interests in Swingline Advances shall be evidenced on such Bank's Credit Note;

(iv) The obligation of each Bank hereunder to purchase interests in Swingline Advances is absolute and unconditional, regardless of any actual or incipient Event of Default or other event or condition which would otherwise excuse a Bank from funding Advances;

(v) Swingline Lender will forward to each Bank such Bank's Pro Rata Share of any Swingline Credit balance resulting from payments made and credited pursuant to Section 2.5 H.

C. Swingline Lender. Resignation, disqualification and succession of Swingline Lender shall be governed by the provisions of Section 9.8.

2.5 Repayments of the Credit.

A. On the earliest of (i) the Sale Date specified in each Commitment, (ii) ninety (90) days after a Bank has made an Advance for the Qualifying Mortgages listed in said Commitment (except that Qualifying Mortgages (x) committed for bulk sale (y) not otherwise due for repayment, and (z) secured by Advances equal to not more than 25% of the Credit Amount, may remain for up to 120 days. Repurchase Loans may remain for up to 180 days and Advances for Construction Mortgages may remain up to thirty (30) days after a Bank has made an Advance), (iii) thirty (30) days after Agent delivers any Loan Documents pertaining to a Qualifying Mortgage or Construction Mortgage to an Investor, (iv) the date on which this Agreement expires or becomes ineffective because of the termination, or (v) fourteen (14) days after any original note evidencing a Qualifying Mortgage or Construction Mortgage has been returned to the Company under a trust receipt, the amount equal to the Advance made with regard to the related Qualifying Mortgage or Construction Mortgage shall be repaid ("Repayment"). In connection with each Repayment the Company shall provide to Agent a completed "Repayment Schedule" in the form provided to the Company by Agent listing the Qualifying Mortgages to which the repayment pertains. On or prior to the Sale Date for each Commitment, and upon receipt from the Company of a written request on Agent's "Request For Delivery", in the form provided to the Company by Agent, Agent shall forward the original notes evidencing the Qualifying Mortgages, together with the UCC-3 assignment of the Financing Statement (in respect to Cooperative Loans) to the applicable Investor or its designee pursuant to

a Bailee Agreement with said Investor; provided, however that Agent shall not be required to forward any such documents unless the Request For Delivery is received by Agent prior to 12:00 noon, Agent's local time, two Business Days prior to the requested delivery, and Agent has had the Loan Documents in its possession for at least two Business Days. If loans are to be sold to FHLMC or Fannie Mae or securitized by GNMA, the Company will also provide the original and any required copies of all necessary or appropriate forms to effect delivery and payment for such notes. Prior to the release of Agent's Security Interest in the Collateral, the Company shall cause the Investor to remit the proceeds from the sale of mortgage loans via wire transfer directly into the Remittance Account. If the amount remitted is less than the principal payment due on the Sale Date, the Company shall pay the remaining amount due against the respective Advance directly to Agent by wire transfer to the Remittance Account on such Sale Date. Provided there is no Event of Default then existing, Agent shall adjust in favor of the Company any excess proceeds received from Investors after paying each Bank's Pro Rata Share of such remittance.

B. No later than the seventh (7th) Business Day of each month, Agent shall send to the Company and to each Bank by facsimile transmission an interest statement setting forth in reasonable detail a calculation of the amount of interest payable for the immediately preceding calendar month (based on daily outstanding Advances, a year of 360 days and actual days elapsed). On or before the tenth (10th) Business Day of each month, the Company shall pay to Agent by wire transfer each Bank's Pro Rata Share of the accrued interest set forth in such statement. Agent shall promptly remit to each Bank its Pro Rata Share of such interest payment. If the Company or any Bank disputes the amount of interest set forth in a

monthly interest statement, appropriate adjustment shall be made on the next succeeding interest statement if the Agent's calculation is determined to be in error.

C. The amount which would otherwise be available for the next Advance shall be reduced by, or, if the Agent shall so elect by notice to the Company, in accordance with subsection G hereof, the Company shall immediately repay by wire transfer into the Remittance Account an amount equal to, the amount of the portion of any Advance made on the security of a loan which is either (i) more than sixty (60) days delinquent, (ii) not purchased by an Investor on the Sale Date provided for in its Commitment, or (iii) not a Qualifying Mortgage, whereupon Agent will return to the Company the documents held by Agent relating to such loan with endorsements or reassignments necessary to transfer such loans to the Company. Agent shall promptly wire transfer to each Bank its Pro Rata Share of such repayments.

D. If the amount of Advances outstanding at any time should exceed the aggregate Maximum Advance Amount for all Qualifying Mortgages, the Company will immediately repay the amount of such excess into the Remittance Account and the Agent shall promptly disburse to each Bank its Pro Rata Share thereof.

E. Upon the date on which this Agreement terminates (whether by acceleration or otherwise), the Company shall pay to Agent by wire transfer of immediately available funds, each Bank's Pro Rata Share of the outstanding Credit Amount, together with accrued interest to the date of such payment and all other amounts due to it under its Credit Note or this Agreement. If the effective date of termination falls on a date which is not a Business Day, all amounts otherwise due on such date shall be payable on the first Business Day occurring after such payment date, together with interest on the outstanding Credit Amount for such

additional day(s). Immediately upon receipt thereof Agent shall remit to each Bank by wire transfer of immediately available funds each Bank's Pro Rata Share of such payment. Following receipt by each Bank of its Pro Rata Share of the outstanding Credit Amount and all other amounts due to it under its Credit Note and this Agreement, Agent will transfer any remaining Qualifying Mortgages, together with appropriate endorsements or reassignments to the Company.

F. The Company may elect to repay portions of Advances made for particular Qualifying Mortgages. In the event of any such repayment in full and in the absence of Default or Event of Default the Agent shall return to the Company the documents held by the Agent relating to such Qualifying Mortgages, together with endorsements or reassignments necessary to transfer such Qualifying Mortgages to the Company.

G. If for any reason an Investor fails to purchase the subject mortgage loan covered by its Commitment on the Sale Date or becomes insolvent or the subject of a proceeding under the Bankruptcy Code, or ceases to carry on its business, the Company shall, at Agent's option, either (i) obtain and provide to Agent another Commitment acceptable to Agent to purchase the subject mortgage loan; or (ii) immediately repay to Agent by wire transfer all amounts advanced for the non-purchased loan or loans in question (or in the case of the Investor's insolvency, bankruptcy proceeding, or cessation of business, all mortgage loans covered by that Investor's Commitments); or (iii) replace such mortgage loan or loans with a Qualifying Mortgage of market value equal to or greater than the Maximum Advance Amount applicable to the replaced mortgage loan or loans, whereupon Agent shall return to the Company the Loan Documents held by Agent relating to the replaced mortgage loan or loans. The

Company shall immediately notify Agent of all delinquencies on any mortgage loans constituting security for the Credit Note and will, at Agent's option, either (i) replace such mortgage loans with Qualifying Mortgages, whereupon Agent shall return to the Company the Loan Documents held by Agent relating to the replaced mortgage loans, or (ii) reduce the amount of principal outstanding under the Credit Notes by the amount of the Advance applicable to such delinquent mortgage loans plus accrued interest.

H. Payments received by Agent after 2:00 p.m. Agent's local time shall be deemed to be received on the next following Business Day. Payments will not be deemed received unless Agent shall have received a completed Repayment Schedule on Agent's form listing the Qualifying Mortgages to which the payment pertains.

ARTICLE III. CONDITIONS TO ADVANCES

3.1 Initial Advance. Each Bank's obligation to make the initial Advance, and the effectiveness of this Agreement, are conditioned upon compliance with the requirements of Section 2.3 hereof and upon the fulfillment of the following conditions.

A. The Company shall have duly executed and delivered to Agent:

(i) This Agreement;

(ii) A copy, certified by a member or manager of the Company, of the consent of the Company's members authorizing the execution, delivery and performance of this Agreement, the Credit Notes and all related documents;

B. The Company shall have duly executed and delivered to each Bank its Credit Note;

C. The Company shall have delivered to the Agent the duly executed Electronic Tracking Agreement.

D. Agent shall have received:

(i) The Guaranty;

(ii) A copy, certified by the Secretary of State of the state of New York, of the Company's filed Articles of Organization;

(iii) A certified copy of the Company's Operating Agreement;

(iv) A certificate of the Secretary of State of the state of New York as to the existence and good standing of the Company;

(v) The favorable opinion of the Company's independent counsel as to the due execution, delivery and enforceability of this Agreement, the Credit Notes and the Guaranty, the due organization and existence of the Company, and such other relevant matters as Agent may require;

(vi) A UCC search against the Company, showing no filings affecting the Collateral;

(vii) Evidence of the insurance coverages required hereby;

(viii) The duly authorized UCC-1 Financing Statement.

(ix) A certified copy of the Certificate or Articles of Incorporation and By-Laws of the Guarantor;

(x) A copy, certified by an officer of the Guarantor, of the resolutions of the Guarantor's board of directors authorizing the execution, delivery and performance of the Guaranty; and

(xi) A certificate of the Secretary of State of the State of Maryland as to the existence and good standing of the Guarantor.

E. All other documents, assurances and matters reasonably required by Agent.

3.2 Conditions to Subsequent Advances. All future Advances shall be subject to compliance with the requirements of Section 2.3 hereof and to such updating of the certificates and opinions referred to in Section 3.1 as Agent may reasonably require from time to time.

3.3 Other Conditions. All Advances shall be subject to Agent's receipt of such additional documents and the Company's compliance with such additional requirements as Agent may reasonably require from time to time, provided that such additional documents or requirements shall not be inconsistent with the existing terms of this Agreement.

3.4 Documents to be Delivered Prior to a Repurchase Advance to Finance a Repurchase Loan. In connection with the request for a Repurchase Advance, the Company shall hold the following Collateral and Loan Documents in trust for the Banks, and shall furnish and deliver such Collateral and Loan Documents to the Agent immediately upon request of the Agent or any Bank; provided, however, the Company shall furnish and deliver the Collateral and Loan Documents listed in subsection (b) below to the Agent in connection with each and every such Repurchase Advance:

(a) The original mortgage securing a mortgage note recorded in the county where the property encumbered is located, and any financing statements filed with respect thereto;

(b) The original mortgage note, executed with respect to such Repurchase Loan, if available, which must be payable to the order of the Company either as the original payee or as subsequent endorsee) and endorsed in blank by the Company (without recourse), or alternatively, if such original mortgage note is unavailable and not in the possession of the Company or any affiliate of the Company, a certified copy thereof together with an acknowledgment letter, in a form prescribed from time to time by the Agent in its sole discretion, provided, however, that the Company shall make every effort to provide the original mortgage note;

(c) At the sole option of the Agent, an appraisal of each property securing the Repurchase Loan which conforms with the requirements of applicable appraisal laws and regulations, or such other evidence of Collateral Value acceptable to the Agent;

(d) (i) An assignment of the mortgage securing the mortgage note by the Company executed in recordable form in blank, or (ii) a MERS assignment of the mortgage securing the mortgage note executed in recordable form in blank. If appropriate filing and recording information regarding such mortgage, including the MIN, has not been inserted into the assignment and the Agent has determined that such information is necessary to perfect its security interest in such mortgage, the Company shall promptly provide such information to the Agent when available and hereby authorizes the Agent to insert such information as appropriate (whether or not such information is supplied to the Agent by the Company), however, the Agent shall not have any obligation to insert such information, and may require such missing information be completed by the Company;

(e) The Request for Advance; and

(f) Such other information and documents as the agent may reasonably request, including without limitation, an executed quit claim deed in recordable form conveying such subject residential property to the Agent for the ratable benefit of the Banks, which deed shall not be recorded except upon the occurrence of an Event of Default, a copy of the FHA/VA conveyance form (e.g., HUD 27011, VA 26-1874 or other applicable forms), if available, and evidence of insurance or guaranty from the pertinent government agency.

Upon the occurrence and during the continuance of an Event of Default, the Company shall at the direction of the Agent, deliver all items referred to in this Section 3.4 to such place as the Agent shall so direct, such items to be held for the benefit and on behalf of the Banks.

ARTICLE IV. SECURITY AGREEMENT

4.1 Grant of Security Interest. This Agreement constitutes a security agreement. As collateral security for the repayment of all sums which may become due under the Credit Note or this Agreement, the Company hereby assigns, pledges, and transfers all its right, title and interest in, and grants to Agent a security interest in the following property (the "Collateral"):

A. All Qualifying Mortgages and all other mortgages which have been represented to Agent to be Qualifying Mortgages, or upon the security of which an Advance has been made, including all Loan Documents and any other documents evidencing or securing the same;

B. All surveys and title insurance policies, commitments, or reports relating to the same;

- C. All hazard insurance policies relating to the same;
- D. All private mortgage insurance policies relating to the same;
- E. All servicing rights relating to the same;
- F. All accounts relating to the same (including, without limitation, escrow accounts, subject to the rights of mortgagors under applicable law);
- G. All files, records, data, correspondence, computer tapes, programs and discs, appraisals, accounting records relating to the same or the servicing thereof;
- H. All Commitments to purchase said Qualifying Mortgages and all other mortgages which have been represented to Agent to be Qualifying Mortgages;
- I. All property of any kind given by the Company to Agent or its designee in furtherance of this Agreement; and
- J. All collections on and proceeds of any of the foregoing.

4.2 Rights of Agent.

- A. With respect to the Collateral, Agent, on behalf of the Banks shall have the rights of a secured party under the Uniform Commercial Code as enacted in the State of New York.
- B. The Company shall not have the right to modify, delete, or waive any material term of any of the Collateral without Agent's prior written consent.

4.3 Income from and Interest on Collateral.

A. Until the occurrence of an Event of Default, the Company reserves the right to receive all income from or interest on the Collateral and if Agent receives any such income or interest prior to such Event of Default, Agent shall pay the same promptly to the Company.

B. Upon the occurrence of an Event of Default, the Company will not demand or receive any income from or interest on such Collateral, and if the Company receives any such income or interest without any demand by it, same shall be held by the Company in trust for the Banks in the same medium in which received, shall not be commingled with any assets of the Company and shall be delivered to Agent in the form received, properly endorsed to permit collection, not later than the next Business Day following the day of its receipt. Agent shall apply the net cash receipts from such income or interest in accordance with Section 8.3 hereof.

4.4 Possession of Collateral. The Company agrees that possession of any of the Collateral by closing attorneys, title companies, or any other bailee acting on the Company's behalf shall be deemed possession by Agent for purposes of perfecting the Security Interest granted hereby.

4.5 Collateral Report. Agent shall provide a Collateral Report to each Bank not later than two Business Days after the end of each calendar month, or at such other intervals as a Bank may request.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

The Company makes the following representations and warranties to the Banks and Agent, which shall be deemed to be continuing representations and warranties so long as any portion of the Credit Amount remains available or any indebtedness of the Company to any Bank or Agent arising pursuant to this Agreement remains unpaid:

5.1 Good Standing and Authority of the Company. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York; has powers to transact the business in which it is engaged; is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of such business requires such licensing or such qualification; and has all necessary power and authority to enter into this Agreement and to execute, deliver and perform this Agreement, the Credit Notes and any other document executed in connection with this Agreement, all of which have been duly authorized by all proper and necessary corporate action.

5.2 Valid and Binding Obligation. This Agreement and any other document executed in connection herewith, and the Credit Notes when executed and delivered, will constitute the legal, valid and binding obligations of the Company, enforceable in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws effecting creditors' rights generally.

5.3 Guaranty. The Guaranty, when executed and delivered, will constitute the legal, valid and binding obligation of the Guarantor, enforceable in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws effecting creditors' rights generally.

5.4 No Pending Litigation. Except as have been or shall be disclosed to Agent in writing, there are no actions, suits, proceedings (whether or not purportedly on behalf of the Company) or investigations pending or, to the knowledge of the Company, threatened against the Company or any Guarantor, if any, or any basis therefor, which, if adversely determined, would, in any case or in the aggregate, materially and adversely affect the property, assets, financial condition or business of the Company or any Guarantor, if any, or materially impair the right or ability of the Company to carry on its operations substantially as now conducted or anticipated to be conducted in the future, or which question the validity of this Agreement, the Credit Notes, the Guaranty, if any, or other documents required by this Agreement, or any action to be taken pursuant to any of the foregoing.

5.5 No Consent or Filing. No consent, license, approval or authorization of, or registration, declaration or filing with, any court, governmental body or authority or other person or entity is required in connection with the valid execution, delivery or performance of this Agreement, the Credit Notes, or other documents required by this Agreement or in connection with any of the transactions contemplated thereby.

5.6 No Violations. The Company is not in violation of any material term of its operating agreement or by-laws, or of any mortgage, borrowing agreement or other instrument or agreement pertaining to indebtedness for borrowed money. The Company is not in violation of any term of any other indenture, instrument or agreement to which it is a party or by which it may be bound, resulting, or which might reasonably be expected to result, in a material and adverse effect upon, its business or assets. The Company is not in violation of any order, writ, judgment, injunction or decree of any court of competent jurisdiction or of any statute, rule or

regulation of any competent governmental authority. The execution and delivery of this Agreement, the Credit Notes and other documents required by this Agreement and the performance of all of the same is and will be in compliance with the foregoing and will not result in any violation or result in the creation of any mortgage, lien, security interest, charge or encumbrance upon any properties or assets except in favor of Agent. There exists no fact or circumstance not disclosed in this Agreement or in the documents furnished in connection herewith which materially adversely affects, or in the future (so far as the Company can now foresee) may materially adversely affect the condition, business or operations of the Company.

5.7 Federal Regulations. The Company is not engaged principally, or as one of its important activities, in the business of extending or arranging for the extension of credit for the purpose of purchasing or carrying "margin security" or "margin stock" (as defined in Regulations G and U issued by the Board of Governors of the Federal Reserve System). Likewise, the Company does not own or intend to carry or purchase any such "margin security" or "margin stock", and the Company will not use the proceeds of any Advance to purchase or carry (or refinance any borrowing, the proceeds of which were used to purchase or carry) any such "margin security" or "margin stock".

5.8 ERISA Matters. No Pension Plan has been terminated or partially terminated or is insolvent or in reorganization, nor have any proceedings been instituted to terminate or reorganize any Pension Plan; neither the Company nor any Subsidiary has withdrawn from any Pension Plan in a complete or partial withdrawal, nor has a condition occurred which if continued would result in a complete or partial withdrawal; neither the Company nor any Subsidiary has incurred any withdrawal liability, including contingent withdrawal liability, to

any Pension Plan pursuant to Title IV of ERISA; neither the Company nor any Subsidiary has incurred any liability to the Pension Benefit Guaranty Corporation other than for required insurance premiums which have been paid when due; no Reportable Event has occurred; and no Pension Plan or other "employee pension benefit plan" as defined in Section 3(2) of ERISA to which the Company or any Subsidiary is a party has an "accumulated funding deficiency" (whether or not waived) as defined in Section 302 of ERISA or in Section 412 of the Internal Revenue Code. Each Pension Plan and each other "employee benefit plan" as defined in Section 3(3) of ERISA to which the Company or any Subsidiary is a party is in substantial compliance with ERISA, and no such plan, or any administrator, trustee or fiduciary thereof has engaged in a prohibited transaction described in Section 406 of ERISA or in Section 4975 of the Internal Revenue Code.

5.9 Collateral. Company represents, and so long as this Agreement is in effect, shall be deemed continuously to represent and warrant that the Company is the owner of the Collateral free of all security interests or other encumbrances except the Security Interest granted herein.

5.10 Subsidiaries. The Company has no Subsidiary or other interest in any other association, corporation, partnership, joint venture, or other business entity not disclosed to Agent on a Schedule hereto.

5.11 Financial Condition. The financial statements which the Company has furnished Agent have been prepared in conformity with GAAP consistently applied and present fairly the financial condition of the Company as of such date and the result of its operations for the period then ended and there has been no material adverse change in said financial condition.

The Company has no contingent obligations, liabilities for taxes or other outstanding financial obligations which are material in the aggregate, which are not otherwise disclosed in the financial statements referred to above.

5.12 Liens. The Company has good and marketable title to all of its properties and assets, which properties and assets are not subject to any mortgage, pledge, title retention lien, or other lien, encumbrance or security interest, except (i) for current taxes not delinquent or for taxes being contested in good faith and by appropriate proceedings, (ii) liens arising in the ordinary course of business for sums not due or sums being contested in good faith and by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services, and (iii) liens in favor of Agent.

5.13 Investment Company Act. The Company is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

5.14 Corporate Takeovers. No portion of the Credit will be used to acquire any security in any transaction which is subject to Section 13 or 14 of the Securities and Exchange Act of 1934, including without limitation Sections 13(d) and 14(d) thereof.

5.15 Insider. The Company is not, and no person having "control" (as the term is defined in 12 U.S.C. Section 375(b)(9)(G) or in regulations promulgated pursuant thereto) of the Company is an "executive officer", "director", or person who "directly or indirectly, or acting through or in concert with one or more persons," owns, controls, or has the power to vote more than 25% of any class of "voting securities" (as those terms are defined in 12 U.S.C. Section 375(9)(b) or in regulations promulgated pursuant thereto) of Agent, any Bank, HSBC (USA) Inc. or any

subsidiary thereof, or of any bank at which a Bank maintains a correspondent account, or of any bank which maintains a correspondent account with a Bank.

ARTICLE VI. COVENANTS

During the Term of this Agreement, and so long as any portion of the Credit shall remain available or any indebtedness of the Company to Agent or Banks shall remain unpaid, the Company will:

6.1 Payments. Duly and punctually pay the principal of and interest on all indebtedness incurred by it pursuant to this Agreement and the Credit Notes in the manner set forth herein and therein.

6.2 Notice. Promptly notify Agent in writing of (a) any pending or future audits of the Company's federal income tax returns by the Internal Revenue Service as soon as the Company has knowledge thereof, and the results of each such audit after its completion; (b) any default by the Company in the performance of, or any modifications of, any of the terms or conditions contained in any agreement, mortgage, indenture or instrument to which the Company is a party or which is binding upon the Company and of any default by the Company in the payment of any of its indebtedness; provided, however, the Company shall not be required to so notify Agent of modifications of any or all terms or provisions of any document or agreement pertaining to its transaction in the ordinary course of business, but which do not pertain to its indebtedness for borrowed money, which do not materially and adversely affect the business or assets of the Company; and (c) receipt by the Company of notices from FHA, VA, Fannie Mae, FHLMC, GNMA, HUD, any Investor, or any state in which the Company transacts business, which notice pertains to the status or qualification of the Company to conduct its business.

6.3 Taxes. Promptly pay and discharge all of its taxes, assessments and other governmental charges (including any charged or assessed on the issuance of the Credit Notes or any of the Qualifying Mortgage notes) prior to the date on which penalties attach thereto, establish adequate reserves for the payment of taxes and assessments and make all required withholding and other tax deposits; provided, however, that nothing herein contained shall be interpreted to require the payment of any tax, assessment or charge so long as its validity is being contested in good faith and by appropriate proceedings diligently conducted, if the Company, upon Agent's request, deposits with Agent, to be held in escrow, such amount being contested.

6.4 Insurance. (a) Keep all its property so insurable insured at all times with responsible insurance carriers against fire, theft and other risks in coverage, form and amount satisfactory to Agent; (b) keep adequately insured at all times in reasonable amounts with responsible insurance carriers against liability on account of errors and omissions, damage to persons or property and under all applicable workers' compensation laws; (c) promptly deliver to Agent certificates of insurance or any of those insurance policies required to be carried by the Company pursuant hereto; and (d) cause each insurance policy to contain a notice of cancellation provision satisfactory to Agent.

6.5 Litigation. Promptly notify Agent in writing as soon as the Company has knowledge thereof, of the institution or filing of any litigation, action, suit, claim, counterclaim or administrative proceeding against, or investigation of, the Company (a) to which the Company is a party by or before any regulatory body or governmental agency; (b) the outcome of which may materially and adversely affect the finances or operations of the Company or the Company's ability to fulfill its obligations hereunder unless adequately covered by insurance; or (c) which

questions the validity of this Agreement, the Credit Notes or any action taken or to be taken pursuant to the foregoing; and furnish or cause to be furnished to Agent such information regarding the same as Agent may request.

6.6 Existence and Eligibility. Maintain its existence in good standing and remain or become duly licensed or qualified and in good standing in each jurisdiction in which the conduct of its business requires such qualification or licensing.

6.7 Books and Records. Keep proper books and records in accordance with GAAP consistently applied, and notify Agent promptly in writing of any proposed change in the location at which such books and records are maintained.

6.8 Compliance with Law. Comply in all material respects with all laws and governmental rules and regulations respecting the transactions which are the subject of this Agreement.

6.9 Access to Records. Permit Agent's authorized representatives, during normal business hours and as often as Agent may reasonably request, to have access to the Company's premises and its financial records pertaining to the transactions contemplated hereby; inspect and copy such records, and discuss the affairs and finances of the Company with appropriate officers of the Company.

6.10 Maintain Qualifications. Maintain its status, as applicable, as an FHA approved direct endorsement mortgagee, an approved lender under the VA guaranty program, and an approved Seller/Service to Fannie Mae, FHLMC and GNMA.

6.11 Financial Reports. Furnish to Agent and the Banks the following financial information, certified true and complete by the Chief Financial Officer of the Company:

A. Balance sheet and income statement of the Company and covenant compliance certificate with covenant calculation attached, as of the end of each calendar quarter, to be furnished not later than forty-five days after the end of each calendar quarter. Such statements shall contain such information as Agent may reasonably request.

B. Annual financial statements of the Company audited by independent certified public accountants acceptable to Agent, to be furnished not later than ninety (90) days after the end of each fiscal year of the Company.

6.12 Pension Reports. With respect to each Pension Plan, the Company will furnish the following to Agent:

A. As soon as possible and in any event within thirty days after the Company knows or has reason to know that any Reportable Event with respect to such Pension Plan has occurred, the statement of the President or chief financial officer of the Company setting forth the details of such Reportable Event and the action which the Company proposes to take with respect thereto;

B. Promptly after the filing thereof with the Secretary of Labor, the Pension Benefit Guaranty Corporation or the Internal Revenue Service, copies of reports (including, without limitation, notices of Reportable Events and annual reports in the Form 5500 Series) filed with respect to each Pension Plan.

6.13 Collateral Value: Margin Call.

- A. Defend the Collateral against the claims and demands of all other parties; keep the Collateral free from all security interests or other encumbrances except those granted herein; not sell, transfer, assign, deliver or otherwise dispose of any Collateral except pursuant to the terms hereof or with the consent of Agent.
- B. Execute and deliver to Agent such financing statements, assignments and other documents and do such other things relating to the Collateral as Agent may request.
- C. Maintain with Agent at all times as security for the Credit, Collateral Value equal to or greater than the outstanding balance of the Credit, and to repay the amount necessary to reduce the outstanding balance of the Credit to or below the Collateral Value immediately upon demand by Agent for such repayment. "Collateral Value" means the aggregate open market value (as determined from time to time by Agent in Agent's sole discretion) of Qualifying Mortgages securing unrepaid Advances.

6.14 Liens. Not create or permit to exist any mortgage, pledge, title retention lien, lease, purchase or other encumbrance or security interest with respect to any of the Collateral, except (a) the Security Interest; (b) materialmen's, mechanics', suppliers', tax, and warehousemen's liens, statutory liens of landlords and other like liens arising in the ordinary course of business securing obligations which are not yet due or which are being contested in good faith by appropriate proceedings; (c) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of statutory obligations, surety or appeal bonds, bids, leases, performance and return of money bonds and similar obligations (exclusive of

obligations for the payment of borrowed money); (d) encumbrances consisting of zoning regulations, easements, rights of way, survey exceptions and other similar restrictions on the use of real property and minor irregularities in titles thereto which do not materially impair such use; (e) liens on GNMA mortgaged-backed securities owned by the Company and liens on such securities which secure the Company's repurchase obligations to brokers with respect to such securities; and (f) existing liens and security interests described on a Schedule hereto.

6.15 Document Shipping Charges. Pay all expenses of shipping Loan Documents from the Company to Agent and from Agent to Investors. The Company will provide Agent with, or Agent will otherwise obtain via the internet, overnight courier labels preprinted with the Company's account number and the names and delivery addresses of the Investors.

6.16 ERISA Contributions. At all times, make prompt payment of contributions required to meet the minimum funding standards set forth in ERISA with respect to any employee benefit plan.

6.17 VA Guaranties and FHA Insurance. Not commit or suffer to be committed any act which would invalidate the guarantee of the VA or insurance by the FHA or cause any impairment to the validity of or priority of the lien on the Collateral created hereby in favor of Agent.

6.18 Financial Covenants.

A. Adjusted Net Worth. Maintain a minimum Adjusted Net Worth **of at least FOURTEEN MILLION AND NO/100 DOLLARS (\$14,000,000.00).**

B. Total Liabilities to Adjusted Net Worth Ratio. Maintain a ratio of total liabilities to Adjusted Net Worth of not more than 15 to 1.

C. Cash. Retain at least \$2,000,000.00 in cash or cash equivalents.

D. Book Net Worth. Cause the Guarantor to maintain a minimum Book Net Worth of at least ONE HUNDRED FIFTEEN MILLION AND NO/100 DOLLARS (\$115,000,000.00).

E. No Operating Loss. Cause the Guarantor to maintain as of the end of any two (2) consecutive fiscal quarters of the Guarantor, net profits after taxes of at least ONE DOLLAR (\$1.00).

6.19 Additional Primary or Secondary Indebtedness. Not incur indebtedness outside of the ordinary course of business or under any other lines of credit, or guaranty the repayment of any other indebtedness without prior written notice to the Banks, provided that one or more of the Banks remains a New York State approved mortgage warehouse lender.

6.20 Fees. Pay to Agent when and as due the following fees:

A. Non-Usage Fee. On the first day of each calendar month, in arrears, a non-usage fee. The non-usage fee shall equal 25 basis points per annum on the average unused portion of the Credit Amount, and the non-usage fee will be waived for each month in which the average used portion of the Credit Amount is more than fifty percent (50%) of the Credit Amount.

B. All collateral handling fees due pursuant to separate agreements between Agent and the Company.

6.21 MERS.

A. The Company will, (i) at all times, maintain its status as a MERS Member, (ii) the Company shall at all times employ officers who have the authority, pursuant to a corporate resolution from MERS, to execute assignments of mortgage in the name of MERS in the event deregistration from the MERS System is necessary or desirable, (iii) at all times remain in full compliance all terms and conditions of membership in MERS, including the MERSCORP "Rules of Membership" most recently promulgated by MERSCORP, Inc., the "MERS Procedures Manual" most recently promulgated by MERS, and any and all other guidelines or requirements set forth by MERS or MERSCORP, as each of the foregoing may be modified from time to time, including, but in no way limited to compliance with guidelines and procedures set forth with respect to technological capabilities, drafting and recordation of mortgages, registration of mortgages on the MERS System, including registration of the interest of the Agent and the Banks in such mortgages and membership requirements, (iv) promptly, upon the request of the Agent, execute and deliver to the Agent an assignment of mortgage, in blank, with respect to any MERS Mortgage that the Agent determines shall be removed from the MERS System, (v) immediately deliver to Agent any notices provided by MERS pursuant to Paragraph 4(a) of the Electronic Tracking Agreement, and (vi) at all times maintain the Electronic Tracking Agreement in full force and effect.

B. The Company shall not de-register or attempt to de-register any Qualifying Mortgage from the MERS System unless the Company has complied with the requirements set forth in the Electronic Tracking Agreement and the requirements hereof and the Security Agreement relating to a release of Collateral.

6.22 Other Acts. Execute and deliver, or cause to be executed and delivered, to Agent all further documents and perform all other acts and things which Agent deems necessary or appropriate to protect or perfect its mortgage or security interests in any property directly or indirectly securing payment of any indebtedness of the Company to Agent or a Bank.

ARTICLE VII. EVENTS OF DEFAULT

The occurrence of any of the events listed in this Article shall constitute an event of default under this Agreement ("Event of Default").

7.1 Nonpayment of Indebtedness. Failure of the Company to make any payment of interest or principal or any other sum, which has become due whether by acceleration or otherwise, under the terms of the Credit Notes this Agreement or any other document evidencing or securing indebtedness of the Company to the Banks or Agent.

7.2 Assignment or Encumbrance. Assignment or attempted assignment by the Company of this Agreement, any rights hereunder, or any Advance to be made hereunder, without first obtaining the specific written consent of the Majority Banks, or the granting by the Company of any security interest, lien or other encumbrance other than to Agent on any Collateral.

7.3 Insolvency Proceedings. The filing by or against the Company of a petition for liquidation, reorganization, arrangement or adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or of any foreign jurisdiction; the failure of the Company to secure dismissal of any such petition filed against it within thirty days of such filing; the making of any general assignment by the Company for the benefit of creditors; the appointment of a receiver or trustee for the Company or

for any part of the Company's assets; the institution by the Company of any other type of insolvency proceeding (under the Bankruptcy Code or otherwise) or of any formal or informal proceeding, including, without limitation, proceedings by the Federal Deposit Insurance Corporation or other governmental authority, for the dissolution or liquidation of, settlement of claims against, or winding up of the affairs of, the Company; the institution of any such proceeding against the Company if the Company shall fail to secure dismissal thereof within thirty days thereafter; the consent by the Company to any type of insolvency proceeding against the Company (under the Bankruptcy Code or otherwise); or the occurrence of any event or existence of any condition which could be the ground, basis or cause for any proceeding or petition described in this Section.

7.4 Misrepresentation. If any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of the Company pursuant to or in connection with this Agreement or otherwise (including, without limitation, representations and warranties contained herein) or as an inducement to a Bank to extend any credit to or to enter into this or any other agreement with the Company proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or to have omitted any substantial contingent or unliquidated liability or claim against the Company, or if on the Agreement Date there shall have been any materially adverse changes in any of the facts previously disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to Agent at or prior to the time of such execution.

7.5 Materially Adverse Changes. Any materially adverse change in the financial condition of the Company or the existence of any other condition which, in Agent's sole

determination, constitutes an impairment of the Company's ability to perform its obligations under this Agreement or any other document evidencing or securing the Credit ("Material Adverse Change"), and which condition is not remedied within ten days after written notice to the Company thereof or, if the condition cannot be fully remedied within said ten days, substantial progress has not been made within said ten days toward remedy of the condition.

Such Materially Adverse Change may include, but shall not be limited to (a) the sale, assignment, transfer or delivery of all or substantially all of the assets of the Company; (b) the cessation by the Company as a going business concern; (c) the entry of judgment against the Company other than a judgment for which the Company is fully insured, if ten days thereafter such judgment is not satisfied, vacated, bonded or stayed pending appeal; (d) the failure of the Company to pay its debts as such debts become due; or (e) nonpayment by the Company when due of any indebtedness for borrowed money owing to any third party, or the occurrence of any event which could result in acceleration of payment of any such indebtedness.

7.6 Failure to Perform Obligations. Default by the Company in the performance of any of the other terms, conditions or covenants contained in this Agreement or any agreement or document made in connection with this Agreement which is not remedied within ten days after notice thereof by Agent to the Company.

7.7 Pension Default. Any Reportable Event which Agent determines in good faith constitutes grounds for the termination of any Pension Plan by the Pension Benefit Guaranty Corporation or for the appointment by an appropriate United States district court of a trustee to administer any Pension Plan shall have occurred and continued thirty days after written notice thereof to the Company by Agent; or the Pension Benefit Guaranty Corporation shall have

instituted proceedings to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan; or a trustee shall be appointed by an appropriate United States district court to administer any Pension Plan; or any Pension Plan shall be terminated; or the Company withdraws from a Pension Plan in a complete withdrawal or a partial withdrawal; or the Company shall fail to pay to any Pension Plan any contribution which it is obligated to pay under the terms of such plan or any agreement, or which is required to meet statutory minimum funding standards.

7.8 Change in Management. A substantial change in the management of the Company to which the Banks have not consented.

7.9 Events Affecting Guarantor(s). The occurrence with respect to any Guarantor of an event or condition described in Sections 7.1, 7.2, 7.3, 7.5 or 7.8 hereof.

ARTICLE VIII. REMEDIES UPON DEFAULT

8.1 Default - Insolvency. Upon the happening of one or more Events of Default under Section 7.3 hereof, the Bank's obligations to advance the Credit shall be canceled immediately, automatically and without notice, and the Credit Notes shall become immediately due and payable without presentation, demand or notice of any kind.

8.2 Remedies; Certain Demands for Payment.

A. Upon the occurrence of a Default or Event of Default, Agent shall upon the request of the Majority Banks notify the Company thereof if required under Article VII.

B. If an Event of Default shall have occurred, Agent shall, upon the request of the Majority Banks, take any or all of the following actions: (i) terminate the obligations of the Banks under this Agreement, (ii) demand immediate payment of the Credit

Notes., and (iii) with respect to MERS Loans, direct MERS, pursuant to the Electronic Tracking Agreement, to remove the Company from the "Servicer" category on the MERS System and insert in place thereof, the Agent or its designee, or direct MERS to take such other action with respect to the MERS Loans as the Agent deems advisable. If, following the request of the Majority Banks that Agent do so, Agent fails or refuses to demand payment of any Bank's Credit Note within three (3) Business Days after such Bank's request to Agent that such demand be made, then such Bank shall have the right to make demand directly to the Company for payment of such Bank's Credit Note. Any Bank making a demand pursuant to its rights under this Section 8.2 shall promptly notify Agent that such demand has been made. If Agent or any Bank has knowledge of the existence of a Default or Event of Default or of any other condition which may materially adversely affect the Company's ability to fulfill its obligations under this Agreement, Agent or such Bank shall promptly notify each other Bank of such Default, Event of Default or condition; provided, however, that neither the Agent nor any Bank shall be liable to any other Bank hereunder as a result of any failure to give the aforesaid notice, except if such failure is caused by gross negligence or willful misconduct. In addition to the foregoing rights of Agent and each Bank, upon the occurrence of an Event of Default the following procedures shall govern the rights of the parties:

(i) Agent shall promptly, and in no event later than seven (7) Business Days after acquiring knowledge of an Event of Default, so notify the Company and consult with the Banks by telephone, and at the option of Agent or the Majority Banks, shall promptly thereafter, call a meeting of the Banks for the purpose of determining what actions, if any, should be taken with respect to such Event of Default. To call such meeting, Agent shall

provide notice thereof, which notice shall be sent to the Banks at least five

(5) Business Days prior to the meeting. The meeting shall be held at such time and place as Agent shall reasonably determine.

