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

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**Form 8-K**

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

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Date of Report (Date of earliest event reported) **February 3, 2005 (January 31, 2005)**

**Cendant Corporation**

*(Exact name of Registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction  
of incorporation)*

**1-10308**  
*(Commission File No.)*

**06-0918165**  
*(I.R.S. Employer  
Identification Number)*

**9 West 57<sup>th</sup> Street**  
**New York, NY**  
*(Address of principal  
executive office)*

**10019**  
*(Zip Code)*

Registrant's telephone number, including area code **(212) 413-1800**

**None**  
*(Former name or former address if changed since last report)*

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Securities Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01 Entry into a Material Definitive Agreement.**

**Term Loan Agreement**

On January 31, 2005, we entered into a \$550,000,000 Term Loan Agreement with the Lenders referred to therein, JPMorgan Chase Bank, N.A., as Administrative Agent, Citicorp North America, Inc. as Syndication Agent and J.P. Morgan Securities Inc. and Citigroup Global Markets Inc., as Joint Lead Arrangers and Joint Bookrunners.

This facility matures on September 30, 2005, however, we are required to prepay amounts outstanding under this facility with net cash proceeds we receive from the disposition of our Wright Express subsidiary or the material entities comprising our Marketing Services segment. Borrowings under this facility bear interest at LIBOR plus a margin of 37.5 basis points. In the event that the credit ratings assigned to us by nationally recognized debt rating agencies are downgraded to a level below our ratings as of September 30, 2004, the interest rate will increase to LIBOR plus a margin of 45.0 basis points. The facility also requires us to maintain a debt to capitalization ratio (as defined in the credit agreement) of less than 0.5 to 1 and an interest coverage ratio (as defined in the credit agreement) of more than 3 to 1. A copy of the credit agreement, attached as Exhibit 10.1, is incorporated by reference herein.

**Relocation Financing Program**

On January 31, 2005, we also restructured our relocation financing program through the issuance of a series of secured variable funding notes in an aggregate amount not to exceed \$550,000,000. The notes bear interest at variable rates and were sold to a group of four commercial paper conduits. The variable funding program replaces a term note financing arrangement and two series of variable funding notes that had been placed with two asset backed commercial paper conduits. The notes are payable from and secured by relocation receivables originated by our subsidiaries comprising our relocation business. Cendant has replaced PHH Corporation as performance guarantor for the program and the parent company of our subsidiaries that comprise our Real Estate Franchise and Operations segment has also provided a performance guaranty for the program. The agreements material to our relocation financing program, as restructured, are attached as Exhibits 10.2 through 10.9 and are incorporated by reference herein.

**Item 9.01 Financial Statements and Exhibits.**

(c) Exhibits

10.1	\$550,000,000 Term Loan Agreement, dated as of January 31, 2005, among Cendant Corporation, as Borrower, the Lenders referred to therein, JPMorgan Chase Bank, N.A., as Administrative Agent, Citicorp North America, Inc. as Syndication Agent and J.P. Morgan Securities Inc. and Citigroup Global Markets Inc., as Joint Lead Arrangers and Joint Bookrunners.
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- 10.2 Purchase Agreement dated as of April 25, 2000 by and between Cendant Mobility Services Corporation, as originator and Cendant Mobility Financial Corporation, as buyer.
- 10.3 Receivables Purchase Agreement dated as of April 25, 2000 by and between Cendant Mobility Financial Corporation, as originator and seller, and Apple Ridge Services Corporation, as buyer.
- 10.4 Transfer and Servicing Agreement dated as of April 25, 2000, by and between Apple Ridge Services Corporation, as transferor, Cendant Mobility Services Corporation, as originator and servicer, Cendant Mobility Financial Corporation, as originator and Apple Ridge Funding LLC (now known as Cendant Mobility Client-Backed Relocation Receivables Funding LLC), as transferee and Bank One, National Association (now JPMorgan Chase Bank, National Association), as indenture trustee.
- 10.5 Performance Guaranty dated as of April 25, 2000 executed by PHH Corporation in favor of Cendant Mobility Financial Corporation and Apple Ridge Funding LLC (now known as Cendant Mobility Client-Backed Relocation Receivables Funding LLC).
- 10.6 Assignment and Assumption Agreement Relating to Performance Guaranty entered into December 20, 2004 by PHH Corporation and Cendant Corporation and was agreed and consented to and accepted by Cendant Mobility Financial Corporation, Apple Ridge Funding LLC (now known as Cendant Mobility Client-Backed Relocation Receivables Funding LLC), JPMorgan Chase Bank, National Association, as indenture trustee.
- 10.7 Omnibus Amendment, Agreement and Consent entered into December 20, 2004 among Cendant Mobility Services Corporation, Cendant Mobility Financial Corporation, Apple Ridge Services Corporation, Apple Ridge Funding LLC (now known as Cendant Mobility Client-Backed Relocation Receivables Funding LLC), JPMorgan Chase Bank, National Association, as indenture trustee, The Bank of New York, as paying agent, the insurer and series enhancer and the then existing commercial paper conduits and banks as noteholders or committed purchasers.
- 10.8 Second Omnibus Amendment, Agreement and Consent entered into January 31, 2005 among Cendant Mobility Services Corporation, Cendant Mobility Financial Corporation, Apple Ridge Services Corporation, Cendant Mobility Client-Backed Relocation Receivables Funding LLC, JPMorgan Chase Bank, National Association, as indenture trustee, The Bank of New York, as paying agent, the insurer and series enhancer and the then existing commercial paper conduits and banks as noteholders or committed purchasers.
- 10.9 Indenture Supplement dated as of January 31, 2005 among Cendant Mobility Client-Backed Relocation Receivables Funding LLC, JPMorgan Chase Bank, National Association, as indenture trustee, and The Bank of New York, as paying agent, authentication agent, transfer agent and registrar.
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**SIGNATURE**

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

**CENDANT CORPORATION**

By: /s/ Eric J. Bock  
Eric J. Bock  
Executive Vice President, Law  
and Corporate Secretary

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Date: February 3, 2005

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**CENDANT CORPORATION**  
**CURRENT REPORT ON FORM 8-K**  
**Report Dated February 3, 2005 (January 31, 2005)**

**EXHIBIT INDEX**

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\$550,000,000

TERM LOAN AGREEMENT

Dated as of January 31, 2005

among

CENDANT CORPORATION,  
as Borrower

THE LENDERS REFERRED TO HEREIN,

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent,

and

CITICORP NORTH AMERICA, INC.  
as Syndication Agent

J.P. MORGAN SECURITIES INC. and  
CITIGROUP GLOBAL MARKETS INC.,  
as Joint Lead Arrangers and Joint Bookrunners

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<b>1.</b>	<b>DEFINITIONS</b>	<b>1</b>
<b>2.</b>	<b>THE LOANS</b>	<b>13</b>
	SECTION 2.1. Commitments	13
	SECTION 2.2. Loans	14
	SECTION 2.3. Use of Proceeds	14
	SECTION 2.4. Reserved	15
	SECTION 2.5. Reserved	15
	SECTION 2.6. Borrowing Procedure	15
	SECTION 2.7. Refinancings	15
	SECTION 2.8. Reserved	15
	SECTION 2.9. Repayment of Loans; Evidence of Debt	15
	SECTION 2.10. Interest on Loans	16
	SECTION 2.11. Interest on Overdue Amounts	16
	SECTION 2.12. Alternate Rate of Interest	17
	SECTION 2.13. Reserved	17
	SECTION 2.14. Prepayment of Loans	17
	SECTION 2.15. Eurocurrency Reserve Costs	17
	SECTION 2.16. Reserve Requirements; Change in Circumstances	18
	SECTION 2.17. Change in Legality	19
	SECTION 2.18. Reimbursement of Lenders	20
	SECTION 2.19. Pro Rata Treatment	20
	SECTION 2.20. Right of Setoff	21
	SECTION 2.21. Manner of Payments	21
	SECTION 2.22. Taxes	21
	SECTION 2.23. Certain Pricing Adjustments	23
	SECTION 2.24. Reserved	24
	SECTION 2.25. Reserved	24
<b>3.</b>	<b>REPRESENTATIONS AND WARRANTIES OF BORROWER</b>	<b>24</b>
	SECTION 3.1. Corporate Existence and Power	24
	SECTION 3.2. Corporate Authority, No Violation and Compliance with Law	24
	SECTION 3.3. Governmental and Other Approval and Consents	24
	SECTION 3.4. Financial Statements of Borrower	24
	SECTION 3.5. No Material Adverse Change	25
	SECTION 3.6. Copyrights, Patents and Other Rights	25
	SECTION 3.7. Title to Properties	25
	SECTION 3.8. Litigation	25
	SECTION 3.9. Federal Reserve Regulations	25
	SECTION 3.10. Investment Company Act	26
	SECTION 3.11. Enforceability	26
	SECTION 3.12. Taxes	26
	SECTION 3.13. Compliance with ERISA	26
	SECTION 3.14. Disclosure	26
	SECTION 3.15. Environmental Liabilities	27



<b>4.</b>	<b>CONDITIONS OF LENDING</b>	<b>27</b>
	SECTION 4.1. Conditions Precedent to Closing	27
<b>5.</b>	<b>AFFIRMATIVE COVENANTS</b>	<b>28</b>
	SECTION 5.1. Financial Statements, Reports, etc	28
	SECTION 5.2. Corporate Existence; Compliance with Statutes	30
	SECTION 5.3. Insurance	30
	SECTION 5.4. Taxes and Charges	30
	SECTION 5.5. ERISA Compliance and Reports	30
	SECTION 5.6. Maintenance of and Access to Books and Records; Examinations	31
	SECTION 5.7. Maintenance of Properties	31
	SECTION 5.8. Changes in Character of Business	31
<b>6.</b>	<b>NEGATIVE COVENANTS</b>	<b>31</b>
	SECTION 6.1. Limitation on Indebtedness	31
	SECTION 6.2. Consolidation, Merger, Sale of Assets	33
	SECTION 6.3. Limitations on Liens	33
	SECTION 6.4. Sale and Leaseback	34
	SECTION 6.5. Debt to Capitalization Ratio	35
	SECTION 6.6. Interest Coverage Ratio	35
	SECTION 6.7. Accounting Practices	35
<b>7.</b>	<b>EVENTS OF DEFAULT</b>	<b>35</b>
<b>8.</b>	<b>THE ADMINISTRATIVE AGENT AND EACH ISSUING LENDER</b>	<b>37</b>
	SECTION 8.1. Administration by Administrative Agent	37
	SECTION 8.2. Advances and Payments	37
	SECTION 8.3. Sharing of Setoffs and Cash Collateral	38
	SECTION 8.4. Notice to the Lenders	38
	SECTION 8.5. Liability of Administrative Agent	39
	SECTION 8.6. Reimbursement and Indemnification	39
	SECTION 8.7. Rights of Administrative Agent	40
	SECTION 8.8. Independent Investigation by Lenders	40
	SECTION 8.9. Notice of Transfer	40
	SECTION 8.10. Successor Administrative Agent	40
	SECTION 8.11. Reserved	41
	SECTION 8.12. Agents Generally	41
<b>9.</b>	<b>Reserved</b>	<b>41</b>
<b>10.</b>	<b>MISCELLANEOUS</b>	<b>41</b>
	SECTION 10.1. Notices	41
	SECTION 10.2. Survival of Agreement, Representations and Warranties, etc.	42
	SECTION 10.3. Successors and Assigns; Syndications; Loan Sales; Participations	42
	SECTION 10.4. Expenses	44

SECTION 10.5. Indemnity	45
SECTION 10.6. CHOICE OF LAW	45
SECTION 10.7. No Waiver	45
SECTION 10.8. Extension of Maturity	46
SECTION 10.9. Amendments, etc.	46
SECTION 10.10. Severability	46
SECTION 10.11. SERVICE OF PROCESS; WAIVER OF JURY TRIAL	46
SECTION 10.12. Headings	47
SECTION 10.13. Execution in Counterparts	47
SECTION 10.14. Entire Agreement	47
SECTION 10.15. Confidentiality	48
SECTION 10.16. USA PATRIOT Act	49
SECTION 10.17. Replacement of Lenders	49

SCHEDULES

1.1

Commitments

EXHIBITS

- A Form of Note
- B-1 Form of Opinion of Skadden, Arps, Slate, Meagher & Flom LLP
- B-2 Form of Cendant In-House Opinion
- C Form of Assignment and Acceptance
- D Form of Officer's Certificate
- E Form of Borrowing Request

TERM LOAN AGREEMENT (the "Agreement") dated as of January 31, 2005, among CENDANT CORPORATION, a Delaware corporation (the "Borrower"), the lenders referred to herein (the "Lenders"), CITICORP NORTH AMERICA, INC., as syndication agent (the "Syndication Agent"), and JPMORGAN CHASE BANK, N.A., as administrative agent (the "Administrative Agent"); together with the Syndication Agent, the "Agents") for the Lenders.

#### INTRODUCTORY STATEMENT

The Borrower has requested that the Lenders establish a term loan facility in an aggregate principal amount of up to \$550,000,000 pursuant to which term loans may be made to the Borrower in a single drawing on the Closing Date (as hereinafter defined).

Subject to the terms and conditions set forth herein, the Administrative Agent is willing to act as agent for the Lenders, and each Lender is willing to make term loans to the Borrower.

Accordingly, the parties hereto hereby agree as follows:

#### 1. DEFINITIONS

For the purposes hereof unless the context otherwise requires, the following terms shall have the meanings indicated, all accounting terms not otherwise defined herein shall have the respective meanings accorded to them under GAAP and all terms defined in the New York Uniform Commercial Code and not otherwise defined herein shall have the respective meanings accorded to them therein:

"Act" shall have the meaning assigned to such term in Section 10.16.

"ABR Borrowing" shall mean a Borrowing comprised of ABR Loans.

"ABR Loan" shall mean any Loan bearing interest at a rate determined by reference to the Alternate Base Rate in accordance with the provisions of Section 2.

"AESOP Financing Program" shall mean the transactions contemplated by that certain Second Amended and Restated Base Indenture, dated as of June 3, 2004, between Cendant Rental Car Funding (AESOP) LLC (formally known as AESOP Funding II L.L.C.), as issuer and The Bank of New York, as trustee, as it may be from time to time further amended, supplemented or modified, and the instruments and agreements referenced therein and otherwise executed in connection therewith, and any successor program.

"AESOP Indebtedness" shall mean any Indebtedness incurred pursuant to the AESOP Financing Program.

"Affiliate" shall mean as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, a Person shall be deemed to be "controlled by" another if such latter Person possesses, directly or indirectly, power either to (i) vote 10% or more of the securities having ordinary voting power for the election of directors of such controlled Person or (ii) direct or cause the direction of the management and policies of such controlled Person whether by contract or otherwise.

"Alternate Base Rate" shall mean, for any day, a rate per annum (rounded upwards to the nearest 1/16 of 1% if not already an integral multiple of 1/16 of 1%) equal to the greatest of (a)

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the Prime Rate in effect for such day and (b) the Federal Funds Effective Rate in effect for such day plus ½ of 1%. For purposes hereof, “Prime Rate” shall mean the rate per annum publicly announced by the Administrative Agent from time to time as its prime rate in effect at its principal office in New York City. For purposes of this Agreement, any change in the Alternate Base Rate due to a change in the Prime Rate shall be effective on the date such change in the Prime Rate is publicly announced as effective. “Federal Funds Effective Rate” shall mean, for any period, a fluctuating interest rate per annum equal for each day during such period to 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 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 Administrative Agent from three Federal funds brokers of recognized standing selected by it. If for any reason the Administrative Agent shall have determined (which determination shall be conclusive absent manifest error) that it is unable to ascertain the Federal Funds Effective Rate, for any reason, including, without limitation, the inability or failure of the Administrative Agent to obtain sufficient bids or publications in accordance with the terms hereof, the Alternate Base Rate shall be determined without regard to clause (b) until the circumstances giving rise to such inability no longer exist. Any change in the Alternate Base Rate due to a change in the Federal Funds Effective Rate shall be effective on the effective date of such change in the Federal Funds Effective Rate.

“Applicable Law” shall mean, with respect to any Person, all provisions of statutes, rules, regulations and orders of governmental bodies or regulatory agencies applicable to such Person, and all binding orders and decrees of all courts and arbitrators in proceedings or actions in which the Person in question is a party or is subject.

“Asset Financing Transaction” shall mean a transaction or series of transactions pursuant to which the Borrower or any other Person (i) issues Indebtedness secured by, payable from or representing beneficial interests in Eligible Assets for which neither the Borrower nor any of its Material Subsidiaries (other than any Securitization Entity) is liable in any way other than pursuant to Standard Securitization Undertakings (unless such liability of the Borrower or such Material Subsidiary is otherwise permitted to be incurred hereunder by the Borrower or such Material Subsidiary) or (ii) transfers or grants a security interest in Eligible Assets to any Person that finances the acquisition of such Eligible Assets through the issuance of securities or the incurrence of Indebtedness or issues obligations secured by such Eligible Assets.

“Assignment and Acceptance” shall mean an agreement in the form of Exhibit C hereto, executed by the assignor, assignee and the other parties as contemplated thereby.

“Basis Point” shall mean 1/100th of 1%.

“Board” shall mean the Board of Governors of the Federal Reserve System.

“Borrowing” shall mean a group of Loans of a single Interest Rate Type made by the Lenders on the Closing Date or which are refinanced pursuant to Section 2.7 and as to which a single Interest Period is in effect.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks in the State of New York are permitted to close.

“Capital Lease” shall mean as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee which, in accordance with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Capital Stock” shall mean any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants, rights or options to purchase any of the foregoing.

“Cash Equivalents” shall mean any of the following, to the extent acquired for investment and not with a view to achieving trading profits: (i) obligations fully backed by the full faith and credit of the United States of America maturing not in excess of twelve months from the date of acquisition, (ii) commercial paper maturing not in excess of twelve months from the date of acquisition and rated “P-1” by Moody’s or “A-1” by S&P on the date of such acquisition, (iii) the following obligations of any Lender or any domestic commercial bank having capital and surplus in excess of \$500,000,000, which has, or the holding company of which has, a commercial paper rating meeting the requirements specified in clause (ii) above: (a) time deposits, certificates of deposit and acceptances maturing not in excess of twelve months from the date of acquisition, or (b) repurchase obligations with a term of not more than thirty days for underlying securities of the type referred to in clause (i) above, (iv) money market funds that invest exclusively in interest bearing, short-term money market instruments and adhere to the minimum credit standards established by Rule 2a-7 of the Investment Company Act of 1940 (17 C.F.R. §270.2A-7 (April 1, 2004), and (v) municipal securities: (a) for which the pricing period in effect is not more than twelve months long and (b) rated at least “P-1” by Moody’s or “A-1” by S&P.

“Change in Control” shall mean (i) the acquisition by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the Closing Date), directly or indirectly, beneficially or of record, of ownership or control of in excess of 50% of the voting common stock of the Borrower on a fully diluted basis at any time or (ii) if at any time, individuals who at the Closing Date constituted the Board of Directors of the Borrower (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Borrower, as the case may be, was approved by a vote of the majority of the directors then still in office who were either directors at the Closing Date or whose election or a nomination for election was previously so approved) cease for any reason to constitute a majority of the Board of Directors of the Borrower then in office.

“Closing Date” shall mean the date on which the conditions precedent to the effectiveness of this Agreement as set forth in Section 4.1 have been satisfied or waived.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commitment” shall mean, with respect to each Lender, the obligation of such Lender to make a Loan to the Borrower in a principal amount not to exceed the amount set forth opposite such Lender’s name on Schedule 1.1. The original amount of the Commitments is \$550,000,000.

“Confidential Information” shall mean information concerning the Borrower, its Subsidiaries or its Affiliates which is non-public, confidential or proprietary in nature, or any information that is marked or designated confidential by or on behalf of the Borrower, which is furnished to any Lender by the Borrower or any of its Affiliates directly or through the Administrative Agent in connection with this Agreement or the transactions contemplated hereby

(at any time on, before or after the date hereof), together with all analyses, compilations or other materials prepared by such Lender or its respective directors, officers, employees, agents, auditors, attorneys, consultants or advisors which contain or otherwise reflect such information.

“Consolidated Assets” shall mean, at any date of determination, the total assets of the Borrower and its Consolidated Subsidiaries determined in accordance with GAAP.