(ii) Only the Banks shall be entitled to vote at the meeting but counsel to each Bank also shall be entitled to be present and to speak at the meeting. Agent may make such reasonable regulations as it may deem advisable concerning such meeting or any adjournment thereof.

(iii) The Majority Banks shall constitute a quorum at the meeting.

(iv) Each Bank, or its proxy, shall be entitled to the number of votes between 1 and 100 equal to such Bank's Pro Rata Share (adjusted for Delinquent Payments and Excess Payments, if any), with fractional amounts being rounded to the nearest whole number. Except for matters as to which the action of the Banks is required hereby, any act of the Majority Banks at the time of the meeting or any adjournment thereof shall be the act of the Banks.

(v) At the meeting or any adjournment thereof, the Majority Banks, by resolution duly approved and adopted as herein provided, shall determine what actions, if any, Agent and the Banks should institute with respect to outstanding Advances, and Agent shall take whatever steps as may be necessary to implement and effect the resolution so adopted and approved in accordance with the terms and provisions thereof.

(vi) The Banks may, by unanimous written consent, make such other arrangements with respect to meetings and voting as they deem advisable.

C. If an Event of Default shall have occurred, upon direction by the Majority Banks, Agent shall take any one or more of the following actions:

- (i) Declare the entire unpaid balances of the Credit Notes, together with all accrued and unpaid interest thereon, and any other obligations secured hereby to be immediately due and payable, whereupon such balances shall be immediately due and payable.
- (ii) Reduce any claim of any Bank to judgment and enforce any such judgment against the Company or any successor or assign of the Company.
- (iii) Take such steps as the Majority Banks may deem appropriate, including without limitation sale of Qualifying Mortgages to Investors pursuant to Commitments, foreclosure upon or other enforcement of the Security Interest and any and all other liens and Security Interests granted to secure payment and performance of the Credit Notes and all other obligations hereunder.
- (iv) Receive and collect all sums payable to the Company in respect of the Collateral and in such case (i) Agent in its discretion may, in its own name or in the name of the Company or otherwise, demand, sue for, collect or receive any money or property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation so to do, (ii) the Company shall, if Agent so requests, forthwith pay to Agent all amounts thereafter received by the Company upon or in respect of any of the Collateral, advising Agent as to the source of such funds, and (iii) all amounts so received and collected by Agent shall be held by it as part of the Collateral.

(v) Exercise any and all rights as the Majority Banks shall deem appropriate, including, but not limited to, rights at law, in equity or otherwise, afforded by the Uniform Commercial Code of New York or of another relevant jurisdiction, or by this Agreement or any document delivered pursuant hereto.

D. If an Event of Default shall have occurred, and subject to the provisions of this Section 8.2, each Bank acting through Agent shall have all the rights and remedies of a secured party under Article 9 of the Uniform Commercial Code of the State of New York, or any other applicable law, and all rights provided for herein. Without limiting the generality of the foregoing, if an Event of Default shall have occurred, Agent, if so directed by the Majority Banks, shall (i) apply the cash, if any, then held by it as Collateral to the payment of all the Credit Notes and all other amounts secured hereby and (ii) if there shall be no cash or the cash so applied shall be insufficient to pay such Credit Notes and all other amounts secured thereby in full, sell the Collateral, or any part thereof, at public or private sale or at any broker's board or on any securities exchange, for cash, upon credit or for future delivery, and at such price or prices as Agent may reasonably deem satisfactory, and Agent or any Bank may be the purchaser of any or all of the Collateral so sold and thereafter hold the same absolutely, free from any right or claim of whatsoever kind. Agent is authorized, at any such sale, if it deems it advisable so to do, to restrict the prospective bidders or purchasers to persons who will represent and agree that they are purchasing for their own account, for investment, and not with a view to the distribution or sale of any of the Collateral. Upon any such sale Agent shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely, free from any claim or right of whatsoever kind,

including any equity or right of redemption of the Company, and the Company hereby specifically waives all rights of redemption, stay or appraisal which it has or may have under any rule of law or statute now existing or hereafter adopted. Agent shall give the Company ten (10) days notice of intention to make any such public or private sale or sale at a broker's board or on a securities exchange, provided, however, that if either (i) Agent determines, in its sole discretion, that the delay of any public or private sale resulting from the giving of such notice would adversely affect the amount realized from such sale or (ii) such sale is made pursuant to a Commitment or Commitments, then Agent shall have no obligation to give the Company any notice with respect to any such public or private sale or sale at a broker's board or on a securities exchange, except to the extent such notice is required by applicable law and provided further, however, that the Company hereby expressly waives the right to any such notice to the extent permitted by applicable law. To the extent that any notice is to be given in accordance with the immediately preceding sentence, such notice, in case of public sale, shall state the time and place fixed for such sale, and, in case of sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or that portion thereof so being sold, will first be offered for sale at such board of exchange. Any such public sale shall be held at such time or times within the ordinary business hours and at such place or places as Agent may fix in the notice of such sale. At any such sale the Collateral may be sold in one lot as an entirety or in separate parcels, as Agent may determine. Agent shall not be obligated to make any sale pursuant to any such notice. Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any

time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Agent until the selling price is paid by the purchaser thereof, but neither Agent nor any Bank shall not incur any liability in case of the failure of such purchaser to take up and pay for the Collateral so sold and, in case of any such failure, such Collateral may again be sold upon like notice. Agent may, however, instead of exercising the power of sale herein conferred upon it, proceed by a suit or suits at law or in equity to collect all amounts due upon the Collateral, and/or to foreclose the pledge and sell the Collateral or any portion thereof, under a judgment or decree of a court or courts of competent jurisdiction.

E. Neither Agent nor any Bank shall incur any liability as a result of any commercially reasonable sale of the Collateral, or any part thereof, at any private sale. The Company hereby waives any claims it may have against Agent or any Bank arising by reason of the fact that the price at which the Collateral may have been sold at such private sale was less than the price which might have been obtained at a public sale or was less than the aggregate amount secured hereby, even if Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

F. The Company waives any right to require Agent or the Banks to (i) proceed against any person, (ii) proceed against or exhaust any of the Collateral or pursue its rights and remedies as against the Collateral in any particular order, or (iii) pursue any other remedy in its power. Agent shall not be required to take any steps necessary to preserve any rights of the Company against holders of any liens or encumbrances prior in lien to the lien of any Qualifying Mortgage.

G. Agent may, but shall not be obligated to, advance any sums or do any act or thing necessary to uphold and enforce the lien and priority of, or the security intended to be afforded by, any Qualifying Mortgage or to preserve any other Collateral pledged under this Agreement, including, without limitation, payment of delinquent taxes or assessments and insurance premiums. The Company shall pay to Agent from time to time, on demand, all advances, charges, costs and expenses, including reasonable attorneys' fees, incurred or paid by Agent or any Bank in exercising any right, power or remedy conferred by this Agreement, or in the enforcement hereof, together with interest thereon at the rate per annum of 2% over the Prime Rate (as such term is defined in the Credit Notes) from the time of payment until repaid, and the obligation to make such payment shall be secured by the Security Interest.

H. No failure on the part of Agent or any Bank to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by Agent or any Bank of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and are not exclusive of any remedies provided by law.

8.3 Application of Proceeds. The proceeds of any sale or enforcement of all or any part of the Collateral shall be applied by Agent:

First, to the payment of the costs and expenses of such sale or enforcement, including reasonable compensation to Agent's and the Banks' agents and counsel, and all expenses, liabilities and advances made or incurred by Agent and the Banks in connection therewith;

Second, to the payment of the Swingline Note;

Third, to the payment of the Pro Rata Share of each Bank of all accrued and unpaid interest due and owing on the Credit Notes;

Fourth, to the payment of the Pro Rata Share of each Bank of all unrepaid principal of the Credit Notes;

Fifth, to the payment of the Pro Rata Share of each Bank of all other amounts owed by the Company in respect of this Agreement and the Credit Notes; and

Finally, to the payment to the Company, or to its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining from such proceeds.

If the proceeds of any such sale are insufficient to cover the amounts described in clauses First through Fifth, inclusive, above, the Company shall remain liable for any deficiency.

ARTICLE IX. RELATIONSHIP OF THE AGENT AND THE BANKS

9.1 Appointment and Authorization. Each Bank hereby appoints Agent to act, and Agent hereby agrees to act as agent in connection with the day-to-day administration of the Credit, and for such other specific purposes as are set forth herein and for such purposes irrevocably authorizes the Agent to take such action and to exercise such rights, powers and discretions as are specifically delegated to the Agent in this Agreement, together with all rights, powers and discretions as are reasonably incidental thereto, including, without limitation, the power to execute financing or similar statements or notices and other related documents relating to the transactions contemplated hereby. The Agent may perform any of its functions and duties

under this Agreement by or through any agents or any of its directors, officers or employees. In performing any of its functions and duties under this Agreement, the Agent shall not be deemed to be acting as a trustee for, or partner of, any Bank or to have assumed any relationship of trust or partnership with or for the Company. Each Bank agrees that the Collateral shall be granted to the Agent for the benefit of the Banks, and that each Bank shall have an undivided interest therein equal to its Pro Rata Share of the principal amount of the Credit outstanding.

9.2 No Other Duties. The Agent shall have no duties or obligations other than those expressly provided for in this Agreement, and neither the Agent nor any of its directors, officers, employees or agents, shall be liable for any action taken or omitted to be taken in connection with this Agreement, the documents evidencing and securing the Credit, the negotiation, preparation or execution thereof, or in connection with the syndication, implementation or administration of the Credit, unless directly resulting from the Agent's, or such directors', officers', employees' or agents' gross negligence or willful misconduct. The duties of the Agent shall be mechanical and administrative in nature; the Agent shall not, by reason of this Agreement, have a fiduciary relationship in respect of any Bank; and nothing in this Agreement, expressed or implied, is intended or shall be construed to impose upon the Agent any obligations in respect of this Agreement or any document in connection herewith except as expressly set forth herein in such documents and this Agreement.

9.3 Certain Rights of Agent; Limitations Thereon.

A. If the Agent shall request instructions from the Banks with respect to any act or action (including failure to act) in connection with this Agreement or any other document related thereto, the Agent shall be entitled to refrain from such act or taking such

action (except action required in connection with the day-to-day administration of the Credit) unless and until the Agent shall have received instructions from the Majority Banks or, if so required hereby from each Bank; and the Agent shall not incur liability by reason of so refraining. The Agent shall be fully justified in failing or refusing to take any action hereunder or under this Agreement or any document related hereto (i) if such action would, in the opinion of the Agent, be contrary to law or the terms of this Agreement or any document related hereto, or (ii) if it shall not receive such advice or concurrence of the Majority Banks or the Banks, as applicable, as it deems appropriate. Without limiting the foregoing, no Bank shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting hereunder or under any document related hereto, in accordance with the instructions of the Majority Banks or of the Banks, as applicable.

B. The Agent may without liability to the Company or any Bank,

(i) rely and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telephone notice, telex or teletype message, statement, order or other document or conversation believed by Agent in good faith to be genuine and correct and to have been signed, sent or made by the person or persons by whom it purports to have been communicated or signed and (ii) employ in Agent's sole discretion and (except in cases where the consent of the Majority Banks or the Banks is required hereby) in good faith rely on the advice and opinions received by it from any professional adviser, including, without limitation, legal counsel, independent accountants or other experts, and the Company and each Bank hereby waives any claim or action it may have against the Agent arising out of or resulting from such employment or reliance.

C. Notwithstanding anything to the contrary herein, Agent shall not, without the prior written consent of the Banks, (i) amend this Agreement in any material respect, provided, however, that the Agent shall notify the Banks in writing of any other changes made to this Agreement, minor, corrective or otherwise, (ii) waive any material right hereunder, (iii) waive any material condition to the right of the Company to receive an Advance, (iv) forgive or reduce any indebtedness of the Company hereunder, (v) extend the maturity date of any payment due from the Company hereunder, or (vi) change the interest rate nor the maximum amount of the Credit. The Banks and Agent agree that waivers with respect to collateral exceptions (including, but not limited to, delinquencies or insufficiencies in timing or delivery requirements set forth herein for those mortgage loans which are security hereunder) up to an aggregate Advance amount of FIVE MILLION DOLLARS (\$5,000,000.00) shall not be deemed material hereunder and Agent is hereby granted the right to unilaterally grant or refrain from granting such waivers in its sole discretion without further consent of any Bank.

9.4 Waiver of Liability of Agent. The Agent shall not have any liability or, as the case may be, any duty or obligation:

A. To the Company on account of any failure of any Bank to perform, or the delay of any Bank in the performance of, any of its or their respective obligations under this Agreement or any of the other documents in connection herewith;

B. To any Bank on account of any failure or delay in performance by the Company of any of its obligations under this Agreement or any of the other documents in connection herewith;

- C. To any Bank for (i) the accuracy of any written or oral statements furnished or made by the Company or by any person on behalf of the Company in connection with the Credit, (ii) the accuracy of any representation, warranty or statement made by the Company in or pursuant to this Agreement or any of the other documents in connection herewith, or (iii) the legality, validity, effectiveness, enforceability or sufficiency of this Agreement, any other document in connection herewith, or any other document referred to herein;
- D. To any Bank to provide either initially or on a continuing basis (except as expressly required in this Agreement) any information with respect to the Company or its condition, or for analyzing or assessing or omitting to analyze or assess the status, creditworthiness or prospects of the Company;
- E. To any Bank to investigate (except under circumstances in which a reasonably prudent lender would investigate) whether or not any Event of Default has occurred (and the Agent may assume that, until Agent shall have actual knowledge to the contrary, no such Event of Default has occurred);
- F. To any Bank to account for any sum or profit or any property of any kind received by Agent arising out of any present or future banking or other relationship with the Company except the relationship established pursuant to this Agreement;
- G. To any Bank to disclose any information relating to the Company received by Agent if, in Agent's determination (such determination to be conclusive) such disclosure would or might constitute a breach of any law or regulation; and
- H. To take any action or refrain from taking any action other than as expressly required by this Agreement.

9.5 Non-Reliance on Agent and Other Banks. Each Bank expressly acknowledges that neither the Agent nor any affiliate of Agent has made any representations or warranties to such Bank and that except as specifically set forth herein, no act by the Agent hereinafter taken, including any review of the affairs of the Company, shall be deemed to constitute any warranty by the Agent to any Bank. Each Bank represents to the Agent that it has, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the financial condition, creditworthiness, affairs, status and nature of the Company and made its own decision to enter into this Agreement, and each Bank hereby releases the Agent from any and all liability to such Bank in connection with the Agent's investigation and appraisal of the Company's financial affairs, financial condition, and creditworthiness. Each Bank also represents that it will, independently and without reliance upon the Agent or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and to make such investigation as it deems necessary to inform itself as to the status and affairs, financial or otherwise, of the Company. Except as specifically required hereby, the Agent shall not be required to keep itself informed as to the performance or observance by the Company of this Agreement or any other document referred to or provided for herein or to inspect the properties or books of the Company. Except for notices, reports, and other documents and information expressly required to be furnished to the Banks by the Agent under this Agreement, the Agent shall have no duty or responsibility to provide any Bank with

any credit or other information concerning the affairs, financial condition or business of the Company which may come into the possession of the Agent.

9.6 Release. At all times until the Credit has been paid in full, the Agent shall exercise the same degree of care in handling the Credit and its Collateral as HSBC exercises with respect to loans that are held solely by HSBC for its own account, and the Agent shall have no responsibility to the Banks other than to exercise such standard of care and, in any event HSBC shall have no liability with respect to any other Bank's Pro Rata Share interest in the Credit except for HSBC's own fraud, gross negligence or willful misconduct. Except in the case of its own fraud, gross negligence or willful misconduct, neither the Agent, any Bank nor any of their officers, directors employees, attorneys or agents (the "Indemnified Parties") shall be liable for any action taken or omitted to be taken by it or them under this Agreement, the Credit Notes or any transaction contemplated hereby reasonably believed by it or them to be within the discretion or power conferred upon it or them by this Agreement or be responsible for consequences of any error of judgment, the Banks expressly intending to hereby waive and release all present and future claims and rights against the Agent (i) owed, in whole or in part, under any claim or theory of strict liability, or (ii) for damages or injures caused or contributed to by any Indemnified Party's sole or concurrent ordinary negligence that does not amount to gross negligence or willful misconduct. Except as otherwise specifically and expressly set forth in the Agreement, the Agent shall not be responsible in any manner to anyone for the effectiveness, enforceability, genuineness, validity or the due execution of the Agreement, any supplement, amendment or restatement of it or of the Credit Notes or for any representation, warranty, document, certificate, report or statement made or furnished in, under or in connection with this

Agreement or any of the Credit Notes or be under any obligation to anyone to ascertain or to inquire as to the performance or observation of any of the terms, covenants or conditions of the Agreement on the part of the Company or anyone else. Without limiting the generality of the foregoing provisions of this Section, the Agent may seek and rely upon the advice of legal counsel in taking or refraining to take any action under this Agreement or the Credit Notes or with the consent of the Majority Banks or the Banks if such consent is required hereby and shall be fully protected in relying upon such advice. The agreements in this Section 9.6 shall survive the payment of the Credit Notes and the termination of this Agreement.

9.7 Agent in Its Individual Capacity. With respect to its Pro Rata Share of the Credit, the Agent shall have the same rights and powers under this Agreement as any Bank and may exercise the same as though it were not the Agent, and the terms "Bank" and "Majority Banks" shall, unless the context otherwise indicates, include the Agent in its individual capacity.

9.8 Successor Agent. The Agent may resign at any time by giving at least sixty (60) days prior written notice thereof to the Banks and the Company. In addition, the Majority Banks shall have the right to remove the Agent without cause by giving Agent and the Banks at least sixty (60) days prior written notice thereof. The Agent shall automatically become disqualified to act as such upon the appointment of a receiver or conservator of Agent. Upon any such resignation, removal or disqualification, the Majority Banks shall have the right to appoint a successor agent, which shall be reasonably acceptable to the Company. If no successor agent shall have been so appointed by the Majority Banks and shall have accepted such appointment within one hundred twenty (120) days after the retiring Agent's giving of notice of resignation, then the retiring Agent may, on behalf of the Banks, appoint a successor agent, which shall be a

bank reasonably acceptable to the Company. Upon the acceptance of any appointment as agent hereunder by a successor agent, such successor agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent. After any retiring Agent's resignation, the provisions of this Article IX, including, without limitation, the indemnity provisions of Section 9.7 hereof, shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. Resignation, removal or disqualification of Agent shall not affect the status of HSBC Bank USA as a Bank.

9.9 Benefit of Article IX. The provisions of this Article IX are intended solely for the benefit of the Agent and the Banks. The Company shall not be entitled to rely on any such provisions or assert any such provisions in a claim, or as a defense, against the Agent or any Bank. The Company shall, however, be entitled to rely without further inquiry on the authority of Agent as to acts taken by it.

9.10 MERS. The Banks and the Company hereby confirm the appointment of the Agent as the agent for the Banks with respect to MERS Loans. The Agent hereby confirms that it is a MERS member in good standing and in compliance with all rules, regulations, procedures, and requirements set forth by MERS, including, but not limited to, the payment of membership fees.

ARTICLE X. DOCUMENTATION AGENT

A. No Bank identified in this Agreement as the "Documentation Agent" shall have any rights, powers, obligations, liabilities, responsibilities, or duties under this Agreement other than those applicable to all Banks as such.

B. Resignation, disqualifications and succession of Documentation Agent shall be governed by the provisions of Section 9.8.

ARTICLE XI. INDEMNIFICATION AND EXPENSES

The Company agrees to hold Agent and each Bank harmless from and indemnifies Agent and each Bank against all liabilities, losses, damages, judgments, costs, and expenses of any kind which may be imposed on, incurred by, or asserted against Agent or a Bank relating to or arising out of this Agreement, the Credit Notes, or any transaction contemplated hereby including any claims based on or caused by the sole or concurrent ordinary negligence that does not amount to gross negligence or willful misconduct on the part of the Agent or any Bank. The Company also agrees to reimburse Agent and each Bank for all reasonable expenses in connection with this Agreement and the Credit Notes, including without limitation the reasonable fees and disbursements of counsel, all delivery and insurance charges incurred in connection with delivery of Loan Documents except as otherwise specifically provided herein, wire transfer fees and the travel expenses of Agent's officers in connection with the transactions contemplated hereby and including expenses of enforcement. The Company's agreements in this Section shall survive the payment in full of the Credit Notes and the expiration or termination of this Agreement.

ARTICLE XII. MISCELLANEOUS

12.1 Amendments and Waivers. Any amendment or modification of this Agreement or waiver of any term, provision or requirement hereof or thereof, shall require the affirmative written consent of the Agent and the Majority Banks; provided, notwithstanding anything herein to the contrary, the following shall require the affirmative written consent of the

Agent and all of the Banks: (i) except as permitted under the terms of this Agreement, the release of any part of the Collateral from the liens arising herefrom; (ii) the termination, cancellation or release of this Agreement; (iii) the decrease in the interest rate(s) borne by the Advances, other than decreases in the interest rate(s) borne by the Advances by virtue of any decreases or changes expressly contemplated in the Credit Notes; (iv) any reduction in the amount of the installments of principal due under this Agreement or the Credit Notes or in the aggregate principal amount of principal due thereunder; (v) any extension of the Term or the due dates of any installments of principal of and/or accrued interest on the Credit Notes; (vi) any change in the definition of the term "Majority Banks"; or (vii) any amendment to any section of this Agreement that expressly requires the consent of all of the Banks.

12.2 Delays and Omissions. No course of dealing and no delay or omission by Agent or a Bank in exercising any right or remedy hereunder or with respect to any indebtedness of the Company to Agent or a Bank shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Agent may remedy any default by the Company hereunder or with respect to any other person, firm or corporation in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default by the Company and shall be reimbursed by the Company for its expenses in so remedying such default. All rights and remedies of Agent and the Banks hereunder are cumulative.

12.3 Attorney-in-fact. The Company hereby authorizes Agent, at the Company's expense, to file such financing statement or statements relating to the Collateral

without the Company's signature thereon as Agent at its option may deem appropriate, and appoints Agent as the Company's attorney-in-fact (without requiring Agent) to execute any such financing statement or statements in the Company's name and to perform all other acts which Agent deems appropriate to perfect and continue the Security Interest and to protect, preserve and realize upon the Collateral, including, but not limited to, the right to endorse notes, complete blanks in documents and sign assignments on behalf of the Company as its attorney-in-fact. This Power of Attorney is coupled with an interest and is irrevocable without Agent's consent.

12.4 Collection. Agent may demand, collect and sue on any of the Collateral (in either the Company's or Agent's name at the latter's option); may enforce, compromise, settle or discharge such Collateral without discharging the indebtedness or any part thereof; and may endorse the Company's name on any and all checks, commercial paper, and any other instruments pertaining to or constituting Collateral. In the event Agent intends to exercise any rights set forth in this Section, Agent shall use its best efforts to notify the Company thereof prior to taking any such action.

12.5 Further Security. As further security for payment of the indebtedness, the Company hereby grants to each Bank a Security Interest in and lien on any and all property of the Company which is or may hereafter be in the possession or control of said Bank in any capacity or of any third party acting on its behalf, including, without limitation, all deposit and other accounts and all moneys owed or to be owed by said Bank to the Company; and with respect to all of such property, said Bank shall have the same rights hereunder as it has with respect to the Collateral. Without limiting any other right of Agent or the Banks, whenever Agent has the right to declare any indebtedness to be immediately due and payable (whether or

not it has so declared), each Bank at its sole election may set off against the indebtedness any and all moneys then or thereafter owed to the Company by said Bank in any capacity, whether or not the indebtedness or the obligation to pay such moneys owed by said Bank is then due, and said Bank shall be deemed to have exercised such right of setoff immediately at the time of such election even though any charge therefor is made or entered on said Bank's records subsequent thereto.

12.6 Return of Collateral Under Trust Receipt. Possession of any of the Collateral (including original notes evidencing Qualifying Mortgages) may be temporarily relinquished by Agent to the Company under a trust receipt for the sole purpose of sale, exchange, collection, or presentation, renewal or registration of transfer. At all times the Collateral is in the Company's possession, the Company will hold the Collateral in trust so as to continue the perfection of Agent's Security Interest.

12.7 Loss of Loan Documents. Once Loan Documents have been delivered to a postal or delivery service, Agent shall incur no liability of any kind in connection with loss or delay in connection with the transmittal of Loan Documents to or from the Company, any Investor, or any other party pursuant to this Agreement.

12.8 Successors and Assigns. The Company, Bank, and Agent as used herein shall include the legal representatives or assigns of those parties in cases where the assignment was made with the consent required hereunder.

12.9 Notices. Any notice or demand to be given hereunder shall be duly given if delivered or mailed to the respective parties at their Notice Address and shall be deemed effective upon receipt.

12.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when duly executed and delivered shall be an original, but all such counterparts shall together constitute one and the same Agreement.

12.11 Titles. Titles to the sections of this Agreement are solely for the convenience of the Parties, and are not an aid in the interpretation of this Agreement or any part thereof.

12.12 Inconsistent Provisions. In the event any provision of this Agreement is inconsistent with any provision of any other document required or executed pursuant to this Agreement, the provisions of this Agreement shall be controlling.

12.13 Participation. The Banks reserve the right to transfer participating interests in this Agreement and in the Credit Notes to one or more other institutions or entities.

12.14 Entire Agreement. This Agreement and the related documents identified and referred to herein are intended to set forth the entire agreement of the parties concerning the subject matter hereof.

12.15 Governing Law. This Agreement and the Credit Note shall be governed by and are to be construed under the internal laws of the State of New York.

12.16 CONSENT TO JURISDICTION. COMPANY AGREES THAT ANY ACTION OR PROCEEDING TO ENFORCE OR ARISING OUT OF THIS DOCUMENT MAY BE COMMENCED IN THE SUPREME COURT OF NEW YORK IN ERIE COUNTY, OR IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF NEW YORK, AND COMPANY WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT A SUMMONS AND COMPLAINT COMMENCING AN ACTION OR

PROCEEDING IN ANY SUCH COURT SHALL BE PROPERLY SERVED AND SHALL CONFER PERSONAL JURISDICTION IF SERVED BY REGISTERED MAIL TO COMPANY AT THE ADDRESS SPECIFIED ABOVE, OR AS OTHERWISE PROVIDED BY THE LAWS OF THE STATE OF NEW YORK OR THE UNITED STATES.

12.17 WAIVER OF JURY TRIAL. COMPANY, BANKS AND AGENT HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY WHICH THEY MAY HAVE IN ANY ACTION OR PROCEEDING, IN LAW OR IN EQUITY, IN CONNECTION WITH THIS DOCUMENT OR THE TRANSACTIONS RELATED HERETO. COMPANY REPRESENTS AND WARRANTS THAT NO REPRESENTATIVE OR AGENT OF A BANK OR AGENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT A BANK OR AGENT WILL NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THIS JURY TRIAL WAIVER. COMPANY ACKNOWLEDGES THAT THE BANKS AND AGENT HAVE BEEN INDUCED TO ENTER INTO THIS TRANSACTION BY, AMONG OTHER THINGS, THE PROVISIONS OF THIS SECTION.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized officers and their corporate seals to be hereunto affixed, all as of the Agreement Date.

THE NEW YORK MORTGAGE COMPANY LLC

BY: /s/ Steven B. Schnall

NAME: STEVEN B. SCHNALL
TITLE: PRESIDENT

**HSBC BANK USA, NATIONAL ASSOCIATION AS
BANK, AGENT AND SWINGLINE LENDER**

BY: /s/ James A. Noyes

James A. Noyes, Vice President

**NATIONAL CITY BANK OF KENTUCKY, AS BANK
AND DOCUMENTATION AGENT**

BY: /s/ Charles Ezell

NAME: _____
TITLE: _____

JPMORGAN CHASE BANK, N.A. AS BANK

BY: /s/ Michael W. Nicholson

NAME: _____
TITLE: _____

HSBC BANK USA, NATIONAL ASSOCIATION

AND

THE NEW YORK MORTGAGE COMPANY LLC

**FIFTH AMENDED
CREDIT NOTE**

Dated as of February 1, 2005

**FIFTH AMENDED
CREDIT NOTE**

\$75,000,000.00 As of February 1, 2005

FOR VALUE RECEIVED, the undersigned, THE NEW YORK MORTGAGE COMPANY LLC, a limited liability company organized under the laws of the State of New York, whose address is 1301 Avenue of the Americas, 7th Floor, New York, New York 10019 (the "Company"), promises to pay to the order of HSBC BANK USA, NATIONAL ASSOCIATION, successor by merger to HSBC Bank USA, a bank organized under the laws of the United States of America, with an office at c/o Mortgage Warehouse Lending Department, 27th Floor, One HSBC Center, Buffalo, New York 14203 ("HSBC") on or before June 29, 2005, or such earlier date as is provided for in the Credit Agreement as hereinafter defined ("Maturity Date"), in lawful money of the United States of America, the principal sum of SEVENTY-FIVE MILLION DOLLARS (\$75,000,000.00), or the aggregate unpaid principal amount of all advances by HSBC to the Company pursuant to the Credit and Security Agreement among HSBC, National City Bank of Kentucky ("National City"), HSBC as Swingline Lender, HSBC as Agent, National City as Documentation Agent, and the Company dated as of December 15, 2003, as amended pursuant to a First Amendment to Credit and Security Agreement dated as of June 14, 2004, a Second Amendment to Credit and Security Agreement dated as of June 30, 2004, a Third Amendment to Credit and Security Agreement dated November 1, 2004 and Fourth Amendment to Credit and Security Agreement dated as of January 10, 2005 (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), plus interest thereon from the date hereof, as follows:

INTEREST: Except with respect to Repurchase Loans and Construction Advances, interest shall accrue on the principal amount outstanding hereon at an annual rate equal to the rate determined by HSBC to be the average rate per annum offered on the London Interbank Offering Market for U.S. Dollar deposits in the amount of this Fifth Amended Credit Note ("Credit Note") or applicable portion thereof and for a term of 30 days ("LIBOR") plus 100 basis points (together, the "LIBOR-Based Rate"). Interest shall accrue on the principal amount of Repurchase Advances outstanding hereon at an annual rate equal to LIBOR plus 162.5 basis points ("Repurchase Loan Rate"). Interest shall accrue on the principal amount of Construction Advances outstanding hereon at an annual rate equal to LIBOR plus 125 basis points ("Construction Loan Rate"). The LIBOR-Based Rate shall be adjusted at the end of each calendar month to the rate equal to the LIBOR-Based Rate determined by reference to the then-current LIBOR. The Repurchase Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Repurchase Loan Rate determined by reference to the then-current LIBOR. The Construction Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Construction Loan Rate determined by reference to the then-current LIBOR. Accrued interest shall be paid monthly on the tenth business day of each month after the date

hereof. Interest shall be calculated on the basis of 1/360 of the annual interest at the applicable rate on the outstanding principal balance for each day such balance is outstanding, thus increasing the effective rate of interest, and shall continue to accrue at such rate until the principal balance is paid in full, regardless of whether the principal has become due by reason of default or otherwise, except as otherwise provided herein.

MAXIMUM RATE OF INTEREST: It is intended that the rate of interest hereon shall never exceed the maximum rate, if any, which may be legally charged on the loan evidenced by this Credit Note ("Maximum Rate"), and if the provisions for interest contained in this Credit Note would result in a rate higher than the Maximum Rate, interest shall nevertheless be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal, or, at the option of HSBC, returned to the Company.

MAXIMUM PRINCIPAL AMOUNT Notwithstanding anything to the contrary contained in this Credit Note, commencing February 1, 2005 the maximum principal amount of this Credit Note shall not exceed SEVENTY-FIVE MILLION DOLLARS (\$75,000.00).

DUE DATE: All indebtedness evidenced hereby not paid before the Maturity Date shall be due and payable on the Maturity Date.

PLACE OF PAYMENT: All payments hereon shall be made, and all notices to HSBC required or authorized hereby shall be given, as set forth in the Credit Agreement.

PAYMENT AND EXPENSES OF COLLECTION: All amounts payable hereunder are payable in lawful money of the United States. Payments received by HSBC after 2:00 p.m. HSBC's local time shall be deemed to be received on the next following business day. Notwithstanding the foregoing, a payment will not be deemed to have been received unless by 2:00 p.m. HSBC's local time HSBC shall have received a completed "Repayment Schedule" on HSBC's form, listing the Qualifying Mortgages (as defined in the Credit Agreement) to which the payment pertains. The Company agrees to pay all costs of collection when incurred, including, without limiting the generality of the foregoing, reasonable attorneys' fees through appellate proceedings, and to perform and comply with each of the covenants, conditions, provisions and agreements contained in every instrument now evidencing or securing said indebtedness. If any suit or action be instituted to enforce this Credit Note, the Company promises to pay, in addition to the cost and disbursements otherwise allowed by law, such sum as the court may adjudge reasonable attorneys' fees in such suit or action.

COLLECTION PERIODS: Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by HSBC and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of HSBC except to the extent that actual cash proceeds of such instrument

are unconditionally received by HSBC; provided, however, that this Credit Note shall not be in default as the result of normal collection periods on such instruments.

LATE PAYMENT CHARGE: The Company promises to pay to HSBC promptly upon the accrual thereof a late payment charge of 6% of the amount of any installment payment not paid within ten days of receipt by the Company of the bill for such payment.

INTEREST AFTER NONPAYMENT: If the principal of this Credit Note is not paid when due, whether by acceleration or otherwise, all unpaid amounts shall bear interest following said nonpayment at the rate of 5% per annum above the otherwise applicable interest rate.

DEFAULTS: Upon the happening of an Event of Default (as defined in the Credit Agreement), HSBC shall have all rights and remedies set forth in the Credit Agreement.

The failure to exercise any of the rights and remedies set forth in the Credit Agreement shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by HSBC of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing rights and remedies at that time or at any subsequent time or nullify any prior exercise of any such rights and remedies without the express consent of HSBC, except as and to the extent otherwise provided by law.

WAIVERS: The Company, and any indorsers or guarantors hereof, severally waive diligence, presentment, protest and demand and also notice of protest, demand, dishonor and nonpayment of this Credit Note, and expressly agree that this Credit Note, or any payment hereunder, may be extended from time to time, and consent to the acceptance of further collateral, the release of any collateral for this Credit Note, the release of any party primarily or secondarily liable hereon, and that it will not be necessary for HSBC, in order to enforce payment of this Credit Note, to first institute or exhaust HSBC's remedies against the Company or any other party liable hereon or against any collateral for this Credit Note. None of the foregoing shall affect the liability of the Company and any indorsers or guarantors hereof. No extension of time for the payment of this Credit Note, or any installment hereof, made by agreement by HSBC with any person now or hereafter liable for the payment of this Credit Note, shall affect the liability under this Credit Note of the Company, even if the Company is not a party to such agreement; provided, however, HSBC and the Company, by written agreement between them may affect the liability of the Company.

TERMINOLOGY: If more than one party joins in the execution of this Credit Note, the covenants and agreements herein contained shall be the joint and several obligation of each and all of them and of their respective heirs, executors, administrators, successor and

assigns, and relative words herein shall be read as if written in the plural when appropriate. Any reference herein to HSBC shall be deemed to include and apply to every subsequent holder of this Credit Note. Words of masculine or neuter import shall be read as if written in the neuter or masculine or feminine when appropriate.

CREDIT AGREEMENT: Reference is made to the Credit Agreement for provisions as to mandatory principal repayments, collateral and acceleration.

APPLICABLE LAW: This Credit Note shall be governed by and construed under the laws of the State of New York, whose laws the Company expressly elects to apply to this Credit Note. The Company agrees that any action or proceeding brought to enforce or arising out of this Credit Note may be commenced in the New York Supreme Court for the County of Erie, or in the District Court of the United States for the Western District of New York, and the Company waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered mail to the Company, or as otherwise provided by the laws of the State of New York or the United States.

WAIVER OF TRIAL BY JURY: The Company hereby knowingly, voluntarily, unconditionally and irrevocably waives the right to a trial by jury in every jurisdiction in any action, proceeding or counterclaim brought by or against the Company, its successors or assigns, in respect of any matter arising out of this Credit Note or any document given in connection with or to secure this Credit Note, including without limitation any exercise of rights under this Credit Note or any such document, any attempt to cancel, void, or rescind this Credit Note or any such document, and any course of conduct or course of dealing in connection therewith.

REPLACEMENT: This Note is executed in replacement of, but not in payment or novation of, the Fourth Amended Credit Note of the Company to HSBC dated as of January 10, 2005 in the original principal amount of \$100,000,000 ("Prior Note"). All collateral for the Prior Note shall hereafter secure payment of this Credit Note.