“Consolidated EBITDA” shall mean, without duplication, for any period for which such amount is being determined, the sum of the amounts for such period of (i) Consolidated Net Income, (ii) provision for taxes based on income, (iii) depreciation expense (excluding any such expense attributable to depreciation of Related Eligible Assets), (iv) Consolidated Interest Expense, (v) amortization expense, (vi) other non-cash items reducing Consolidated Net Income (and increasing EBITDA), minus (plus) (vii) any non-recurring gains (losses) on business unit dispositions outside the ordinary course of business if such gains (losses) are included in Consolidated Net Income) minus (viii) any cash expenditures during such period to the extent such cash expenditures (x) did not reduce Consolidated Net Income for such period and (y) were applied against reserves that constituted non-cash items which reduced Consolidated Net Income during prior periods, all as determined on a consolidated basis for the Borrower and its Consolidated Subsidiaries in accordance with GAAP. Notwithstanding the foregoing, in calculating Consolidated EBITDA pro forma effect shall be given to each acquisition of a Subsidiary or any entity acquired in a merger, where the purchase price exceeds \$150,000,000 in any relevant period for which the covenant set forth in Section 6.6 is being calculated as if such acquisition had been made on the first day of such period.

“Consolidated Interest Expense” shall mean for any period for which such amount is being determined, total interest expense paid or payable in cash (including that properly attributable to Capital Leases in accordance with GAAP but excluding in any event (x) all capitalized interest and amortization of debt discount and debt issuance costs and (y) debt extinguishment costs) of the Borrower and its Consolidated Subsidiaries on a consolidated basis including, without limitation, all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net cash costs (or minus net profits) under Interest Rate Protection Agreements minus, without duplication, any interest income of the Borrower and its Consolidated Subsidiaries on a consolidated basis during such period (other than interest income earned on any Related Eligible Assets). Notwithstanding the foregoing, interest expense on any Securitization Indebtedness, AESOP Indebtedness or Other Excluded Indebtedness shall not be included in Consolidated Interest Expense.

“Consolidated Net Income” shall mean, for any period for which such amount is being determined, the net income (or loss) of the Borrower and its Consolidated Subsidiaries during such period determined on a consolidated basis for such period taken as a single accounting period in accordance with GAAP, provided that there shall be excluded (i) income (loss) of any Person (other than a Consolidated Subsidiary of the Borrower) in which the Borrower or any of its Consolidated Subsidiaries has any equity investment or comparable interest, except to the extent of the amount of dividends or other distributions actually paid to the Borrower or its Consolidated Subsidiaries by such Person during such period, (ii) the income of any Consolidated Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by that Consolidated Subsidiary of the income is not at the time permitted by operation of the terms of its charter, or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Consolidated Subsidiary, (iii) any extraordinary after-tax gains and (iv) any extraordinary or unusual pretax losses.

"Consolidated Net Worth" shall mean, as of any date of determination, all items which in conformity with GAAP would be included under shareholders' equity on a consolidated balance sheet of the Borrower and its Subsidiaries at such date. Consolidated Net Worth shall include the Borrower's equity interest in PHH until such time as PHH is no longer a Subsidiary of the Borrower.

"Consolidated Subsidiaries" shall mean all Subsidiaries of the Borrower that are required to be consolidated with the Borrower for financial reporting purposes in accordance with GAAP.

"Consolidated Total Indebtedness" shall mean (i) the total amount of Indebtedness of the Borrower and its Consolidated Subsidiaries determined on a consolidated basis using GAAP principles of consolidation, which is, at the dates as of which Consolidated Total Indebtedness is to be determined, includable as liabilities on a consolidated balance sheet of the Borrower and its Subsidiaries, plus (ii) without duplication of any items included in Indebtedness pursuant to the foregoing clause (i), Indebtedness of others which the Borrower or any of its Consolidated Subsidiaries has directly or indirectly assumed or guaranteed (but only to the extent so assumed or guaranteed) or otherwise provided credit support therefor, including without limitation, Guaranty Obligations; provided that, for purposes of this definition, Indebtedness shall not include (x) Securitization Indebtedness, AESOP Indebtedness or Other Excluded Indebtedness or (y) obligations incurred under any derivatives transaction entered into in the ordinary course of business pursuant to hedging programs. In addition, for purposes of this definition, the amount of Indebtedness at any time shall be reduced (but not to less than zero) by the amount of Excess Cash.

"Debt to Capitalization Ratio" shall mean at any time the ratio of (x) Consolidated Total Indebtedness to (y) the sum of (i) Consolidated Total Indebtedness plus (ii) Consolidated Net Worth.

"Default" shall mean any event, act or condition, which with notice or lapse of time, or both, would constitute an Event of Default.

"Defaulting Lender" shall mean any Lender which fails to make a Loan on the Closing Date in accordance with the terms and conditions of this Agreement.

"Disclosed Matters" shall mean public filings with the Securities and Exchange Commission made by the Borrower or any of its Subsidiaries on Form S-4, Form 8-K, Form 10-Q or Form 10-K, as filed on or prior to the Closing Date.

"Dollars" and "\$" shall mean lawful money of the United States of America.

"Eligible Assets" shall mean any of the following and any proceeds thereof: (x) assets (and interests in assets) that are of the type described as "assets under management and mortgage programs" in the consolidated financial statements of the Borrower and its Consolidated Subsidiaries, dated December 31, 2003, which shall include, without limitation, vehicles, vehicle leases, fleet maintenance contracts, fleet management contracts, other service contracts, mortgage loans, real estate owned as a result of ownership of mortgage loans, timeshare loans, timeshare properties, vacation rental assets, relocation advances and relocation properties, receivables generated by any of the foregoing, and mortgage and other asset servicing rights, and (y) equity interests or other securities issued by any Subsidiary or other Person issuing securities or incurring Indebtedness secured by, payable from or representing beneficial interests in, or holding



title or ownership interests in, assets of the type described in clause (x) above or interests in such assets.

“Environmental Law” shall mean all laws, rules, orders, regulations, statutes, ordinances, codes, decrees, judgments, injunctions, notices or requirements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters, including without limitation, the Clean Water Act also known as the Federal Water Pollution Control Act (“FWPCA”) 33 U.S.C. § 1251 et seq., the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136 et seq., the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §§ 1201 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., the Superfund Amendment and Reauthorization Act of 1986 (“SARA”), Public Law 99-499, 100 Stat. 1613, the Emergency Planning and Community Right to Know Act (“ECPCRKA”), 42 U.S.C. § 11001 et seq., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 et seq., the Occupational Safety and Health Act as amended (“OSHA”), 29 U.S.C. § 655 and § 657, together, in each case, with any amendment thereto, and the regulations adopted and publications promulgated thereunder and all substitutions thereof.

“Environmental Liabilities” shall mean any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as such Act may be amended from time to time, and the regulations promulgated thereunder.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an “accumulated funding deficiency” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a

determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Event of Default” shall have the meaning given such term in Section 7 hereof.

“Excess Cash” shall mean all cash and Cash Equivalents of the Borrower and its Consolidated Subsidiaries at such time determined on a consolidated basis in accordance with GAAP in excess of \$25,000,000.

“Excluded Taxes” shall mean, with respect to any Lender, or any other recipient of payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income or net profits by the United States of America, or by the jurisdiction under the laws of which such recipient is organized, in which its principal office is located or in which it is otherwise doing business or in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Borrower is located, (c) any withholding tax that is imposed on amounts payable to such Lender in Dollars, or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, at the time such Lender becomes a party to this Agreement (or designates a new Lending Office), except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.22(a), (d) Taxes attributable to such Lender’s failure to comply with Section 2.22(e), and (e) any Taxes imposed as a result of such Lender’s gross negligence or willful misconduct.

“Fitch” shall mean Fitch Investors Service, Inc. and any successor thereto.

“Fundamental Documents” shall mean this Agreement, any Notes and any Compliance Certificate which is required to be executed by the Borrower pursuant to Section 5.1(c) and delivered to the Administrative Agent in connection with this Agreement.

“GAAP” shall mean generally accepted accounting principles in the United States as in effect from time to time.

“Governmental Authority” shall mean any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, or any court, in each case whether of the United States or foreign.

“Granting Lender” shall have the meaning assigned to such term in Section 10.3(k).

“Guaranty Obligation” shall mean any obligation, contingent or otherwise, of the Person guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness; provided, however, that the amount of any Guaranty Obligation shall be limited to

the extent necessary so that such amount does not exceed the value of the assets of such Person (as reflected on a consolidated balance sheet of such Person prepared in accordance with GAAP) to which any creditor or beneficiary of such Guaranty Obligation would have recourse. Notwithstanding the foregoing definition, the term "Guaranty Obligation" shall not include any direct or indirect obligation of a Person as a general partner of a general partnership or a joint venturer of a joint venture in respect of Indebtedness of such general partnership or joint venture, to the extent such Indebtedness is contractually non-recourse to the assets of such Person as a general partner or joint venturer (other than assets comprising the capital of such general partnership or joint venture). The term "Guaranty Obligation" shall not include endorsements for collection or deposit in the ordinary course of business.

"Hazardous Materials" shall mean all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indebtedness" shall mean (without double counting), at any time and with respect to any Person, (i) indebtedness of such Person for borrowed money (whether by loan or the issuance and sale of debt securities) or for the deferred purchase price of property or services purchased (other than amounts constituting account payables arising in the ordinary course and payable within 180 days); (ii) indebtedness of others of the type described in clause (i), (iii), (iv) or (v) of this definition of Indebtedness, which such Person has directly or indirectly assumed or guaranteed (but only to the extent so assumed or guaranteed) or otherwise provided credit support therefor, including without limitation, Guaranty Obligations; (iii) indebtedness of others secured by a Lien on assets of such Person, whether or not such Person shall have assumed such indebtedness (but only to the extent of the fair market value of such assets); (iv) obligations of such Person in respect of letters of credit, acceptance facilities, or drafts or similar instruments issued or accepted by banks and other financial institutions for the account of such Person (other than account payables arising in the ordinary course and payable within 180 days); or (v) obligations of such Person under Capital Leases.

"Indemnified Party" shall have the meaning assigned to such term in Section 10.5.

"Indemnified Taxes" shall mean Taxes other than Excluded Taxes and Other Taxes.