THE NEW YORK MORTGAGE COMPANY LLC

By: /s/ Steven B. Schnall

Name: Steven B. Schnall

Title: President / CEO

NATIONAL CITY BANK OF KENTUCKY

AND

THE NEW YORK MORTGAGE COMPANY LLC

**FIFTH AMENDED
CREDIT NOTE**

Dated as of February 1, 2005

**FIFTH AMENDED
CREDIT NOTE**

\$25,000,000.00 As of February 1, 2005

FOR VALUE RECEIVED, the undersigned, THE NEW YORK MORTGAGE COMPANY LLC, a limited liability company organized under the laws of the State of New York, whose address is 1301 Avenue of the Americas, 7th Floor, New York, New York 10019 (the "Company"), promises to pay to the order of NATIONAL CITY BANK OF KENTUCKY, a national banking association, whose address is 101 South Fifth Street, Louisville, Kentucky 40202 ("National City") on or before June 29, 2005, or such earlier date as is provided for in the Credit Agreement as hereinafter defined ("Maturity Date"), in lawful money of the United States of America, the principal sum of TWENTY-FIVE MILLION DOLLARS (\$25,000,000.00), or the aggregate unpaid principal amount of all advances by National City to the Company pursuant to the Amended and Restated Credit and Security Agreement among National City, HSBC Bank USA, National Association, successor by merger to HSBC Bank USA ("HSBC"), JPMorgan Chase Bank, N.A., HSBC as Agent, National City as Documentation Agent, and the Company dated as of even date herewith, which amended and restated a Credit and Security Agreement dated as of December 15, 2003, as amended pursuant to a First Amendment to Credit and Security Agreement dated as of June 14, 2004, a Second Amendment to Credit and Security Agreement dated as of June 30, 2004, a Third Amendment to Credit and Security Agreement dated as of November 1, 2004, and Fourth Amendment to Credit and Security Agreement dated as of January 10, 2005 (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), plus interest thereon from the date hereof, as follows:

INTEREST: Except with respect to Repurchase Loans and Construction Advances, interest shall accrue on the principal amount outstanding hereon at an annual rate equal to the rate determined by the Agent to be the average rate per annum offered on the London Interbank Offering Market for U.S. Dollar deposits in the amount of this Fifth Amended Credit Note (the "Credit Note") or applicable portion thereof and for a term of 30 days ("LIBOR") plus 100 basis points (together, the "LIBOR-Based Rate"). Interest shall accrue on the principal amount of Repurchase Advances outstanding hereon at an annual rate equal to LIBOR plus 162.5 basis points ("Repurchase Loan Rate"). Interest shall accrue on the principal amount of Construction Advances outstanding hereon at an annual rate equal to LIBOR plus 125 basis points ("Construction Loan Rate"). The LIBOR-Based Rate shall be adjusted at the end of each calendar month to the rate equal to the LIBOR-Based Rate determined by reference to the then-current LIBOR. The Repurchase Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Repurchase Loan Rate determined by reference to the then-current LIBOR. The Construction Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Construction Loan Rate determined by reference to the then-current LIBOR. Accrued interest shall be paid monthly on the tenth business day of each month after the date

hereof. Interest shall be calculated on the basis of 1/360 of the annual interest at the applicable rate on the outstanding principal balance for each day such balance is outstanding, thus increasing the effective rate of interest, and shall continue to accrue at such rate until the principal balance is paid in full, regardless of whether the principal has become due by reason of default or otherwise, except as otherwise provided herein.

MAXIMUM RATE OF INTEREST: It is intended that the rate of interest hereon shall never exceed the maximum rate, if any, which may be legally charged on the loan evidenced by this Credit Note ("Maximum Rate"), and if the provisions for interest contained in this Credit Note would result in a rate higher than the Maximum Rate, interest shall nevertheless be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal, or, at the option of National City, returned to the Company.

DUE DATE: All indebtedness evidenced hereby not paid before the Maturity Date shall be due and payable on the Maturity Date.

PLACE OF PAYMENT: All payments hereon shall be made, and all notices to National City required or authorized hereby shall be given, as set forth in the Credit Agreement.

PAYMENT AND EXPENSES OF COLLECTION: All amounts payable hereunder are payable in lawful money of the United States. Payments received by the Agent on behalf of National City after 2:00 p.m. Agent's local time shall be deemed to be received on the next following business day. Notwithstanding the foregoing, a payment will not be deemed to have been received unless by 2:00 p.m. Agent's local time Agent shall have received a completed "Repayment Schedule" on Agent's form, listing the Qualifying Mortgages (as defined in the Credit Agreement) to which the payment pertains. The Company agrees to pay all costs of collection when incurred, including, without limiting the generality of the foregoing, reasonable attorneys' fees through appellate proceedings, and to perform and comply with each of the covenants, conditions, provisions and agreements contained in every instrument now evidencing or securing said indebtedness. If any suit or action be instituted to enforce this Credit Note, the Company promises to pay, in addition to the cost and disbursements otherwise allowed by law, such sum as the court may adjudge reasonable attorneys' fees in such suit or action.

COLLECTION PERIODS: Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by National City and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of National City except to the extent that actual cash proceeds of such instrument are unconditionally received by National City; provided, however, that this Credit Note shall not be in default as the result of normal collection periods on such instruments.

LATE PAYMENT CHARGE: The Company promises to pay to National City promptly upon the accrual thereof a late payment charge of 6% of the amount of any installment payment not paid within ten days of receipt by the Company of the bill for such payment.

INTEREST AFTER NONPAYMENT: If the principal of this Credit Note is not paid when due, whether by acceleration or otherwise, all unpaid amounts shall bear interest following said nonpayment at the rate of 5% per annum above the otherwise applicable interest rate.

DEFAULTS: Upon the happening of an Event of Default (as defined in the Credit Agreement), National City shall have all rights and remedies set forth in the Credit Agreement.

The failure to exercise any of the rights and remedies set forth in the Credit Agreement shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by National City of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing rights and remedies at that time or at any subsequent time or nullify any prior exercise of any such rights and remedies without the express consent of National City, except as and to the extent otherwise provided by law.

WAIVERS: The Company, and any indorsers or guarantors hereof, severally waive diligence, presentment, protest and demand and also notice of protest, demand, dishonor and nonpayment of this Credit Note, and expressly agree that this Credit Note, or any payment hereunder, may be extended from time to time, and consent to the acceptance of further collateral, the release of any collateral for this Credit Note, the release of any party primarily or secondarily liable hereon, and that it will not be necessary for National City, in order to enforce payment of this Credit Note, to first institute or exhaust National City's remedies against the Company or any other party liable hereon or against any collateral for this Credit Note. None of the foregoing shall affect the liability of the Company and any indorsers or guarantors hereof. No extension of time for the payment of this Credit Note, or any installment hereof, made by agreement by National City with any person now or hereafter liable for the payment of this Credit Note, shall affect the liability under this Credit Note of the Company, even if the Company is not a party to such agreement; provided, however, National City and the Company, by written agreement between them may affect the liability of the Company.

TERMINOLOGY: If more than one party joins in the execution of this Credit Note, the covenants and agreements herein contained shall be the joint and several obligation of each and all of them and of their respective heirs, executors, administrators, successor and assigns, and relative words herein shall be read as if written in the plural when appropriate. Any

reference herein to National City shall be deemed to include and apply to every subsequent holder of this Credit Note. Words of masculine or neuter import shall be read as if written in the neuter or masculine or feminine when appropriate.

CREDIT AGREEMENT: Reference is made to the Credit Agreement for provisions as to mandatory principal repayments, collateral and acceleration.

APPLICABLE LAW: This Credit Note shall be governed by and construed under the laws of the State of New York, whose laws the Company expressly elects to apply to this Credit Note. The Company agrees that any action or proceeding brought to enforce or arising out of this Credit Note may be commenced in the New York Supreme Court for the County of Erie, or in the District Court of the United States for the Western District of New York, and the Company waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered mail to the Company, or as otherwise provided by the laws of the State of New York or the United States.

WAIVER OF TRIAL BY JURY: The Company hereby knowingly, voluntarily, unconditionally and irrevocably waives the right to a trial by jury in every jurisdiction in any action, proceeding or counterclaim brought by or against the Company, its successors or assigns, in respect of any matter arising out of this Credit Note or any document given in connection with or to secure this Credit Note, including without limitation any exercise of rights under this Credit Note or any such document, any attempt to cancel, void, or rescind this Credit Note or any such document, and any course of conduct or course of dealing in connection therewith.

REPLACEMENT: This Note is executed in replacement of, but not in payment or novation of, the Fourth Amended Credit Note of the Company to National City dated as of January 10, 2005 in the original principal amount of \$25,000,000 ("Prior Note"). All collateral for the Prior Note shall hereafter secure payment of this Credit Note.

THE NEW YORK MORTGAGE COMPANY LLC

By: /s/ Steven B. Schnall

Name: Steven B. Schnall

Title: President/CEO

JPMORGAN CHASE BANK, N.A.

AND

THE NEW YORK MORTGAGE COMPANY LLC

CREDIT NOTE

Dated As of February 1, 2005

CREDIT NOTE

\$50,000,000.00 As of February 1, 2005

FOR VALUE RECEIVED, the undersigned, THE NEW YORK MORTGAGE COMPANY LLC, a limited liability company organized under the laws of the State of New York, whose address is 1301 Avenue of the Americas, 7th Floor, New York, New York 10019 (the "Company"), promises to pay to the order OF JPMORGAN CHASE BANK, N.A., a national banking association, whose address is 707 Travis Street, 6th Floor North, Houston, Texas 77002 ("Chase") on or before June 29, 2005, or such earlier date as is provided for in the Credit Agreement as hereinafter defined ("Maturity Date"), in lawful money of the United States of America, the principal sum OF FIFTY MILLION DOLLARS (\$50,000,000.00), or the aggregate unpaid principal amount of all advances by Chase to the Company pursuant to the Amended and Restated Credit and Security Agreement among Chase, HSBC Bank USA, National Association, successor by merger to HSBC Bank USA ("HSBC"), National City Bank of Kentucky ("National City"), HSBC as Agent, National City as Documentation Agent, and the Company dated as of even date herewith, which amended and restated a Credit and Security Agreement dated as of December 15, 2003, as amended pursuant to a First Amendment to Credit and Security Agreement dated as of June 14, 2004, a Second Amendment to Credit and Security Agreement dated as of June 30, 2004, and a Third Amendment to Credit and Security Agreement dated as of November 1, 2004 and a Fourth Amendment to Credit and Security Agreement dated as of January 10, 2005 (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), plus interest thereon from the date hereof, as follows:

INTEREST: Except with respect to Repurchase Loans and Construction Advances, interest shall accrue on the principal amount outstanding hereon at an annual rate equal to the rate determined by the Agent to be the average rate per annum offered on the London Interbank Offering Market for U.S. Dollar deposits in the amount of this Credit Note or applicable portion thereof and for a term of 30 days ("LIBOR") plus 100 basis points (together, the "LIBOR-Based Rate"). Interest shall accrue on the principal amount of Repurchase Advances outstanding hereon at an annual rate equal to LIBOR plus 162.5 basis points ("Repurchase Loan Rate"). Interest shall accrue on the principal amount of Construction Advances outstanding hereon at an annual rate equal to LIBOR plus 125 basis points ("Construction Loan Rate"). The LIBOR-Based Rate shall be adjusted at the end of each calendar month to the rate equal to the LIBOR-Based Rate determined by reference to the then-current LIBOR. The Repurchase Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Repurchase Loan Rate determined by reference to the then-current LIBOR. The Construction Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Construction Loan Rate determined by reference to the then-current LIBOR. Accrued interest shall be paid monthly on the tenth business day of each month after the date

hereof. Interest shall be calculated on the basis of 1/360 of the annual interest at the applicable rate on the outstanding principal balance for each day such balance is outstanding, thus increasing the effective rate of interest, and shall continue to accrue at such rate until the principal balance is paid in full, regardless of whether the principal has become due by reason of default or otherwise, except as otherwise provided herein.

MAXIMUM RATE OF INTEREST: It is intended that the rate of interest hereon shall never exceed the maximum rate, if any, which may be legally charged on the loan evidenced by this Credit Note ("Maximum Rate"), and if the provisions for interest contained in this Credit Note would result in a rate higher than the Maximum Rate, interest shall nevertheless be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal, or, at the option of Chase, returned to the Company.

DUE DATE: All indebtedness evidenced hereby not paid before the Maturity Date shall be due and payable on the Maturity Date.

PLACE OF PAYMENT: All payments hereon shall be made, and all notices to Chase required or authorized hereby shall be given, as set forth in the Credit Agreement.

PAYMENT AND EXPENSES OF COLLECTION: All amounts payable hereunder are payable in lawful money of the United States. Payments received by the Agent on behalf of Chase after 2:00 p.m. Agent's local time shall be deemed to be received on the next following business day. Notwithstanding the foregoing, a payment will not be deemed to have been received unless by 2:00 p.m. Agent's local time Agent shall have received a completed "Repayment Schedule" on Agent's form, listing the Qualifying Mortgages (as defined in the Credit Agreement) to which the payment pertains. The Company agrees to pay all costs of collection when incurred, including, without limiting the generality of the foregoing, reasonable attorneys' fees through appellate proceedings, and to perform and comply with each of the covenants, conditions, provisions and agreements contained in every instrument now evidencing or securing said indebtedness. If any suit or action be instituted to enforce this Credit Note, the Company promises to pay, in addition to the cost and disbursements otherwise allowed by law, such sum as the court may adjudge reasonable attorneys' fees in such suit or action.

COLLECTION PERIODS: Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by Chase and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of Chase except to the extent that actual cash proceeds of such instrument are unconditionally received by Chase; provided, however, that this Credit Note shall not be in default as the result of normal collection periods on such instruments.

LATE PAYMENT CHARGE: The Company promises to pay to Chase promptly upon the accrual thereof a late payment charge of 6% of the amount of any installment payment not paid within ten days of receipt by the Company of the bill for such payment.

INTEREST AFTER NONPAYMENT: If the principal of this Credit Note is not paid when due, whether by acceleration or otherwise, all unpaid amounts shall bear interest following said nonpayment at the rate of 5% per annum above the otherwise applicable interest rate.

DEFAULTS: Upon the happening of an Event of Default (as defined in the Credit Agreement), Chase shall have all rights and remedies set forth in the Credit Agreement.

The failure to exercise any of the rights and remedies set forth in the Credit Agreement shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by Chase of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing rights and remedies at that time or at any subsequent time or nullify any prior exercise of any such rights and remedies without the express consent of Chase, except as and to the extent otherwise provided by law.

WAIVERS: The Company, and any indorsers or guarantors hereof, severally waive diligence, presentment, protest and demand and also notice of protest, demand, dishonor and nonpayment of this Credit Note, and expressly agree that this Credit Note, or any payment hereunder, may be extended from time to time, and consent to the acceptance of further collateral, the release of any collateral for this Credit Note, the release of any party primarily or secondarily liable hereon, and that it will not be necessary for Chase, in order to enforce payment of this Credit Note, to first institute or exhaust Chase's remedies against the Company or any other party liable hereon or against any collateral for this Credit Note. None of the foregoing shall affect the liability of the Company and any indorsers or guarantors hereof. No extension of time for the payment of this Credit Note, or any installment hereof, made by agreement by Chase with any person now or hereafter liable for the payment of this Credit Note, shall affect the liability under this Credit Note of the Company, even if the Company is not a party to such agreement; provided, however, Chase and the Company, by written agreement between them may affect the liability of the Company.

TERMINOLOGY: If more than one party joins in the execution of this Credit Note, the covenants and agreements herein contained shall be the joint and several obligation of each and all of them and of their respective heirs, executors, administrators, successor and assigns, and relative words herein shall be read as if written in the plural when appropriate. Any reference herein to Chase shall be deemed to include and apply to every subsequent holder of this

Credit Note. Words of masculine or neuter import shall be read as if written in the neuter or masculine or feminine when appropriate.

CREDIT AGREEMENT: Reference is made to the Credit Agreement for provisions as to mandatory principal repayments, collateral and acceleration.

APPLICABLE LAW: This Credit Note shall be governed by and construed under the laws of the State of New York, whose laws the Company expressly elects to apply to this Credit Note. The Company agrees that any action or proceeding brought to enforce or arising out of this Credit Note may be commenced in the New York Supreme Court for the County of Erie, or in the District Court of the United States for the Western District of New York, and the Company waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered mail to the Company, or as otherwise provided by the laws of the State of New York or the United States.

WAIVER OF TRIAL BY JURY: The Company hereby knowingly, voluntarily, unconditionally and irrevocably waives the right to a trial by jury in every jurisdiction in any action, proceeding or counterclaim brought by or against the Company, its successors or assigns, in respect of any matter arising out of this Credit Note or any document given in connection with or to secure this Credit Note, including without limitation any exercise of rights under this Credit Note or any such document, any attempt to cancel, void, or rescind this Credit Note or any such document, and any course of conduct or course of dealing in connection therewith.

THE NEW YORK MORTGAGE COMPANY LLC

By: /s/ Steven B. Schnall

Name: Steven B. Schnall

Title: President/CEO

HSBC BANK USA, NATIONAL ASSOCIATION

AND

THE NEW YORK MORTGAGE COMPANY LLC

FIFTH AMENDED

SWINGLINE NOTE

Dated as of February 1, 2005

**FIFTH AMENDED
SWINGLINE NOTE**

\$15,000,000.00 As of February 1, 2005

FOR VALUE RECEIVED, the undersigned, THE NEW YORK MORTGAGE COMPANY LLC, a limited liability company organized under the laws of the State of New York, whose address is 1301 Avenue of the Americas, 7th Floor, New York, New York 10019 (the "Company"), promises to pay to the order of HSBC BANK USA, NATIONAL ASSOCIATION, successor by merger to HSBC Bank USA, a bank organized under the laws of the United States of America, with an office at c/o Mortgage Warehouse Lending Department, One HSBC Center, 27th Floor, Buffalo, New York 14203 ("HSBC") on or before June 29, 2005, or such earlier date as is provided for in the Credit Agreement as hereinafter defined ("Maturity Date"), in lawful money of the United States of America, the principal sum of FIFTEEN MILLION DOLLARS (\$15,000,000.00), or the aggregate unpaid principal amount of all advances by HSBC as Swingline Lender to the Company pursuant to the Amended and Restated Credit and Security Agreement between HSBC, National City Bank of Kentucky ("NCB"), JPMorgan Chase Bank, N.A., HSBC as Swingline Lender, HSBC as Agent, and NCB as Documentation Agent, and the Company dated as of even date herewith, which amended and restated a Credit and Security Agreement dated as of December 15, 2003, as amended pursuant to a First Amendment to Credit and Security Agreement dated as of June 14, 2004, a Second Amendment to Credit and Security Agreement dated as of June 30, 2004, a Third Amendment to Credit and Security Agreement dated as of November 1, 2004 and Fourth Amendment to Credit and Security Agreement dated as of January 10, 2005 (as such agreement may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement"), plus interest thereon from the date hereof, as follows:

INTEREST: Except with respect to Repurchase Loans and Construction Advances, interest shall accrue on the principal amount outstanding hereon at an annual rate equal to the rate determined by HSBC to be the average rate per annum offered on the London Interbank Offering Market for U.S. Dollar deposits in the amount of this Fifth Amended Swingline Note (the "Swingline Note") or applicable portion thereof and for a term of 30 days ("LIBOR") plus 100 basis points (together, the "LIBOR-Based Rate"). Interest shall accrue on the principal amount of Repurchase Advances outstanding hereon at an annual rate equal to LIBOR plus 162.5 basis points ("Repurchase Loan Rate"). Interest shall accrue on the principal amount of Construction Advances outstanding hereon at an annual rate equal to LIBOR plus 125 basis points ("Construction Loan Rate"). The LIBOR-Based Rate shall be adjusted at the end of each calendar month to the rate equal to the LIBOR-Based Rate determined by reference to the then-current LIBOR. The Repurchase Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Repurchase Loan Rate determined by reference to the then-current LIBOR. The Construction Loan Rate shall be adjusted at the end of each calendar month to the rate equal to the Construction Loan Rate determined by reference to the then-current LIBOR.

Accrued interest shall be paid monthly on the tenth business day of each month after the date hereof. Interest shall be calculated on the basis of 1/360 of the annual interest at the applicable rate on the outstanding principal balance for each day such balance is outstanding, thus increasing the effective rate of interest, and shall continue to accrue at such rate until the principal balance is paid in full, regardless of whether the principal has become due by reason of default or otherwise, except as otherwise provided herein.

MAXIMUM RATE OF INTEREST: It is intended that the rate of interest hereon shall never exceed the maximum rate, if any, which may be legally charged on the loan evidenced by this Swingline Note ("Maximum Rate"), and if the provisions for interest contained in this Swingline Note would result in a rate higher than the Maximum Rate, interest shall nevertheless be limited to the Maximum Rate and any amounts which may be paid toward interest in excess of the Maximum Rate shall be applied to the reduction of principal, or, at the option of HSBC, returned to the Company.

DUE DATE: All indebtedness evidenced hereby not paid before the Maturity Date shall be due and payable on the Maturity Date.

PLACE OF PAYMENT: All payments hereon shall be made, and all notices to HSBC required or authorized hereby shall be given, as set forth in the Credit Agreement.

PAYMENT AND EXPENSES OF COLLECTION: All amounts payable hereunder are payable in lawful money of the United States. Payments received by HSBC after 2:00 p.m. HSBC's local time shall be deemed to be received on the next following business day. Notwithstanding the foregoing, a payment will not be deemed to have been received unless by 2:00 p.m. HSBC's local time HSBC shall have received a completed "Repayment Schedule" on HSBC's form, listing the Qualifying Mortgages (as defined in the Credit Agreement) to which the payment pertains. The Company agrees to pay all costs of collection when incurred, including, without limiting the generality of the foregoing, reasonable attorneys' fees through appellate proceedings, and to perform and comply with each of the covenants, conditions, provisions and agreements contained in every instrument now evidencing or securing said indebtedness. If any suit or action be instituted to enforce this Swingline Note, the Company promises to pay, in addition to the cost and disbursements otherwise allowed by law, such sum as the court may adjudge reasonable attorneys' fees in such suit or action.

COLLECTION PERIODS: Any check, draft, money order or other instrument given in payment of all or any portion hereof may be accepted by HSBC and handled in collection in the customary manner, but the same shall not constitute payment hereunder or diminish any rights of HSBC except to the extent that actual cash proceeds of such instrument are unconditionally received by HSBC; provided, however, that this Swingline Note shall not be in default as the result of normal collection periods on such instruments.

LATE PAYMENT CHARGE: The Company promises to pay to HSBC promptly upon the accrual thereof a late payment charge of 6% of the amount of any installment payment not paid within ten days of receipt by the Company of the bill for such payment.

INTEREST AFTER NONPAYMENT: If the principal of this Swingline Note is not paid when due, whether by acceleration or otherwise, all unpaid amounts shall bear interest following said nonpayment at the rate of 5% per annum above the otherwise applicable interest rate.

DEFAULTS: Upon the happening of an Event of Default (as defined in the Credit Agreement), HSBC shall have all rights and remedies set forth in the Credit Agreement.

The failure to exercise any of the rights and remedies set forth in the Credit Agreement shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect of the same event or any other event. The acceptance by HSBC of any payment hereunder which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing rights and remedies at that time or at any subsequent time or nullify any prior exercise of any such rights and remedies without the express consent of HSBC, except as and to the extent otherwise provided by law.

WAIVERS: The Company, and any indorsers or guarantors hereof, severally waive diligence, presentment, protest and demand and also notice of protest, demand, dishonor and nonpayment of this Swingline Note, and expressly agree that this Swingline Note, or any payment hereunder, may be extended from time to time, and consent to the acceptance of further collateral, the release of any collateral for this Swingline Note, the release of any party primarily or secondarily liable hereon, and that it will not be necessary for HSBC, in order to enforce payment of this Swingline Note, to first institute or exhaust HSBC's remedies against the Company or any other party liable hereon or against any collateral for this Swingline Note. None of the foregoing shall affect the liability of the Company and any indorsers or guarantors hereof. No extension of time for the payment of this Swingline Note, or any installment hereof, made by agreement by HSBC with any person now or hereafter liable for the payment of this Swingline Note, shall affect the liability under this Swingline Note of the Company, even if the Company is not a party to such agreement; provided, however, HSBC and the Company, by written agreement between them may affect the liability of the Company.

TERMINOLOGY: If more than one party joins in the execution of this Swingline Note, the covenants and agreements herein contained shall be the joint and several obligation of each and all of them and of their respective heirs, executors, administrators, successor and assigns, and relative words herein shall be read as if written in the plural when appropriate. Any

reference herein to HSBC shall be deemed to include and apply to every subsequent holder of this Swingline Note. Words of masculine or neuter import shall be read as if written in the neuter or masculine or feminine when appropriate.

CREDIT AGREEMENT: Reference is made to the Credit Agreement for provisions as to mandatory principal repayments, collateral and acceleration.

APPLICABLE LAW: This Swingline Note shall be governed by and construed under the laws of the State of New York, whose laws the Company expressly elects to apply to this Swingline Note. The Company agrees that any action or proceeding brought to enforce or arising out of this Swingline Note may be commenced in the New York Supreme Court for the County of Erie, or in the District Court of the United States for the Western District of New York, and the Company waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered mail to the Company, or as otherwise provided by the laws of the State of New York or the United States.

WAIVER OF TRIAL BY JURY: The Company hereby knowingly, voluntarily, unconditionally and irrevocably waives the right to a trial by jury in every jurisdiction in any action, proceeding or counterclaim brought by or against the Company, its successors or assigns, in respect of any matter arising out of this Swingline Note or any document given in connection with or to secure this Swingline Note, including without limitation any exercise of rights under this Swingline Note or any such document, any attempt to cancel, void, or rescind this Swingline Note or any such document, and any course of conduct or course of dealing in connection therewith.

REPLACEMENT. This Swingline Note is executed in replacement of, but not in payment or novation of, the Fourth Amended Swingline Note of the Company to HSBC dated as of January 10, 2005 in the original principal amount of \$12,000,000 ("Prior Note"). All Collateral for the Prior Note hereafter shall secure payment of this Swingline Note.

THE NEW YORK MORTGAGE COMPANY LLC

By: /s/ Steven B. Schnall

Name: Steven B. Schnall

Title: President/CEO

HSBC BANK USA, NATIONAL ASSOCIATION,

NATIONAL CITY BANK OF KENTUCKY,

JPMORGAN CHASE BANK, N.A.

AND

HSBC BANK USA, NATIONAL ASSOCIATION, AS AGENT

AND

THE NEW YORK MORTGAGE COMPANY LLC

SECOND AMENDED GUARANTY

NEW YORK MORTGAGE TRUST INC.

Dated as of February 1, 2005

**SECOND AMENDED
GUARANTY
OF
NEW YORK MORTGAGE TRUST INC.**

In consideration of any extension of credit whether heretofore or hereafter made by HSBC BANK USA, NATIONAL ASSOCIATION, successor by merger to HSBC Bank USA, a national banking association organized under the laws of the United States of America ("HSBC"), NATIONAL CITY BANK OF KENTUCKY, a national banking association, organized under the laws of the United States of America ("NCB"), JPMORGAN CHASE BANK, N.A. ("Chase" and together with HSBC and NCB, "Banks") to THE NEW YORK MORTGAGE COMPANY LLC, a New York limited liability company (the "Company"), the undersigned hereby guarantees to HSBC Bank USA, National Association, successor by merger to HSBC Bank USA, as Agent for the Banks pursuant to the Credit Agreement, as hereinafter defined ("Secured Party")

(a) the full and prompt payment to the Banks and Secured Party when due, whether by acceleration or otherwise, of any and all indebtedness and other liabilities of the Company to the Banks and Secured Party arising out of a Credit and Security Agreement dated as of December 15, 2003, as amended pursuant to a First Amendment to Credit and Security Agreement dated as of June 14, 2004, a Second Amendment to Credit and Security Agreement dated as of June 30, 2004, and a Third Amendment to Credit and Security Agreement dated November 1, 2004, as amended and restated pursuant to an Amended and Restated Credit and Security Agreement dated of even date herewith ("Credit Agreement") governing a mortgage warehousing line of credit in the maximum principal amount of ONE HUNDRED FIFTY MILLION DOLLARS (\$150,000,000.00), whether now existing or hereafter incurred, of every kind and character, direct or indirect, and whether such indebtedness is from time to time reduced and thereafter increased, or entirely extinguished and thereafter reincurred ("Indebtedness"), and (b) the full and complete performance of all the Company's obligations and compliance with all the Company's covenants set forth in the Credit Agreement. The undersigned further agrees to pay all costs and expenses, including, without limitation, attorneys' fees, at any time paid or incurred by the Banks and Secured Party in endeavoring to collect the Indebtedness or any part thereof and in enforcing this Guaranty.

This Guaranty is, and is intended to be, a continuing guaranty of the payment of the Indebtedness (irrespective of the aggregate amount thereof) independent of and in addition to any other guaranty, indorsement or collateral held by Secured Party therefor whether or not furnished by the undersigned. The undersigned shall have no right of subrogation with respect to any payments made by the undersigned hereunder until all of the Indebtedness is paid in full.

If any default shall be made in the payment of any Indebtedness, the undersigned hereby agrees to pay the same to the extent above specified: (i) without requiring protest or notice of nonpayment or notice of default to the undersigned, to the Company, or to any other person; (ii) without proof of demand; (iii) without requiring Secured Party to resort first to the

Company or to any other guaranty or any collateral which Secured Party may hold; (iv) without requiring notice of acceptance hereof or assent hereto by Secured Party; and (v) without requiring notice that any indebtedness has been incurred, all of which the undersigned hereby waives.

The undersigned authorizes Secured Party, without notice or demand and without releasing, impairing or affecting the undersigned's obligations hereunder, from time to time: (i) to take from any party and hold collateral for the payment of the Indebtedness or any part thereof, and to exchange, enforce or release such collateral or any part thereof; (ii) to accept and hold any indorsement or guaranty of payment of the Indebtedness or any part thereof and to release or substitute any such indorser or guarantor, or any party who has given any security interest in any collateral as security for the payment of the Indebtedness or any part thereof, or any other party in any way obligated to pay the Indebtedness or any part thereof; (iii) to direct the order or manner of the disposition of any and all collateral and the enforcement of any and all indorsements and guaranties relating to the Indebtedness or any part thereof as Secured Party, in its sole discretion, may determine; and (iv) to determine how, when and what application of payments and credits, if any, shall be made on the Indebtedness or any part thereof, and to apply the same upon principal or interest or the portion thereof, if any, in excess of the amount of this Guaranty.

No delay or omission by Secured Party in exercising any right or remedy hereunder shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. All rights and remedies of Secured Party hereunder are cumulative.

This Guaranty is absolute and unconditional and shall not be affected by any act or thing whatsoever, except as herein provided. No modification or amendment of any provision of this Guaranty shall be effective unless in writing and subscribed by a duly authorized officer of Secured Party.

This Guaranty shall be governed by and construed under the laws of the State of New York, whose laws the undersigned expressly elects to apply to this Guaranty. The undersigned agrees that any action or proceeding brought to enforce or arising out of this Guaranty may be commenced in the New York Supreme Court for the County of Erie, or in the District Court of the United States for the Western District of New York, and the undersigned waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered mail to the undersigned, or as otherwise provided by the laws of the State of New York or the United States.

The undersigned hereby knowingly, voluntarily, unconditionally and irrevocably waives the right to a trial by jury in every jurisdiction in any action, proceeding or counterclaim

brought by or against the undersigned, its personal representatives, successors or assigns, in respect of any matter arising out of this Guaranty or the Indebtedness, including without limitation any exercise of rights hereunder, any attempt to cancel, void, or rescind this Guaranty, and any course of conduct or course of dealing in connection herewith.

Secured Party and the undersigned as used herein shall include the estates, executors or administrators, or successors or assigns, of those parties.

This Second Amended Guaranty amends the amended and restated guaranty of New York Mortgage Trust Inc. to Agent, for the benefit of the Banks, dated as of November 1, 2004.

IN WITNESS WHEREOF, this Guaranty has been signed by the undersigned as of the 1st day of February, 2005.

Signature of Guarantor:

NEW YORK MORTGAGE TRUST INC.

By: /s/ Steven B. Schnall

Name: Steven B. Schnall

Title: Chairman/Co-CEO

Address:

*1301 Avenue of the Americas
New York, NY 10019*

COMPANY GENERAL CERTIFICATE

FROM: THE NEW YORK MORTGAGE COMPANY LLC ("Company") and NEW YORK MORTGAGE TRUST INC. ("NYMT")

TO: HSBC BANK USA, NATIONAL ASSOCIATION, as Agent ("Agent")

CLOSING DATE: As of February 1, 2005

The undersigned certifies that he is the Secretary of the Company and its sole member, NYMT, and that, as such, the undersigned is authorized to execute and deliver this certificate in the name and on behalf of the Company. The undersigned further certifies that:

1. As of the Closing Date, the Company is in good standing in the State of New York.
2. Attached hereto as Exhibit A is a true, correct and complete copy of the Written Consent of Sole Member of the Company, and such Consent is in full force and effect on and as of the Closing Date without revocation, modification or amendment in any respect. No other or further action by or on behalf of the Company or its member or managers, as appropriate, is necessary or appropriate to authorize the execution, delivery and performance by the Company of the Amended and Restated Credit and Security Agreement among the Company, HSBC Bank USA, National Association ("HSBC"), National City Bank of Kentucky ("NCB"), JPMorgan Chase Bank, N.A. ("Chase" and, together with HSBC, "Banks"), HSBC as Swingline Lender, HSBC as Agent, and NCB as Documentation Agent, dated as of the date hereof or any or all of the other agreements and documents required to be executed and delivered by the Company in order to give effect to and consummate the transactions contemplated therein. None of the foregoing is or will be in contravention of any provision of the Company's Articles of Organization, Operating Agreement, or any document or agreement to which the Company is a party or which is binding on the Company.
3. Each officer of the Company authorized to execute documents on behalf of the Company is indicated below, and the specimen signatures below are the genuine signatures of such officers:

<i>NAME</i>	<i>TITLE</i>	<i>SIGNATURE</i>
<i>Steven B. Schnall</i>	<i>Chief Executive Office and President</i>	<i>/s/ Steven B. Schnall</i> -----
<i>Michael I. Wirth</i>	<i>Executive Vice President, Secretary and Treasurer</i>	<i>/s/ Michael I. Wirth</i> -----
<i>Ref: CR/SBS</i>	<i>Date: 01/28/2005</i>	<i>Shipping: 15.45</i>
<i>To: DEBORAH A DOXEY</i>	<i>Co: PHILLIPS LYTTLE L</i>	<i>Special: 1.39</i>
<i>Ad: 3400 HSBC CENTER</i>	<i>City: 0.00</i>	
<i>St: NY</i>	<i>Zip: 14203</i>	<i>Total: 16.84</i>

**Svcs: PRIORITY OVERNIGHT
TRCK: 5934 8006 3886**

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate in the name and on behalf of the Company as its sole member on and as of the Closing Date.

SOLE MEMBER:

NEW YORK MORTGAGE TRUST INC.

By: /s/ Michael I. Wirth

Name: Michael I. Wirth

Title: Secretary

Exhibit A

(Written Consent of Sole Member)

WRITTEN CONSENT OF

SOLE MEMBER

OF

THE NEW YORK MORTGAGE COMPANY, LLC

RESOLVED, that the undersigned, as sole member of THE NEW YORK MORTGAGE COMPANY, LLC, a New York limited liability company ("Company"), hereby designates the Chief Executive Officer and President and the Executive Vice President, Secretary and Treasurer of the Company as designated officers (each a "Designated Officer" and collectively, the "Designated Officers"), and each of the Designated Officers be and is authorized on behalf of the Company to execute and deliver to HSBC BANK USA, NATIONAL ASSOCIATION ("HSBC"), NATIONAL CITY BANK OF KENTUCKY ("NCB"), JPMORGAN CHASE BANK, N.A. ("Chase" and, together with HSBC and NCB, "Banks"), HSBC as Agent for the Banks, HSBC, as Swingline Lender and NCB, as Documentation Agent, an Amended and Restated Credit and Security Agreement ("Agreement") governing a residential mortgage warehousing line of credit from the Banks to the Company in the principal amount of ONE HUNDRED FIFTY MILLION AND 00/100 DOLLARS (\$150,000,000.00);

RESOLVED, FURTHER, that the Designated Officers of the Company be and each of them acting alone is hereby authorized on behalf of the Company to execute and deliver to the Banks and Agent such other documents and do any and all other acts necessary or appropriate to effectuate the purposes of these resolutions, including, without limitation, to execute and deliver to the Banks and Agent any subsequent amendments, extensions, or renewals of the Agreement and any other agreement or instrument contemplated by the Agreement or by these resolutions, which any of such Designated Officer deems necessary or appropriate;

RESOLVED, FURTHER, that each of the foregoing documents mentioned in these resolutions be in such form and content as the Designated Officers of the Company executing same shall approve, his approval to be conclusively evidenced by his execution thereof; and

[SIGNATURE PAGE FOLLOWS]

RESOLVED, FURTHER, that the undersigned has executed and delivered this Written Consent of Sole Member on and as of the Closing Date for the purposes of the foregoing resolutions.

SOLE MEMBER:

NEW YORK MORTGAGE TRUST, INC.