"Interest Coverage Ratio" shall mean, for each period for which it is to be determined, the ratio of (i) Consolidated EBITDA to (ii) Consolidated Interest Expense.

"Interest Payment Date" shall mean, with respect to any Borrowing, the last day of the Interest Period applicable thereto and, in the case of a LIBOR Borrowing with an Interest Period of more than three months' duration, each day that would have been an Interest Payment Date had successive Interest Periods of three months duration been applicable to such Borrowing, and, in addition, the date of any refinancing or conversion of a Borrowing with, or to, a Borrowing of a different Interest Rate Type.

"Interest Period" shall mean (a) as to any LIBOR Borrowing, the period commencing on the date of such Borrowing, and ending on the numerically corresponding day (or, if there is no numerically corresponding day or if the date of the LIBOR Borrowing is the last day of any month, on the last day) in the calendar month that is 1, 2, 3 or 6 months thereafter, as the Borrower may elect and (b) as to any ABR Borrowing, the period commencing on the date of

such Borrowing and ending on the earliest of (i) the next succeeding March 31, June 30, September 30 or December 31, (ii) the Maturity Date and (iii) the date such Borrowing is refinanced with a Borrowing of a different Interest Rate Type in accordance with Section 2.7 or is prepaid in accordance with Section 2.14; provided, however, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of LIBOR Loans only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) no Interest Period may be selected which would extend beyond the Maturity Date. Interest shall accrue from, and including, the first day of an Interest Period to, but excluding, the last day of such Interest Period.

“Interest Rate Protection Agreement” shall mean any interest rate swap agreement, interest rate cap agreement or other similar financial agreement or arrangement.

“Interest Rate Type” when used in respect of any Loan or Borrowing, shall refer to the Rate by reference to which interest on such Loan or on the Loans comprising such Borrowing is determined. For purposes hereof, “Rate” shall include LIBOR and the Alternate Base Rate.

“JPMorgan Chase Bank” shall mean JPMorgan Chase Bank, N.A.

“Lender and “Lenders” shall mean the financial institutions whose names appear at the foot hereof and any assignee of a Lender permitted pursuant to Section 10.3(b).

“Lending Office” shall mean, with respect to any Lender, the branch (or affiliate) from which such Lender’s Loans are made and for the account of which all payments of principal of, and interest on, such Lender’s Loans are made, as notified to the Administrative Agent from time to time.

“LIBOR” shall mean, with respect to any LIBOR Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next Basis Point) equal to the rate at which Dollar deposits approximately equal in principal amount to a Borrowing, JPMorgan Chase Bank’s portion of such LIBOR Borrowing, and for a maturity comparable to such Interest Period, are offered to the principal London office of JPMorgan Chase Bank in immediately available funds in the London Interbank market at approximately 11:00 A.M., London time, two Business Days prior to the commencement of such Interest Period.< /DIV>

“LIBOR Borrowing” shall mean a Borrowing comprised of LIBOR Loans.

“LIBOR Loan” shall mean any Loan bearing interest at a rate determined by reference to LIBOR in accordance with the provisions of Section 2.

“LIBOR Spread” shall mean, at any date or any period of determination, the LIBOR Spread that would be in effect on such date or during such period pursuant to the chart set forth in Section 2.23 based on the rating of the Borrower’s senior non-credit enhanced unsecured long-term debt.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

“Loan” shall have the meaning assigned to such term in Section 2.1.

“Margin Stock” shall be as defined in Regulation U of the Board.

“Material Adverse Effect” shall mean a material adverse effect on the business, assets, operations or condition, financial or otherwise, of the Borrower and its Subsidiaries, taken as a whole (it is understood that, for purposes of this definition, resolution of matters relating to the accounting irregularities and errors referred to in the Borrower’s report on Form 10-K for the period ending December 31, 2003, filed with the Securities and Exchange Commission and including the class action lawsuits referred to therein and other class action lawsuits arising as a result of the accounting irregularities and errors disclosed therein do not constitute a Material Adverse Effect).

“Material Subsidiary” shall mean any Subsidiary of the Borrower which, together with its Subsidiaries at the time of determination hold, or, solely with respect to Sections 7(f) and 7(g), any group of Subsidiaries which, if merged into each other at the time of determination would hold, assets constituting 10% or more of Consolidated Assets or accounts for 10% or more of Consolidated EBITDA for the Rolling Period immediately preceding the date of determination.

“Maturity Date” shall mean September 30, 2005.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Multiemployer Plan” shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Cash Proceeds” (a) in connection with any asset sale, the proceeds thereof in the form of cash and (including any such cash proceeds received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but only as and when received), net of attorneys’ fees, accountants’ fees, investment banking fees and other customary fees and expenses actually incurred in connection therewith and net of Taxes paid or reasonably estimated by the Borrower to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and net of any cash reserve for adjustment in respect of the sale price of such asset established in accordance with GAAP, including without limitation, for pension and post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction and (b) in connection with any issuance or sale of Capital Stock, the cash proceeds received from such issuance or incurrence, net of attorneys’ fees, investment banking fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith and net of Taxes paid or reasonably estimated by the Borrower to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements) and net of any cash reserve for adjustment in respect of the sale price of such asset established in accordance with GAAP, including without limitation, for pension and post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction .

“Non-Consenting Lender” shall have the meaning assigned to such term in Section 10.17.

“Non Ratable Assignment” shall have the meaning assigned to such term in Section 10.3(b).

“Note” shall have the meaning assigned to such term in Section 2.9(f) .

“Obligations” shall mean the obligation of the Borrower to make due and punctual payment of principal of, and interest on, the Loans, and all other monetary obligations of the Borrower to the Administrative Agent or any Lender under this Agreement, the Notes or the Fundamental Documents.

“Other Excluded Indebtedness” shall mean (a) Indebtedness of the type described in Section 6.1(q) up to an aggregate principal amount not to exceed \$350,000,000 and (b) Indebtedness secured by, payable from or representing beneficial interests in Eligible Assets except to the extent that such Indebtedness provides for recourse (other than Standard Securitization Undertakings) to the Borrower or any Subsidiary (other than a Securitization Entity).

“Other Taxes” shall mean any and all present or future stamp or documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this Agreement or the Notes or any Fundamental Document.

“Participant” shall have the meaning assigned to such term in Section 10.3(g).

“PBGC” shall mean the Pension Benefit Guaranty Corporation or any successor thereto.

“Permitted Encumbrances” shall mean Liens permitted under Section 6.3 hereof.

“Person” shall mean any natural person, corporation, division of a corporation, partnership, limited liability company, trust, joint venture, company, estate, unincorporated organization or government or any agency or political subdivision thereof.

“PHH” shall mean PHH Corporation, a Maryland corporation.

“Plan” shall mean any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pro Forma Basis” shall mean in connection with any transaction for which a determination on a Pro Forma Basis is required to be made hereunder, that such determination shall be made (i) after giving effect to any issuance of Indebtedness, any acquisition, any disposition or any other transaction (as applicable) and (ii) assuming that the issuance of Indebtedness, acquisition, disposition or other transaction and, if applicable, the application of any proceeds therefrom, occurred at the beginning of the most recent Rolling Period ending at least thirty days prior to the date on which such issuance of Indebtedness, acquisition, disposition or other transaction occurred.

“Ratable Assignment” shall have the meaning assigned to such term in Section 10.3(b).

“Related Eligible Assets” shall mean Eligible Assets that secure or are the source of payment for AESOP Indebtedness, Securitization Indebtedness or Other Excluded Indebtedness.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Responsible Officer” means the chief executive officer, president, chief accounting officer, chief financial officer, treasurer or assistant treasurer of the Borrower.

“Required Lenders” shall mean at any time, Lenders 100% of the aggregate principal amount of the Loans at the time outstanding.

“Rolling Period” shall mean with respect to any fiscal quarter, such fiscal quarter and the three immediately preceding fiscal quarters considered as a single accounting period.

“S&P” shall mean Standard & Poor’s.

“Securitization Entity” shall mean (i) any Subsidiary or other Person engaged solely in the business of effecting asset securitization transactions and related activities, or (ii) any Subsidiary or other Person whose primary purpose is to hold title or ownership interests in Eligible Assets.

“Securitization Indebtedness” shall mean Indebtedness incurred by a Securitization Entity that does not permit or provide for recourse (other than Standard Securitization Undertakings) to the Borrower or any Subsidiary of the Borrower (other than a Securitization Entity) or any property or asset of the Borrower or any Subsidiary of the Borrower (other than the property or assets of, or any equity interests or other securities issued by, a Securitization Entity).

“SPC” shall have the meaning assigned to such term in Section 10.3(k).

“Standard Securitization Undertakings” means representations, warranties (and any related repurchase obligations), servicer obligations, guaranties, covenants and indemnities entered into by the Borrower or any Subsidiary of the Borrower of a type that are reasonably customary in securitizations.

“Statutory Reserves” shall mean a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board and any other banking authority to which the Administrative Agent or any Lender is subject, for Eurocurrency Liabilities (as defined in Regulation D). Such reserve percentages shall include those imposed under Regulation D. LIBOR Loans shall be deemed to constitute Eurocurrency Liabilities and as such shall be deemed to be subject to such reserve requirements without benefit of or credit for proration, exceptions or offsets which may be available from time to time to any Lender under Regulation D. Statutory Reserves shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary” shall mean with respect to any Person, any corporation, association, joint venture, partnership or other business entity (whether now existing or hereafter organized) of which at least a majority of the voting stock or other ownership interests having ordinary voting power for the election of directors (or the equivalent) is, at the time as of which any determination is being made, 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; provided that for purposes of

Sections 6.1, 6.3, 6.4, 6.5 and 6.6 hereof, PHH and its Subsidiaries shall be deemed not to be Subsidiaries of the Borrower except that until such time as PHH is no longer a Subsidiary of the Borrower (a) Consolidated Net Worth shall be calculated in accordance with the definition thereof and (b) in calculating Consolidated EBITDA for any fiscal quarter the amount of any cash dividends or any other cash distributions actually paid by PHH or any Subsidiary of PHH to the Borrower and its Subsidiaries (excluding the Subsidiaries of PHH) (i) during such period and (ii) up to the time of the delivery of the certificate pursuant to Section 5.1(c) hereof related to such period shall be included in such calculation. Any such cash dividends and distributions received from PHH and its Subsidiaries in one period and included in calculating Consolidated EBITDA for any prior period shall not be included in calculating Consolidated EBITDA for any fiscal quarter ending on or after the first anniversary of the date such dividends and distributions are received.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Timeshare Indebtedness” shall mean any Indebtedness that is secured by, payable from or represents beneficial interests in Timeshare Loans or Timeshare Property.