By: /s/ Steven B. Sohnall

By: Steven B. Sohnall

Its: Co-Chief Executive Officer

GUARANTOR GENERAL CERTIFICATE

FROM: The New York Mortgage Trust, Inc. ("Company")

TO: HSBC Bank USA, National Association, National City Bank of Kentucky and JPMorgan Chase Bank, N.A. (collectively, "Lenders")

CLOSING DATE: February 1, 2005 ("Closing Date")

The undersigned certifies that he is Co-Chief Executive Officer of the Company and that, as such, the undersigned is authorized to execute and deliver this certificate in the name and on behalf of the Company. The undersigned further certifies that:

1. This Certificate is being delivered in Buffalo, New York on the Closing Date in connection with the execution and delivery of a Second Amended Guaranty from the Company to Lender dated as of the Closing Date ("Guaranty").
2. Attached hereto as Exhibit A is a certified copy of the Company's Articles of Incorporation including any amendments thereto. The Articles of Incorporation are in full force and effect on and as of the Closing Date without further modification or amendment in any respect.
3. Attached hereto as Exhibit B is a true copy of the Company's current By-Laws including any amendments thereto. The attached By-Laws are in full force and effect on and as of the Closing Date without further modification or amendment in any respect.
4. Attached hereto as Exhibit C is a Certificate of Good Standing issued by the Secretary of State of the State of Maryland Department of Assessments and Taxation. As of the Closing Date, the Company is in good standing in the State of Maryland Department of Assessments and Taxation, does not owe franchise tax, and no franchise tax reports or license or other fees are due.

5. Each officer of the Company indicated below has been duly elected and is at present qualified and acting in the office indicated opposite his name, and the specimen signatures below are the genuine signatures of such officers:

<i>NAME</i>	<i>TITLE</i>	<i>SIGNATURE</i>
<i>Steven B. Schnall</i>	<i>Co-Chief Executive Officer</i>	<i>/s/ Steven B. Schnall</i> -----
<i>David A. Akre</i>	<i>Co-Chief Executive Officer</i>	<i>/s/ David A. Akre</i> -----
<i>Michael I. Wirth</i>	<i>Executive Vice President, Chief Financial, Secretary and Treasurer</i>	<i>/s/ Michael I. Wirth</i> -----

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate in the name and on behalf of the Company as of the Closing Date.

/s/ Steven B. Schnall

Name: Steven B. Schnall
Title: Co-Chief Executive Officer

**JASON L. MADFES
ATTORNEY AT LAW
1301 AVENUE OF THE AMERICAS, 7(TH) FLOOR
NEW YORK, NEW YORK 10019**

MEMBER OF NEW YORK,
CONNECTICUT & FLORIDA BARS

(212) 634-9495
FAX (212) 634-2398
E-MAIL ADDRESS: JMADFES@NYMC.COM

January 28, 2005

HSBC Bank USA, National Association
c/o Mortgage Warehouse Lending Department One HSBC Center, 27th Floor
Buffalo, New York 14203
Attention: Manager, Warehouse Lending

National City Bank of Kentucky
101 South 5th Street
Louisville, Kentucky 40202
Attention: Charles Ezell, President

JPMorgan Chase Bank, N.A.
707 Travis Street, 6th Floor North
Houston, Texas 77002
Attention: Michael Nicholson

Re: HSBC Bank USA, National Association, National City Bank of Kentucky and JPMorgan Chase Bank, N.A. Warehousing Line of Credit to The New York Mortgage Company LLC

Ladies and Gentlemen:

I am the Vice-President, Settlement Department Manager of The New York Mortgage Company, LLC. I also act in the capacity of in-house counsel for The New York Mortgage Company, LLC and New York Mortgage Trust, Inc.

I have acted as counsel to The New York Mortgage Company LLC, a limited liability company organized under the laws of the State of New York (the "Company") and as such have advised the Company in connection with a Credit and Security Agreement between the Company, HSBC Bank USA, National Association ("HSBC"), National City Bank of Kentucky ("NCB"), HSBC as Agent, and NCB as Documentation Agent (the "Original Parties"), dated as of December 15, 2003, as amended by a First Amendment to Credit and Security Agreement dated as of June 14, 2004, a Second Amendment to Credit and Security Agreement dated as of June 30, 2004, a Third Amendment to Credit and Security Agreement dated as of November 1, 2004, and a Fourth Amendment to Credit and Security Agreement dated as of January 10, 2005, and further amended and restated pursuant to an Amended and Restated Credit and Security Agreement dated the date hereof (the "Credit Agreement") among the Original Parties and JPMorgan Chase Bank, N.A. ("Chase" and collectively with HSBC and NCB, the "Banks"), the Credit Notes referred to in the Credit Agreement ("Credit Notes") and the related documents to

which the Company is a party and which are referred to in the Credit Agreement ("Related Documents"). I have also acted as counsel to New York Mortgage Trust, Inc., a corporation organized under the laws of the State of Maryland ("Guarantor") and as such have advised the Guarantor in connection with a Guaranty from the Guarantor dated as of August 26, 2004, as amended and supplemented by a First Amended Guaranty from the Guarantor dated as of November 1, 2004 and a Second Amended and Restated Guaranty dated as of the date hereof, guarantying the repayment of the Company's indebtedness when and as due, to the Banks, and the performance of the obligations of the Company under the Credit Agreement (the "Guaranty").

I have examined such matters of law, the aforementioned documents, the organizational documents of the Company, the Articles of Incorporation and By-laws of the Guarantor, and copies of such other agreements, documents and statements of governmental officials and corporate officers and representatives and have made such investigations as I have deemed relevant and necessary as the basis for my opinion. In such examination I have assumed the genuineness of all signatures (other than those of my clients) and the authenticity of all documents submitted to me as originals and the conformity with originals of all documents submitted to me as copies.

Based upon and subject to the foregoing, I am of the opinion that:

1. The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New York; has powers to transact the business in which it is engaged; is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of such business requires such licensing or such qualification; and has all necessary power and authority to enter into and to execute, deliver and perform the Credit Agreement, the Credit Notes, and the Related Documents, all of which have been duly authorized by all proper and necessary corporate action.
2. The Guarantor is a corporation duly organized, validly existing, and in good standing under the laws of the State of Maryland; has powers to transact the business in which it is engaged; is duly licensed or qualified and in good standing in each jurisdiction in which the conduct of such business requires such licensing or such qualification; and has all necessary power and authority to enter into and to execute, deliver and perform the Guaranty, all of which have been duly authorized by all proper and necessary corporate and shareholder action.
3. The execution, delivery and performance by the Company of all the terms and provisions of the Credit Agreement, Credit Notes, and the Related Documents are within the powers of the Company; have been duly authorized by all proper and necessary company action, including without limitation valid and proper consents of its members, and do not conflict with the Company's organizational documents, or, to the best of my knowledge, any note, indenture, contract or agreement to which either the Company is a party or by which the Company is bound, or with any statute, rule, regulation, law (whether statutory or decisional) binding upon the Company or affecting the aforementioned documents.
4. The execution, delivery and performance by the Guarantor of all the terms and provisions of the Guaranty are within the corporate powers of the Guarantor; have been duly authorized by all proper and necessary corporate and shareholder action, including without limitation valid and proper consents of stockholders and directors, and do not conflict with the Guarantor's Articles of Incorporation, By-laws, or, to the best of my knowledge, any

note, indenture, contract or agreement to which either the Guarantor is a party or by which the Guarantor is bound, or with any statute, rule, regulation, law (whether statutory or decisional) binding upon the Guarantor or affecting the aforementioned documents.

5. All authorizations and approvals, notices and filings required for the Company and the Guarantor, as applicable, to enter into the Credit Agreement, Credit Notes, the Guaranty, and each of the other Related Documents and to take all actions contemplated therein or in connection therewith, have been obtained, copies thereof have been delivered to HSBC, and such authorizations and approvals remain in full force and effect.

6. The Credit Agreement, the Credit Notes, the Related Documents, and the Guaranty, when executed and delivered, will constitute the legal, valid and binding obligations of the Company and the Guarantor, respectively, enforceable in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy and insolvency laws and laws effecting creditors' rights generally.

7. To the best of my knowledge, there are not any actions, suits, proceedings (whether or not purportedly on behalf of the Company or the Guarantor) or investigations pending or threatened against the Company or the Guarantor on any basis therefor, which, if adversely determined, would, in any case or in the aggregate, materially and adversely affect the property, assets, financial condition or business of the Company or the Guarantor or materially impair the right or ability of the Company or the Guarantor to carry on their respective operations substantially as now conducted or anticipated to be conducted in the future, or which question the validity of the Credit Agreement, the Credit Notes, the Related Documents, the Guaranty or any other documents required by the Credit Agreement, or any action taken pursuant to any of the foregoing.

8. No consent, license, approval or authorization of, or registration, declaration or filing with, any court, governmental body or authority or other person or entity is required in connection with the valid execution, delivery or performance of the Credit Agreement, the Credit Notes, the Related Documents, and the Guaranty or other documents required by the Credit Agreement or in connection with any of the transactions contemplated thereby.

9. I have no knowledge that any investigation of the Company's or the Guarantor's tax liability by any state or federal agency or authority is pending, threatened or expected.

very truly yours

/s/ Jason L. Madfes

Jason L. Madfes

cc: Steven Schnall
Joseph V. Fierro
David Akre
Michael Wirth

EXHIBIT 10.100

EXECUTION COPY

**AMENDED AND RESTATED
MASTER LOAN AND SECURITY AGREEMENT**

DATED AS OF DECEMBER 6, 2004

NEW YORK MORTGAGE FUNDING, LLC

AS BORROWER

THE NEW YORK MORTGAGE COMPANY, LLC

AS BORROWER

NEW YORK MORTGAGE TRUST, INC.

AS BORROWER

AND

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

AS LENDER

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AMENDED AND RESTATED MASTER LOAN AND SECURITY AGREEMENT

AMENDED AND RESTATED MASTER LOAN AND SECURITY AGREEMENT, dated as of December 6, 2004, among NEW YORK MORTGAGE FUNDING, LLC, a Delaware limited liability company, THE NEW YORK MORTGAGE COMPANY, LLC, a New York limited liability company and NEW YORK MORTGAGE TRUST, INC., a Maryland corporation (each, a "Borrower" and jointly and severally, the "Borrowers") and GREENWICH CAPITAL FINANCIAL PRODUCTS, INC., a Delaware corporation (the "Lender").

RECITALS

The Borrowers wish to obtain financing from time to time to provide interim funding for the origination and acquisition of certain Mortgage Loans (as defined herein), which Mortgage Loans are to be sold or contributed by the Borrowers to one or more trusts or other entities to be sponsored by the Borrowers or an Affiliate (as defined herein) thereof, or to third-parties, and which Mortgage Loans shall secure Advances (as defined herein) to be made by the Lender hereunder.

The Lender has agreed, subject to the terms and conditions of this Loan Agreement (as defined herein), to provide such financing to the Borrowers, with a portion of the proceeds of the sale of all mortgage-backed securities issued by any such trust or other entity, together with a portion of the proceeds of any permitted whole loan sales, together with other funds of the Borrowers, if necessary, being used to repay any Advances made hereunder as more particularly described herein. This Loan Agreement amends and restates the Master Loan and Security Agreement dated as of January 9, 2004 among New York Mortgage Funding, LLC and the Lender as amended.

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

Section 1. Definitions and Accounting Matters.

1.01 Certain Defined Terms. As used herein, the following terms shall have the following meanings (all terms defined in this Section 1.01 or in other provisions of this Loan Agreement in the singular to have the same meanings when used in the plural and vice versa):

"Accepted Servicing Practices" shall mean, with respect to any Mortgage Loan, accepted and prudent mortgage servicing practices of prudent mortgage lending institutions which service mortgage loans of the same type as such Mortgage Loans in the jurisdiction where the related Mortgaged Property is located and in a manner at least equal in quality to the servicing the Subservicer or any Borrower, as the case may be, provides to mortgage loans which they own in their own portfolio.

"Advance" shall have the meaning specified in Section 2.01(a) hereof.

"Affiliate" means, with respect to any Person, any other Person which, directly or indirectly, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (together with the correlative meanings of "controlled by" and "under common control with") means possession, directly or indirectly, of the power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the directors or managing general partners (or their equivalent) of such Person, or (b) to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract, or otherwise.

"Alt-A Mortgage Loans" shall mean (i) any first lien, wet or dry Mortgage Loans secured by one-to-four family residential properties to Mortgagors of "Alt-A" credit quality or (ii) any Cooperative Loan to Mortgagors of "Alt-A" credit quality.

"Alt-A Mortgage Loan Advances" shall mean Advances so long as, and to the extent that, they are secured by Alt-A Mortgage Loans.

"ALTA" means the American Land Title Association.

"Applicable Collateral Percentage" shall mean (i) for the first 120 days following the date such Eligible Mortgage Loan first becomes subject to the terms of this Agreement, with respect to each Advance:

(a) which are Prime Mortgage Loans or Alt-A Mortgage Loans, 98% of the lesser of (i) the current principal balance and (ii) the Market Value of the Loans;

(b) which are Mixed-Use Mortgage Loan Advance or Multi-Family Mortgage Loan Advance, 97% of the lesser of (i) the current principal balance and (ii) the Market Value of the Loans;

(c) which are 30 days past due with respect to scheduled principal and interest payments, 0%; and

(ii) thereafter, 0%.

"Applicable Margin" shall mean with respect to Advances that are Prime Mortgage Loan Advances, Alt-A Mortgage Loan Advances, Mixed Use-Small Multifamily Mortgage Loans and Wet Loan Advances respectively, and which are secured by the Mortgage Loans, the applicable rate per annum set forth below for each day that such Advances shall be so secured:

Prime Mortgage Loan Advances	0.75%
Alt-A Mortgage Loan Advances	0.75%
Mixed-Use Mortgage Loan Advance	1.25%

"Appraised Value" shall mean the value set forth in an appraisal made in connection with the origination of the related Mortgage Loan as the value of the Mortgaged Property.

"Assignment of Mortgage" shall mean, with respect to any Mortgage, an assignment of the Mortgage, notice of transfer or equivalent instrument in recordable form, sufficient under the laws of the jurisdiction wherein the related Mortgaged Property is located to reflect the assignment and pledge of the Mortgage.

"Attorney Bailee Letter" shall have the meaning assigned to such term in the Custodial Agreement.

"Bankruptcy Code" shall mean the United States Bankruptcy Code of 1978, as amended from time to time.

"Best's" means Best's Key Rating Guide, as the same shall be amended from time to time.

"Borrower" shall have the meaning provided in the heading hereof.

"Borrowing Base" shall mean the aggregate Collateral Value of all Eligible Mortgage Loans that have been, and remain pledged to the Lender hereunder.

"Borrowing Base Certificate" shall mean the certificate prepared by the Lender substantially in the form of Exhibit H, attached hereto.

"Borrowing Base Deficiency" shall have the meaning provided in Section 2.06 hereof.

"Business Day" shall mean any day other than (i) a Saturday or Sunday, (ii) a day on which the New York Stock Exchange, the Federal Reserve Bank of New York, the Custodian or banking and savings and loan institutions in the State of New York, Connecticut or the City of New York or the city or state in which the Custodian's offices are located are closed, or (iii) a day on which trading in securities on the New York Stock Exchange or any other major securities exchange in the United States is not conducted.

"Capital Lease Obligations" shall mean, for any Person, all obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) Property to the extent such obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP, and, for purposes of this Loan Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Cash Equivalents" shall mean (a) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed or insured by the United States Government or any agency thereof, (b) certificates of deposit and eurodollar time deposits with maturities of 90 days or less from the date of acquisition and overnight bank deposits of any commercial bank having capital and surplus in excess of \$500,000,000, (c) repurchase obligations of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than seven days with respect to securities issued or fully guaranteed or insured by the United States Government, (d) commercial paper of a domestic issuer rated at least A-1 or the equivalent thereof by Standard and Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. ("S&P") or P-1 or the equivalent thereof by Moody's Investors Service, Inc. ("Moody's") and in either case maturing within 90 days after the day of acquisition, (e) securities with maturities of 90 days or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P or A by Moody's, (f) securities with maturities of 90 days or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the requirements of clause (b) of this definition or, (g) shares of money market mutual or similar funds which invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

"Change of Control" means with respect to any Borrower, the acquisition by any Person, or two or more Persons acting in concert, of beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934) of outstanding shares of voting stock of such Borrower at any time if after giving effect to such acquisition (i) such Person or Persons owns twenty percent (20%) or more of such outstanding voting stock or (ii) Steven B. Schnall does not own more than fifty (50%) of such outstanding shares of voting stock; provided, however that the contribution by the members of NYMC of their membership interests in the NYMC to NYMT under that certain Contribution Agreement, dated as of December 22, 2003, by and among Steven B. Schnall and Joseph V. Fierro, as contributors, and New York Mortgage Trust, Inc. upon completion of the initial public offering of NYMT shall not constitute a Change of Control.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall have the meaning assigned to such term in Section 4.01(b) hereof.

"Collateral Value" shall mean with respect to each Mortgage Loan, the lesser of (a) the product of (x) the Applicable Collateral Percentage and (y) the outstanding principal balance of such Mortgage Loan, and (b) the Market Value; provided that, the Collateral Value shall be deemed to be zero with respect to each Mortgage Loan:

- (1) in respect of which there is a material breach of a representation and warranty set forth on Schedule 1 (assuming each representation and warranty is made as of the date Collateral Value is determined) or there is an Exception which was not otherwise waived by Lender;
- (2) which the Lender determines, in its reasonable discretion is not eligible for sale in the secondary market or for securitization without unreasonable credit enhancement;
- (3) which has been released from the possession of the Custodian under Section 5(a) of the Custodial Agreement to a Borrower or its bailee for a period in excess of ten (10) calendar days (or if such tenth day is not a Business Day, the next succeeding Business Day);
- (4) which has been released from the possession of the Custodian (i) under Section 5(b) of the Custodial Agreement under any Transmittal Letter in excess of the time period stated in such Transmittal Letter for release, or (ii) under Section 5(c) of the Custodial Agreement under an Attorney Bailee Letter, from and after the date such Attorney's Bailee Letter is terminated or ceases to be in full force and effect;
- (5) which has been subject to this Loan Agreement for greater than 120 days;
- (6) in respect of which (a) the related Mortgaged Property is the subject of a foreclosure proceeding or (b) the related Mortgage Note has been extinguished under relevant state law in connection with a judgment of foreclosure or foreclosure sale or otherwise;
- (7) if (a) the related Mortgage Note or the related Mortgage is not genuine or is not the legal, valid, binding and enforceable obligation of the maker thereof, subject to no right of rescission, set-off, counterclaim or defense, or (b) such Mortgage, is not a valid, subsisting, enforceable and perfected first lien on the Mortgaged Property;
- (8) in respect of which the related Mortgagor is the subject of a bankruptcy proceeding;
- (9) which is 30 or more days past due;
- (10) if the Mortgagor has not made its first payment on the related Mortgage Loan prior to its next scheduled payment date at the time of the funding of the related Advance;

(11) if such Mortgage Loan is a Wet Loan and all Required Documents have not been delivered to the Custodian within seven (7) days of the origination of such Wet Loan;

(12) which is a Wet Loan and the Collateral Value of such Wet Loan, when added to the Collateral Value of all other Wet Loans that secure Advances hereunder exceeds (i) \$60,000,000 during the first and last seven calendar days of any calendar month (ii) and \$50,000,000 during any other calendar day of any calendar month.

(13) which is a Mixed-Use Mortgage Loan or Multi-Family Mortgage Loan and the Collateral Value of such Mixed-Use Mortgage Loan or Multi-Family Mortgage Loan , when added to the Collateral Value of all other mixed use or small multifamily Mortgage Loans that secure Advances hereunder exceeds \$10,000,000;

(14) which is a Mixed-Use Mortgage Loan or Multi-Family Mortgage Loan that is not subject to a Takeout Commitment;

(15) which is an "Alt-A" credit Mortgage Loan and either (a) such "Alt-A" credit Mortgage Loan has a FICO score less than 660, (b) the inclusion of such "Alt-A" credit Mortgage Loan in the Borrowing Base causes the weighted average FICO score of all "Alt-A" credit Mortgage Loans then subject to the facility to be less than 700, (c) such "Alt-A" credit Mortgage Loan has an LTV of greater than 95% or (d) such "Alt-A" credit Mortgage Loan has an LTV between 80% and 95% and does not have a related PMI policy; or

(16) which has been originated more than thirty (30) days prior to the date such Mortgage Loan first becomes subject to the terms of this Loan Agreement.

"Contractual Obligation" shall mean as to any Person, any material provision of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound or any material provision of any security issued by such Person.

"Cooperative Corporation" shall mean with respect to any Cooperative Loan, the cooperative apartment corporation that holds legal title to the related Cooperative Project and grants occupancy rights to units therein to stockholders through Proprietary Leases or similar arrangements.

"Cooperative Loan" shall mean a Mortgage Loan that is secured by a first lien on and a perfected security interest in Cooperative Shares and the related Proprietary Lease granting exclusive rights to occupy the related Cooperative Unit in the building owned by the related Cooperative Corporation.

"Cooperative Project" shall mean with respect to any Cooperative Loan, all real property and improvements thereto and rights therein and thereto owned by a Cooperative Corporation including without limitation the land, separate dwelling units and all common elements.

"Cooperative Shares" shall mean with respect to any Cooperative Loan, the shares of stock issued by a Cooperative Corporation and allocated to a Cooperative Unit and represented by a stock certificate.

"Cooperative Unit" shall mean with respect to any Cooperative Loan, a specific unit in a Cooperative Project.

"Custodial Agreement" shall mean the Custodial Agreement, dated as of May 1 2004, and as amended from time to time, among the Borrowers, the Custodian and the Lender, substantially in the form of Exhibit B hereto, as the same shall be modified and supplemented and in effect from time to time.

"Custodian" shall mean LaSalle Bank, National Association, its successors and permitted assigns.

"Custodian Loan Transmission" shall have the meaning assigned thereto in the Custodial Agreement.

"Default" shall mean an Event of Default or an event that with notice or lapse of time or both would become an Event of Default.

"Disbursement Account" shall mean the account established by the Lender pursuant to which funds shall be disbursed to fund any Wet Loan.

"Dollars" and "\$" shall mean lawful money of the United States of America.

"Dry Loan" shall mean a first lien Mortgage Loan which is underwritten in accordance with the Underwriting Guidelines which Mortgage File contains all required Mortgage Loan Documents.

"Due Date" means the day of the month on which the Monthly Payment is due on a Mortgage Loan, exclusive of any days of grace.

"Due Diligence Review" shall mean the performance by the Lender of any or all of the reviews permitted under Section 11.16 hereof with respect to any or all of the Mortgage Loans or the Borrowers or related parties, as desired by the Lender from time to time.

"Effective Date" shall mean the date upon which the conditions precedent set forth in Section 5.01 shall have been satisfied.

"Electronic Tracking Agreement" means the electronic tracking agreement among the Lender, the Borrowers, Cenlar FSB, MERSCORP, Inc. and Mortgage Electronic Registration, Systems, Inc., in form and substance acceptable to Lender to be entered into in the event that any of the Mortgage Loans become MERS Mortgage Loans; provided that if no Mortgage Loans are or will be MERS Mortgage Loans, all references herein to the Electronic Tracking Agreement shall be disregarded.

"Eligible Mortgage Loan" shall mean a Mortgage Loan secured by a first lien mortgage on a one to four family residential property, a mixed use property or a small multifamily property (or, with respect to any Cooperative Loan, the Proprietary Lease and the related Cooperative Shares) and as to which
(i) the representations and warranties in Section 6.12 and 6.23 and Schedule 1 hereof are correct, (ii) was originated or acquired by a Borrower in accordance with such Borrower's or Lender approved third party's Underwriting Guidelines,
(iii) contains all required Mortgage Loan Documents without Exceptions unless otherwise waived by Lender and (iv) such other customary criteria for eligibility determined by the Lender shall have been satisfied

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" shall mean any corporation or trade or business that is a member of any group of organizations (i) described in Section 414(b) or (c) of the Code of which a Borrower is a member and (ii) solely for purposes of potential liability under Section 302(c)(11) of ERISA and Section 412(c)(11) of the Code and the lien created under Section 302(f) of ERISA and Section 412(n) of the Code, described in Section 414(m) or (o) of the Code of which Borrower is a member.

"Escrow Closing Letter" shall have the meaning provided in the Custodial Agreement.

"Escrow Payments" means with respect to any Mortgage Loan, the amounts constituting ground rents, taxes, assessments, water rates, sewer rents, municipal charges, mortgage insurance premiums, fire and hazard insurance premiums, condominium charges, and any other payments required to be escrowed by the Mortgagor with the mortgagee pursuant to the Mortgage or any other document.

"Event of Default" shall have the meaning provided in Section 8 hereof.

"Exception" shall have the meaning assigned thereto in the Custodial Agreement.

"Exception Report" shall mean the exception report prepared by the Custodian pursuant to the Custodial Agreement.

"Fannie Mae" shall mean Fannie Mae, or any successor thereto.

"Federal Funds Rate" shall mean, for any day, the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for the day of such transactions received by the Lender from three primary dealers (other than an affiliate of the Lender).

"Freddie Mac" shall mean Freddie Mac, or any successor thereto.

"Funding Date" shall mean the date on which an Advance is made hereunder.

"GAAP" shall mean generally accepted accounting principles as in effect from time to time in the United States of America.

"Governmental Authority" shall mean any nation or government, any state or other political subdivision, agency or instrumentality thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any court or arbitrator having jurisdiction over such Person, any of its Subsidiaries or any of its properties.

"Gross Margin" means with respect to each adjustable rate Mortgage Loan, the fixed percentage amount set forth in the related Mortgage Note.

"Guarantee" shall mean, as to any Person, any obligation of such Person directly or indirectly guaranteeing any Indebtedness of any other Person or in any manner providing for the payment of any Indebtedness of any other Person or otherwise protecting the holder of such Indebtedness against loss (whether by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, or to take-or-pay or otherwise), provided that the term "Guarantee" shall not include (i) endorsements for collection or deposit in the ordinary course of business, (ii) obligations to make servicing advances for delinquent taxes and insurance, or other obligations in respect of a Mortgaged Property, to the extent required by the Lender, or (iii) liabilities held through joint and several liability among any of the Borrowers. The amount of any Guarantee of a Person shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith. The terms "Guarantee" and "Guaranteed" used as verbs shall have correlative meanings.

"Indebtedness" shall mean, for any Person: (a) obligations created, issued or incurred by such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of Property to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such Property from such Person); (b) obligations of such Person to pay the deferred purchase or acquisition price of Property or services, other than trade accounts payable (other than for borrowed money) arising, and accrued expenses incurred, in the ordinary course of business so long as such trade accounts payable are payable within 90 days of

the date the respective goods are delivered or the respective services are rendered; (c) indebtedness of others secured by a Lien on the Property of such Person, whether or not the respective indebtedness so secured has been assumed by such Person; (d) obligations (contingent or otherwise) of such Person in respect of letters of credit or similar instruments issued or accepted by banks and other financial institutions for account of such Person; (e) Capital Lease Obligations of such Person; (f) obligations of such Person under repurchase agreements or like arrangements; (g) indebtedness of others Guaranteed by such Person; (h) all obligations of such Person incurred in connection with the acquisition or carrying of fixed assets by such Person; (i) indebtedness of general partnerships of which such Person is a general partner; and (j) any other indebtedness of such Person by a note, bond, debenture or similar instrument.

"Index" means with respect to each adjustable rate Mortgage Loan, the index set forth in the related Mortgage Note for the purpose of calculating the interest rate thereon.

"Instruction Letter" shall mean a letter agreement between each related Borrower and each Subservicer substantially in the form of Exhibit J attached hereto, in which such Persons acknowledge the Lender's security interest in the Mortgage Loans, and agree to remit any collections with respect to the Mortgage Loans as the Lender may so direct from time to time, which Instruction Letter may be delivered by Lender to such Subservicer in its sole discretion.

"Insurance Proceeds" means with respect to each Mortgage Loan, proceeds of insurance policies insuring the Mortgage Loan or the related Mortgage Property.

"Insured Closing Letter" shall have the meaning assigned to such term in the Custodial Agreement.

"Interest Period" shall mean, with respect to any Advance, (i) initially, the period commencing on the Funding Date with respect to such Advance and ending on the calendar day prior to the next succeeding Payment Date, and (ii) thereafter, each period commencing on the Payment Date of a month and ending on the calendar day prior to the Payment Date of the next succeeding month. Notwithstanding the foregoing, no Interest Period may end after the Termination Date.

"Interest Rate Adjustment Date" means with respect to each adjustable rate Mortgage Loan, the date, specified in the related Mortgage Note and the Mortgage Loan Schedule, on which the Mortgage Interest Rate is adjusted.

"Interest Rate Protection Agreement" shall mean with respect to any or all of the Mortgage Loans and/or Advances, any interest rate swap, cap or collar agreement or any other applicable hedging arrangements providing for protection against fluctuations in interest rates or the exchange of nominal interest obligations, either generally or under specific contingencies entered into by a Borrower and reasonably acceptable to the Lender.

"Lender" shall have the meaning assigned thereto in the heading hereto.

"LIBO Base Rate" shall mean with respect to each day an Advance is outstanding (or if such day is not a Business Day, the next succeeding Business Day), the rate per annum equal to the rate published by Bloomberg or if such rate is not available, the rate appearing at page 3750 of the Telerate Screen as one-month LIBOR on such date, and if such rate shall not be so quoted, the rate per annum at which the Lender is offered Dollar deposits at or about 11:00 A.M., eastern time, on such date by prime banks in the interbank eurodollar market where the eurodollar and foreign currency and exchange operations in respect of its Advances are then being conducted for delivery on such day for a period of one month and in an amount comparable to the amount of the Advances to be outstanding on such day.

"LIBO Rate" shall mean with respect to each Interest Period pertaining to an Advance, a rate (reset on a monthly basis) per annum determined by the Lender in its sole discretion in accordance with the following formula (rounded upwards to the nearest 1/100th of one percent), which rate as determined by the Lender shall be conclusive absent manifest error by the Lender:

LIBO Base Rate

1.00 - LIBO Reserve Requirements

The LIBO Rate shall be calculated each Funding Date and Payment Date commencing with the first Funding Date.

"LIBO Reserve Requirements" shall mean for any Interest Period for any Advance, the aggregate (without duplication) of the rates (expressed as a decimal fraction) of reserve requirements applicable to the Lender in effect on such day (including, without limitation, basic, supplemental, marginal and emergency reserves under any regulations of the Board of Governors of the Federal Reserve System or other Governmental Authority having jurisdiction with respect thereto), dealing with reserve requirements prescribed for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of such Board) maintained by a member bank of such Governmental Authority. As of the Effective Date, the LIBO Reserve Requirements shall be deemed to be zero.

"Lien" shall mean any mortgage, lien, pledge, charge, security interest or similar encumbrance.

"Loan Agreement" shall mean this Amended and Restated Master Loan and Security Agreement, as may be amended, supplemented or otherwise modified from time to time as mutually agreed by the parties in writing.

"Loan Documents" shall mean collectively, this Loan Agreement, the Note and the Custodial Agreement.

"Loan-to-Value Ratio" or "LTV" means with respect to any Mortgage Loan, the ratio of the original outstanding principal amount of the Mortgage Loan to the lesser of (a) the Appraised Value of the Mortgaged Property at origination or (b) if the Mortgaged Property was

purchased within 12 months of the origination of the Mortgage Loan, the purchase price of the Mortgaged Property.

"Market Value" shall mean the value, determined by the Lender in its sole reasonable discretion, of the Mortgage Loans if sold in their entirety to a single third-party purchaser. The Lender's determination of Market Value shall be conclusive upon the parties, absent manifest error on the part of the Lender. The Lender shall have the right to mark to market the Mortgage Loans on a daily basis which Market Value with respect to one or more of the Mortgage Loans may be determined to be zero. The Borrowers acknowledge that the Lender's determination of Market Value is for the limited purpose of determining Collateral Value for lending purposes hereunder without the ability to perform customary purchaser's due diligence and is not necessarily equivalent to a determination of the fair market value of the Mortgage Loans achieved by obtaining competing bids in an orderly market in which the originator/servicer is not in default under a revolving debt facility and the bidders have adequate opportunity to perform customary loan and servicing due diligence.

"Material Adverse Effect" shall mean a material adverse effect on

(a) the property, business, operations, financial condition or prospects of any Borrower, (b) the ability of any Borrower to perform in all material respects its obligations under any of the Loan Documents to which it is a party, (c) the validity or enforceability in all material respects of any of the Loan Documents, (d) the rights and remedies of the Lender under any of the Loan Documents, (e) the timely payment of the principal or of interest on the Advances or other amounts payable in connection therewith or (f) the Collateral.

"MERS" shall mean Mortgage Electronic Registration Systems, Inc., a Delaware corporation, or any successor in interest thereto.

"MERS Mortgage Loan" shall mean any Mortgage Loan as to which the related Mortgage or Assignment of Mortgage has been recorded in the name of MERS, as agent for the holder from time to time of the Mortgage Note and which is identified as a MERS Mortgage Loan on the related Mortgage Loan Schedule.

"MERS System" shall mean the system of recording transfers of mortgages electronically maintained by MERS.

"Mortgage Identification Number" or "MIN" shall mean the eighteen digit number permanently assigned to each MERS Mortgage Loan.

"Monthly Payment" means the scheduled monthly payment of principal and interest on a Mortgage Loan as adjusted in accordance with changes in the Mortgage Interest Rate pursuant to the provisions of the Mortgage Note for an adjustable rate Mortgage Loan.

"Mortgage" shall mean with respect to a Mortgage Loan, the mortgage, deed of trust or other instrument, which creates a first lien on either (i) with respect to a Mortgage Loan

other than a Cooperative Loan, the fee simple or leasehold estate in such real property or (ii) with respect to a Cooperative Loan, the Proprietary Lease and related Cooperative Shares, which in either case secures the Mortgage Note.

"Mortgage File" shall have the meaning assigned thereto in the Custodial Agreement.

"Mortgage Interest Rate" means the annual rate of interest borne on a Mortgage Note, which shall be adjusted from time to time with respect to adjustable rate Mortgage Loans.

"Mortgage Interest Rate Cap" means with respect to an adjustable rate Mortgage Loan, the limit on each Mortgage Interest Rate adjustment as set forth in the related Mortgage Note.

"Mortgage Loan" shall mean a mortgage loan or a Cooperative Loan which the Custodian has been instructed to hold for the Lender pursuant to the Custodial Agreement, and which Mortgage Loan includes, without limitation, (i) a Mortgage Note, the related Mortgage and all other Mortgage Loan Documents and
(ii) all right, title and interest of the related Borrower in and to the Mortgaged Property covered by such Mortgage.

"Mortgage Loan Documents" shall mean, with respect to a Mortgage Loan, the documents comprising the Mortgage File for such Mortgage Loan.

"Mortgage Loan List" shall mean the hard copy report provided by the related Borrower which shall include with respect to each Mortgage Loan to be included as Collateral: (i) the Mortgage Loan number, (ii) the Mortgagor's name,
(iii) the original principal amount of the Mortgage Loan and (iv) the current principal balance of the Mortgage Loan.

"Mortgage Loan Data Transmission" shall mean a computer-readable magnetic or other electronic format incorporating the fields identified on Exhibit G.

"Mortgage Note" shall mean the original executed promissory note or other evidence of the indebtedness of a mortgagor/borrower with respect to a Mortgage Loan.

"Mortgaged Property" means the real property (including all improvements, buildings, fixtures, building equipment and personal property thereon and all additions, alterations and replacements made at any time with respect to the foregoing) and all other collateral securing repayment of the debt evidenced by a Mortgage Note.

"Mortgagee" means either a Borrower or any subsequent holder of a Mortgage Loan.

"Mortgagor" means the obligor on a Mortgage Note.

"Multiemployer Plan" shall mean a multiemployer plan defined as such in Section 3(37) of ERISA to which contributions have been or are required to be made by a Borrower or any ERISA Affiliate and that is covered by Title IV of ERISA.

"Multi-Family Mortgage Loan " shall mean any first lien, wet or dry Mortgage Loans secured by small five-to-eight family residential properties to Mortgagors of "A" or "Alt-A" credit quality.

"Multi-Family Mortgage Loan Advance" shall mean Advances so long as, and to the extent that, they are secured by Multi-Family Mortgage Loans.

"Mixed-Use Mortgage Loan" shall mean any first lien, wet or dry Mortgage Loans secured by mixed use properties to Mortgagors of "A" or "Alt-A" credit quality.

"Mixed-Use Mortgage Loan Advance" shall mean Advances so long as, and to the extent that, they are secured by Mixed-Use Mortgage Loans.

"Net Income" shall mean, for any period, the net income of the NYMT for such period as determined in accordance with GAAP.

"Net Worth" shall mean, with respect to any Person, the excess of total assets of such Person, over total liabilities of such Person, determined in accordance with GAAP.

"Note" shall mean the promissory note provided for by Section 2.02(a) hereof for Advances and any promissory note delivered in substitution or exchange therefor, in each case as the same shall be modified and supplemented and in effect from time to time.

"Notice of Borrowing and Pledge" shall have the meaning assigned to such term in Section 2.03(a).

"NYMC" shall mean The New York Mortgage Company, LLC or any successor thereto.

"NYMF" shall mean New York Mortgage Funding, LLC or any successor thereto

"NYMT" shall mean New York Mortgage Trust, Inc.

"Payment Date" shall mean the seventh day of each calendar month, or if such day is not a Business Day, the next succeeding Business Day.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Permitted Exceptions" shall mean the exceptions to lien priority including but not limited to: (i) the lien of current real property taxes and assessments not yet due and payable;

(ii) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and (A) referred to or otherwise considered in the appraisal (if any) made for the originator of the Mortgage Loan or (B) which do not adversely affect the appraised value of the Mortgaged Property set forth in such appraisal; and (iii) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

"Person" shall mean any individual, corporation, company, voluntary association, partnership, joint venture, limited liability company, trust, unincorporated association or government (or any agency, instrumentality or political subdivision thereof).

"Plan" shall mean an employee benefit or other plan established or maintained by either any Borrower or any ERISA Affiliate and that is covered by Title IV of ERISA, other than a Multiemployer Plan.

"PMI Policy" or "Primary Insurance Policy" means a policy of primary mortgage guaranty insurance issued by a Qualified Insurer.

"Post-Default Rate" shall mean, in respect of any principal of any Advance or any other amount under this Loan Agreement, the Note or any other Loan Document that is not paid when due to the Lender (whether at stated maturity, by acceleration or mandatory prepayment or otherwise), a rate per annum during the period from and including the due date to but excluding the date on which such amount is paid in full equal to 2% per annum, plus (a) the interest rate otherwise applicable to such Advance or other amount, or (b) if no interest rate is otherwise applicable, the LIBO Rate plus the Applicable Margin.

"Prime Mortgage Loans" shall mean any first lien, wet or dry Mortgage Loans secured by one-to-four family residential properties to Mortgagors of "A" credit quality.

"Prime Mortgage Loan Advances" shall mean Advances so long as, and to the extent that, they are secured by Prime Mortgage Loans.

"Property" shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

"Proprietary Lease" shall mean the lease on a Cooperative Unit evidencing the possessory interest of the owner of the Cooperative Shares in such Cooperative Unit.

"Qualified Insurer" means an insurance company duly qualified as such under the laws of the states in which the Mortgaged Property is located, duly authorized and licensed such states to transact the applicable insurance business and to write the insurance provided, and approved as an insurer by Fannie Mae and Freddie Mac and whose claims paying ability is rated

in the two highest rating categories by any of the rating agencies with respect to primary mortgage insurance and in the two highest rating categories by Best's with respect to hazard and flood insurance.

"Qualified Originator" shall mean (a) a Borrower and (b) any other originator of Mortgage Loans as may be approved by the Lender in writing from time to time.

"Regulations T, U and X" shall mean Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as the same may be modified and supplemented and in effect from time to time.

"Requirement of Law" shall mean as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Required Documents" shall mean those documents identified in Section 2 of the Custodial Agreement.

"Rescission" shall mean the right of a Mortgagor to rescind the related Mortgage Note and related documents pursuant to applicable law.

"Responsible Officer" shall mean, as to any Person, the chief executive officer or, with respect to financial matters, the chief financial officer of such Person; provided, that in the event any such officer is unavailable at any time he or she is required to take any action hereunder, Responsible Officer shall mean any officer authorized to act on such officer's behalf as demonstrated by a certificate of corporate resolution.

"Restricted Payments" shall mean with respect to any Person, collectively, all dividends or other distributions of any nature (cash, securities, assets or otherwise), and all payments, by virtue of redemption or otherwise, on any class of equity securities (including, without limitation, warrants, options or rights therefor) issued by such Person, whether such securities are now or may hereafter be authorized or outstanding and any distribution in respect of any of the foregoing, whether directly or indirectly.

"Secured Obligations" shall have the meaning assigned thereto in Section 4.01(c) hereof.

"Securitization Letter" shall mean that certain letter agreement by and between each Borrower and Lender dated the date hereof, outlining rights and obligations with respect to securitizations and whole loan sales of Mortgage Loans subject to this Loan Agreement from time to time.

"Servicer" shall mean a Borrower in its capacity as servicer or master servicer of the Mortgage Loans.

"Servicing Agreement" shall have the meaning provided in Section 11.15(c) hereof.

"Servicing File" means with respect to each Mortgage Loan, the file retained by the related Borrower or the Subservicer consisting of originals of all material documents in the Mortgage File which are not delivered to the Custodian and copies of the Mortgage Loan Documents set forth in Section 2 of the Custodial Agreement.

"Servicing Records" shall have the meaning assigned thereto in Section 11.15(b) hereof.

"Servicing Transmission" shall mean a computer-readable magnetic or other electronic format acceptable to the parties containing the information identified on Exhibit F.

"Settlement Agent" shall have the meaning provided in the Custodial Agreement.

"Subservicer" shall have the meaning provided in Section 11.15(c) hereof.

"Subsidiary" shall mean, with respect to any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Takeout Commitment" shall mean, with respect to any Mortgage Loan, an irrevocable commitment issued by a Takeout Investor in favor of the related Borrower pursuant to which such Takeout Investor agrees to purchase such Mortgage Loan at a specific price on a forward delivery basis acceptable to the Lender in its sole discretion.

"Takeout Investor" shall mean a third party, acceptable to Lender, which has agreed to purchase Mortgage Loans pursuant to a Takeout Commitment.

"Tangible Net Worth" shall mean, with respect to any Person, as of any date of determination, the consolidated Net Worth of such Person and its Subsidiaries, less the consolidated net book value of all assets of such Person and its Subsidiaries (to the extent reflected as an asset in the balance sheet of such Person or any Subsidiary at such date) which will be treated as intangibles under GAAP, including, without limitation, such items as deferred financing expenses, deferred taxes, net leasehold improvements, good will, trademarks, trade

names, service marks, copyrights, patents, licenses and unamortized debt discount and expense; provided, that residual securities issued by such Person or its Subsidiaries shall not be treated as intangibles for purposes of this definition.

"Termination Date" shall mean December 5, 2005, or such earlier date on which this Loan Agreement shall terminate in accordance with the provisions hereof or by operation of law.

"Total Indebtedness" shall mean with respect to any Person, for any period, the aggregate Indebtedness of such Person and its Subsidiaries during such period, less the amount of any nonspecific consolidated balance sheet reserves maintained in accordance with GAAP.

"Trust Receipt" shall have the meaning provided in the Custodial Agreement.

"Uncommitted Amount" shall mean \$250,000,000.00

"Underwriting Guidelines" shall mean the underwriting guidelines of the related Borrower attached as Exhibit E hereto as amended from time to time in accordance with Section 7.09, or such other third party's underwriting as are acceptable to the Lender.

"Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

"Wet Loan" shall mean a wet-funded first lien Mortgage Loan which is underwritten in accordance with the Underwriting Guidelines and does not contain all the required Mortgage Loan Documents in the Mortgage File, which in order to be deemed an Eligible Mortgage Loan shall have the following additional characteristics:

(a) the proceeds thereof have been funded (or, on the date of the Advance supported by a Notice of Borrowing and Pledge are being funded) by wire transfer or cashier's check, cleared check or draft or other form of immediately available funds to the Settlement Agent for such Wet Loan;

(b) the related Borrower expects such Wet Loan to close and become a valid lien securing actual indebtedness by funding to the order of the Mortgagor thereunder;

(c) the proceeds thereof have not been returned to the Lender from the Settlement Agent for such Wet Loan;

(d) the related Borrower has not learned that such Wet Loan will not be closed and funded to the order of the Mortgagor; and

(e) upon recordation such Mortgage Loan will constitute a first lien on the premises described therein.

"Wet Loan Advances" shall mean Advances so long as, and to the extent that, they are secured by Wet Loans.

1.02 Accounting Terms and Determinations. Except as otherwise expressly provided herein, all accounting terms used herein shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lender hereunder shall be prepared, in accordance with GAAP.

Section 2. Advances, Note and Prepayments.

2.01 Advances.

(a) Subject to fulfillment of the conditions precedent set forth in Sections 5.01 and 5.02 hereof, and provided that no Default shall have occurred and be continuing hereunder, the Lender may, in its sole discretion, agree from time to time, on the terms and conditions of this Loan Agreement, to make loans (individually, an "Advance"; collectively, the "Advances") to the Borrowers in Dollars, on any Business Day from and including the Effective Date to but excluding the Termination Date in an aggregate principal amount at any one time outstanding up to but not exceeding the lesser of (i) the Uncommitted Amount (which shall be further subject to the limitations in the definition of Collateral Value) and (ii) the Borrowing Base as in effect from time to time. It is acknowledged and agreed that, notwithstanding any other provision of this Loan Agreement to the contrary, the facility provided under this Loan Agreement is an uncommitted facility and the Lender shall have no obligation to make any Advance hereunder. Any Advance hereunder shall be made in the sole discretion of the Lender. The Lender or any Borrowers may, at any time, terminate this Loan Agreement by providing written notice to all other parties which are signatories to this Loan Agreement. Within thirty (30) Business Days of receipt of such notice, the Borrowers agree to repay the aggregate outstanding amount of all Advances including all interest accrued thereon. The Lender shall have a right of first refusal, with a last look, with respect to any Mortgage Loan which is sold following the receipt of such notice.

(b) Subject to the terms and conditions of this Loan Agreement, during such period the Borrowers may borrow, repay and reborrow hereunder.

(c) In no event shall an Advance be made when any Default or Event of Default has occurred and is continuing.

2.02 Notes.

(a) The Advances made by the Lender shall be evidenced by a single promissory note of the Borrowers substantially in the form of Exhibit A hereto (the "Note"), dated the date hereof, payable to the Lender in a principal amount equal to the amount of the Uncommitted Amount as originally in effect and otherwise duly completed. The Lender shall have the right to have its Note subdivided, by exchange for promissory notes of lesser denominations or otherwise.

(b) The date, amount and interest rate of each Advance made by the Lender to a Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of the Note, noted by the Lender on the grid attached to the Note or any continuation thereof; provided, that the failure of the Lender to make any such recordation or notation shall not affect the obligations of the Borrowers to make a payment when due of any amount owing hereunder or under the Note in respect of the Advances.

2.03 Procedure for Borrowing.

(a) Borrowing Procedure for Requesting an Advance. A Borrower may request a borrowing to be secured by any Mortgage Loans hereunder, on any Business Day during the period from and including the Effective Date to the Termination Date, by delivering to the Lender, with a copy to the Custodian, a Mortgage Loan Data Transmission and an irrevocable Notice of Borrowing and Pledge substantially in the form of Exhibit D hereto (a "Notice of Borrowing and Pledge"), appropriately completed, and a Mortgage Loan Data Transmission which Notice of Borrowing and Pledge and Mortgage Loan Data Transmission must be received no later than 5:00 p.m. (eastern time) two Business Days prior to the requested Funding Date. Such Notice of Borrowing and Pledge shall clearly indicate those Mortgage Loans that are intended to be Wet Loans and Dry Loans and include a Mortgage Loan List in respect of the Eligible Mortgage Loans that the related Borrower proposes to pledge to the Lender and to be included in the Borrowing Base in connection with such borrowing. The Borrowers agree to immediately report to the Custodian and the Lender by facsimile transmission within one Business Day of discovery that any Wet Loans that were previously pledged to the Lender do not close for any reason including, but not limited to, a Rescission.

(b) Pursuant to the Custodial Agreement, the Custodian shall review any Required Documents delivered prior to 12:00 p.m. (eastern time) on any Business Day in time to include the related Mortgage Loans in such Borrowing Base determination on the same day. Not later than 3:00 p.m. (eastern time) on each Business Day, the Custodian shall deliver to the Lender, via electronic transmission acceptable to the Lender, the Custodian Loan Transmission and an Exception Report showing the status of all Mortgage Loans then held by the Custodian, including but not limited to the Wet Loans and Dry Loans which are subject to document exceptions, and the time the related Mortgage Loan Documents have been released pursuant to Section 5(a) or 5(b) of the Custodial Agreement. From time to time, the Lender shall calculate the Borrowing Base of all Mortgage Loans that are held by the Custodian and forward to the Borrowers by facsimile transmission a copy of the Borrowing Base Certificate in the form of Exhibit H. In addition, the Custodian shall deliver to the Lender no later than 4:00 p.m. (eastern

time) by facsimile transmission on each Funding Date, one or more Trust Receipts (as defined in the Custodial Agreement) relating to either Wet Loans or Dry Loans. The original copies of such Trust Receipts shall be delivered to JPMorgan Chase Bank, National Association at Four New York Plaza, Ground Floor, Outsourcing Department, New York, New York 10004, Attention: Jennifer John for the account of Greenwich Capital Markets (telephone number (212) 623-5953), as agent for the Lender by overnight delivery using a nationally recognized insured overnight delivery service.

(c) Upon a Borrower's request for a borrowing pursuant to Section 2.03(a) above, the Lender shall, assuming all conditions precedent set forth in this Section 2.03 and in Section 5.01 and 5.02 have been met, and provided no Default shall have occurred and be continuing (in accordance with Section 2.01), not later than 5:00 p.m. (eastern time) on the requested Funding Date make an Advance (determined by the Lender) in an amount which would not cause the aggregate amount of Advances then outstanding to exceed the lesser of (i) the Uncommitted Amount or (ii) the Borrowing Base shown on the latest Borrowing Base Certificate of the Lender. Subject to the foregoing, such borrowing will be made available to the related Borrower by the Lender transferring, via wire transfer (pursuant to wire transfer instructions provided by such Borrower on or prior to such Funding Date), in the aggregate amount of such borrowing in funds immediately available to such Borrower; provided, however, that the Lender may, at its sole option, elect not to make any Advance hereunder.

2.04 Limitation on Types of Advances; Illegality. Anything herein to the contrary notwithstanding, if, on or prior to the determination of any LIBO Base Rate:

(a) the Lender determines, which determination shall be conclusive, that quotations of interest rates for the relevant deposits referred to in the definition of "LIBO Base Rate" in Section 1.01 hereof are not being provided in the relevant amounts or for the relevant maturities for purposes of determining rates of interest for Advances as provided herein; or

(b) the Lender determines, which determination shall be conclusive, that the Applicable Margin plus the relevant rate of interest referred to in the definition of "LIBO Base Rate" in Section 1.01 hereof upon the basis of which the rate of interest for Advances is to be determined is not likely adequately to cover the cost to the Lender of making or maintaining Advances; or

(c) it becomes unlawful for the Lender to make or maintain Advances hereunder using a LIBO Rate;

then the Lender shall give the Borrowers prompt notice thereof and, so long as such condition remains in effect, the Lender shall not make additional Advances, and the Borrowers shall, at their option, either prepay such Advances or pay interest on such Advances at a rate per annum as determined by the Lender taking into account the increased cost to the Lender of making and maintaining the Advances.

2.05 Repayment of Advances; Interest.

(a) The Borrowers shall repay in full on the Termination Date the then aggregate outstanding principal amount of the Advances (as evidenced by the Note).

(b) Interest on the Advances shall be payable in arrears monthly on the Payment Date in respect of the previous calendar month and on the Termination Date. No later than the Business Day prior to each Payment Date, the Lender shall provide to the related Borrower a report which shall state the interest amount due for the current interest period on the Advance. The calculation on such report shall be based upon information provided in the Servicing Transmission and the report provided pursuant to Section 7.20.

(c) The Borrowers shall pay to the Lender interest on the unpaid principal amount of each Advance for the period from and including the date of such Advance to but excluding the date such Advance shall be paid in full, at a rate per annum equal to the LIBO Rate plus the Applicable Margin. Notwithstanding the foregoing, the Borrowers shall pay to the Lender interest at the applicable Post-Default Rate on any principal of any Advance and on any other amount payable by the Borrowers hereunder or under the Note, that shall not be paid in full when due (whether at stated maturity, by acceleration or by mandatory prepayment or otherwise), for the period from and including the due date thereof to but excluding the date the same is paid in full. Accrued interest on each Advance as calculated in Section 2.05(b) above shall be payable monthly on each Payment Date and on the Termination Date, except that interest payable at the Post-Default Rate shall accrue daily and shall be payable promptly upon receipt of invoice. Promptly after the determination of any interest rate provided for herein or any change therein, the Lender shall give written notice thereof to the Borrowers.

2.06 Mandatory Prepayments or Pledge.

On each Advance Date or other date on which there is a change in the Mortgage Loans held by the Custodian, the Custodian shall deliver to the Lender and the related Borrower the Custodian Loan Transmission. The Lender shall deliver to the related Borrower a Borrowing Base Certificate in the form attached hereto as Exhibit H, the calculation in such certificate to be based on the delinquency status and principal balance of the Eligible Mortgage Loans as of the later of the funding date balance or the last calendar day of the prior month. Such information shall be ascertained from the Servicing Transmission which shall be delivered or caused to be delivered by the related Borrower in accordance with Section 7.20 and shall include all Mortgage Loans which were funded on or prior to the last calendar day of the previous month.

In the event that such Borrowing Base Certificate indicates or if at any time the aggregate outstanding principal amount of Advances exceeds the Borrowing Base (a "Borrowing Base Deficiency"), as determined by the Lender and notified to the Borrowers on any Business Day, the Borrowers shall no later than one Business Day after receipt of such written notice, either prepay the Advances in part or in whole or pledge additional Eligible Mortgage Loans (which Collateral shall be in all respects acceptable to the Lender) to the Lender, such that after giving effect to such prepayment or pledge the aggregate outstanding principal amount of the Advances does not exceed the Borrowing Base.

2.07 Optional Prepayments.

(a) The Advances are prepayable without premium or penalty, in whole or in part on each Payment Date. The Advances are prepayable at any other time, in whole or in part, in accordance herewith and subject to clause (b) below. Any amounts prepaid shall be applied to repay the outstanding principal amount of any Advances (together with interest thereon) until paid in full. Amounts repaid may be reborrowed in accordance with the terms of this Loan Agreement. If any Borrower intends to prepay an Advance in whole or in part from any source, such Borrower shall give two (2) Business Days' prior written notice thereof to the Lender. If such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with accrued interest to such date on the amount prepaid. Partial prepayments shall be in an aggregate principal amount of at least \$100,000.

(b) If any Borrower makes a prepayment of an Advance on any day which is not a Payment Date, the Borrowers shall indemnify the Lender and hold the Lender harmless from any actual loss or expense which the Lender may sustain or incur arising from (a) the re-employment of funds obtained by the Lender to maintain such Advance hereunder or from (b) fees payable to terminate the deposits from which such funds were obtained, in either case, which actual loss or expense shall be equal to an amount equal to the excess, as reasonably determined by the Lender, of (i) its cost of obtaining funds for such Advance for the period from the date of such payment through the following Payment Date over (ii) the amount of interest likely to be realized by such Lender in redeploying the funds not utilized by reason of such payment for such period. This Section 2.07 shall survive termination of this Loan Agreement and payment of the Note.

2.08 Requirements of Law.

(a) If any Requirement of Law (other than with respect to any amendment made to the Lender's certificate of incorporation and by-laws or other organizational or governing documents) or any change in the interpretation or application thereof or compliance by the Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority made subsequent to the date hereof:

(i) shall subject the Lender to any tax of any kind whatsoever with respect to this Loan Agreement, the Note or any Advance made by it (excluding net income taxes) or change the basis of taxation of payments to the Lender in respect thereof;

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory advance or similar requirement against assets held by deposits or other liabilities in or for the account of Advances or other extensions of credit by, or any other acquisition of funds by any office of the Lender which is not otherwise included in the determination of the LIBO Base Rate hereunder;

(iii) shall impose on the Lender any other condition;

and the result of any of the foregoing is to increase the cost to the Lender, by an amount which the Lender deems to be material, of making, continuing or maintaining any Advance or to reduce any amount receivable hereunder in respect thereof, then, in any such case, the Borrowers shall promptly pay the Lender such additional amount or amounts as will compensate the Lender for such increased cost or reduced amount receivable thereafter incurred.

(b) If the Lender shall have determined that the adoption of or any change in any Requirement of Law (other than with respect to any amendment made to the Lender's certificate of incorporation and by-laws or other organizational or governing documents) regarding capital adequacy or in the interpretation or application thereof or compliance by the Lender or any corporation controlling the Lender with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority made subsequent to the date hereof shall have the effect of reducing the rate of return on the Lender's or such corporation's capital as a consequence of any obligations hereunder to a level below that which the Lender or such corporation (taking into consideration the Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by the Lender to be material, then from time to time, the Borrowers shall promptly pay to the Lender such additional amount or amounts as will thereafter compensate the Lender for such reduction.

(c) If the Lender becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify the Borrowers of the event by reason of which it has become so entitled. A certificate as to any additional amounts payable pursuant to this subsection submitted by the Lender to the Borrowers shall be conclusive in the absence of manifest error.

2.09 Purpose of Advances.

Each Advance shall be used to finance the origination or purchase of Eligible Mortgage Loans identified to the Lender in writing on each Mortgage Loan Schedule as such Mortgage Loan Schedule may be amended from time to time.

Section 3. Payments; Computations; Taxes.

3.01 Payments.

Except to the extent otherwise provided herein, all payments of principal, interest and other amounts to be made by the Borrowers under this Loan Agreement and the Note, shall be made in Dollars, in immediately available funds, without deduction, set-off or counterclaim, to the Lender at the following account maintained by the Lender at JPMorgan Chase Bank: Account Number 140095961, For the A/C of Greenwich Capital Financial Products, Inc., ABA# 021000021, Attn: Michael Harris, not later than 1:00 p.m., eastern time, on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Each Borrower acknowledges that it has no rights of withdrawal from the foregoing account.

3.02 Computations. Interest on the Advances shall be computed on the basis of a 360-day year for the actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

3.03 U.S. Taxes.

(a) Each Borrower agrees to pay to the Lender such additional amounts as are necessary in order that the net payment of any amount due to the Lender hereunder after deduction for or withholding in respect of any U.S. Tax (as defined below) imposed with respect to such payment (or in lieu thereof, payment of such U.S. Tax by the Lender), will not be less than the amount stated herein to be then due and payable; provided, that the foregoing obligation to pay such additional amounts shall not apply:

(i) to any payment to the Lender hereunder unless the Lender is entitled to submit a Form 1001 (relating to the Lender and entitling it to a complete exemption from withholding on all interest to be received by it hereunder in respect of the Advances) or Form 4224 (relating to all interest to be received by the Lender hereunder in respect of the Advances), or

(ii) to any U.S. Tax imposed solely by reason of the failure by the Lender to comply with applicable certification, information, documentation or other reporting requirements concerning the nationality, residence, identity or connections with the United States of America of the Lender if such compliance is required by statute or regulation of the United States of America as a precondition to relief or exemption from such U.S. Tax.

For the purposes of this Section 3.03(a), (w) "Form 1001" shall mean Form 1001 (Ownership, Exemption, or Reduced Rate Certificate) of the Department of the Treasury of the United States of America, (x) "Form 4224" shall mean Form 4224 (Exemption from Withholding of Tax on Income Effectively Connected with the Conduct of a Trade or Business in the United States) of the Department of the Treasury of the United States of America (or in relation to either such Form such successor and related forms as may from time to time be adopted by the relevant taxing authorities of the United States of America to document a claim to which such Form relates), and (y) "U.S. Taxes" shall mean any present or future tax, assessment or other charge or levy imposed by or on behalf of the United States of America or any taxing authority thereof or therein.

(b) Within 30 days after paying any such amount to the Lender, and within 30 days after it is required by law to remit such deduction or withholding to any relevant taxing or other authority, the related Borrower shall deliver to the Lender evidence satisfactory to the Lender of such deduction, withholding or payment (as the case may be).

(c) The Lender represents and warrants to the Borrowers that on the date hereof the Lender is either incorporated under the laws of the United States or a State thereof or is entitled to submit a Form 1001 (relating to the Lender and entitling it to a complete exemption

from withholding on all interest to be received by it hereunder in respect of the Advances) or Form 4224 (relating to all interest to be received by the Lender hereunder in respect of the Advances).

3.04 [Intentionally Omitted].

Section 4. Collateral Security.

4.01 Collateral; Security Interest.

(a) Pursuant to the Custodial Agreement, the Custodian shall hold the Mortgage Loan Documents as exclusive bailee and agent for the Lender pursuant to the terms of the Custodial Agreement and shall deliver to the Lender Trust Receipts with Exception Reports (as such terms are defined in the Custodial Agreement) to the effect that it has reviewed such Mortgage Loan Documents in the manner required by the Custodial Agreement and identifying any deficiencies in such Mortgage Loan Documents as so reviewed.

(b) Each of the following items or types of property, whether now owned or hereafter acquired, now existing or hereafter created and wherever located, is hereinafter referred to as the "Collateral":

(i) all Mortgage Loans identified on a Notice of Borrowing and Pledge delivered by any Borrower to the Lender and the Custodian from time to time;

(ii) all Mortgage Loan Documents, including without limitation all promissory notes, and all Servicing Records (as defined in Section 11.15(b) below), and any other collateral pledged or otherwise relating to such Mortgage Loans, together with all files, material documents, instruments, surveys (if available), certificates, correspondence, appraisals, computer records, computer storage media, Mortgage Loan accounting records and other books and records relating thereto;

(iii) all mortgage guaranties and insurance (issued by governmental agencies or otherwise) and any mortgage insurance certificate or other document evidencing such mortgage guaranties or insurance relating to any Mortgage Loans and all claims and payments thereunder;

(iv) all other insurance policies and insurance proceeds relating to any Mortgage Loans or the related Mortgaged Property;

(v) all Interest Rate Protection Agreements relating to any or all of the foregoing;

(vi) any purchase agreements or other agreements or contracts relating to or constituting any or all of the foregoing;

(vii) all purchase or take-out commitments relating to or constituting any or all of the foregoing;

(viii) all "accounts", "chattel paper", "commercial tort claims", "deposit accounts", "documents," "equivalent", "general intangibles", "goods", "instruments", "inventory", "investment property", "letter of credit rights", and "securities' accounts" as each of those terms is defined in the Uniform Commercial Code and all cash and Cash Equivalents and all products and proceeds relating to or constituting any or all of the foregoing;

(ix) all interests in real property owned by the Borrower or collateralizing any Mortgage Loans; and

(x) any and all replacements, substitutions, distributions on or proceeds of any or all of the foregoing.

(c) Each Borrower hereby assigns, pledges and grants a security interest to the Lender in all of its right, title and interest in, to and under all the Collateral, whether now owned or hereafter acquired, now existing or hereafter created and wherever located, to secure the repayment of principal of and interest on all Advances and all other amounts owing to the Lender hereunder, under the Note and under the other Loan Documents (collectively, the "Secured Obligations"). Each Borrower agrees to mark its respective computer records and tapes to evidence the security interests granted to the Lender hereunder.

4.02 Further Documentation. At any time and from time to time, upon the written request of the Lender, and at the sole expense of the Borrowers, the Borrowers will promptly and duly execute and deliver, or will promptly cause to be executed and delivered, such further instruments and documents and take such further action as the Lender may reasonably request for the purpose of obtaining or preserving the full benefits of this Loan Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the Liens created hereby. Each Borrower also hereby authorizes the Lender to file any such financing or continuation statement without the signature of the related Borrower to the extent permitted by applicable law. A carbon, photographic or other reproduction of this Loan Agreement shall be sufficient as a financing statement for filing in any jurisdiction.

4.03 Changes in Locations, Name, etc. No Borrower shall (i) change the location of its chief executive office/chief place of business from that specified in Section 6 hereof, (ii) change its name, identity or corporate structure (or the equivalent) or change the location where it maintains its records with respect to the Collateral, or (iii) reincorporate or reorganize under the laws of another jurisdiction unless it shall have given the Lender at least 30 days prior written notice thereof and shall have delivered to the Lender all Uniform Commercial Code financing statements and amendments thereto as the Lender shall request and taken all other actions deemed reasonably necessary by the Lender to continue its perfected status in the Collateral with the same or better priority.

4.04 Lender's Appointment as Attorney-in-Fact.

(a) Each Borrower hereby irrevocably constitutes and appoints the Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Borrower and in the name of such Borrower or in its own name, from time to time in the Lender's discretion, for the purpose of carrying out the terms of this Loan Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Loan Agreement, and, without limiting the generality of the foregoing, each Borrower hereby gives the Lender the power and right, on behalf of such Borrower, without assent by, but with notice to, such Borrower, if an Event of Default shall have occurred and be continuing, to do the following:

(i) in the name of such Borrower or its own name, or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any mortgage insurance or with respect to any other Collateral and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Lender for the purpose of collecting any and all such moneys due under any such mortgage insurance or with respect to any other Collateral whenever payable;

(ii) to pay or discharge taxes and Liens levied or placed on or threatened against the Collateral; and

(iii) (A) to direct any party liable for any payment under any Collateral to make payment of any and all moneys due or to become due thereunder directly to the Lender or as the Lender shall direct; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against such Borrower with respect to any Collateral; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as the Lender may deem appropriate; and (G) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Lender were the absolute owner thereof for all purposes, and to do, at the Lender's option and the Borrowers' expense, at any time, or from time to time, all acts and things which the Lender deems necessary to protect, preserve or realize upon the Collateral and the Lender's Liens thereon and to effect the intent of this Loan Agreement, all as fully and effectively as such Borrower might do.

Each Borrower hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

(b) Each Borrower also authorizes the Lender, at any time and from time to time, to execute, in connection with the sale provided for in Section 4.07 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(c) The powers conferred on the Lender are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Lender nor any of its officers, directors, or employees shall be responsible to any Borrower for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

4.05 Performance by Lender of Borrowers' Obligations. If any Borrower fails to perform or comply with any of its material agreements contained in the Loan Documents and the Lender may itself perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable out-of-pocket expenses of the Lender incurred in connection with such performance or compliance, together with interest thereon at a rate per annum equal to the Post-Default Rate, shall be payable by the Borrowers to the Lender on demand and shall constitute Secured Obligations.

4.06 Proceeds. If an Event of Default shall occur and be continuing,

(a) all proceeds of Collateral received by any Borrower consisting of cash, checks and other near-cash items shall be held by such Borrower in trust for the Lender, segregated from other funds of such Borrower, and shall forthwith upon receipt by such Borrower be turned over to the Lender in the exact form received by such Borrower (duly endorsed by such Borrower to the Lender, if required) and

(b) any and all such proceeds received by the Lender will be applied by the Lender against, the Secured Obligations (whether matured or unmatured), such application to be in such order as the Lender shall elect. Any balance of such proceeds remaining after the Secured Obligations shall have been paid in full and this Loan Agreement shall have been terminated shall be promptly paid over to the Borrowers or to whomsoever may be lawfully entitled to receive the same. For purposes hereof, proceeds shall include, but not be limited to, all principal and interest payments, all prepayments and payoffs, insurance claims, condemnation awards, sale proceeds, real estate owned rents and any other income and all other amounts received with respect to the Collateral.

4.07 Remedies. If a Default shall occur and be continuing, the Lender may, at its option, enter into one or more Interest Rate Protection Agreements covering all or a portion of the Mortgage Loans pledged to the Lender hereunder, and the Borrowers shall be responsible for all damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against the Lender relating to or arising out of such Interest Rate Protection

Agreements; including without limitation any losses resulting from such Interest Rate Protection Agreements. If an Event of Default shall occur and be continuing, the Lender may exercise, in addition to all other rights and remedies granted to it in this Loan Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the Uniform Commercial Code. Without limiting the generality of the foregoing, the Lender without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Borrower or any other Person (all and each of which demands, defenses, presentments, protests, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels or as an entirety at public or private sale or sales, at any exchange, broker's board or office of the Lender or elsewhere upon such terms and conditions and at prices that are consistent with the prevailing market for similar collateral as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Lender shall act in good faith to obtain the best execution possible under prevailing market conditions. The Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Borrower, which right or equity is hereby waived or released. Each Borrower further agrees, at the Lender's request, to assemble the Collateral and make it available to the Lender at places which the Lender shall reasonably select, whether at such Borrower's premises or elsewhere. The Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Lender hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, in such order as the Lender may elect, and only after such application and after the payment by the Lender of any other amount required or permitted by any provision of law, including, without limitation, Section 9-504(1)(c) of the Uniform Commercial Code, need the Lender account for the surplus, if any, to any Borrower. To the extent permitted by applicable law, each Borrower waives all claims, damages and demands it may acquire against the Lender arising out of the exercise by the Lender of any of its rights hereunder, other than those claims, damages and demands arising from the gross negligence or willful misconduct of the Lender. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. The Borrowers shall remain liable for any deficiency (plus accrued interest thereon as contemplated pursuant to Section 2.05(b) hereof) if the proceeds of any sale or other disposition of the Collateral are insufficient to pay the Secured Obligations and the reasonable fees and disbursements incurred by the Lender, including reasonable fees and expenses of any attorneys employed by the Lender to collect such deficiency. Because the Borrowers recognize that it may not be possible to purchase or sell all of the Collateral on a particular Business Day, or in a transaction with the same purchaser, or in the same manner because the market for such

Collateral may not be liquid, each Borrower agrees that liquidation of the Collateral does not require a public purchase or sale and that a good faith private purchase or sale shall be deemed to have been made in a commercially reasonable manner. Accordingly, the Lender may elect, in its sole discretion, the time and manner of liquidating any Collateral and nothing contained herein shall (A) obligate the Lender to liquidate any Collateral on the occurrence of an Event of Default or to liquidate all Collateral in the same manner or on the same Business Day or (B) constitute a waiver of any of the Lender's rights or remedies.

4.08 Limitation on Duties Regarding Presentation of Collateral. The Lender's duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as the Lender deals with similar property for its own account. Neither the Lender nor any of its directors, officers or employees shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Borrower or otherwise.

4.09 Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

4.10 Release of Security Interest. Upon termination of this Loan Agreement and repayment to the Lender of all Secured Obligations and the performance of all obligations under the Loan Documents the Lender shall release its security interest in any remaining Collateral; provided that if any payment, or any part thereof, of any of the Secured Obligations is rescinded or must otherwise be restored or returned by the Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Borrower, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or a trustee or similar officer for any Borrower or any substantial part of its Property, or otherwise, this Loan Agreement, all rights hereunder and the Liens created hereby shall continue to be effective, or be reinstated, until such payments have been made.

Section 5. Conditions Precedent.

5.01 Initial Advance. Immediately prior to or concurrently with the making by the Lender of its initial Advance hereunder, the following conditions precedent must be satisfied:

(a) Loan Agreement. The Lender shall have received this Loan Agreement, executed and delivered by a duly authorized officer of each Borrower.

(b) Loan Documents. The Lender shall have received the following documents, each of which shall be satisfactory to the Lender in form and substance:

(i) Note. The Note, duly completed and executed;

(ii) Custodial Agreement. The Custodial Agreement, duly executed and delivered by the Borrowers and the Custodian. In addition, each Borrower shall have filed all Uniform Commercial Code and related filings and performed under the Custodial Agreement and taken such other action as the Lender shall have requested in order to perfect the security interests created pursuant to the Loan Agreement; and

(c) Organizational Documents. A good standing certificate and certified copies of the charter and by-laws (or equivalent documents) of each Borrower and of all corporate or other authority for each Borrower with respect to the execution, delivery and performance of the Loan Documents and each other document to be delivered by each Borrower from time to time in connection herewith (and the Lender may conclusively rely on such certificate until it receives notice in writing from such Borrower to the contrary).

(d) Legal Opinion. A legal opinion of counsel to the Borrowers, substantially in the form attached hereto as Exhibit C.

(e) Securitization Letter. The Lender shall have received the Securitization Letter, in form and substance satisfactory to the Lender and executed by a duly authorized officer of each Borrower.

(f) Filings, Registrations, Recordings. (i) Any documents (including, without limitation, financing statements) required to be filed, registered or recorded in order to create, in favor of the Lender, a perfected, first-priority security interest in the Collateral, subject to no Liens other than those created hereunder, shall have been properly prepared and executed for filing (including the applicable county(ies) if the Lender determines such filings are necessary in its reasonable discretion), registration or recording in each office in each jurisdiction in which such filings, registrations and recordations are required to perfect such first-priority security interest; and

(ii) UCC lien searches in such jurisdictions as shall be applicable to each Borrower and the Collateral, the results of which shall be satisfactory to the Lender.

(g) Fees and Expenses. The Lender shall have received all fees and expenses required to be paid by the Borrowers on or prior to the initial Funding Date, which fees and expenses may be netted out of any Advance made by the Lender hereunder.

(h) Financial Statements. The Lender shall have received the financial statements referenced in Section 7.01(a).

(i) Underwriting Guidelines. The Lender and the Borrowers shall have agreed upon the Borrowers' current Underwriting Guidelines for Mortgage Loans and the Lender shall have received a copy thereof.

(j) Consents, Licenses, Approvals, etc. The Lender shall have received copies certified by the Borrowers of all consents, licenses and approvals, if any, required in connection with the execution, delivery and performance by the Borrowers of, and the validity

and enforceability of, the Loan Documents, which consents, licenses and approvals shall be in full force and effect.

(k) Insurance. The Lender shall have received evidence in form and substance satisfactory to the Lender showing compliance by the Borrowers as of such initial Funding Date with Section 7.22 hereof.

(l) Instruction Letter. The Lender shall have received an Instruction Letter in the form attached hereto as Exhibit J executed by each Borrower.

(m) Other Documents. The Lender shall have received such other documents as the Lender or its counsel may reasonably request.

(n) Electronic Tracking Agreement. The Lender and the Borrowers shall have entered into an Electronic Tracking Agreement with MERS in a form acceptable to the Lender.