“Timeshare Loan” shall mean any loans made to finance the acquisition of a timeshare (including vacation credits or points), including a timeshare that has not yet been completed, any installment contract for the purchase of a timeshare, or any other arrangement in the nature of a financing of the purchase of a timeshare, and all security therefor and proceeds thereof.

“Timeshare Property” shall mean any property used or intended to be used for development, in whole or in part, of a timeshare regime, including but not limited to real property, improvements thereon, any condominium, any portion of such a development, any unit or units subjected to a timeshare regime, any fixed week intervals, any undivided interests, any notional “points” afforded to owners of timeshares, any common areas, and any other form of ownership of, or entitlement to occupy real estate that forms a part of, or is subject to, a timeshare regime under applicable state law.

“Treaty” shall mean the Treaty establishing the European Economic Community, being the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1987, the Maastricht Treaty (which was signed at Maastricht on February 7, 1992 and came into force on November 1, 1993), the Amsterdam Treaty (which was signed at Amsterdam on October 2, 1997 and came into force on May 1, 1999) and the Nice Treaty (which was signed on February 26, 2001), each as amended from time to time and as referred to in legislative measures of the European Union for the introduction of, changeover to or operating of the Euro in one or more member states.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

## 2. THE LOANS

### SECTION 2.1. Commitments.

Subject to the terms and conditions hereof, each Lender severally agrees to make a term loan (a “Loan”) to the Borrower on the Closing Date in an amount not to exceed the amount of the



Commitment of such Lender. The Loans may from time to time be LIBOR Loans or ABR Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Sections 2.6 and 2.7.

**SECTION 2.2. Loans.**

i. Each Loan shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their Commitment; provided, however, that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). The Loans comprising any Borrowing shall be (i) in the case of LIBOR Loans, in an aggregate principal amount that is an integral multiple of \$5,000,000 and not less than \$10,000,000 and (ii) in the case of ABR Loans, in an aggregate principal amount that is an integral multiple of \$500,000 and not less than \$5,000,000.

ii. Each Borrowing shall be comprised entirely of LIBOR Loans or ABR Loans, as the Borrower may request pursuant to Section 2.6 or 2.7, as applicable. Each Lender may at its option make any LIBOR Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan, provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement and the applicable Note. Borrowings of more than one Interest Rate Type may be outstanding at the same time; provided, however, that the Borrower shall not be entitled to request any Borrowing that, if made, would result in an aggregate of more than nine separate Borrowings being outstanding hereunder at any one time. For purposes of the calculation required by the immediately preceding sentence, LIBOR Loans having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowing, and all Borrowings of a single Interest Rate Type made on a single date shall be considered a single Borrowing if such Borrowings have a common Interest Period.

iii. Subject to Section 2.7, each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by making funds available at the offices of the Administrative Agent's Agent Bank Services Department, JPMorgan Chase Bank, N.A., 111 Fannin, 10<sup>th</sup> floor, Houston, Texas 77002, Attention of Vaughan Nguyen (Telephone No. 713-750-3550; Facsimile No. 713-750-2932), for credit to Cendant Corporation Clearing Account, Account No. 144812905 (Reference: Cendant Corporation Credit Agreement dated as of January [31], 2005) no later than 1:00 P.M. New York City time (2:00 P.M. New York City time, in the case of an ABR Borrowing) in Federal or other immediately available funds. Upon receipt of the funds to be made available by the Lenders to fund any Borrowing hereunder, the Administrative Agent shall disburse such funds by depositing them into an account of the Borrower maintained with the Administrative Agent. Loans shall be made by all the Lenders pro rata in accordance with Section 2.1 and this Section 2.2.

iv. Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

**SECTION 2.3. Use of Proceeds**

The proceeds of the Loans shall be used for working capital and general corporate purposes of the Borrower and its Subsidiaries, including, without limitation, for acquisitions. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations U and X of the Board.

**SECTION 2.4.** Reserved

**SECTION 2.5.** Reserved

**SECTION 2.6.** Borrowing Procedure

In order to effect a Borrowing, the Borrower shall hand deliver or telecopy to the Administrative Agent a Borrowing Request in the form of Exhibit E (a) in the case of a LIBOR Borrowing, not later than 12:00 (noon), New York City time, three Business Days before a proposed Borrowing, and (b) in the case of an ABR Borrowing, not later than 12:00 (noon), New York City time, on the day of a proposed Borrowing. Such Borrowing Request shall be irrevocable and shall in each case specify (a) whether the Borrowing then being requested is to be a LIBOR Borrowing or an ABR Borrowing, (b) the date of such Borrowing (which shall be a Business Day) and the amount thereof and (c) if such Borrowing is to be a LIBOR Borrowing, the Interest Period with respect thereto. If no election as to the Interest Rate Type of a Borrowing is specified in any such Borrowing Request, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period with respect to any LIBOR Borrowing is specified in any such Borrowing Request, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. If the Borrower shall not have given a Borrowing Request in accordance with this Section 2.6 of its election to refinance a Borrowing prior to the end of the Interest Period in effect for such Borrowing, then the Borrower shall (unless such Borrowing is repaid at the end of such Interest Period) be deemed to have given notice of an election to refinance such Borrowing with an ABR Borrowing. The Administrative Agent shall promptly advise the Lenders of any notice given pursuant to this Section 2.6 and of each Lender's portion of the requested Borrowing.

**SECTION 2.7.** Refinancings

The Borrower may refinance all or any part of any Borrowing with a Borrowing of the same or a different Interest Rate Type pursuant to a Borrowing Request under Section 2.6, subject to the conditions and limitations set forth herein and elsewhere in this Agreement; provided, however, that at any time after the occurrence, and during the continuation, of a Default or an Event of Default, a Borrowing or portion thereof may only be refinanced with an ABR Borrowing. Any Borrowing or part thereof so refinanced shall be deemed to be repaid in accordance with Section 2.9 with the proceeds of a new Borrowing hereunder and the proceeds of the new Borrowing, which will repay the Borrowing being refinanced, shall not be paid by the Lenders to the Administrative Agent or by the Administrative Agent to the Borrower, and each Borrowing after the Closing Date will merely reflect a new or continued interest rate option.

**SECTION 2.8.** Reserved

**SECTION 2.9.** Repayment of Loans; Evidence of Debt

(a) The Loans shall be repayable in a single installment on the Maturity Date.

(b) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the entire principal amount of the Loan of such Lender on the Maturity Date (or such earlier date on which the Loans become due and payable pursuant to Section 2.14(b) or Section 7). The Borrower hereby further agrees to pay interest on the unpaid principal amount of the Term Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Section 2.10.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from the Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement.

(d) The Administrative Agent shall maintain the Register pursuant to Section 10.3(e), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of the Loan made by it hereunder, the Interest Rate Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) both the amount of any sum received by the Administrative Agent hereunder from the Borrower and each Lender's share thereof.

(e) The entries made in the Register and the accounts of each Lender maintained pursuant to this Section 2.9 shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loan made to the Borrower by such Lender in accordance with the terms of this Agreement.

(f) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, it will execute and deliver to such Lender a promissory note of the Borrower evidencing the Loan of such Lender, substantially in the form of Exhibit A with appropriate insertions as to date and principal amount (a "Note").

**SECTION 2.10. Interest on Loans**

(a) Subject to the provisions of Section 2.11, the Loans comprising each LIBOR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 360 days) at a rate per annum equal to LIBOR for the Interest Period in effect for such Borrowing plus the applicable LIBOR Spread from time to time in effect. Interest on each LIBOR Borrowing shall be payable on each applicable Interest Payment Date.

(b) Subject to the provisions of Section 2.11, the Loans comprising each ABR Borrowing shall bear interest (computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as the case may be, when determined by reference to the Prime Rate and over a year of 360 days at all other times) at a rate per annum equal to the Alternate Base Rate plus the applicable margin, if any, for ABR Loans from time to time in effect pursuant to Section 2.23.

(c) Interest on each Loan shall be payable in arrears on each Interest Payment Date applicable to such Loan. The LIBOR or the Alternate Base Rate for each Interest Period or day within an Interest Period shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

**SECTION 2.11. Interest on Overdue Amounts**

If the Borrower shall default in the payment of the principal of, or interest on, any Loan or any other amount becoming due hereunder, the Borrower shall on demand from time to time pay interest, to the extent permitted by Applicable Law, on such defaulted amount up to (but not including) the date of actual payment (after as well as before judgment) at a rate per annum computed on the basis of the actual number of days elapsed over a year of 365 or 366 days, as applicable, in the case of amounts bearing interest determined by reference to the Prime Rate and a year of 360 days in all other cases, equal

to (a) in the case of the remainder of the then current Interest Period for any LIBOR Loan, the rate applicable to such Loan under Section 2.10 plus 2% per annum and (b) in the case of any other Loan or amount, the rate that would at the time be applicable to an ABR Loan under Section 2.10 plus 2% per annum.

**SECTION 2.12. Alternate Rate of Interest**

In the event, and on each occasion, that on the day two Business Days prior to the commencement of any Interest Period for a LIBOR Loan, the Administrative Agent shall have determined that Dollar deposits in the amount of the requested principal amount of such LIBOR Loan are not generally available in the London Interbank market, or that the rate at which such Dollar deposits are being offered will not adequately and fairly reflect the cost to any Lender of making or maintaining its portion of such LIBOR Loans during such Interest Period, or that reasonable means do not exist for ascertaining LIBOR, the Administrative Agent shall, as soon as practicable thereafter, give written or telecopier notice of such determination to the Borrower and the Lenders. In the event of any such determination, until the Administrative Agent shall have determined that circumstances giving rise to such notice no longer exist, any request by the Borrower for a LIBOR Borrowing pursuant to Section 2.6 shall be deemed to be a request for an ABR Loan. Each determination by the Administrative Agent hereunder shall be conclusive absent manifest error.