5.02 Initial and Subsequent Advances. The making of each Advance to a Borrower (including the initial Advance) on any Business Day is subject to the following further conditions precedent, both immediately prior to the making of such Advance and also after giving effect thereto and to the intended use thereof:

(a) no Default or Event of Default shall have occurred and be continuing;

(b) both immediately prior to the making of such Advance and also after giving effect thereto and to the intended use thereof, the representations and warranties made by the Borrowers in Section 6 hereof, and in each of the other Loan Documents, shall be true and complete on and as of the date of the making of such Advance in all material respects (in the case of the representations and warranties in Section 6.23 and Schedule 1, solely with respect to Mortgage Loans included in the Borrowing Base) with the same force and effect as if made on and as of such date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date). At the request of the Lender, the Lender shall have received an officer's certificate signed by a Responsible Officer of each Borrower certifying as to the truth and accuracy of the above, which certificate shall specifically include a statement that such Borrower is in compliance with all governmental licenses and authorizations and is qualified to do business and in good standing in all required jurisdictions;

(c) the aggregate outstanding principal amount of the Advances shall not exceed the Borrowing Base or the Uncommitted Amount; and the aggregate outstanding principal amount of the Advances under this Loan Agreement and any other loan agreement between the Lender and the Borrowers shall not exceed, in the aggregate, the Uncommitted Amount.

(d) subject to the Lender's right to perform one or more Due Diligence Reviews pursuant to Section 11.16 hereof, the Lender shall have completed its due diligence review of the Mortgage Loan Documents for each Advance and such other documents, records,

agreements, instruments, mortgaged properties or information relating to such Advances as the Lender in its reasonable discretion deems appropriate to review and such review shall be satisfactory to the Lender in its reasonable discretion;

(e) the Lender shall have received a Notice of Borrowing and Pledge, Loan List and Mortgage Loan Data Transmission and all other documents required under Section 2.03;

(f) the Lender shall have received from the Custodian a Custodian Loan Transmission and one or more Trust Receipts in respect of Mortgage Loans to be pledged hereunder on such Business Day and an Exception Report, in each case dated such Business Day and duly completed;

(g) in the event that the Mortgage Loans to be pledged would cause the aggregate outstanding principal balance of Mortgage Loans pledged secured by Mortgaged Property from any state to exceed 10% of the aggregate outstanding principal balance of Mortgage Loans pledged hereunder, then such Borrower shall, upon request by the Lender, deliver an opinion of counsel acceptable to the Lender in such state, substantially in the form of items number 12 and 13 of Exhibit C;

(h) with respect to any Mortgage Loan that was funded in the name of or acquired by a Qualified Originator which is an Affiliate of any Borrower, the Lender may, in its sole discretion, require such Borrower to provide evidence sufficient to satisfy the Lender that such Mortgage Loan was acquired in a legal sale, including without limitation, an opinion, in form and substance and from an attorney, in both cases, acceptable to the Lender in its sole discretion, that such Mortgage Loan was acquired in a legal sale;

(i) none of the following shall have occurred and/or be continuing:

(i) an event or events resulting in the inability of the Lender to finance any Advances with traditional counterparties at rates which would have been reasonable prior to the occurrence of such catastrophic event or events or a material adverse change in the financial condition of the Lender which affects (or can reasonably be expected to affect) materially and adversely the ability of the Lender to fund any obligations under or otherwise comply with the terms of this Loan Agreement; or

(ii) any other event beyond the control of the Lender which the Lender reasonably determines may result in the Lender's inability to perform any obligations under this Loan Agreement including, without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, nationalization, expropriation, currency restrictions, fire, communication line failures, computer viruses, power failures, earthquakes, or other disasters of a similar nature to the foregoing.

(j) if any Mortgage Loans to be pledged hereunder were acquired by any Borrower, such Mortgage Loans shall conform to such Borrower's Underwriting Guidelines or

the Lender shall have received Underwriting Guidelines for such Mortgage Loans acceptable to the Lender in its reasonable discretion;

(k) the Lender shall have received all information requested from the Borrowers relating to Interest Rate Protection Agreements pursuant to Section 7.25, and the Lender shall have reasonably determined that such Interest Rate Protection Agreements adequately protect the Borrowers from interest rate fluctuations; and

(l) the Lender shall have received, no later than 10:00 a.m. three

(3) days prior to the requested Funding Date, an Instruction Letter, executed by the Borrowers, with the related Servicing Agreement attached thereto, which such Servicing Agreement shall be in form and substance acceptable to Lender.

Each request for a borrowing by any Borrower hereunder shall constitute a certification by the Borrowers to the effect set forth in this Section (both as of the date of such notice, request or confirmation and as of the date of such borrowing).

Section 6. Representations and Warranties. Each Borrower represents and warrants to the Lender that throughout the term of this Loan Agreement:

6.01 Existence. The Borrower (a) is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) has all requisite corporate or other power, and has all governmental licenses, authorizations, consents and approvals, necessary to own its assets and carry on its business as now being or as proposed to be conducted, except where the lack of such licenses, authorizations, consents and approvals would not be reasonably likely to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all other jurisdictions in which the nature of the business conducted by it makes such qualification necessary, except where failure so to qualify would not be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect, and (d) is in compliance in all material respects with all Requirements of Law.

6.02 Financial Condition. The Borrower has heretofore furnished to the Lender a copy of its audited consolidated balance sheets and the audited consolidated balance sheets of its consolidated Subsidiaries, each as at December 31, 2003 with the opinion thereon of Deloitte & Touche LLP, a copy of which has been provided to Lender. The Borrower has also heretofore furnished to the Lender the related consolidated statements of income and retained earnings and of cash flows for the Borrower and its consolidated Subsidiaries for the one year period ending December 31, 2003, setting forth in comparative form the figures for the previous year. All such financial statements are materially complete and correct and fairly present the consolidated financial condition of the Borrower and its Subsidiaries and the consolidated results of their operations for the fiscal year ended on said date, all in accordance with GAAP applied on a consistent basis. Since December 31, 2003 there has been no development or event nor any prospective development or event which has had or should reasonably be expected to have a Material Adverse Effect.

6.03 Litigation. There are no actions, suits, arbitrations, investigations or proceedings pending or, to its knowledge, threatened against the Borrower or any of its Subsidiaries or affecting any of the property thereof before any Governmental Authority, (i) as to which individually or in the aggregate there is a reasonable likelihood of an adverse decision which would be reasonably likely to have a Material Adverse Effect or (ii) which questions the validity or enforceability of any of the Loan Documents or any action to be taken in connection with the transactions contemplated hereby and there is a reasonable likelihood of a Material Adverse Effect or adverse decision.

6.04 No Breach. Neither (a) the execution and delivery of the Loan Documents or (b) the consummation of the transactions therein contemplated in compliance with the terms and provisions thereof will conflict with or result in a breach of the charter or by-laws of the Borrower, or any applicable law, rule or regulation, or any order, writ, injunction or decree of any Governmental Authority, or other material agreement or instrument to which the Borrower, or any of its Subsidiaries, is a party or by which any of them or any of their property is bound or to which any of them is subject, or constitute a default under any such material agreement or instrument, or (except for the Liens created pursuant to this Loan Agreement) result in the creation or imposition of any Lien upon any property of the Borrower or any of its Subsidiaries, pursuant to the terms of any such agreement or instrument.

6.05 Action. The Borrower has all necessary corporate or other power, authority and legal right to execute, deliver and perform its obligations under each of the Loan Documents to which it is a party; the execution, delivery and performance by the Borrower of each of the Loan Documents to which it is a party has been duly authorized by all necessary corporate or other action on its part; and each Loan Document has been duly and validly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

6.06 Approvals. No authorizations, approvals or consents of, and no filings or registrations with, any Governmental Authority, or any other Person, are necessary for the execution, delivery or performance by the Borrower of the Loan Documents to which it is a party or for the legality, validity or enforceability thereof, except for filings and recordings in respect of the Liens created pursuant to this Loan Agreement.

6.07 Margin Regulations. Neither the making of any Advance hereunder, nor the use of the proceeds thereof, will violate or be inconsistent with the provisions of Regulation T, U or X.

6.08 Taxes. The Borrower and its Subsidiaries have filed all Federal income tax returns and all other material tax returns that are required to be filed by them and have paid all taxes due pursuant to such returns or pursuant to any assessment received by any of them, except for any such taxes, if any, that are being appropriately contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate reserves have been provided. The charges, accruals and reserves on the books of the Borrower and its

Subsidiaries in respect of taxes and other governmental charges are, in the opinion of the Borrower, adequate.

6.09 Investment Company Act. Neither the Borrower nor any of its Subsidiaries is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. The Borrower is not subject to any Federal or state statute or regulation which limits its ability to incur indebtedness.

6.10 No Legal Bar. The execution, delivery and performance of this Loan Agreement and the Note, the borrowings hereunder and the use of the proceeds thereof will not violate any Requirement of Law or Contractual Obligation of the Borrower or of any of its Subsidiaries and will not result in, or require, the creation or imposition of any Lien (other than the Liens created hereunder) on any of its or their respective properties or revenues pursuant to any such Requirement of Law or Contractual Obligation.

6.11 No Default. Neither the Borrower nor any of its Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect which should reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

6.12 Collateral; Collateral Security.

(a) The Borrower has not assigned, pledged, or otherwise conveyed or encumbered any Mortgage Loan to any other Person, and immediately prior to the pledge of any such Mortgage Loan, the Borrower was the sole owner of such Mortgage Loan and had good and marketable title thereto, free and clear of all Liens, in each case except for Liens to be released simultaneously with the Liens granted in favor of the Lender hereunder and no Person other than the Borrower has any Lien on any Mortgage Loan.

(b) The provisions of this Loan Agreement are effective to create in favor of the Lender a valid security interest in all right, title and interest of the Borrower in, to and under the Collateral.

(c) Upon receipt by the Custodian of each Mortgage Note, endorsed in blank by a duly authorized officer of the payee or last endorsee, the Lender shall have a fully perfected first priority security interest therein, in the Mortgage Loan evidenced thereby and in the Borrower's interest in the related Mortgaged Property.

(d) Upon the filing of financing statements on Form UCC-1 naming the Lender as "Secured Party" and the Borrower as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on Schedule 2 attached hereto, the security interests granted hereunder in the Collateral will constitute fully perfected first priority security interests under the Uniform Commercial Code in all right, title and interest of the Borrower in, to and under such Collateral, which can be perfected by filing under the Uniform Commercial Code.

6.13 Chief Executive Office; Chief Operating Office. The Borrower's chief executive office and chief operating office on the Effective Date is located at address set forth on the signature page to this Loan Agreement.

6.14 Location of Books and Records. The location where the Borrower keeps its books and records including all computer tapes and records relating to the Collateral is its chief executive office or chief operating office or the offices of the Custodian.

6.15 True and Complete Disclosure. The information, reports, financial statements, exhibits and schedules furnished in writing by or on behalf of the Borrower to the Lender in connection with the negotiation, preparation or delivery of this Loan Agreement and the other Loan Documents or included herein or therein or delivered pursuant hereto or thereto, when taken as a whole, do not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading. All written information furnished after the date hereof by or on behalf of the Borrower to the Lender in connection with this Loan Agreement and the other Loan Documents and the transactions contemplated hereby and thereby will be true, complete and accurate in every material respect, or (in the case of projections) based on reasonable estimates, on the date as of which such information is stated or certified. There is no fact known to a Responsible Officer that, after due inquiry, could reasonably be expected to have a Material Adverse Effect that has not been disclosed herein, in the other Loan Documents or in a report, financial statement, exhibit, schedule, disclosure letter or other writing furnished to the Lender for use in connection with the transactions contemplated hereby or thereby.

6.16 Tangible Net Worth; Liquidity. NYMT's Tangible Net Worth is not less than \$100,000,000 or such higher amount provided under any other repurchase, financing, credit or other similar facility entered into by the Borrowers. NYMT has at all times Cash Equivalents in an amount not less than \$5,000,000. The ratio of NYMT's Total Indebtedness to Tangible Net Worth is not greater than 20:1. The Borrowers shall at all times have cash, Cash Equivalents and unused borrowing capacity on unencumbered assets that could be drawn against (taking into account required haircuts) under committed warehouse and repurchase facilities in an amount equal to not less than \$10,000,000. NYMT shall have GAAP after-tax Net Income of at least \$1.00 for each fiscal quarter.

6.17 ERISA. Each Plan to which the Borrower or its Subsidiaries make direct contributions, and, to the knowledge of the Borrower, each other Plan and each Multiemployer Plan, is in compliance in all material respects with, and has been administered in all material respects in compliance with, the applicable provisions of ERISA, the Code and any other Federal or State law. No event or condition has occurred and is continuing as to which the Borrower would be under an obligation to furnish a report to the Lender under Section 7.01(d) hereof.

6.18 Licenses. The Lender will not be required as a result of financing or taking a pledge of the Mortgage Loans to be licensed, registered or approved or to obtain permits

or otherwise qualify (i) to do business in any state in which it currently so required or (ii) under any state consumer lending, fair debt collection or other applicable state statute or regulation.

6.19 Relevant States. Schedule 3 sets forth all of the states or other jurisdictions (the "Relevant States") in which the Borrower originates Mortgage Loans in its own name or through brokers on the date of this Loan Agreement.

6.20 True Sales. Any and all interest of a Qualified Originator in, to and under any Mortgage funded in the name of or acquired by such Qualified Originator or seller which is an Affiliate of the Borrower has been sold, transferred, conveyed and assigned to the Borrower pursuant to a legal sale and such Qualified Originator retains no interest in such Mortgage Loan, and if so requested by the Lender, is covered by an opinion of counsel to that effect in form and substance acceptable to the Lender.

6.21 No Burdensome Restrictions. No Requirement of Law or Contractual Obligation of the Borrower or any of its Subsidiaries has a Material Adverse Effect.

6.22 Subsidiaries. All of the Subsidiaries of the Borrower at the date hereof are listed on Schedule 4 to this Loan Agreement.

6.23 Origination and Acquisition of Mortgage Loans. The Mortgage Loans were originated or acquired by the Borrower, and the origination and collection practices used by the Borrower or Qualified Originator, as applicable, with respect to the Mortgage Loans have been, in all material respects legal, proper, prudent and customary in the residential mortgage loan servicing business, and in accordance with the Underwriting Guidelines. With respect to Mortgage Loans acquired by the Borrower, all such Mortgage Loans are in conformity with the Underwriting Guidelines. Each of the Mortgage Loans complies with the representations and warranties listed in Schedule I hereto.

6.24 No Adverse Selection. The Borrower used no selection procedures that identified the Mortgage Loans as being less desirable or valuable than other comparable Mortgage Loans owned by the Borrower.

6.25 Borrower Solvent; Fraudulent Conveyance. As of the date hereof and immediately after giving effect to each Advance, the fair value of the assets of the Borrower is greater than the fair value of the liabilities (including, without limitation, contingent liabilities if and to the extent required to be recorded as a liability on the financial statements of the Borrower in accordance with GAAP) of the Borrower and the Borrower is and will be solvent, is and will be able to pay its debts as they mature and does not and will not have an unreasonably small capital to engage in the business in which it is engaged and proposes to engage. Borrower does not intend to incur, or believe that it has incurred, debts beyond its ability to pay such debts as they mature. Borrower is not contemplating the commencement of insolvency, bankruptcy, liquidation or consolidation proceedings or the appointment of a receiver, liquidator, conservator, trustee or similar official in respect of Borrower or any of its assets. Borrower is not transferring any Mortgage Loans with any intent to hinder, delay or defraud any of its creditors.

6.26 Insured Closing Letter. As of the date hereof and as of the date of each delivery of a Wet Loan, the Settlement Agent has obtained an Insured Closing Letter, closing protection letter or similar authorization letter from a nationally recognized title insurance company approved by the Lender, copies of which shall be delivered by the Borrower to the Custodian prior to the Funding Date. Upon request by the Lender, all such Insured Closing Letters or similar letters in possession of the Borrower shall be made available for audit by the Lender or its designee.

6.27 Escrow Agreement. As of the date hereof and as of the date of each delivery of a Wet Loan, the Settlement Agent has executed an escrow agreement or letter stating that in the event of a Rescission of any other reason the Mortgage Loan fails to fund on a given day, the party conducting the closing is holding all funds which would have been disbursed on behalf of the Mortgagor as agent for an for the benefit of the Lender and such funds shall be redeposited in the Disbursement Account for benefit of the Lender not later than one Business Day after the date of Rescission or other failure of the Mortgage Loan to fund on a given day. Upon request by the Lender, all such Escrow Letters in possession of the Borrower shall be delivered to the Lender or made available for audit by the Lender or its designee, as requested by the Lender.

Section 7. Covenants of the Borrower. Each Borrower covenants and agrees with the Lender that, so long as any Advance is outstanding and until payment in full of all Secured Obligations:

7.01 Financial Statements. The Borrower shall deliver to the Lender:

(a) (i) as soon as available and in any event within 30 days after the end of each month, the consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such month and the related unaudited consolidated statements of income and retained earnings for the Borrower and its consolidated Subsidiaries for such month and the portion of the fiscal year through the end of such month, setting forth in each case in comparative form the figures for the previous year, accompanied by a certificate of a Responsible Officer of the Borrower, which certificate shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of the Borrower and its Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such month (subject to normal year-end audit adjustments);

(ii) as soon as available and in any event within 45 days after the end of each of the first three quarterly fiscal periods of each fiscal year of the Borrower, the consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such period and the related unaudited consolidated statements of income and retained earnings and of cash flows for the Borrower and its consolidated Subsidiaries for such period and the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous year, accompanied by a certificate of a Responsible Officer of the Borrower, which certificate shall state that said

consolidated financial statements fairly present the consolidated financial condition and results of operations of the Borrower and its Subsidiaries in accordance with GAAP, consistently applied, as at the end of, and for, such period (subject to normal year-end audit adjustments);

(b) as soon as available and in any event within 90 days after the end of each fiscal year of the Borrower, the consolidated balance sheets of the Borrower and its consolidated Subsidiaries as at the end of such fiscal year and the related consolidated statements of income and retained earnings and of cash flows for the Borrower and its consolidated Subsidiaries for such year, setting forth in each case in comparative form the figures for the previous year, accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall not be qualified as to scope of audit or going concern and shall state that said consolidated financial statements fairly present the consolidated financial condition and results of operations of the Borrower and its consolidated Subsidiaries at the end of, and for, such fiscal year in accordance with GAAP, and a certificate of such accountants stating that, in making the examination necessary for their opinion, they obtained no knowledge, except as specifically stated, of any Default or Event of Default;

(c) from time to time such other information regarding the financial condition, operations, or business of the Borrower as the Lender may reasonably request; and

(d) as soon as reasonably possible, and in any event within thirty

(30) days after a Responsible Officer knows, or with respect to any Plan or Multiemployer Plan to which the Borrower or any of its Subsidiaries makes direct contributions, has reason to believe, that any of the events or conditions specified below with respect to any Plan or Multiemployer Plan has occurred or exists, a statement signed by a senior financial officer of the Borrower setting forth details respecting such event or condition and the action, if any, that the Borrower or its ERISA Affiliate proposes to take with respect thereto (and a copy of any report or notice required to be filed with or given to PBGC by the Borrower or an ERISA Affiliate with respect to such event or condition):

(i) any reportable event, as defined in Section 4043(b) of ERISA and the regulations issued thereunder, with respect to a Plan, as to which PBGC has not by regulation or otherwise waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event (provided that a failure to meet the minimum funding standard of Section 412 of the Code or Section 302 of ERISA, including, without limitation, the failure to make on or before its due date a required installment under Section 412(m) of the Code or Section 302(e) of ERISA, shall be a reportable event regardless of the issuance of any waivers in accordance with Section 412(d) of the Code); and any request for a waiver under Section 412(d) of the Code for any Plan;

(ii) the distribution under Section 4041(c) of ERISA of a notice of intent to terminate any Plan or any action taken by the Borrower or an ERISA Affiliate to terminate any Plan;

(iii) the institution by PBGC of proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan, or the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by PBGC with respect to such Multiemployer Plan;

(iv) the complete or partial withdrawal from a Multiemployer Plan by the Borrower or any ERISA Affiliate that results in liability under Section 4201 or 4204 of ERISA (including the obligation to satisfy secondary liability as a result of a purchaser default) or the receipt by the Borrower or any ERISA Affiliate of notice from a Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA or that it intends to terminate or has terminated under Section 4041A of ERISA;

(v) the institution of a proceeding by a fiduciary of any Multiemployer Plan against the Borrower or any ERISA Affiliate to enforce Section 515 of ERISA, which proceeding is not dismissed within 30 days; and

(vi) the adoption of an amendment to any Plan that, pursuant to Section 401(a)(29) of the Code or Section 307 of ERISA, would result in the loss of tax-exempt status of the trust of which such Plan is a part if the Borrower or an ERISA Affiliate fails to timely provide security to such Plan in accordance with the provisions of said Sections.

The Borrower will furnish to the Lender, at the time it furnishes each set of financial statements pursuant to paragraphs (a) and (b) above, a certificate of a Responsible Officer of the Borrower to the effect that, to the best of such Responsible Officer's knowledge, the Borrower during such fiscal period or year has observed or performed all of its covenants and other agreements, and satisfied every material condition, contained in this Loan Agreement and the other Loan Documents to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default except as specified in such certificate (and, if any Default or Event of Default has occurred and is continuing, describing the same in reasonable detail and describing the action the Borrower has taken or proposes to take with respect thereto).

7.02 Litigation. The Borrower will promptly, and in any event within 7 days after service process on any of the following, give to the Lender notice of all legal or arbitrable proceedings affecting the Borrower or any of its Subsidiaries that questions or challenges the validity or enforceability of any of the Loan Documents or as to which there is a reasonable likelihood of adverse determination which would result in a Material Adverse Effect.

7.03 Existence, Etc. Each of the Borrower and its Subsidiaries will:

(a) preserve and maintain its legal existence and all of its material rights, privileges, licenses and franchises;

(b) comply with the requirements of all applicable laws, rules, regulations and orders of Governmental Authorities (including, without limitation, truth in lending, real estate settlement procedures and all environmental laws) if failure to comply with such requirements would be reasonably likely (either individually or in the aggregate) to have a Material Adverse Effect;

(c) keep adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied;

(d) not move its chief executive office or chief operating office from the addresses referred to in Section 6.13 unless it shall have provided the Lender 30 days prior written notice of such change;

(e) pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its Property prior to the date on which penalties attach thereto, except for any such tax, assessment, charge or levy the payment of which is being contested in good faith and by proper proceedings and against which adequate reserves are being maintained; and

(f) permit representatives of the Lender, during normal business hours upon three (3) Business Days' prior written notice at a mutually desirable time or at any time during the continuance of an Event of Default, to examine, copy and make extracts from its books and records, to inspect any of its Properties, and to discuss its business and affairs with its officers, all to the extent reasonably requested by the Lender.

7.04 Prohibition of Fundamental Changes. The Borrower shall not enter into any transaction of merger or consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation, winding up or dissolution) or sell all or substantially all of its assets; provided, that the Borrower may merge or consolidate with (a) any wholly owned subsidiary of the Borrower, or (b) any other Person if the Borrower is the surviving corporation; and provided further, that if after giving effect thereto, no Default would exist hereunder.

7.05 Borrowing Base Deficiency. If at any time there exists a Borrowing Base Deficiency the Borrower shall cure same in accordance with Section 2.06 hereof.

7.06 Notices. The Borrower shall give notice to the Lender promptly:

(a) upon the Borrower becoming aware of, and in any event within one

(1) Business Day after, the occurrence of any Default or Event of Default or any event of default or default under any other material agreement of the Borrower;

- (b) upon, and in any event within three (3) Business Days after, service of process on the Borrower or any of its Subsidiaries, or any agent thereof for service of process, in respect of any legal or arbitrable proceedings affecting the Borrower or any of its Subsidiaries (i) that questions or challenges the validity or enforceability of any of the Loan Documents or (ii) in which the amount in controversy exceeds \$1,000,000;
- (c) upon the Borrower becoming aware of any default related to any Collateral, any Material Adverse Effect and any event or change in circumstances which should reasonably be expected to have a Material Adverse Effect;
- (d) upon the Borrower becoming aware during the normal course of its business that the Mortgaged Property in respect of any Mortgage Loan or Mortgage Loans with an aggregate unpaid principal balance of at least \$1,000,000 has been damaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty, or otherwise damaged so as to materially and adversely affect the Collateral Value of such Mortgage Loan;
- (e) upon the entry of a judgment or decree in an amount in excess of \$1,000,000 against the Borrower.

Each notice pursuant to this Section 7.06 (other than 7.06(e)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken or proposes to take with respect thereto.

7.07 Servicing. Except as provided in Section 11.15(c), the Borrower shall not permit any Person other than the Borrower to service Mortgage Loans without the prior written consent of the Lender, which consent shall not be unreasonably withheld.

7.08 MERS. The Borrower is a member of MERS in good standing and current in the payment of all fees and assessments imposed by MERS, and has complied with all rules and procedures of MERS. In connection with the assignment of any Mortgage Loan registered on the MERS System, the Borrower agrees that at the request of the Lender it will, at the Borrower's own cost and expense, cause the MERS System to indicate that such Mortgage Loan has been transferred to the Lender in accordance with the terms of this Agreement by including in MERS' computer files (a) the code in the field which identifies the specific owner of the Mortgage Loans and (b) the code in the field "Pool Field" which identifies the series in which such Mortgage Loans were sold. The Borrower further agrees that it will not alter codes referenced in this paragraph with respect to any Mortgage Loan at any time that such Mortgage Loan is subject to this Agreement.

7.09 Underwriting Guidelines. The Borrower shall notify the Lender in writing of any material modifications to the Underwriting Guidelines prior to implementation of such change, and unless the Lender objects in writing within five (5) Business Days of receipt of notice, the proposed modifications shall be deemed acceptable.

7.10 Lines of Business. The Borrower will not engage to any substantial extent in any line or lines of business activity other than the businesses generally carried on by it as of the Effective Date.

7.11 Transactions with Affiliates. The Borrower will not enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate unless such transaction is (a) otherwise permitted under this Loan Agreement, (b) in the ordinary course of the Borrower's business and (c) upon fair and reasonable terms no less favorable to the Borrower than it would obtain in a comparable arm's length transaction with a Person which is not an Affiliate, or make a payment that is not otherwise permitted by this Section 7.11 to any Affiliate.

7.12 Use of Proceeds. The Borrower will use the proceeds of the Advances solely to originate, purchase, fund, manage and service Eligible Mortgage Loans.

7.13 Limitation on Liens. The Borrower will not, nor will it permit or allow others to, create, incur or permit to exist any Lien, security interest or claim on or to any of its Property, except for (i) Liens (not otherwise permitted hereunder) which are created in connection with the purchase of fixed assets and equipment necessary in the ordinary course of the Borrower's business or to finance residual certificates issued in connection with securitizations of mortgage loans completed by the Borrower which are financed solely based on a pledge of such residual certificates; and (ii) Liens on the Collateral created pursuant to this Loan Agreement. The Borrower will defend the Collateral against, and will take such other action as is necessary to remove, any Lien, security interest or claim on or to the Collateral, other than the security interests created under this Loan Agreement, and the Borrower will defend the right, title and interest of the Lender in and to any of the Collateral against the claims and demands of all persons whomsoever.

7.14 Limitation on Sale of Assets. The Borrower shall not convey, sell, lease, assign, transfer or otherwise dispose of (collectively, "Transfer"), all or substantially all of its Property, business or assets (including, without limitation, receivables and leasehold interests) whether now owned or hereafter acquired or allow any Subsidiary to Transfer substantially all of its assets to any Person; provided, that the Borrower may after prior written notice to the Lender allow such action with respect to any Subsidiary which is not a material part of the Borrower's overall business operations.

7.15 Limitation on Distributions. Without the Lender's consent, the Borrower shall not make any payment on account of, or set apart assets for a sinking or other analogous fund for the purchase, redemption, defeasance, retirement or other acquisition of, any stock or senior or subordinate debt of the Borrower, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the Borrower.

7.16 Maintenance of Liquidity. The Borrower shall insure that, at all times, NYMT has Cash Equivalents in an amount of not less than \$5,000,000. The Borrower shall

insure that it has at all times Cash Equivalents and unused borrowing capacity on unencumbered assets that could be drawn against (taking into account required haircuts) under committed warehouse and repurchase facilities in an amount equal to not less than \$10,000,000.

7.17 Maintenance of Tangible Net Worth. The Borrower shall not permit the NYMT's Tangible Net Worth at any time to be less than \$100,000,000 or such higher amount provided under any other repurchase, financing, credit or other similar facility entered into by Borrower.

7.18 Maintenance of Ratio of Total Indebtedness to Tangible Net Worth. The Borrower shall not permit the ratio of the Total Indebtedness to Tangible Net Worth of NYMT at any time to be greater than 20:1; and NYMT shall have quarterly net income greater than \$1.

7.19 Restricted Payments. The Borrower shall not make any Restricted Payments following an Event of Default.

7.20 Servicing Transmission. The Borrower shall provide to the Lender on a monthly basis no later than 11:00 a.m. eastern time two (2) Business Days prior to each Payment Date (or such other day requested by Lender) (i) the Servicing Transmission, on a loan-by-loan basis and in the aggregate, with respect to the Mortgage Loans serviced hereunder by the Borrower which were funded prior to the first day of the current month, summarizing the Borrower's delinquency and loss experience with respect to Mortgage Loans serviced by the Borrower (including, in the case of the Mortgage Loans, the following categories: current, 30-59, 60-89, 90-119, 120-149 and 150+) and (ii) any other information reasonably requested by the Lender with respect to the Mortgage Loans.

7.21 No Amendment or Waiver. The Borrower will not, nor will it permit or allow others to amend, modify, terminate or waive any provision of any Mortgage Loan to which the Borrower is a party in any manner which shall reasonably be expected to materially and adversely affect the value of such Mortgage Loan as Collateral.

7.22 Maintenance of Property; Insurance. The Borrower shall keep all property useful and necessary in its business in good working order and condition. The Borrower shall maintain errors and omissions insurance and/or mortgage impairment insurance and blanket bond coverage in such amounts as are in effect on the Effective Date (as disclosed to Lender in writing) and shall not reduce such coverage without the written consent of the Lender, and shall also maintain such other insurance with financially sound and reputable insurance companies, and with respect to property and risks of a character usually maintained by entities engaged in the same or similar business similarly situated, against loss, damage and liability of the kinds and in the amounts customarily maintained by such entities.

7.23 Further Identification of Collateral. The Borrower will furnish to the Lender from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender or any Lender may reasonably request, all in reasonable detail.

7.24 Mortgage Loan Determined to be Defective. Upon discovery by the Borrower or the Lender of any breach of any representation or warranty listed on Schedule 1 hereto applicable to any Mortgage Loan, the party discovering such breach shall promptly give notice of such discovery to the other.

7.25 Interest Rate Protection Agreements. Upon the Lender's request, the Borrower shall deliver to the Lender any and all information relating to Interest Rate Protection Agreements.

7.26 Certificate of a Responsible Officer of the Borrower. At the time that the Borrower delivers financial statements to the Lender in accordance with Section 7.01 hereof, the Borrower shall forward to the Lender a certificate of a Responsible Officer of the Borrower which demonstrates that the Borrower is in compliance with the covenants set forth in Sections 7.16, 7.17 and 7.18 above.

7.27 [Intentionally Omitted].

7.28 Alternative Collateral. The Borrower shall not cause any Eligible Mortgage Loan which is at any time used as collateral for an Advance hereunder to be subsequently used as collateral pursuant to any other financing, note purchase, loan warehouse, repurchase or similar facility maintained by the Borrower with any third party without the express written consent of the Lender, unless such Mortgage Loan is no longer an Eligible Mortgage Loan.

7.29 [Intentionally Omitted.]

Section 8. Events of Default. Each of the following events shall constitute an event of default (an "Event of Default") hereunder:

- (a) any Borrower shall default in the payment of any principal of or interest on any Advance when due (whether at stated maturity, upon acceleration or at mandatory prepayment); or
- (b) any Borrower shall default in the payment of any other amount payable by it hereunder or under any other Loan Document after notification by the Lender of such default, and such default shall have continued unremedied for three (3) Business Days; or
- (c) any representation, warranty or certification made or deemed made herein or in any other Loan Document by any Borrower or any certificate furnished to the Lender pursuant to the provisions thereof, shall prove to have been false or misleading in any material respect as of the time made or furnished (other than the representations and warranties set forth in Schedule 1 which shall be considered solely for the purpose of determining the Collateral Value of the Mortgage Loans; unless (i) such Borrower shall have made any such representations and warranties with knowledge that they were materially false or misleading at the time made or

(ii) any such representations and warranties have been determined by the Lender in its sole discretion to be materially false or misleading on a regular basis); or

(d) any Borrower shall fail to comply with the requirements of Section 7.03(a), Section 7.04, Section 7.06 (a) or (c), Sections 7.12 through 7.19, or Section 7.22 hereof; or any Borrower shall default in the performance of its obligations under Section 7.05 hereof, and such default shall continue unremedied for a period of one (1) Business Day; or any Borrower shall otherwise fail to observe or perform any other agreement contained in this Loan Agreement or any other Loan Document and such failure to observe or perform shall continue unremedied for a period of five (5) Business Days; or

(e) a final judgment or judgments for the payment of money in excess of \$2,000,000 in the aggregate (to the extent that it is, in the reasonable determination of the Lender, uninsured and provided that any insurance or other credit posted in connection with an appeal shall not be deemed insurance for these purposes) shall be rendered against any Borrower or any of its Subsidiaries by one or more courts, administrative tribunals or other bodies having jurisdiction over them and the same shall not be discharged (or provision shall not be made for such discharge) or bonded, or a stay of execution thereof shall not be procured, within 60 days from the date of entry thereof and any Borrower or any such Subsidiary shall not, within said period of 60 days, or such longer period during which execution of the same shall have been stayed or bonded, appeal therefrom and cause the execution thereof to be stayed during such appeal; or

(f) any Borrower shall admit in writing its inability to pay its debts as such debts become due; or

(g) any Borrower or any of its Subsidiaries shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, examiner or liquidator of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Bankruptcy Code, (iv) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or readjustment of debts, (v) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or (vi) take any corporate or other action for the purpose of effecting any of the foregoing; or

(h) a proceeding or case shall be commenced, without the application or consent of the related Borrower or any of its Subsidiaries, in any court of competent jurisdiction, seeking (i) its reorganization, liquidation, dissolution, arrangement or winding-up, or the composition or readjustment of its debts, (ii) the appointment of, or taking of possession by, a receiver, custodian, trustee, examiner, liquidator or the like of any Borrower or any such Subsidiary or of all or any substantial part of its property, or (iii) similar relief in respect of the Borrower or any such Subsidiary under any law relating to bankruptcy, insolvency, reorganization, liquidation, dissolution, arrangement or winding-up, or composition or

adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of 60 or more days; or an order for relief against any Borrower or any such Subsidiary shall be entered in an involuntary case under the Bankruptcy Code; or

(i) the Custodial Agreement or any Loan Document shall for whatever reason (including an event of default thereunder) be terminated or the lien on the Collateral created by this Loan Agreement or the Borrowers' material obligations hereunder shall cease to be in full force and effect, or the enforceability thereof shall be contested by any Borrower; or

(j) any materially adverse change in the Properties, business or financial condition, or prospects of any Borrower or any of its Subsidiaries or Affiliates, in each case as determined by the Lender in its sole discretion, or the existence of any other condition which, in the Lender's sole discretion, constitutes a material impairment of such Borrower's ability to perform its obligations under this Loan Agreement, the Note or any other Loan; or

(k) (i) any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan,

(ii) any material "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of any Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) any Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Lenders is likely to, incur any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(l) any Change of Control of any Borrower shall have occurred without the prior consent of the Lender; or

(m) any Borrower shall grant, or suffer to exist, any Lien on any Collateral except the Liens contemplated hereby; or the Liens contemplated hereby shall cease to be first priority perfected Liens on the Collateral in favor of the Lender or shall be Liens in favor of any Person other than the Lender; or

(n) the Lender shall reasonably request, specifying the reasons for such request, information, and/or written responses to such requests, regarding the financial well-

being of a Borrower and such information and/or responses shall not have been provided within three Business Days of such request; or

(o) any Borrower or any subsidiary or Affiliate of such Borrower shall default under, or fail to perform as required under, or shall otherwise materially breach the terms of any instrument, agreement or contract between such Borrower or such other entity, on the one hand, and the Lender or any of the Lender's Affiliates on the other; or any Borrower or any Subsidiary or Affiliate of such Borrower shall default under, or fail to perform as requested under, the terms of any repurchase agreement, loan and security agreement or similar credit facility or agreement for borrowed funds entered into by such Borrower or such other entity and any third party, which default or failure entitles any party to require acceleration or prepayment of any indebtedness thereunder; or

(p) any Borrower's membership in MERS is terminated for any reason; or

(q) the Servicer shall default under the related Servicing Agreement and such default shall have a Material Adverse Effect on the collectibility, enforceability or payment performance on any of the Mortgage Loans and the Borrowers shall have failed to transfer servicing of the affected Mortgage Loans to another servicer within thirty (30) days of the date of such default.

Section 9. Remedies Upon Default.

(a) Upon the occurrence of one or more Events of Default other than those referred to in Section 8(g) or (h), the Lender may immediately declare the principal amount the Advances then outstanding under the Note to be immediately due and payable, together with all interest thereon and reasonable fees and out-of-pocket expenses accruing under this Loan Agreement; provided that upon the occurrence of an Event of Default referred to in Sections 8(g) or (h), such amounts shall immediately and automatically become due and payable without any further action by any Person. Upon such declaration or such automatic acceleration, the balance then outstanding on the Note shall become immediately due and payable, without presentment, demand, protest or other formalities of any kind, all of which are hereby expressly waived by each Borrower and may thereupon exercise any remedies available to it at law and pursuant to the Loan Documents, including, but not limited to, the transfer of servicing or the liquidation of the Collateral on a servicing released basis.