**SECTION 2.13. Reserved**

**SECTION 2.14. Prepayment of Loans**

(a) Prior to the Maturity Date, the Borrower shall have the right at any time to prepay Loans, in whole or in part, subject to the requirements of Section 2.18, but otherwise without premium or penalty, upon prior written or teletype notice to the Administrative Agent before 12:00 Noon, New York City, time at least one Business Day in the case of an ABR Loan and at least three Business Days in the case of a LIBOR Loan; provided, however, that each such partial prepayment shall be in an integral multiple of \$5,000,000 and in a minimum aggregate principal amount of \$10,000,000.

(b) On any date when the Borrower or any of its Subsidiaries shall receive Net Cash Proceeds from the sale or disposition of all or substantially all of the Capital Stock or assets of (i) Wright Express Corporation or (ii) the material entities comprising the Cendant Marketing Services Division, 100% of the Net Cash Proceeds thereof shall be applied within three Business Days of such date toward the prepayment of the Loans in accordance with Section 2.14(c).

(c) Each notice of prepayment pursuant to Section 2.14(a) shall specify the specific Borrowing(s), the prepayment date and the aggregate principal amount of each Borrowing to be prepaid, shall be irrevocable and shall commit the Borrower to prepay such Borrowing(s) by the amount stated therein. All prepayments under this Section 2.14 shall be accompanied by accrued interest on the principal amount being prepaid, to the date of prepayment. Any amounts prepaid pursuant to this Section 2.14 may not be reborrowed.

**SECTION 2.15. Eurocurrency Reserve Costs**

The Borrower shall pay to the Administrative Agent for the account of each Lender, so long as such Lender shall be required under regulations of the Board to maintain reserves with respect to liabilities or assets consisting of, or including, Eurocurrency Liabilities (as defined in Regulation D of the Board), additional interest on the unpaid principal amount of each LIBOR Loan made to the Borrower by such Lender, from the date of such Loan until such Loan is paid in full, at an interest rate per annum equal

at all times during the Interest Period for such Loan to the remainder obtained by subtracting (i) LIBOR for such Interest Period from (ii) the rate obtained by multiplying LIBOR as referred to in clause (i) above by the Statutory Reserves of such Lender for such Interest Period. Such additional interest shall be determined by such Lender and notified to the Borrower (with a copy to the Administrative Agent) not later than five Business Days before the next Interest Payment Date for such Loan, and such additional interest so notified to the Borrower by any Lender shall be payable to the Administrative Agent for the account of such Lender on each Interest Payment Date for such Loan.

**SECTION 2.10. Reserve Requirements; Change in Circumstances**

(a) Except with respect to Indemnified Taxes and Other Taxes, which shall be governed solely and exclusively by Section 2.22, if after the Closing Date any change in Applicable Law or regulation or in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof (whether or not having the force of law) (i) shall impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender, or (ii) shall impose on any Lender or the London Interbank market any other condition affecting this Agreement or any LIBOR Loan made by such Lender, and the result of any of the foregoing shall be to increase the cost (other than the amount of Taxes, if any) to such Lender of making or maintaining any LIBOR Loan or to reduce the amount (other than a reduction resulting from an increase in Taxes, if any) of any sum received or receivable by such Lender hereunder (whether of principal, interest or otherwise) in respect thereof by an amount deemed in good faith by such Lender to be material, then the Borrower shall pay such additional amount or amounts as will compensate such Lender for such increase or reduction to such Lender.

(b) If, after the Closing Date, any Lender shall have determined in good faith that the adoption after the Closing Date of any applicable law, rule, regulation or guideline regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or any Lending Office of such Lender) with any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of its obligations hereunder to a level below that which such Lender (or its holding company) could have achieved but for such applicability, adoption, change or compliance (taking into consideration such Lender's policies or the policies of its holding company, as the case may be, with respect to capital adequacy) by an amount deemed by such Lender to be material, then, from time to time, the Borrower shall pay to the Administrative Agent for the account of such Lender such additional amount or amounts as will compensate such Lender for such reduction upon demand by such Lender.

(c) A certificate of a Lender setting forth in reasonable detail (i) such amount or amounts as shall be necessary to compensate such Lender as specified in paragraph (a) or (b) above, as the case may be, and (ii) the calculation of such amount or amounts referred to in the preceding clause (i), shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Administrative Agent for the account of such Lender the amount shown as due on any such certificate within 10 Business Days after its receipt of the same.

(d) Failure on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to any Interest Period shall not constitute a waiver of such Lender's rights to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital with respect to such Interest Period or any other Interest Period. The protection of this Section 2.16 shall be available to each

Lender regardless of any possible contention of invalidity or inapplicability of the law, regulation or condition which shall have been imposed.

(e) Each Lender agrees that, as promptly as practicable after it becomes aware of the occurrence of an event or the existence of a condition that (i) would cause it to incur any increased cost under this Section 2.16, Section 2.17, Section 2.22 or Section 2.25(g) or (ii) would require the Borrower to pay an increased amount under this Section 2.16, Section 2.17, Section 2.22 or Section 2.25(g), it will notify the Borrower of such event or condition and, to the extent not inconsistent with such Lender's internal policies, will use its reasonable efforts to make, fund or maintain the affected Loans of such Lender through another Lending Office of such Lender if as a result thereof the additional monies which would otherwise be required to be paid or the reduction of amounts receivable by such Lender thereunder in respect of such Loans would be materially reduced, or any inability to perform would cease to exist, or the increased costs which would otherwise be required to be paid in respect of such Loans pursuant to this Section 2.16, Section 2.17, Section 2.22 or Section 2.25(g) would be materially reduced or the Taxes or other amounts otherwise payable under this Section 2.16, Section 2.17, Section 2.22 or Section 2.25(g) would be materially reduced, and if, as determined by such Lender, in its sole discretion, the making, funding or maintaining of such Loans through such other Lending Office would not otherwise materially adversely affect such Loans or such Lender.

(f) In the event any Lender shall have delivered to the Borrower a notice that LIBOR Loans are no longer available from such Lender pursuant to Section 2.17, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.15 or Section 2.21, the Borrower may (but subject in any such case to the payments required by Section 2.17), upon at least five Business Days' prior written or telecopier notice to such Lender and the Administrative Agent, identify to the Administrative Agent a lending institution reasonably acceptable to the Administrative Agent which will purchase from the Lender providing such notice the outstanding principal amount of the Loan made by such Lender and such Lender shall thereupon assign such Loan to such replacement lending institution pursuant to Section 10.3. Such notice shall specify an effective date for such assignment and at the time thereof, the Borrower shall pay all accrued interest and all other amounts (including without limitation all amounts payable under this Section) owing hereunder to such Lender as at such effective date for such assignment.

**SECTION 2.17. Change in Legality**

(a) Notwithstanding anything to the contrary herein contained, if, after the Closing Date, any change in any law or regulation or in the interpretation thereof by any Governmental Authority charged with the administration or interpretation thereof shall make it unlawful for any Lender to make or maintain any LIBOR Loan or to give effect to its obligations as contemplated hereby, then, by written notice to the Borrower and to the Administrative Agent, such Lender may:

(i) declare that LIBOR Loans will not thereafter be made by such Lender hereunder (or refinanced pursuant to Section 2.7), whereupon the Borrower shall be prohibited from requesting LIBOR Loans from such Lender (or refinancings as part of a LIBOR Borrowing pursuant to Section 2.7) hereunder unless such declaration is subsequently withdrawn; and

(ii) require that all outstanding LIBOR Loans made by it be converted to ABR Loans, in which event (A) all such LIBOR Loans shall be automatically converted to ABR Loans as of the effective date of such notice as provided in Section 2.17(b) and (B) all payments and prepayments of principal which would otherwise have been applied to repay the converted LIBOR Loans shall instead be applied to repay the ABR Loans resulting from the conversion of such LIBOR Loans.

(b) For purposes of this Section 2.17, a notice to the Borrower by any Lender pursuant to Section 2.17(a) shall be effective on the date of receipt thereof by the Borrower.

**SECTION 2.18. Reimbursement of Lenders**

(a) The Borrower shall reimburse each Lender on demand for any loss incurred or to be incurred by it in the reemployment of the funds released (i) by any prepayment (other than a prepayment required by Section 2.14(b)) of any LIBOR Loan if such Loan is repaid other than on the last day of the applicable Interest Period for such Loan or (ii) in the event that after the Borrower delivers a notice of borrowing under Section 2.6 in respect of LIBOR Loans and the applicable Loan is not made on the first day of the Interest Period specified by the Borrower for any reason other than (I) a suspension or limitation under Section 2.17 of the right of the Borrower to select a LIBOR Loan or (II) a breach by a Lender of its obligations hereunder. In the case of such failure to borrow, such loss shall be the amount as reasonably determined by such Lender as the excess, if any of (A) the amount of interest which would have accrued to such Lender on the amount not borrowed, at a rate of interest equal to the interest rate applicable to such Loan pursuant to Section 2.10, for the period from the date of such failure to borrow, to the last day of the Interest Period for such Loan which would have commenced on the date of such failure to borrow, over (B) the amount realized by such Lender in reemploying the funds not advanced during the period referred to above. In the case of a payment other than on the last day of the Interest Period for a Loan (other than a prepayment required by Section 2.14(b)), such loss shall be the amount as reasonably determined by the Administrative Agent as the excess, if any, of (A) the amount of interest which would have accrued on the amount so paid at a rate of interest equal to the interest rate applicable to such Loan pursuant to Section 2.10, for the period from the date of such payment to the last day of the then current daily Interest Period for such Loan, over (B) the amount equal to the product of (x) the amount of the Loan so paid ~~times~~ (y) the current daily yield on U.S. Treasury Securities (at such date of determination) with maturities approximately equal to the remaining Interest Period for such Loan ~~times~~ (z) the number of days remaining in the Interest Period for such Loan. Each Lender shall deliver to the Borrower from time to time one or more certificates setting forth the amount of such loss (and in reasonable detail the manner of computation thereof) as determined by such Lender, which certificates shall be conclusive absent manifest error. The Borrower shall pay to the Administrative Agent for the account of each Lender the amount shown as due on any certificate within thirty days after its receipt of the same.