(b) Upon the occurrence of one or more Events of Default, the Lender shall have the right to obtain physical possession of the Servicing Records and all other files of each Borrower relating to the Collateral and all documents relating to the Collateral which are then or may thereafter come in to the possession of any Borrower or any third party acting for such Borrower and such Borrower shall deliver to the Lender such assignments as the Lender shall request. The Lender shall be entitled to specific performance of all agreements of the Borrowers contained in this Loan Agreement.

Section 10. No Duty on Lender's Part. The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither it nor any of its officers, directors, employees or agents shall be responsible to any Borrower for any act or failure to act hereunder, except for its or their own gross negligence or willful misconduct.

Section 11. Miscellaneous.

11.01 Waiver. No failure on the part of the Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

11.02 Notices. Except as otherwise expressly permitted by this Loan Agreement, all notices, requests and other communications provided for herein and under the Custodial Agreement (including, without limitation, any modifications of, or waivers, requests or consents under, this Loan Agreement) shall be given or made in writing (including, without limitation, by telex or telecopy) delivered to the intended recipient at the "Address for Notices" specified below its name on the signature pages hereof); or, as to any party, at such other address as shall be designated by such party in a written notice to each other party. Except as otherwise provided in this Loan Agreement and except for notices given under Section 2 (which shall be effective only on receipt), all such communications shall be deemed to have been duly given when transmitted by telex or telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

11.03 Indemnification and Expenses.

(a) Each Borrower agrees to hold the Lender, and its Affiliates and their officers, directors, employees, agents and advisors (each an "Indemnified Party") harmless from and indemnify any Indemnified Party against all liabilities, losses, damages, judgments, costs and expenses of any kind which may be imposed on, incurred by or asserted against such Indemnified Party (collectively, the "Costs") relating to or arising out of this Loan Agreement, the Note, any other Loan Document or any transaction contemplated hereby or thereby, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Loan Agreement, the Note, any other Loan Document or any transaction contemplated hereby or thereby, that, in each case, results from anything other than any Indemnified Party's gross negligence or willful misconduct. Without limiting the generality of the foregoing, each Borrower agrees to hold any Indemnified Party harmless from and indemnify such Indemnified Party against all Costs with respect to all Mortgage Loans relating to or arising out of any violation or alleged violation of any environmental law, rule or regulation or any consumer credit laws, including without limitation laws with respect to unfair or deceptive lending practices and

predatory lending practices, the Truth in Lending Act and/or the Real Estate Settlement Procedures Act, that, in each case, results from anything other than such Indemnified Party's gross negligence or willful misconduct. In any suit, proceeding or action brought by an Indemnified Party in connection with any Mortgage Loan for any sum owing thereunder, or to enforce any provisions of any Mortgage Loan, each Borrower will save, indemnify and hold such Indemnified Party harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim, recoupment or reduction or liability whatsoever of the account debtor or obligor thereunder, arising out of a breach by any Borrower of any obligation thereunder or arising out of any other agreement, indebtedness or liability at any time owing to or in favor of such account debtor or obligor or its successors from any Borrower. Each Borrower also agrees to reimburse an Indemnified Party as and when billed by such Indemnified Party for all such Indemnified Party's costs and expenses incurred in connection with the enforcement or the preservation of such Indemnified Party's rights under this Loan Agreement, the Note, any other Loan Document or any transaction contemplated hereby or thereby, including without limitation the reasonable fees and disbursements of its counsel. Each Borrower hereby acknowledges that, notwithstanding the fact that the Note is secured by the Collateral, the obligation of the Borrowers under the Note is a recourse obligation of the Borrowers.

(b) Each Borrower agrees to pay as and when billed by the Lender all of the out-of-pocket costs and expenses incurred by the Lender in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Loan Agreement, the Note, any other Loan Document or any other documents prepared in connection herewith or therewith including, without limitation, the fees and expenses of Lender's counsel which will be independent from and not included in the aggregate limitation specified in subclause (i) of this subsection. Each Borrower agrees to pay as and when billed by the Lender all of the out-of-pocket costs and expenses incurred in connection with the consummation and administration of the transactions contemplated hereby and thereby including, without limitation, (i) all the reasonable fees, disbursements and expenses of counsel to the Lender, but limited to no greater than \$10,000 in the aggregate during the term of this Loan Agreement and (ii) all the due diligence, inspection, testing and review costs and expenses incurred by the Lender with respect to Collateral under this Loan Agreement, including, but not limited to, those costs and expenses incurred by the Lender pursuant to Sections 11.03 (a), 11.14 and 11.16 hereof.

11.04 Amendments. Except as otherwise expressly provided in this Loan Agreement, any provision of this Loan Agreement may be modified or supplemented only by an instrument in writing signed by the Borrowers and the Lender and any provision of this Loan Agreement may be waived by the Lender.

11.05 Successors and Assigns. This Loan Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.06 Survival. The obligations of the Borrowers under Sections 3.03 and 11.03 hereof shall survive the repayment of the Advances and the termination of this Loan Agreement.

In addition, each representation and warranty made, or deemed to be made by a request for a borrowing, herein or pursuant hereto shall survive the making of such representation and warranty, and the Lender shall not be deemed to have waived, by reason of making any Advance, any Default that may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that the Lender may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such Advance was made.

11.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Loan Agreement.

11.08 Counterparts. This Loan Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any of the parties hereto may execute this Loan Agreement by signing any such counterpart.

11.09 Loan Agreement Constitutes Security Agreement; Governing Law. This Loan Agreement shall be governed by New York law without reference to choice of law doctrine (but with reference to Section 5-1401 of the New York General Obligations Law, which by its terms applies to this Loan Agreement), and shall constitute a security agreement within the meaning of the Uniform Commercial Code.

11.10 SUBMISSION TO JURISDICTION; WAIVERS. EACH LOAN PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(A) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS LOAN AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF;

(B) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(C) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO ITS ADDRESS SET FORTH UNDER ITS

SIGNATURE BELOW OR AT SUCH OTHER ADDRESS OF WHICH THE LENDER SHALL HAVE BEEN NOTIFIED; AND

(D) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

11.11 WAIVER OF JURY TRIAL. EACH OF THE BORROWERS AND THE LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS LOAN AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

11.12 Acknowledgments. Each Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Loan Agreement, the Note and the other Loan Documents to which it is a party;

(b) the Lender has no fiduciary relationship to the Borrower, and the relationship between the Borrower and the Lender is solely that of debtor and creditor; and

(c) no joint venture exists among or between the Lender and the Borrowers.

11.13 Hypothecation or Pledge of Collateral. The Lender shall have free and unrestricted use of all Collateral and nothing in this Loan Agreement shall preclude the Lender from engaging in repurchase transactions with the Collateral or otherwise pledging, repledging, transferring, hypothecating, or rehypothecating the Collateral. Nothing contained in this Loan Agreement shall obligate the Lender to segregate any Collateral delivered to the Lender by the Borrowers.

11.14 Assignments; Participations.

(a) The Borrowers may assign any of its rights or obligations hereunder or under the Note only with the prior written consent of the Lender. The Lender may assign or transfer to any bank or other financial institution that makes or invests in loans or any Affiliate of the Lender all or any of its rights under this Loan Agreement and the other Loan Documents.

(b) The Lender may, in accordance with applicable law, at any time sell to one or more lenders or other entities ("Participants") participating interests in any Advance, the Note, its right to make Advances, or any other interest of the Lender hereunder and under the other Loan Documents. In the event of any such sale by the Lender of participating interests to a Participant, the Lender's obligations under this Loan Agreement to the Borrowers shall remain unchanged, the Lender shall remain solely responsible for the performance thereof, the Lender

shall remain the holder of the Note for all purposes under this Loan Agreement and the other Loan Documents, and the Borrowers shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Loan Agreement and the other Loan Documents. Each Borrower agrees that if amounts outstanding under this Loan Agreement and the Note are due or unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Loan Agreement and the Note to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Loan Agreement or the Note; provided, that such Participant shall only be entitled to such right of set-off if it shall have agreed in the agreement pursuant to which it shall have acquired its participating interest to share with the Lender the proceeds thereof. The Lender also agrees that each Participant shall be entitled to the benefits of Sections 2.07 and 11.03 with respect to its participation in the Advances outstanding from time to time; provided, that the Lender and all Participants shall be entitled to receive no greater amount in the aggregate pursuant to such Sections than the Lender would have been entitled to receive had no such transfer occurred.

(c) The Lender may furnish any information concerning any Borrower or any of its Subsidiaries in the possession of such Lender from time to time to assignees and Participants (including prospective assignees and Participants) only after notifying such Borrower in writing and securing signed confidentiality statements (a form of which is attached hereto as Exhibit I) and only for the sole purpose of evaluating participations and for no other purpose.

(d) Each Borrower agrees to cooperate with the Lender in connection with any such assignment and/or participation, to execute and deliver such replacement notes, and to enter into such restatements of, and amendments, supplements and other modifications to, this Loan Agreement and the other Loan Documents in order to give effect to such assignment and/or participation. Each Borrower further agrees to furnish to any Participant identified by the Lender to such Borrower copies of all reports and certificates to be delivered by such Borrower to the Lender hereunder, as and when delivered to the Lender.

11.15 Servicing.

(a) Each Borrower covenants to maintain or cause the servicing of the Mortgage Loans to be maintained in conformity with Accepted Servicing Practices. In the event that the preceding language is interpreted as constituting one or more servicing contracts, each such servicing contract shall terminate automatically upon the earliest of (i) an Event of Default, or (ii) the date on which all the Secured Obligations have been paid in full, or (iii) the transfer of servicing to any entity approved by the Lender.

(b) During the period any Borrower is servicing the Mortgage Loans,

(i) the Borrowers agree that Lender has a first priority perfected security interest in all servicing records, including but not limited to any and all servicing agreements, files, documents, records,

data bases, computer tapes, copies of computer tapes, proof of insurance coverage, insurance policies, appraisals, other closing documentation, payment history records, and any other records relating to or evidencing the servicing of such Mortgage Loans (the "Servicing Records"), and (ii) the Borrowers shall grant the Lender a security interest in all servicing fees and rights relating to the Mortgage Loans and all Servicing Records to secure the obligation of the Borrowers or their designee to service in conformity with this Section and any other obligation of the Borrowers to the Lender. Each Borrower covenants to and shall cause any Subservicer to safeguard such Servicing Records and to deliver them promptly to the Lender or its designee (including the Custodian) at the Lender's request. It is understood and agreed by the parties that prior to an Event of Default, the Borrowers or any Subservicer, as applicable, shall retain the servicing fees with respect to the Mortgage Loans.

(c) If the Mortgage Loans are serviced by any other third party servicer (such third party servicer, the "Subservicer") the Borrowers shall provide a copy of the related servicing agreement with a properly executed Instruction Letter to the Lender at least three (3) Business Days prior to the applicable Funding Date or the date on which the Subservicer shall begin subservicing the Mortgage Loans, which shall be in the form and substance acceptable to Lender (the "Servicing Agreement") and shall have obtained the written consent of the Lender for such Subservicer to subservice the Mortgage Loans. Initially, the Subservicer shall be Cenlar FSB.

(d) Each Borrower agrees that, in the event any Borrower is servicing the Mortgage Loans, upon the occurrence of an Event of Default, the Lender may terminate the Borrower in its capacity as servicer and terminate any Servicing Agreement and transfer such servicing to the Lender or its designee, at no cost or expense to the Lender. In addition, each Borrower shall provide to the Lender an Instruction Letter from the Borrowers to the effect that upon the occurrence of an Event of Default, the Lender may cause such Borrower to terminate any Subservicer or Servicing Agreement and direct that collections with respect to the Mortgage Loans be remitted in accordance with the Lender's instructions. Each Borrower agrees to cooperate with the Lender in connection with the transfer of servicing.

(e) After the Funding Date, until the pledge of any Mortgage Loan is relinquished by the Custodian, no Borrower will have the right to modify or alter the terms of the Mortgage Loan or consent to the modification or alteration of the terms of any Mortgage Loan, and the Borrowers will have no obligation or right to repossess any Mortgage Loan or substitute another Mortgage Loan, except as provided in any Custodial Agreement.

(f) Each Borrower shall permit the Lender to inspect upon reasonable prior written notice (which shall be no more than five (5) Business Days prior to such date) at a mutually convenient time, such Borrower's or its Affiliate's servicing facilities, as the case may be, for the purpose of satisfying the Lender that such Borrower or its Affiliate, as the case may be, has the ability to service the Mortgage Loans as provided in this Loan Agreement. In addition, with respect to any Subservicer which is not an Affiliate of such Borrower, such

Borrower shall use its best efforts to enable the Lender to inspect the servicing facilities of such Subservicer.

11.16 Periodic Due Diligence Review. Each Borrower acknowledges that the Lender has the right to perform continuing due diligence reviews with respect to the Mortgage Loans, for purposes of verifying compliance with the representations, warranties and specifications made hereunder, or otherwise, and each Borrower agrees that upon reasonable (but no less than one (1) Business Day's) prior notice to such Borrower, the Lender or its authorized representatives will be permitted during normal business hours to examine, inspect, make copies of, and make extracts of, the Mortgage Files and any and all documents, records, agreements, instruments or information relating to such Mortgage Loans in the possession, or under the control, of such Borrower and/or the Custodian. Each Borrower also shall make available to the Lender a knowledgeable financial or accounting officer for the purpose of answering questions respecting the Mortgage Files and the Mortgage Loans. Without limiting the generality of the foregoing, each Borrower acknowledges that the Lender shall make Advances to the Borrowers based solely upon the information provided by the Borrowers to the Lender in the Mortgage Loan Data Transmission and the representations, warranties and covenants contained herein, and that the Lender, at its option, has the right, at any time to conduct a partial or complete due diligence review on some or all of the Mortgage Loans securing such Advance, including, without limitation, ordering new credit reports, new appraisals on the related Mortgaged Properties and otherwise re-generating the information used to originate such Mortgage Loan. The Lender may underwrite such Mortgage Loans itself or engage a mutually agreed upon third party underwriter to perform such underwriting. Each Borrower agrees to cooperate with the Lender and any third party underwriter in connection with such underwriting, including, but not limited to, providing the Lender and any third party underwriter with access to any and all documents, records, agreements, instruments or information relating to such Mortgage Loans in the possession, or under the control, of such Borrower. In addition, the Lender has the right to perform continuing Due Diligence Reviews of each Borrower and its Affiliates, directors, officers, employees and significant shareholders. The Borrowers and Lender further agree that all out-of-pocket costs and expenses incurred by the Lender in connection with the Lender's activities pursuant to this Section 11.16 shall be paid by the Borrowers.

11.17 Set-Off. In addition to any rights and remedies of the Lender provided by this Loan Agreement and by law, the Lender shall have the right, without prior notice to the Borrowers, any such notice being expressly waived by each Borrower to the extent permitted by applicable law, upon any amount becoming due and payable by any Borrower hereunder (whether at the stated maturity, by acceleration or otherwise) to set-off and appropriate and apply against such amount any and all Property and deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by the Lender or any Affiliate thereof to or for the credit or the account of any Borrower. The Lender may set-off cash, the proceeds of the liquidation of any Collateral and all other sums or obligations owed by the Lender or its Affiliates to any Borrower against all of any Borrower's obligations to the Lender or its Affiliates, whether under this Loan Agreement

or under any other agreement between the parties or between any Borrower and any affiliate of the Lender, or otherwise, whether or not such obligations are then due, without prejudice to the Lender's or its Affiliate's right to recover any deficiency. The Lender agrees promptly to notify the related Borrower after any such set-off and application made by the Lender; provided that the failure to give such notice shall not affect the validity of such set-off and application.

11.18 Intent. The parties recognize that each Advance is a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended.

11.19 Replacement by Repurchase Agreement. The Borrowers hereby acknowledge and agree that this Loan Agreement may at any time and without any further cost to the Borrowers, in the sole discretion of the Lender, be replaced by a repurchase facility with substantially similar terms as those contained in this Loan Agreement. The Borrowers hereby agree to take such action and execute such documents and instruments as is necessary to effectuate such conversion.

11.20 Entire Agreement. This Loan Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendments, or change or supplement hereto shall be binding or effective unless the same is set forth in writing by a duly authorized representative of each party hereto.

11.21 Joint and Several Liability; Cross-Default. The Borrowers hereby acknowledge and agree that they are jointly and severally liable to the Lender for all representations, warranties, covenants, obligations and liabilities of each of the Borrowers hereunder. The Borrowers hereby further acknowledge and agree that any Default, Event of Default or breach of a representation, warranty or covenant by any Borrower under this Loan Agreement is hereby considered a Default, Event of Default or breach by each Borrower.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed and delivered as of the day and year first above written.

BORROWER

NEW YORK MORTGAGE FUNDING, LLC

By: /s/ David Akre

Title:

Address for Notices to NYMF:

1301 Avenue of the Americas, 7th
Floor New York, New York 10019
Attention: Steven B. Schnall, CEO
Telecopier No.: (212) 655-6269
Telephone No.: (212) 634-9449

BORROWER

THE NEW YORK MORTGAGE COMPANY, LLC

By: /s/ Steven B. Schnall

Title:

Address for Notices to NYMC:

1301 Avenue of the Americas, 7th
Floor New York, New York 10019
Attention: Steven B. Schnall, CEO
Telecopier No.: (212) 655-6269
Telephone No.: (212) 634-9449

BORROWER

NEW YORK MORTGAGE TRUST, INC.

By: /s/ Steven B. Schnall

Title:

Address for Notices to Borrowers:

1301 Avenue of the Americas, 7th
Floor New York, New York 10019
Attention: David Akre, CEO
Telecopier No.: (212) 655-6269
Telephone No.: (212) 634-2338

LENDER

GREENWICH CAPITAL FINANCIAL PRODUCTS, INC.

By: /s/ Anthony Palmisano

Title:

Address for Notices:

600 Steamboat Road
Greenwich, Connecticut
06830 Attention: Anthony
Palmisano Telecopier No.:

(203) 618-2164 Telephone No.: (203) 618-2341

With a copy to:

Attention: General Counsel Telecopier No.: (203) 629-5718 Telephone No.: (203) 625-2700

SCHEDULE 1

REPRESENTATIONS AND WARRANTIES RE: MORTGAGE LOANS

Eligible Mortgage Loans

As to each Mortgage Loan that forms part of the Collateral hereunder (and the related Mortgage, Mortgage Note, Assignment of Mortgage and Mortgaged Property), each Borrower shall be deemed to make the following representations and warranties to the Lender as of such date and as of each date Collateral Value is determined:

- (a) Mortgage Loans as Described. The information set forth in the Mortgage Loan Data Transmission with respect to the Mortgage Loan is complete, true and correct in all material respects.
- (b) Payments Current. The first Monthly Payment shall have been made prior to the second scheduled Monthly Payment becoming due.
- (c) No Outstanding Charges. There are no defaults in complying with the terms of the Mortgage securing the Mortgage Loan, and all taxes, governmental assessments, insurance premiums, water, sewer and municipal charges, leasehold payments or ground rents which previously became due and owing have been paid, or an escrow of funds has been established in an amount sufficient to pay for every such item which remains unpaid and which has been assessed but is not yet due and payable. Neither any Borrower nor the Qualified Originator from which the Borrower acquired the Mortgage Loan has advanced funds, or induced, solicited or knowingly received any advance of funds by a party other than the Mortgagor, directly or indirectly, for the payment of any amount required under the Mortgage Loan, except for interest accruing from the date of the Mortgage Note or date of disbursement of the proceeds of the Mortgage Loan, whichever is more recent, to the day which precedes by one month the Due Date of the first installment of principal and interest thereunder.
- (d) Original Terms Unmodified. The terms of the Mortgage Note and Mortgage have not been impaired, waived, altered or modified in any respect, from the date of origination; except by a written instrument which has been recorded, if necessary to protect the interests of the Lender, and which has been delivered to the Custodian and the terms of which are reflected in the Mortgage Loan Schedule. The substance of any such waiver, alteration or modification has been approved by the title insurer, to the extent required by the title insurance policy, and its terms are reflected on the Mortgage Loan Schedule. No Mortgagor in respect of the Mortgage Loan has been released, in whole or in part, except in connection with an assumption agreement approved by the title insurer, to the extent required by such policy, and which assumption agreement is part of the Mortgage File delivered to the Custodian and the terms of which are reflected in the Mortgage Loan Schedule.

(e) No Defenses. The Mortgage Loan is not subject to any right of rescission, set-off, counterclaim or defense, including without limitation the defense of usury, nor will the operation of any of the terms of the Mortgage Note or the Mortgage, or the exercise of any right thereunder, render either the Mortgage Note or the Mortgage unenforceable, in whole or in part and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto, and no Mortgagor in respect of the Mortgage Loan was a debtor in any state or Federal bankruptcy or insolvency proceeding at the time the Mortgage Loan was originated.

(f) Hazard Insurance. The Mortgaged Property is insured by a fire and extended perils insurance policy, issued by a Qualified Insurer, and such other hazards as are customary in the area where the Mortgaged Property is located, and to the extent required by the related Borrower as of the date of origination consistent with the Underwriting Guidelines, against earthquake and other risks insured against by Persons operating like properties in the locality of the Mortgaged Property, in an amount not less than the greatest of (i) 100% of the replacement cost of all improvements to the Mortgaged Property, (ii) the outstanding principal balance of the Mortgage Loan with respect to each Mortgage Loan, (iii) the amount necessary to avoid the operation of any co-insurance provisions with respect to the Mortgaged Property, and consistent with the amount that would have been required as of the date of origination in accordance with the Underwriting Guidelines or (iv) the amount necessary to fully compensate for any damage or loss to the improvements that are a part of such property on a replacement cost basis. If any portion of the Mortgaged Property is in an area identified by any federal Governmental Authority as having special flood hazards, and flood insurance is available, a flood insurance policy meeting the current guidelines of the Federal Insurance Administration is in effect with a generally acceptable insurance carrier, in an amount representing coverage not less than the least of (1) the outstanding principal balance of the Mortgage Loan, (2) the full insurable value of the Mortgaged Property, and (3) the maximum amount of insurance available under the Flood Disaster Protection Act of 1973, as amended. All such insurance policies (collectively, the "hazard insurance policy") contain a standard mortgagee clause naming the related Borrower, its successors and assigns (including without limitation, subsequent owners of the Mortgage Loan), as mortgagee, and may not be reduced, terminated or canceled without 30 days' prior written notice to the mortgagee. No such notice has been received by any Borrower. All premiums due and owing on such insurance policy have been paid. The related Mortgage obligates the Mortgagor to maintain all such insurance and, at such Mortgagor's failure to do so, authorizes the mortgagee to maintain such insurance at the Mortgagor's cost and expense and to seek reimbursement therefor from such Mortgagor. Where required by state law or regulation, the Mortgagor has been given an opportunity to choose the carrier of the required hazard insurance, provided the policy is not a "master" or "blanket" hazard insurance policy covering a condominium, or any hazard insurance policy covering the common facilities of a planned unit development. The hazard insurance policy is the valid and binding obligation of the insurer and is in full force and effect. The Borrower has not engaged in, and has no knowledge of the Mortgagor's having engaged in, any act or omission which would impair the coverage of any such policy, the benefits of the endorsement provided for herein, or the validity and binding effect of either including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by

any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by the Borrower.

(g) Compliance with Applicable Laws. Any and all requirements of any federal, state or local law including, without limitation, usury, truth-in-lending, all applicable predatory and abusive lending, real estate settlement procedures, consumer credit protection, equal credit opportunity or disclosure laws applicable to the origination and servicing of such Mortgage Loan have been complied with, the consummation of the transactions contemplated hereby will not involve the violation of any such laws or regulations, and the related Borrower shall maintain or shall cause its agent to maintain in its possession, available for the inspection of the Lender, and shall deliver to the Lender, upon two (2) Business Days' request, evidence of compliance with all such requirements.

(h) No Satisfaction of Mortgage. The Mortgage has not been satisfied, canceled, subordinated or rescinded, in whole or in part, and the Mortgaged Property has not been released from the lien of the Mortgage, in whole or in part, nor has any instrument been executed that would effect any such release, cancellation, subordination or rescission other than in the case of a release of a portion of the land comprising a Mortgaged Property or a release of a blanket Mortgage which release will not cause the Mortgage Loan to fail to satisfy the Underwriting Guidelines. The Borrower has not waived the performance by the Mortgagor of any action, if the Mortgagor's failure to perform such action would cause the Mortgage Loan to be in default, nor has the Borrower waived any default resulting from any action or inaction by the Mortgagor.

(i) Location and Type of Mortgaged Property. The Mortgaged Property is located in the state identified in the Mortgage Loan Schedule and consists of a single parcel of real property with a detached single family residence erected thereon, or a two- to four-family dwelling, or an individual condominium unit in a condominium project, or an individual unit in a planned unit development or a de minimis planned unit development, provided, however, that any condominium unit or planned unit development shall conform with the applicable Fannie Mae and Freddie Mac requirements regarding such dwellings and that no residence or dwelling is a mobile home or a manufactured dwelling. No portion of the Mortgaged Property is used for commercial purposes.

(j) Valid Lien. The Mortgage is a valid, subsisting, enforceable and perfected first lien and first priority security interest with respect to each Mortgage Loan, on the real property included in the Mortgaged Property, including all buildings on the Mortgaged Property and all installations and mechanical, electrical, plumbing, heating and air conditioning systems located in or annexed to such buildings, and all additions, alterations and replacements made at any time with respect to the foregoing and with respect to Cooperative Loans, including the Proprietary Lease and the Cooperative Shares. The lien of the Mortgage is subject only to:

(1) the lien of current real property taxes and assessments not yet due and payable;

(2) covenants, conditions and restrictions, rights of way, easements and other matters of the public record as of the date of recording acceptable to prudent mortgage lending institutions generally and specifically referred to in the lender's title insurance policy delivered to the originator of the Mortgage Loan and (a) referred to or otherwise considered in the appraisal made for the originator of the Mortgage Loan or (b) which do not adversely affect the Appraised Value of the related Mortgaged Property set forth in such appraisal; and

(3) other matters to which like properties are commonly subject which do not materially interfere with the benefits of the security intended to be provided by the Mortgage or the use, enjoyment, value or marketability of the related Mortgaged Property.

Any security agreement, chattel mortgage or equivalent document related to and delivered in connection with the Mortgage Loan establishes and creates a valid, subsisting and enforceable first lien and first priority security interest with respect to each Mortgage Loan, on the property described therein and the Borrower has full right to pledge and assign the same to the Lender. The Mortgaged Property was not, as of the date of origination of the Mortgage Loan, subject to a mortgage, deed of trust, deed to secure debt or other security instrument creating a lien subordinate to the lien of the Mortgage.

(k) Validity of Mortgage Documents. The Mortgage Note and the Mortgage and any other agreement executed and delivered by a Mortgagor or guarantor, if applicable, in connection with a Mortgage Loan are genuine, and each is the legal, valid and binding obligation of the maker thereof enforceable in accordance with its terms. All parties to the Mortgage Note, the Mortgage and any other such related agreement had legal capacity to enter into the Mortgage Loan and to execute and deliver the Mortgage Note, the Mortgage and any such agreement, and the Mortgage Note, the Mortgage and any other such related agreement have been duly and properly executed by such related parties. No fraud, error, omission, misrepresentation, negligence or similar occurrence with respect to a Mortgage Loan has taken place on the part of any Person, including, without limitation, the Mortgagor, any appraiser, any builder or developer, or any other party involved in the origination of the Mortgage Loan. The Borrower has reviewed all of the documents constituting the Servicing File and has made such inquiries as it deems necessary to make and confirm the accuracy of the representations set forth herein.

(l) Full Disbursement of Proceeds. The proceeds of the Mortgage Loan have been fully disbursed and there is no further requirement for future advances thereunder, and any and all requirements as to completion of any on-site or off-site improvement and as to disbursements of any escrow funds therefor have been complied with. All costs, fees and expenses incurred in making or closing the Mortgage Loan and the recording of the Mortgage were paid, and the Mortgagor is not entitled to any refund of any amounts paid or due under the Mortgage Note or Mortgage.

(m) Ownership. The related Borrower is the sole owner and holder of the Mortgage Loan. All Mortgage Loans acquired by the Borrower from third parties (including affiliates) were acquired in a true and legal sale pursuant to which such third party sold, transferred, conveyed and assigned to the Borrower all of its right, title and interest in, to and under such Mortgage Loan and retained no interest in such Mortgage Loan. In connection with such sale, such third party received reasonably equivalent value and fair consideration and, in accordance with GAAP and for federal income tax purposes, reported the sale of such Mortgage Loan to the Borrower as a sale of its interests in such Mortgage Loan. The Mortgage Loan is not assigned or pledged, and the Borrower has good, indefeasible and marketable title thereto, and has full right to transfer, pledge and assign the Mortgage Loan to the Lender free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest, and has full right and authority subject to no interest or participation of, or agreement with, any other party, to assign, transfer and pledge each Mortgage Loan pursuant to this Loan Agreement and following the pledge of each Mortgage Loan, the Lender will hold such Mortgage Loan free and clear of any encumbrance, equity, participation interest, lien, pledge, charge, claim or security interest except any such security interest created pursuant to the terms of this Loan Agreement.

(n) Doing Business. All parties which have had any interest in the Mortgage Loan, whether as mortgagee, assignee, pledgee or otherwise, are (or, during the period in which they held and disposed of such interest, were) (i) in compliance with any and all applicable licensing requirements of the laws of the state wherein the Mortgaged Property is located, and (ii) either (A) organized under the laws of such state, (B) qualified to do business in such state, (C) a federal savings and loan association, a savings bank or a national bank having a principal office in such state or (D) not doing business in such state.

(o) LTV. As of the date of origination of the Mortgage Loan, the LTV are as identified on the Mortgage Loan Data Transmission.

(p) Title Insurance. The Mortgage Loan is covered by either (i) an attorney's opinion of title and abstract of title, the form and substance of which is acceptable to prudent mortgage lending institutions making mortgage loans in the area wherein the Mortgaged Property is located or (ii) an ALTA lender's title insurance policy or other generally acceptable form of policy or insurance acceptable to Fannie Mae or Freddie Mac and each such title insurance policy is issued by a title insurer acceptable to Fannie Mae or Freddie Mac and qualified to do business in the jurisdiction where the Mortgaged Property is located, insuring the Borrower, its successors and assigns, as to the first priority lien of the Mortgage in the original principal amount of the Mortgage Loan (or to the extent a Mortgage Note provides for negative amortization, the maximum amount of negative amortization in accordance with the Mortgage), subject only to the exceptions contained in clauses (1), (2) and (3), and in the case of adjustable rate Mortgage Loans, against any loss by reason of the invalidity or unenforceability of the lien resulting from the provisions of the Mortgage providing for adjustment to the Mortgage Interest Rate and Monthly Payment. Where required by state law or regulation, the Mortgagor has been given the opportunity to choose the carrier of the required mortgage title insurance.

Additionally, such lender's title insurance policy affirmatively insures ingress and egress and against encroachments by or upon the Mortgaged Property or any interest therein. The title policy does not contain any special exceptions (other than the standard exclusions) for zoning and uses and has been marked to delete the standard survey exception or to replace the standard survey exception with a specific survey reading. The Borrower, its successors and assigns, are the sole insureds of such lender's title insurance policy, and such lender's title insurance policy is valid and remains in full force and effect and will be in force and effect upon the consummation of the transactions contemplated by this Loan Agreement. No claims have been made under such lender's title insurance policy, and no prior holder or servicer of the related Mortgage, including the Borrower, has done, by act or omission, anything which would impair the coverage of such lender's title insurance policy, including, without limitation, no unlawful fee, commission, kickback or other unlawful compensation or value of any kind has been or will be received, retained or realized by any attorney, firm or other Person, and no such unlawful items have been received, retained or realized by the Borrower.

(q) No Defaults. There is no default, breach, violation or event of acceleration existing under the Mortgage or the Mortgage Note and no event has occurred which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and neither the Borrower nor its predecessors have waived any default, breach, violation or event of acceleration.

(r) No Mechanics' Liens. At origination, there were no mechanics' or similar liens or claims which have been filed for work, labor or material (and no rights are outstanding that under the law could give rise to such liens) affecting the Mortgaged Property which are or may be liens prior to, or equal or coordinate with the lien of the Mortgage.

(s) Location of Improvements: No Encroachments. All improvements which were considered in determining the Appraised Value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property. No improvement located on or being part of the Mortgaged Property is in violation of any applicable zoning and building law, ordinance or regulation.

(t) Origination: Payment Terms. The Mortgage Loan was originated by or in conjunction with a mortgagee approved by the Secretary of Housing and Urban Development pursuant to Sections 203 and 211 of the National Housing Act, a savings and loan association, a savings bank, a commercial bank, credit union, insurance company or similar banking institution which is supervised and examined by a federal or state authority. Monthly Payments on the Mortgage Loan commenced no more than sixty (60) days after funds were disbursed in connection with the Mortgage Loan. The Mortgage Interest Rate is adjusted, with respect to adjustable rate Mortgage Loans, on each Interest Rate Adjustment Date to equal the Index plus the Gross Margin (rounded up or down to the nearest .125 %), subject to the Mortgage Interest Rate Cap. The Mortgage Note is payable on the day set forth in the Mortgage Note in equal monthly installments of principal and interest, which installments of interest, with respect to

adjustable rate Mortgage Loans, are subject to change due to the adjustments to the Mortgage Interest Rate on each Interest Rate Adjustment Date, with interest calculated and payable in arrears, sufficient to amortize the Mortgage Loan fully by the stated maturity date, over an original term of not more than 30 years from commencement of amortization. The Due Date of the first payment under the Mortgage Note is no more than 60 days from the date of the Mortgage Note.

(u) Customary Provisions. The Mortgage Note has a stated maturity. The Mortgage contains customary and enforceable provisions such as to render the rights and remedies of the holder thereof adequate for the realization against the Mortgaged Property of the benefits of the security provided thereby, including, (i) in the case of a Mortgage designated as a deed of trust, by trustee's sale, and (ii) otherwise by judicial foreclosure. Upon default by a Mortgagor on a Mortgage Loan and foreclosure on, or trustee's sale of, the Mortgaged Property pursuant to the proper procedures, the holder of the Mortgage Loan will be able to deliver good and merchantable title to the Mortgaged Property. There is no homestead or other exemption available to a Mortgagor which would interfere with the right to sell the Mortgaged Property at a trustee's sale or the right to foreclose the Mortgage.

(v) Conformance with Underwriting Guidelines and Agency Standards. The Mortgage Loan was underwritten in accordance with the applicable Underwriting Guidelines. The Mortgage Note and Mortgage are on forms similar to those used by Freddie Mac or Fannie Mae and the Borrower has not made any representations to a Mortgagor that are inconsistent with the mortgage instruments used.

(w) Occupancy of the Mortgaged Property. As of the Funding Date the Mortgaged Property is either vacant or lawfully occupied under applicable law. All inspections, licenses and certificates required to be made or issued with respect to all occupied portions of the Mortgaged Property and, with respect to the use and occupancy of the same, including but not limited to certificates of occupancy and fire underwriting certificates, have been made or obtained from the appropriate authorities. The Borrower has not received written notification from any governmental authority that the Mortgaged Property is in material non-compliance with such laws or regulations, is being used, operated or occupied unlawfully or has failed to have or obtain such inspection, licenses or certificates, as the case may be. The Borrower has not received notice of any violation or failure to conform with any such law, ordinance, regulation, standard, license or certificate. Except as otherwise set forth in the Mortgage Loan Data Transmission, the Mortgagor represented at the time of origination of the Mortgage Loan that the Mortgagor would occupy the Mortgaged Property as the Mortgagor's primary residence.

(x) No Additional Collateral. The Mortgage Note is not and has not been secured by any collateral except the lien of the corresponding Mortgage and the security interest of any applicable security agreement or chattel mortgage referred to in clause (j) above.

(y) Deeds of Trust. In the event the Mortgage constitutes a deed of trust, a trustee, authorized and duly qualified under applicable law to serve as such, has been properly

designated and currently so serves and is named in the Mortgage, and no fees or expenses are or will become payable by the Custodian or the Lender to the trustee under the deed of trust, except in connection with a trustee's sale after default by the Mortgagor.

(z) Delivery of Mortgage Documents. The Mortgage Note, the Mortgage, the Assignment of Mortgage (other than for a MERS Mortgage Loan) and any other documents required to be delivered under the Custodial Agreement for each Mortgage Loan have been delivered to the Custodian. The related Borrower or its agent is in possession of a complete, true and materially accurate Mortgage File in compliance with the Custodial Agreement, except for such documents the originals of which have been delivered to the Custodian.

(aa) Transfer of Mortgage Loans. The Assignment of Mortgage is in recordable form and is acceptable for recording under the laws of the jurisdiction in which the Mortgaged Property is located.

(bb) Due-On-Sale. The Mortgage contains an enforceable provision for the acceleration of the payment of the unpaid principal balance of the Mortgage Loan in the event that the Mortgaged Property is sold or transferred without the prior written consent of the mortgagee thereunder.

(cc) No Buydown Provisions: No Graduated Payments or Contingent Interests. The Mortgage Loan does not contain provisions pursuant to which Monthly Payments are paid or partially paid with funds deposited in any separate account established by any Borrower, the Mortgagor, or anyone on behalf of the Mortgagor, or paid by any source other than the Mortgagor nor does it contain any other similar provisions which may constitute a "buydown" provision. The Mortgage Loan is not a graduated payment mortgage loan and the Mortgage Loan does not have a shared appreciation or other contingent interest feature.

(dd) Consolidation of Future Advances. Any future advances made to the Mortgagor prior to the origination of the Mortgage Loan have been consolidated with the outstanding principal amount secured by the Mortgage, and the secured principal amount, as consolidated, bears a single interest rate and single repayment term. The lien of the Mortgage securing the consolidated principal amount is expressly insured as having first lien priority with respect to each Mortgage Loan by a title insurance policy, an endorsement to the policy insuring the mortgagee's consolidated interest or by other title evidence acceptable to Fannie Mae and Freddie Mac. The consolidated principal amount does not exceed the original principal amount of the Mortgage Loan.

(ee) Mortgaged Property Undamaged. The Mortgaged Property (and with respect to any Cooperative Loan, the Cooperative Unit) is undamaged by waste, fire, earthquake or earth movement, windstorm, flood, tornado or other casualty so as to affect adversely the value of the Mortgaged Property as security for the Mortgage Loan or the use for which the premises were intended and each Mortgaged Property is in good repair. There have not been any condemnation proceedings with respect to the Mortgaged Property and the Borrower has no knowledge of any such proceedings.

(ff) Collection Practices: Escrow Deposits: Interest Rate Adjustments. The origination and collection practices used by the originator, each servicer of the Mortgage Loan and the Borrowers with respect to the Mortgage Loan have been in all material respects in compliance with Accepted Servicing Practices, applicable laws and regulations, and have been in all respects legal and proper. With respect to escrow deposits and Escrow Payments, all such payments are in the possession of, or under the control of, the Borrower and there exist no deficiencies in connection therewith for which customary arrangements for repayment thereof have not been made. All Escrow Payments have been collected in full compliance with state and federal law. An escrow of funds is not prohibited by applicable law and has been established in an amount sufficient to pay for every item that remains unpaid and has been assessed but is not yet due and payable. No escrow deposits or Escrow Payments or other charges or payments due the Borrower have been capitalized under the Mortgage or the Mortgage Note. All Mortgage Interest Rate adjustments have been made in strict compliance with state and federal law and the terms of the related Mortgage Note. Any interest required to be paid pursuant to state, federal and local law has been properly paid and credited.

(gg) Conversion to Fixed Interest Rate. With respect to adjustable rate Mortgage Loans, the Mortgage Loan is not convertible to a fixed interest rate Mortgage Loan.

(hh) Other Insurance Policies. No action, inaction or event has occurred and no state of facts exists or has existed that has resulted or will result in the exclusion from, denial of, or defense to coverage under any applicable special hazard insurance policy, PMI Policy or bankruptcy bond, irrespective of the cause of such failure of coverage. In connection with the placement of any such insurance, no commission, fee, or other compensation has been or will be received by the Borrower or by any officer, director, or employee of the Borrower or any designee of the Borrower or any corporation in which the Borrower or any officer, director, or employee had a financial interest at the time of placement of such insurance.

(ii) Servicemembers Civil Relief Act. The Mortgagor has not notified the Borrower, and the Borrower has no knowledge, of any relief requested or allowed to the Mortgagor under the Servicemembers Civil Relief Act.

(jj) Appraisal. The Mortgage File contains an appraisal of the related Mortgaged Property signed prior to the approval of the Mortgage Loan application by a qualified appraiser, duly appointed by the Borrower or the Qualified Originator, who had no interest, direct or indirect in the Mortgaged Property or in any loan made on the security thereof, and whose compensation is not affected by the approval or disapproval of the Mortgage Loan, and the appraisal and appraiser both satisfy the requirements of Fannie Mae or Freddie Mac and Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 as amended and the regulations promulgated thereunder, all as in effect on the date the Mortgage Loan was originated.

(kk) Disclosure Materials. The Mortgagor has executed a statement to the effect that the Mortgagor has received all disclosure materials required by applicable law with

respect to the making of adjustable rate mortgage loans, and the Borrower maintains such statement in the Mortgage File.

(ll) Construction or Rehabilitation of Mortgaged Property. No Mortgage Loan was made in connection with the construction or rehabilitation of a Mortgaged Property or facilitating the trade-in or exchange of a Mortgaged Property.

(mm) No Defense to Insurance Coverage. No action has been taken or failed to be taken, no event has occurred and no state of facts exists or has existed on or prior to the Funding Date (whether or not known to the Borrower on or prior to such date) which has resulted or will result in an exclusion from, denial of, or defense to coverage under any private mortgage insurance (including, without limitation, any exclusions, denials or defenses which would limit or reduce the availability of the timely payment of the full amount of the loss otherwise due thereunder to the insured) whether arising out of actions, representations, errors, omissions, negligence, or fraud of the Borrower, the related Mortgagor or any party involved in the application for such coverage, including the appraisal, plans and specifications and other exhibits or documents submitted therewith to the insurer under such insurance policy, or for any other reason under such coverage, but not including the failure of such insurer to pay by reason of such insurer's breach of such insurance policy or such insurer's financial inability to pay.

(nn) Capitalization of Interest. The Mortgage Note does not by its terms provide for the capitalization or forbearance of interest.

(oo) No Equity Participation. No document relating to the Mortgage Loan provides for any contingent or additional interest in the form of participation in the cash flow of the Mortgaged Property or a sharing in the appreciation of the value of the Mortgaged Property. The indebtedness evidenced by the Mortgage Note is not convertible to an ownership interest in the Mortgaged Property or the Mortgagor and the Borrower has not financed nor does it own directly or indirectly, any equity of any form in the Mortgaged Property or the Mortgagor.

(pp) Withdrawn Mortgage Loans. If the Mortgage Loan has been released to the Borrower pursuant to a Request for Release as permitted under Section 5 of the Custodial Agreement, then the promissory note relating to the Mortgage Loan was returned to the Custodian within 10 days (or if such tenth day was not a Business Day, the next succeeding Business Day).

(qq) No Exception. Other than as noted by the Custodian on the Exception Report; no Exception exists (as defined in the Custodial Agreement) with respect to the Mortgage Loan which would materially adversely affect the Mortgage Loan or the Lender's security interest, granted by the Borrower, in the Mortgage Loan as determined by the Lender in its sole discretion.

(rr) Qualified Originator. The Mortgage Loan has been originated by, and, if applicable, purchased by the related Borrower from, a Qualified Originator.

(ss) Mortgage Submitted for Recordation. The Mortgage has been submitted for recordation in the appropriate governmental recording office of the jurisdiction where the Mortgaged Property is located.

(tt) Acceptable Investment. No specific circumstances or conditions exist with respect to the Mortgage, the Mortgaged Property, the Mortgagor or the Mortgagor's credit standing that should reasonably be expected to (i) cause private institutional investors which invest in Mortgage Loans similar to the Mortgage Loan to regard the Mortgage Loan as an unacceptable investment, (ii) cause the Mortgage Loan to be more likely to become past due in comparison to similar Mortgage Loans, or (iii) adversely affect the value or marketability of the Mortgage Loan in comparison to similar Mortgage Loans;

(uu) Environmental Matters. The Mortgaged Property is free from any and all toxic or hazardous substances and there exists no violation of any local, state or federal environmental law, rule or regulation;

(vv) Ground Leases. With respect to each ground lease to which the Mortgaged Property is subject (a "Ground Lease"): (i) the Mortgagor is the owner of a valid and subsisting interest as tenant under the Ground Lease; (ii) the Ground Lease is in full force and effect, unmodified and not supplemented by any writing or otherwise; (iii) all rent, additional rent and other charges reserved therein have been paid to the extent they are payable to the date hereof; (iv) the Mortgagor enjoys the quiet and peaceful possession of the estate demised thereby, subject to any sublease; (v) the Mortgagor is not in default under any of the terms thereof and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute an event of default thereunder; (vi) the lessor under the Ground Lease is not in default under any of the terms or provisions thereof on the part of the lessor to be observed or performed; (vii) the lessor under the Ground Lease has satisfied all of its repair or construction obligations, if any, to date pursuant to the terms of the Ground Lease; (viii) the remaining term of the Ground Lease extends not less than ten (10) years following the maturity date of such Mortgage Loan; and (ix) the execution, delivery and performance of the Mortgage do not require the consent (other than those consents which have been obtained and are in full force and effect) under, and will not contravene any provision of or cause a default under, the Ground Lease;

(ww) Value of Mortgaged Property. The Borrower has no knowledge of any circumstances existing that should reasonably be expected to adversely affect the value or the marketability of the Mortgaged Property or the Mortgage Loan or to cause the Mortgage Loan to prepay during any period materially faster or slower than the Mortgage Loans originated by the Borrower generally;

(xx) HOEPA. No Mortgage Loan is (a) subject to the provisions of the Homeownership and Equity Protection Act of 1994 as amended ("HOEPA"), (b) a "high cost" mortgage loan, "covered" mortgage loan or "predatory" mortgage loan or any other comparable term, no matter how defined, under any federal, state or local law, or (c) subject to any comparable federal, state or local statutes or regulations, including, without limitation, the

provisions of the Georgia Fair Lending Act, the City of Oakland, California Anti-Predatory Lending Ordinance No. 12361 or any other statute or regulation providing for heightened regulatory scrutiny or assignee liability to holders of such mortgage loans;

(yy) No Predatory Lending. No predatory, abusive or deceptive lending practices, including but not limited to, the extension of credit to a mortgagor without regard for the mortgagor's ability to repay the Mortgage Loan and the extension of credit to a mortgagor which has no tangible net benefit to the mortgagor, were employed in connection with the origination of the Mortgage Loan;

(zz) Georgia Mortgage Loans. No Mortgage Loan which is secured by a Mortgaged Property which is located in the state of Georgia was originated prior to March 7, 2004;

(aaa) Cooperative Loans. With respect to each Cooperative Loan, each original UCC financing statement, continuation statement or other governmental filing or recordation necessary to create or preserve the perfection and priority of the first priority lien and security interest in the Cooperative Shares and Proprietary Lease has been timely and properly made. Any security agreement, chattel mortgage or equivalent document related to the Cooperative Loan and delivered to the Borrower or its designee establishes in the Borrower a valid and subsisting perfected first lien on and security interest in the Mortgaged Property described therein, and the Borrower has full right to sell and assign the same; and

(bbb) MERS. With respect to each MERS Mortgage Loan, a Mortgage Identification Number has been assigned by MERS and such Mortgage Identification Number is accurately provided on the Mortgage Loan Schedule. The related Assignment of Mortgage to MERS has been duly and properly recorded. With respect to each MERS Mortgage Loan, the Borrower has not received any notice of liens or legal actions with respect to such Mortgage Loan and no such notices have been electronically posted by MERS.

SCHEDULE 2

SCHEDULE 3

SCHEDULE 4

EXHIBIT A

[FORM OF PROMISSORY NOTE]

\$250,000,000

December 6, 2004 New York, New York

FOR VALUE RECEIVED, NEW YORK MORTGAGE FUNDING, LLC, a Delaware limited liability company, THE NEW YORK MORTGAGE COMPANY, LLC, a New York limited liability company and NEW YORK MORTGAGE TRUST, INC., a Maryland corporation (the "Borrowers"), hereby jointly and severally promise to pay to the order of GREENWICH CAPITAL FINANCIAL PRODUCTS, INC. (the "Lender"), at the principal office of the Lender at 600 Steamboat Road, Greenwich, Connecticut 06830, in lawful money of the United States, and in immediately available funds, the principal sum of TWO HUNDRED FIFTY MILLION DOLLARS (\$250,000,000) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Advances made by the Lender to the Borrowers under the Loan Agreement), on the dates and in the principal amounts provided in the Loan Agreement, and to pay interest on the unpaid principal amount of each such Advance, at such office, in like money and funds, for the period commencing on the date of such Advance until such Advance shall be paid in full, at the rates per annum and on the dates provided in the Loan Agreement.

The date, amount and interest rate of each Advance made by the Lender to the Borrowers, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof; provided, that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrowers to make a payment when due of any amount owing under the Loan Agreement or hereunder in respect of the Advances made by the Lender.

This Note is the Note referred to in the Amended and Restated Master Loan and Security Agreement dated as of December 6, 2004 (as amended, supplemented or otherwise modified and in effect from time to time, the "Loan Agreement") between the Borrowers, and the Lender, and evidences Advances made by the Lender thereunder. Terms used but not defined in this Note have the respective meanings assigned to them in the Loan Agreement.

The Borrowers agree to pay all the Lender's costs of collection and enforcement (including reasonable attorneys' fees and disbursements of Lender's counsel) in respect of this Note when incurred, including, without limitation, reasonable attorneys' fees through appellate proceedings.

Notwithstanding the pledge of the Collateral, the Borrowers hereby acknowledge, admits and agree that the Borrowers' obligations under this Note are recourse obligations of the Borrowers to which the Borrowers pledge their full faith and credit.

The Borrowers, and any indorsers or guarantors hereof, (a) severally waive diligence, presentment, protest and demand and also notice of protest, demand, dishonor and nonpayments of this Note, (b) expressly agree that this Note, or any payment hereunder, may be extended from time to time, and consent to the acceptance of further Collateral, the release of any Collateral for this Note, the release of any party primarily or secondarily liable hereon, and (c) expressly agree that it will not be necessary for the Lender, in order to enforce payment of this Note, to first institute or exhaust the Lender's remedies against the Borrowers or any other party liable hereon or against any Collateral for this Note. No extension of time for the payment of this Note, or any installment hereof, made by agreement by the Lender with any person now or hereafter liable for the payment of this Note, shall affect the liability under this Note of the Borrowers, even if the Borrowers are not a party to such agreement; provided, however, that the Lender and the Borrowers, by written agreement between them, may affect the liability of the Borrowers.

Any reference herein to the Lender shall be deemed to include and apply to every subsequent holder of this Note. Reference is made to the Loan Agreement for provisions concerning optional and mandatory prepayments, Collateral, acceleration and other material terms affecting this Note.

The Borrowers hereby acknowledge and agree that they will each be jointly and severally liable to the Lender for all representations, warranties, covenants and liabilities of each of the Borrowers hereunder.

Any enforcement action relating to this Note may be brought by motion for summary judgment in lieu of a complaint pursuant to Section 3213 of the New York Civil Practice Law and Rules. The Borrowers hereby submit to New York jurisdiction with respect to any action brought with respect to this Note and waive any right with respect to the doctrine of forum non conveniens with respect to such transactions.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE BUT WITH REFERENCE TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WHICH BY ITS TERMS APPLIES TO THIS NOTE) WHOSE LAWS THE BORROWERS EXPRESSLY ELECT TO APPLY TO THIS NOTE. THE BORROWERS AGREE THAT ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE OR ARISING OUT OF THIS NOTE MAY BE COMMENCED IN THE SUPREME COURT OF THE STATE OF NEW YORK, BOROUGH OF MANHATTAN, OR IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

NEW YORK MORTGAGE FUNDING, LLC

By: _____
Name:
Title:

THE NEW YORK MORTGAGE COMPANY, LLC

By: _____

Name:

Title:

NEW YORK MORTGAGE TRUST, INC.

By: _____

Name:

Title:

SCHEDULE OF LOANS

This Note evidences Advances made under the within-described Loan Agreement to the Borrowers, on the dates, in the principal amounts and bearing interest at the rates set forth below, and subject to the payments and prepayments of principal set forth below:

Date Made	Principal Amount of Loan	Amount Paid or Prepaid	Unpaid Principal Amount	Notation Made by
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EXHIBIT B

FORM OF CUSTODIAL AGREEMENT

EXHIBIT C

[FORM OF OPINION OF COUNSEL TO THE BORROWER]

(DATE)

Greenwich Capital Financial Products, Inc. 600 Steamboat Road
Greenwich, Connecticut 06830

Dear Sirs and Mesdames:

You have requested [our] [my] opinion, as counsel to New York Mortgage Funding, LLC, a Delaware limited liability company, The New York Mortgage Company, LLC, a New York limited liability company and New York Mortgage Trust, Inc., a Maryland corporation (the "Borrowers") with respect to certain matters in connection with that certain Amended and Restated Master Loan and Security Agreement, dated as of December 6, 2004 (the "Loan and Security Agreement"), by and among the Borrowers and Greenwich Capital Financial Products, Inc. (the "Lender"), being executed contemporaneously with a Promissory Note dated December 6, 2004 from the Borrowers to the Lender (the "Note"), an Amendment Number Two to the Custodial Agreement, dated as of December 6, 2004, by and among the Borrowers, LaSalle Bank, National Association (the "Custodian"), and the Lender (the "Amendment" and together with that certain Custodial Agreement, dated as of May 1, 2004, by and among NYMF, the Lender and the Custodian, the "Custodial Agreement"). Capitalized terms not otherwise defined herein have the meanings set forth in the Loan and Security Agreement.

[We] [I] have examined the following documents:

1. the Loan and Security Agreement;
2. the Note;
3. Custodial Agreement;
4. unfiled copies of the financing statements listed on Schedule 1 (collectively, the "Financing Statements") naming any Borrower as Debtor and the Lender as Secured Party and describing the Collateral (as defined in the Loan and Security Agreement) as to which security interests may be perfected by filing under the Uniform Commercial Code of the States listed on Schedule 1 (the "Filing Collateral"), which I understand will be filed in the filing offices listed on Schedule 1 (the "Filing Offices");
5. the reports listed on Schedule 2 as to UCC financing statements (collectively, the "UCC Search Report"); and

6. such other documents, records and papers as we have deemed necessary and relevant as a basis for this opinion.

[We] [I] have assumed the authenticity of all documents submitted to me as originals, the genuineness of all signatures, the legal capacity of natural persons and the conformity to the originals of all documents.

Based upon the foregoing, it is [our] [my] opinion that:

1. Each Borrower is a limited liability company or corporation duly organized, validly existing and in good standing under the laws of the state of state] and is qualified to transact business in, duly licensed and is in good standing under, the laws of each state in which any Mortgaged Property is located to the extent necessary to ensure the enforceability of each Mortgage Loan and the servicing of each Mortgage Loan pursuant to the Loan and Security Agreement.
2. Each Borrower has the corporate or limited liability company power to engage in the transactions contemplated by the Loan and Security Agreement, the Note and the Custodial Agreement and all requisite corporate or limited liability company power, authority and legal right to execute and deliver the Loan and Security Agreement, the Note and the Custodial Agreement and observe the terms and conditions of such instruments. Each Borrower has all requisite corporate or limited liability company power to borrow under the Loan and Security Agreement and to grant a security interest in the Collateral pursuant to the Loan and Security Agreement.
3. The execution, delivery and performance by each Borrower of the Loan and Security Agreement, the Note and the Custodial Agreement, and the borrowings by each Borrower and the pledge of the Collateral under the Loan and Security Agreement have been duly authorized by all necessary corporate action on the part of each Borrower. Each of the Loan and Security Agreement, the Note and the Custodial Agreement have been executed and delivered by each Borrower and are legal, valid and binding agreements enforceable in accordance with their respective terms against each Borrower, subject to bankruptcy laws and other similar laws of general application affecting rights of creditors and subject to the application of the rules of equity, including those respecting the availability of specific performance, none of which will materially interfere with the realization of the benefits provided thereunder or with the Lender's security interest in the Mortgage Loans.
4. No consent, approval, authorization or order of, and no filing or registration with, any court or governmental agency or regulatory body is required on the part of each Borrower for the execution, delivery or performance by each Borrower of the Loan and Security Agreement, the Note and the Custodial

Agreement, or for the borrowings by each Borrower under the Loan and Security Agreement or the granting of a security interest to the Lender in the Collateral, pursuant to the Loan and Security Agreement.

5. The execution, delivery and performance by each Borrower of, and the consummation of the transactions contemplated by, the Loan and Security Agreement, the Note or the Custodial Agreement do not and will not (a) violate any provision of any Borrower's charter or by-laws, (b) violate any applicable law, rule or regulation, (c) violate any order, writ, injunction or decree of any court or governmental authority or agency or any arbitral award applicable to any Borrower of which I have knowledge (after due inquiry) or (d) result in a breach of, constitute a default under, require any consent under, or result in the acceleration or required prepayment of any indebtedness pursuant to the terms of, any agreement or instrument of which I have knowledge (after due inquiry) to which any Borrower is a party or by which it is bound or to which it is subject, or (except for the Liens created pursuant to the Loan and Security Agreement) result in the creation or imposition of any Lien upon any Property of any Borrower pursuant to the terms of any such agreement or instrument.
6. There is no action, suit, proceeding or investigation pending or, to the best of [our] [my] knowledge, threatened against any Borrower which, in [our] [my] judgment, either in any one instance or in the aggregate, would be reasonably likely to result in any material adverse change in the properties, business or financial condition, or prospects of the related Borrower or in any material impairment of the right or ability of any Borrower to carry on its business substantially as now conducted or in any material liability on the part of any Borrower or which would draw into question the validity of the Loan and Security Agreement, the Note, the Custodial Agreement, or the Mortgage Loans or of any action taken or to be taken in connection with the transactions contemplated thereby, or which would be reasonably likely to impair materially the ability of any Borrower to perform under the terms of the Loan and Security Agreement, the Note, the Custodial Agreement or the Mortgage Loans.
7. The Loan and Security Agreement is effective to create, in favor of the Lender, a valid security interest under the Uniform Commercial Code in all of the right, title and interest of the Borrowers in, to and under the Collateral as collateral security for the payment of the Secured Obligations (as defined in the Loan and Security Agreement), except that (a) such security interests will continue in Collateral after its sale, exchange or other disposition only to the extent provided in Section 9-306 of the Uniform Commercial Code, (b) the security interests in Collateral in which any Borrower acquires rights after the commencement of a case under the Bankruptcy Code in respect of such Borrower may be limited by Section 552 of the Bankruptcy Code.

8. When the Mortgage Notes are delivered to the Custodian, endorsed in blank by a duly authorized officer of any Borrower, the security interest referred to in paragraph 7 above in the Mortgage Notes will constitute a fully perfected first priority security interest in all right, title and interest of the Borrowers therein, in the Mortgage Loan evidenced thereby and in the Borrowers' interest in the related Mortgaged Property.
9. (a) Upon the filing of financing statements on Form UCC-1 naming the Lender as "Secured Party" and any Borrower as "Debtor", and describing the Collateral, in the jurisdictions and recording offices listed on Schedule 1 attached hereto, the security interests referred to in paragraph 8 above will constitute fully perfected security interests under the Uniform Commercial Code in all right, title and interest of the Borrowers in, to and under such Collateral, which can be perfected by filing under the Uniform Commercial Code.

(b) The UCC Search Report sets forth the proper filing offices and the proper debtors necessary to identify those Persons who have on file in the jurisdictions listed on Schedule 1 financing statements covering the Filing Collateral as of the dates and times specified on Schedule 2. Except for the matters listed on Schedule 2, the UCC Search Report identifies no Person who has filed in any Filing Office a financing statement describing the Filing Collateral prior to the effective dates of the UCC Search Report.
10. The Assignments of Mortgage are in recordable form, except for the insertion of the name of the assignee, and upon the name of the assignee being inserted, are acceptable for recording under the laws of the state where each related Mortgaged Property is located.
11. Each Borrower is duly registered as a [_____] in each state in which Mortgage Loans were originated to the extent such registration is required by applicable law, and has obtained all other licenses and governmental approvals in each jurisdiction to the extent that the failure to obtain such licenses and approvals would render any Mortgage Loan unenforceable or would materially and adversely affect the ability of such Borrower to perform any of its obligations under, or the enforceability of, the Loan Documents.
12. Assuming that all other elements necessary to render a Mortgage Loan legal, valid, binding and enforceable were present in connection with the execution, delivery and performance of each Mortgage Loan (including completion of the entire Mortgage Loan fully, accurately and in compliance with all applicable laws, rules and regulations) and assuming further that no action was taken in connection with the execution, delivery and performance of each Mortgage Loan (including in connection with the sale of the related Mortgaged Property) that would give rise to a defense to the legality, validity, binding effect

and enforceability of such Mortgage Loan, nothing in the forms of such Mortgage Loans, as attached hereto as Exhibit A, would render such Mortgage Loans other than legal, valid, binding and enforceable.

13. Assuming their validity, binding effect and enforceability in all other respects (including completion of the entire Mortgage Loan fully, accurately and in compliance with all applicable laws, rules and regulations), the forms of Mortgage Loans attached hereto as Exhibit A are in sufficient compliance with _____ law and Federal consumer protection laws so as not to be rendered void or voidable at the election of the Mortgagor thereunder.

Very truly yours,

EXHIBIT D

FORM OF NOTICE OF BORROWING AND PLEDGE

[INSERT DATE]

Greenwich Capital Financial Products, Inc. 600 Steamboat Road Greenwich,
Connecticut 06830

Attention: _____

NOTICE OF BORROWING AND PLEDGE NO.: _____

Ladies/Gentlemen:

Reference is made to the Amended and Restated Master Loan and Security Agreement, dated as of December 6, 2004 (the "Loan Agreement"; capitalized terms used but not otherwise defined herein shall have the meaning given them in the Loan Agreement), among New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc. (each, a "Borrower" and collectively, the "Borrowers") and Greenwich Capital Financial Products, Inc. (the "Lender").

In accordance with Section 2.03(a) of the Loan Agreement, the undersigned Borrower hereby requests that you, the Lender, make Advances to us in connection with our delivery of Mortgage Loans on _____ [insert requested Funding Date, which in the case of Dry Loans must be at least two (2) Business Days following the date of the request], in connection with which we shall pledge to you as Collateral the Mortgage Loans (along with all previous pledges defined as Eligible Mortgage Loans for such date) set forth on the Mortgage Loan Schedule attached hereto.

The undersigned Borrower hereby certifies, as of such Funding Date, that:

(a) no Default or Event of Default has occurred and is continuing on the date hereof nor will occur after giving effect to such Advance as a result of such Advance;

(b) each of the representations and warranties made by the Borrower in or pursuant to the Loan Documents is true and correct in all material respects on and as of such date (in the case of the representations and warranties in respect of Mortgage Loans, solely with respect to Mortgage Loans being included the Borrowing Base on the Funding Date) as if made on and as of the date hereof (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date);

(c) the Borrower is in compliance with all governmental licenses and authorizations and is qualified to do business and is in good standing in all required jurisdictions; and

(d) the Borrower has satisfied all conditions precedent in Section 5.02 of the Loan Agreement and all other requirements of the Loan Agreement.

The undersigned duly authorized officer of Borrower further represents and warrants that (1) the documents constituting the Custodial File (as defined in the Custodial Agreement) with respect to the Mortgage Loans that are the subject of the Advance requested herein and more specifically identified on the mortgage loan schedule or computer readable magnetic transmission delivered to both the Lender and the Custodian in connection herewith (the "Received Mortgage Loans")

[with respect to Dry Loans: have been or are hereby submitted] [with respect to Wet Loans: shall be delivered, within _____ (__) days of the date of the execution of this Notice of Borrowing and Pledge,] to Custodian and such Required Documents are to be held by the Custodian subject to Lender's first priority security interest thereon, (2) all other documents related to such Received Mortgage Loans (including, but not limited to, mortgages, insurance policies, loan applications and appraisals) have been or will be created and held by Borrower in trust for Lender, (3) all documents related to such Received Mortgage Loans withdrawn from Custodian shall be held in trust by Borrower for Lender, and Borrower will not attempt to pledge, hypothecate or otherwise transfer such Received Mortgage Loans to any other party until the Advance to which such Received Mortgage Loans are related has been paid in full by Borrower and (4) Borrower has granted a first priority perfected security interest in and lien on the Received Mortgage Loans.

Borrower hereby represents and warrants that (x) the Received Mortgage Loans have an unpaid principal balance as of the date hereof of \$_____ and

(y) the number of Received Mortgage Loans is _____.

Very truly yours,

By: _____ Name:

Title:

**SCHEDULE I
TO NOTICE OF BORROWING AND PLEDGE**

**[MORTGAGE LOANS PROPOSED TO BE PLEDGED]
[TO LENDER ON FUNDING DATE]**

[attach Mortgage Loan Schedule]

EXHIBIT E

UNDERWRITING GUIDELINES

[TO BE PROVIDED BY BORROWER]

EXHIBIT F

REQUIRED FIELDS FOR SERVICING TRANSMISSION

[TO BE PROVIDED BY LENDER]

EXHIBIT G

REQUIRED FIELDS FOR MORTGAGE LOAN DATA TRANSMISSION

[TO BE PROVIDED BY LENDER]

EXHIBIT H

FORM OF BORROWING BASE CERTIFICATE

[TO BE PROVIDED BY LENDER]

EXHIBIT I

FORM OF CONFIDENTIALITY AGREEMENT

In connection with your consideration of a possible or actual acquisition of a participating interest (the "Transaction") in an advance, or note of Greenwich Capital Financial Products, Inc. ("Greenwich") pursuant to an Amended and Restated Master Loan and Security Agreement between Greenwich and New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc. (the "Borrowers") dated December 6, 2004, you have requested the right to review certain non-public information regarding the Borrowers that is in the possession of Greenwich. In consideration of, and as a condition to, furnishing you with such information and any other information (whether communicated in writing or communicated orally) delivered to you by Greenwich or its affiliates, directors, officers, employees, advisors, agents or "controlling persons" (within the meaning of the Securities Exchange Act of 1934, as amended (the "1934 Act")) (such affiliates and other persons being herein referred to collectively as Greenwich "Representatives") in connection with the consideration of a Transaction (such information being herein referred to as "Evaluation Material"), Greenwich hereby requests your agreement as follows:

1. The Evaluation Material will be used solely for the purpose of evaluating a possible Transaction with Greenwich involving you or your affiliates, and unless and until you have completed such Transaction pursuant to a definitive agreement between you or any such affiliate and Greenwich, such Evaluation Material will be kept strictly confidential by you and your affiliates, directors, officers, employees, advisors, agents or controlling persons (such affiliates and other persons being herein referred to collectively as "your Representatives"), except that the Evaluation Material or portions thereof may be disclosed to those of your Representatives who need to know such information for the purpose of evaluating a possible Transaction with Greenwich (it being understood that prior to such disclosure your Representatives will be informed of the confidential nature of the Evaluation Material and shall agree to be bound by this Agreement). You agree to be responsible for any breach of this Agreement by your Representatives.
2. The term "Evaluation Material" does not include any information which (i) at the time of disclosure or thereafter is generally known by the public (other than as a result of its disclosure by you or your Representatives) or (ii) was or becomes available to you on a nonconfidential basis from a person not otherwise bound by a confidential agreement with Greenwich or its Representatives or is not otherwise prohibited from transmitting the information to you. As used in this Agreement, the term "person" shall be broadly interpreted to include, without limitation, any corporation, company, joint venture, partnership or individual.

3. In the event that you receive a request to disclose all or any part of the information contained in the Evaluation Material under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, you agree to (i) immediately notify Greenwich and the Borrowers of the existence, terms and circumstances surrounding such a request, (ii) consult with the Borrowers on the advisability of taking legally available steps to resist or narrow such request, and (iii) if disclosure of such information is required, exercise your best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information.
4. Unless otherwise required by law in the opinion of your counsel, neither you nor your Representative will, without our prior written consent, disclose to any person the fact that the Evaluation Material has been made available to you.
5. You agree not to initiate or maintain contact (except for those contacts made in the ordinary course of business) with any officer, director or employee of any Borrower regarding the business, operations, prospects or finances of such Borrower or the employment of such officer, director or employee, except with the express written permission of such Borrower.
6. You understand and acknowledge that the Borrowers are not making any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material or any other information provided to you by Greenwich. The Borrowers, their respective affiliates or Representatives, nor any of its respective officers, directors, employees, agents or controlling persons (within the meaning of the 1934 Act) shall have any liability to you or any other person (including, without limitation, any of your Representatives) resulting from your use of the Evaluation Material.
7. You agree that neither Greenwich nor any Borrower has granted you any license, copyright, or similar right with respect to any of the Evaluation Material or any other information provided to you by Greenwich.
8. If you determine that you do not wish to proceed with the Transaction, you will promptly deliver to Greenwich all of the Evaluation Material, including all copies and reproductions thereof in your possession or in the possession of any of your Representatives
9. Without prejudice to the rights and remedies otherwise available to the Borrowers, the Borrowers shall be entitled to equitable relief by way of injunction if you or any of your Representatives breach or threaten to breach any of the provisions of this Agreement. You agree to waive, and to cause your Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy.

10. The validity and interpretation of this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to agreements made and to be fully performed therein (excluding the conflicts of law rules). You submit to the jurisdiction of any court of the State of New York or the United States District Court for the Southern District of the State of New York for the purpose of any suit, action, or other proceeding arising out of this Agreement.

11. The benefits of this Agreement shall inure to the respective successors and assigns of the parties hereto, and the obligations and liabilities assumed in this Agreement by the parties hereto shall be binding upon the respective successors and assigns.

12. If it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) that any term or provision hereof is invalid or unenforceable, (i) the remaining terms and provisions hereof shall be unimpaired and shall remain in full force and effect and (ii) the invalid or unenforceable provision or term shall be replaced by a term or provision that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term or provision.

13. This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendments, or change or supplement hereto shall be binding or effective unless the same is set forth in writing by a duly authorized representative of each party and may be modified or waived only by a separate letter executed by the Borrowers and you expressly so modifying or waiving such Agreement.

14. For the convenience of the parties, any number of counterparts of this Agreement may be executed by the parties hereto. Each such counterpart shall be, and shall be deemed to be, an original instrument, but all such counterparts taken together shall constitute one and the same Agreement.

Kindly execute and return one copy of this letter which will constitute our Agreement with respect to the subject matter of this letter.

By: _____ Greenwich Capital Financial Products, Inc.

Confirmed and agreed to
this ____ day of
_____, 200_.

By: _____
Name
Title:

EXHIBIT J

FORM OF INSTRUCTION LETTER

_____, 2004

_____, as [Subservicer]

Attention: _____

Re: Amended and Restated Master Loan and Security Agreement, dated as of December 6, 2004, by and between Greenwich Capital Financial Products, Inc., ("Lender"), and New York Mortgage Funding, LLC, The New York Mortgage Company, LLC and New York Mortgage Trust, Inc.

("Borrowers")

Ladies and Gentlemen:

Pursuant to the Amended and Restated Master Loan and Security Agreement, dated as of December 6, 2004 (the "Loan and Security Agreement"), between the Lender and the Borrowers, you are hereby notified that: (i) the undersigned Borrower has pledged to the Lender the assets described on Schedule 1 hereto (the "Eligible Assets"), (ii) each of the Eligible Assets is subject to a security interest in favor of the Lender, and (iii) effective as of the delivery of this letter to the Subservicer, unless otherwise notified by the Lender in writing, any payments or distributions made with respect to such Eligible Assets shall be remitted immediately by the [Subservicer] in accordance with the Lender's wiring instructions provided below:

Account No.: [_____]

ABA No. : [_____]
[_____]
Reference: [_____]
[_____]

The Subservicer also acknowledges its consent to terminate such Servicing Agreement upon notification by the Lender of an occurrence of an Event of Default.

Please acknowledge receipt of this instruction letter by signing in the signature block below and forwarding an executed copy to the Lender promptly upon receipt. Any notices to the Lender should be delivered to the following address: 600 Steamboat Road, Greenwich, Connecticut 06830, Attention: Joe Bartolotta, Telephone: (203) 625-6675, Facsimile: (203) 625-4751.

Very truly yours,

[BORROWER]

By: _____

Name:

Title:

ACKNOWLEDGED:

_____, as [Subservicer]

By:

Name:

Title:

Telephone:

Facsimile:

<u>Name</u>	<u>Jurisdiction of Incorporation of Organization</u>	<u>Other Names Under Which Doing Business</u>
1. The New York Mortgage Company, LLC	New York	N/A
2. New York Mortgage Funding, LLC	Delaware	NYMF REIT (New York)

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-117524 on Form S-8 of our report dated March 24, 2005, relating to the consolidated financial statements of New York Mortgage Trust, Inc. appearing in this Annual Report on Form 10-K of New York Mortgage Trust, Inc. for the year ended December 31, 2004.

/s/ Deloitte & Touche LLP

New York, New York
March 30, 2005

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Steven B. Schnall, certify that:

1. I have reviewed this annual report on Form 10-K of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted in reliance on SEC Release No. 33-8238; 34-47986, Section III.E.]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on our evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Steven B. Schnall

Steven B. Schnall
Chairman and Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 31, 2005

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, David A. Akre, certify that:

1. I have reviewed this annual report on Form 10-K of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted in reliance on SEC Release No. 33-8238; 34-47986, Section III.E.]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on our evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ David A. Akre

David A. Akre
Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 31, 2005

**CERTIFICATION PURSUANT TO SECTION 302
OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael I. Wirth, certify that:

1. I have reviewed this annual report on Form 10-K of New York Mortgage Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted in reliance on SEC Release No. 33-8238; 34-47986, Section III.E.]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on our evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ Michael I. Wirth

Michael I. Wirth
Executive Vice President
and Chief Financial Officer
(Principal Financial Officer)

Date: March 31, 2005

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the New York Mortgage Trust, Inc. Annual Report on Form 10-K for the period ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of New York Mortgage Trust, Inc.

/s/ Steven B. Schnall

Steven B. Schnall
Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 31, 2005

/s/ David A. Akre

David A. Akre
Co-Chief Executive Officer
(Principal Executive Officer)

Date: March 31, 2005

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the New York Mortgage Trust, Inc. Annual Report on Form 10-K for the period ended December 31, 2004, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of New York Mortgage Trust, Inc.

/s/ Michael I. Wirth

Michael I. Wirth
Executive Vice President
and Chief Financial Officer
(Principal Financial Officer)

Date: March 31, 2005