(b) In the event the Borrower fails to prepay any Loan on the date specified in any prepayment notice delivered pursuant to Section 2.14(a), the Borrower on demand by any Lender shall pay to the Administrative Agent for the account of such Lender any amounts required to compensate such Lender for any loss incurred by such Lender as a result of such failure to prepay, including, without limitation, any loss, cost or expenses incurred by reason of the acquisition of deposits or other funds by such Lender to fulfill deposit obligations incurred in anticipation of such prepayment. Each Lender shall deliver to the Borrower and the Administrative Agent from time to time one or more certificates setting forth the amount of such loss (and in reasonable detail the manner of computation thereof) as determined by such Lender, which certificates shall be conclusive absent manifest error.

**SECTION 2.19. Pro Rata Treatment**

Except as permitted under Sections 2.15, 2.16(c), 2.17 and 2.18 (i) each Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest on the Loans and each refinancing of any Borrowing with, or conversion of any Borrowing to, another Borrowing, or continuation of any Borrowing, shall be allocated pro rata among the Lenders in accordance with the outstanding principal amount of their Loans. Each Lender agrees that in computing such Lender's portion of any Borrowing to be made hereunder, the Administrative Agent may, in its discretion, round each

Lender's percentage of such Borrowing computed in accordance with Section 2.1, to the next higher or lower whole dollar amount.

**SECTION 2.20. Right of Setoff**

If any Event of Default shall have occurred and be continuing and any Lender shall have directed the Administrative Agent to declare the Loans immediately due and payable pursuant to Section 7, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by such Lender and any other indebtedness at any time owing by such Lender to, or for the credit or the account of, the Borrower, against any of and all the obligations of the Borrower now or hereafter existing under this Agreement and the Loans to the Borrower held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such Loans and although such Obligations may be unmaturred. Each Lender agrees promptly to notify the Borrower after any such setoff and application made by such Lender, but the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section 2.20 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

**SECTION 2.21. Manner of Payments**

All payments by the Borrower hereunder and under the Notes shall be made in Dollars in Federal or other immediately available funds without deduction, setoff or counterclaim at the office of the Administrative Agent's Agent Bank Services Department, JPMorgan Chase Bank, N.A. 111 Fannin, 10<sup>th</sup> floor, Houston, Texas 77002, Attention of Vaughan Nguyen (Telephone No. 713-750-3550; Facsimile No. 713-750-2932), for credit to Cendant Corporation Clearing Account, Account No. 144812905 (Reference: Cendant Corporation Credit Agreement dated January [31], 2005) no later than 1:00 P.M., New York City time, on the date on which such payment shall be due. Interest in respect of any Loan hereunder shall accrue from and including the date of such Loan to, but excluding, the date on which such Loan is paid or refinanced with a Loan of a different Interest Rate Type.

**SECTION 2.22. Taxes**

(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.22) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) If the United States Internal Revenue Service or other Governmental Authority of the United States of America or other jurisdiction asserts a claim against the Administrative Agent or a Lender that the full amount of Indemnified Taxes or Other Taxes has not been paid, the Borrower shall indemnify the Administrative Agent and each Lender within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent or such



Lender, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 2.22) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than those resulting from the Administrative Agent or Lender's gross negligence or willful misconduct). A certificate (along with a copy of the applicable documents from the United States Internal Revenue Service or other Governmental Authority of the United States of America or other jurisdiction that asserts such claim) as to the amount of such payment or liability and setting forth in reasonable detail the calculation and basis for such payment or liability delivered to the Borrower by a Lender or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time such Lender becomes a party to this Agreement and at any other time or times reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate. Each Lender and Administrative Agent that is a United States Person, as defined in Section 7701(a)(30) of the Code (other than Persons that are corporations or otherwise exempt from United States backup withholding Tax), shall deliver at the time(s) and in the manner(s) prescribed by Applicable Law, to the Borrower and the Administrative Agent (as applicable), a properly completed and duly executed United States Internal Revenue Form W-9, or any successor form, certifying that such Person is exempt from United States backup withholding Tax on payments made hereunder.

(f) If the Administrative Agent or a Lender determines, in its sole good-faith discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.22, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.22 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 2.22 shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

(g) Each Lender agrees (i) that as between it and the Borrower or the Administrative Agent, it shall be the Person to deduct and withhold Taxes, and to the extent required by law it shall deduct and withhold Taxes, on amounts that such Lender may remit to any other Person(s) by reason of any undisclosed transfer or assignment of an interest in this Agreement to such other Person(s) pursuant to paragraph (g) of Section 10.3 and (ii) to indemnify the Borrower and the Administrative Agent and any

officers, directors, agents, or employees of the Borrower or the Administrative Agent against, and to hold them harmless from, any Tax, interest, additions to Tax, penalties, reasonable counsel and accountants' fees, disbursements or payments arising from the assertion by any appropriate Governmental Authority of any claim against them relating to a failure to withhold Taxes as required by Applicable Law with respect to amounts described in clause (i) of this paragraph (c).

(h) Each assignee of a Lender's interest in this Agreement in conformity with Section 10.3 shall be bound by this Section 2.22, so that such assignee will have all of the obligations and provide all of the forms and statements and all indemnities, representations and warranties required to be given under this Section 2.22.

**SECTION 2.23. Certain Pricing Adjustments**

The applicable LIBOR Spread in effect from time to time shall be determined in accordance with the following table:

<u>S&amp;P/Moody's/Fitch Rating Equivalent Of The Borrower's Senior Non-Credit Enhanced Unsecured Long-Term Debt</u>	<u>Applicable LIBOR Spread (in Basis Points)</u>
BBB+/Baa1/BBB+ or better	37.5
BBB/Baa2/BBB or lower	45.0

In the event that S&P, Moody's and Fitch ratings on the Borrower's senior non-credit enhanced unsecured long-term debt are not equivalent to each other, the higher rating of S&P or Moody's will determine the applicable LIBOR Spread, unless the ratings are more than one level apart, in which case the rating one level below the higher rating of S&P or Moody's will be determinative. In the event that (a) the Borrower's senior non-credit enhanced unsecured long-term debt is rated by (i) Fitch and only one of S&P or Moody's, or (ii) only one of S&P or Moody's (for any reason, including if S&P or Moody's shall cease to be in the business of rating corporate debt obligations), and not by Fitch, (b) if the rating system of any of S&P, Moody's or Fitch shall change, or (c) in the event that the Borrower's senior unsecured long-term debt is (i) not rated by any of S&P, Moody's or Fitch or (ii) rated only by Fitch, then an amendment shall be negotiated in good faith to the references to specific ratings in the table above to reflect such changed rating system or the unavailability of ratings from such rating agency (including an amendment to provide for the substitution of an equivalent or successor ratings agency). In the event that the Borrower's senior unsecured long-term debt is (i) not rated by any of S&P, Moody's or Fitch or (ii) rated only by Fitch, then the applicable LIBOR Spread shall be deemed to be calculated as if the lowest rating category set forth above applied until such time as an amendment to the table above shall be agreed to. Any increase in the applicable LIBOR Spread determined in accordance with the foregoing table shall become effective on the date of announcement or publication by the Borrower or the applicable rating agency of a reduction in such rating or, in the absence of such announcement or publication, on the effective date of such decreased rating, or on the date of any request by the Borrower to the applicable rating agency not to rate its senior unsecured long-term debt or on the date any of such rating agencies announces it shall no longer rate the Borrower's senior unsecured long-term debt. Any decrease in the applicable LIBOR Spread shall be effective on the date of announcement or publication by any of such rating agencies of an increase in rating or in the absence of announcement or publication on the effective date of such increase in rating.

The applicable margin for ABR Loans shall be the applicable LIBOR Spread minus 100 Basis Points (but not less than 0%).

**SECTION 2.24.** Reserved

**SECTION 2.25.** Reserved

3. REPRESENTATIONS AND WARRANTIES OF BORROWER

In order to induce the Lenders to enter into this Agreement and to make the Loans provided for herein, the Borrower makes the following representations and warranties to the Administrative Agent and the Lenders, all of which shall survive the execution and delivery of this Agreement, the issuance of the Notes and the making of the Loans:

**SECTION 3.1.** Corporate Existence and Power

The Borrower and its Subsidiaries have been duly organized and are validly existing in good standing under the laws of their respective jurisdictions of incorporation and are in good standing or have applied for authority to operate as a foreign corporation in all jurisdictions where the nature of their properties or business so requires it and where a failure to be in good standing as a foreign corporation would have a Material Adverse Effect. The Borrower has the corporate power to execute, deliver and perform its obligations under this Agreement and the other Fundamental Documents and other documents contemplated hereby and to borrow hereunder.

**SECTION 3.2.** Corporate Authority, No Violation and Compliance with Law

The execution, delivery and performance of this Agreement and the other Fundamental Documents and the borrowings hereunder (a) have been duly authorized by all necessary corporate action on the part of the Borrower, (b) will not violate any provision of any Applicable Law (including any laws related to franchising) applicable to the Borrower or any of its Subsidiaries or any of their respective properties or assets, (c) will not violate any provision of the Certificate of Incorporation or By-Laws of the Borrower or any of its Subsidiaries, (d) will not violate or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material indenture, bond, note, instrument or any other material agreement to which the Borrower or any of its Subsidiaries is a party or by which the Borrower or any of its Subsidiaries or any of their respective properties or assets are bound and (e) will not result in the creation or imposition of any Lien upon any property or assets of the Borrower or any of its Subsidiaries other than pursuant to this Agreement or any other Fundamental Document.

**SECTION 3.3.** Governmental and Other Approval and Consents

No action, consent or approval of, or registration or filing with, or any other action by, any governmental agency, bureau, commission or court is required in connection with the execution, delivery and performance by the Borrower of this Agreement or the other Fundamental Documents, except such as have been obtained or made and are in full force and effect.

**SECTION 3.4.** Financial Statements of Borrower

The (a) audited consolidated financial statements of the Borrower and its Consolidated Subsidiaries as of December 31, 2003, and (b) unaudited consolidated balance sheets of the Borrower and its Consolidated Subsidiaries as of March 31, 2004, June 30, 2004, and September 30, 2004, together with

the related unaudited statements of income, shareholders' equity and cash flows for such periods, fairly present the financial condition of the Borrower and its Consolidated Subsidiaries as at the dates indicated and the results of operations and cash flows for the periods indicated in conformity with GAAP subject to normal year-end adjustments in the case of the March 31, 2004, June 30, 2004 and September 30, 2004 financial statements.

**SECTION 3.5. No Material Adverse Change**

There has been no material adverse change in the business, assets, operations, or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole from that disclosed in the audited consolidated financial statements (including the footnotes thereto) of the Borrower referred to in Section 3.4 for its 2003 fiscal year.

**SECTION 3.6. Copyrights, Patents and Other Rights**

Each of the Borrower and its Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by the Borrower and its Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not result in a Material Adverse Effect.

**SECTION 3.7. Title to Properties**

Each of the Borrower or its Subsidiaries will have at the Closing Date good title or valid leasehold interests to each of the properties and assets reflected on the balance sheets referred to in Section 3.4 (other than properties or assets owned by a Person that is consolidated with the Borrower or any of its Subsidiaries under GAAP but is not a Subsidiary of the Borrower), except for defects in title or interests that would not result in a Material Adverse Effect, and all such properties and assets will be free and clear of Liens, except Permitted Encumbrances.

**SECTION 3.8. Litigation**

(a) Except for the Disclosed Matters, there are no lawsuits or other proceedings pending (including, but not limited to, matters relating to Environmental Law and Environmental Liability), or, to the knowledge of the Borrower, threatened, against or affecting the Borrower or any of its Subsidiaries or any of their respective properties, by or before any Governmental Authority or arbitrator, which would have a Material Adverse Effect. Neither the Borrower nor any of its Subsidiaries is in default with respect to any order, writ, injunction, decree, rule or regulation of any Governmental Authority, which default would have a Material Adverse Effect.

**SECTION 3.9. Federal Reserve Regulations**

Neither the Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the Loans will be used, whether immediately, incidentally or ultimately, for any purpose violative of or inconsistent with any of the provisions of Regulation U or X of the Board.

**SECTION 3.10. Investment Company Act**

The Borrower is not, and will not during the term of this Agreement be, (x) an “investment company” subject to regulation under the Investment Company Act of 1940, as amended or (y) subject to regulation under the Public Utility Holding Company Act of 1935 or the Federal Power Act.

**SECTION 3.11. Enforceability**

This Agreement and the other Fundamental Documents when executed by all parties hereto will constitute legal, valid and binding obligations (as applicable) of the Borrower (enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law).

**SECTION 3.12. Taxes**

The Borrower and each of its Subsidiaries has filed or caused to be filed all federal, state and local Tax returns which are required to be filed, and has paid or has caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves in conformity with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

**SECTION 3.13. Compliance with ERISA**

No ERISA Event has occurred or is reasonably expected to occur that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Each of the Borrower and its Subsidiaries is in compliance in all material respects with the provisions of ERISA and the Code applicable to Plans, and the regulations and published interpretations thereunder, if any, which are applicable to it. Neither the Borrower nor any of its Subsidiaries has, with respect to any Plan established or maintained by it, engaged in a prohibited transaction which would subject it to a material tax or penalty on prohibited transactions imposed by ERISA or Section 4975 of the Code. Neither the Borrower nor any of its Subsidiaries has engaged in a transaction which would result in the incurrence of a material liability under Section 4069 of ERISA. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$300,000,000 the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$300,000,000 the fair market value of the assets of all such underfunded Plans.

**SECTION 3.14. Disclosure**

As of the Closing Date, this Agreement does not contain any untrue statement of a material fact or omitted to state a material fact, under the circumstances under which it was made, necessary in order to make the statements contained herein or therein not misleading. At the Closing Date, there is no fact known to the Borrower which has not been disclosed to the Lenders and which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. The Borrower has delivered to the Administrative Agent certain projections relating to the Borrower and its Consolidated Subsidiaries. Such projections are based on good faith estimates and assumptions believed

to be reasonable at the time made, provided, however, that the Borrower makes no representation or warranty that such assumptions will prove in the future to be accurate or that the Borrower and its Subsidiaries will achieve the financial results reflected in such projections.

**SECTION 3.15. Environmental Liabilities**

Except for the Disclosed Matters and except with respect to any matters, that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

4. CONDITIONS OF LENDING

**SECTION 4.1. Conditions Precedent to Closing**

The effectiveness of this Agreement is subject to the following conditions precedent:

- (a) Loan Documents. The Administrative Agent shall have received this Agreement and each of the other Fundamental Documents, each executed and delivered by a duly authorized officer of the Borrower.
- (b) Corporate Documents for the Borrower. The Administrative Agent shall have received a certificate of the Secretary or Assistant Secretary of the Borrower dated the Closing Date and certifying (A) that attached thereto is a true and complete copy of the certificate of incorporation and by-laws of the Borrower as in effect on the date of such certification; (B) that attached thereto is a true and complete copy of resolutions adopted by the Executive Committee of the Board of Directors of the Borrower authorizing the borrowings hereunder and the execution, delivery and performance in accordance with their respective terms of this Agreement and any other documents required or contemplated hereunder; and (C) as to the incumbency and specimen signature of each officer of the Borrower executing this Agreement or any other document delivered by it in connection herewith (such certificate to contain a certification by another officer of the Borrower as to the incumbency and signature of the officer signing the certificate referred to in this paragraph (b)).
- (c) Financial Statements. The Lenders shall have received the (a) audited consolidated financial statements of the Borrower and its Consolidated Subsidiaries as of December 31, 2003 and (b) unaudited consolidated financial statements of the Borrower and its Consolidated Subsidiaries as of March 31, 2004, June 30, 2004 and September 30, 2004.
- (d) Opinions of Counsel. The Administrative Agent shall have received the favorable written opinions, dated the date of the initial Extension of Credit and addressed to the Administrative Agent and the Lenders, of (i) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Borrower, substantially in the form of Exhibit B-1 hereto, and (ii) Eric J. Bock, Executive Vice President and Corporate Secretary for the Borrower, substantially in the form of Exhibit B-2 hereto.
- (e) No Material Adverse Change. Since December 31, 2003 no events and conditions have occurred that have had, or could reasonably be expected to have, a Material Adverse Effect.

(f) Payment of Fees. The Administrative Agent shall be satisfied that all amounts payable to the Administrative Agent and the other Lenders pursuant hereto or with regard to the transactions contemplated hereby have been or are simultaneously being paid.

(g) Litigation; Approval. No litigation shall be pending or threatened which would be likely to have a Material Adverse Effect, or which could reasonably be expected to materially adversely affect the ability of the Borrower to fulfill its obligations hereunder or to otherwise materially impair the interests of the Lenders.

(h) Officer's Certificate. The Administrative Agent shall have received a certificate of the Borrower's chief executive officer or chief financial officer certifying, as of the Closing Date, that:

(i) The representations and warranties set forth in Section 3 hereof and in the other Fundamental Documents shall be true and correct in all material respects (except to the extent that such representations and warranties expressly relate to an earlier date); and

(ii) No Event of Default or Default shall have occurred and be continuing.

(i) Other Documents. The Administrative Agent shall have received such other documents and certificates as the Administrative Agent may reasonably require.

#### 5. AFFIRMATIVE COVENANTS

From the date of the initial Loans and for so long as any amount shall remain outstanding under any Note or unpaid under this Agreement, the Borrower agrees that, unless the Required Lenders shall otherwise consent in writing, it will, and will cause each of its Subsidiaries to:

##### **SECTION 5.1. Financial Statements, Reports, etc.**

The Borrower will furnish to the Administrative Agent and to each Lender:

(a) As soon as is practicable, but in any event within 100 days after the end of each fiscal year of the Borrower, the audited consolidated balance sheet of the Borrower and its Consolidated Subsidiaries as at the end of, and the related consolidated statements of income, shareholders' equity and cash flows for such year, and the corresponding figures as at the end of, and for, the preceding fiscal year, accompanied by an opinion of Deloitte & Touche LLP or such other independent certified public accountants of recognized standing as shall be retained by the Borrower and satisfactory to the Administrative Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards relating to reporting and which report and opinion shall (A) be unqualified as to going concern and scope of audit and shall state that such financial statements fairly present the financial condition of the Borrower and its Consolidated Subsidiaries, as at the dates indicated and the results of the operations and cash flows for the periods indicated and (B) contain no material exceptions or qualifications except for qualifications relating to accounting changes (with which such independent public accountants concur) in response to FASB releases or other authoritative pronouncements;

(b) As soon as is practicable, but in any event within 55 days after the end of each of the first three fiscal quarters of each fiscal year, the unaudited consolidated balance sheet of the Borrower and its Consolidated Subsidiaries, as at the end of, and the related unaudited statements of income (or changes in financial position) for such quarter and for the period from the beginning of the then current fiscal year to the end of such fiscal quarter and the corresponding figures as at the end of, and for, the corresponding period in the preceding fiscal year, together with a certificate signed by the chief financial officer or a

vice president responsible for financial administration of the Borrower to the effect that such financial statements, while not examined by independent public accountants, reflect, in his opinion and in the opinion of the Borrower, all adjustments necessary to present fairly the financial position of the Borrower and its Consolidated Subsidiaries, as the case may be, as at the end of the fiscal quarter and the results of their operations for the quarter then ended in conformity with GAAP consistently applied, subject only to year-end and audit adjustments and to the absence of footnote disclosure;

(c) Together with the delivery of the statements referred to in paragraphs (a) and (b) of this Section 5.1, a certificate of the Responsible Officer, substantially in the form of Exhibit D hereto (i) stating whether or not the signer has knowledge of any Default or Event of Default and, if so, specifying each such Default or Event of Default of which the signer has knowledge, the nature thereof and any action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event and (ii) demonstrating in reasonable detail compliance with the provisions of Sections 6.5 and 6.6 hereof;

(d) With reasonable promptness, copies of such financial statements and reports that the Borrower may make to, or file with, the SEC and such other information, certificates and data with respect to the Borrower and its Subsidiaries as from time to time may be reasonably requested by the Administrative Agent or any of the Lenders;

(e) Promptly upon any Responsible Officer obtaining actual knowledge of the occurrence of any Default or Event of Default, a certificate of the Responsible Officer specifying the nature and period of existence of such Default or Event of Default and what action the Borrower has taken, is taking and proposes to take with respect thereto;

(f) Promptly upon any Responsible Officer of the Borrower or any of its Subsidiaries obtaining actual knowledge of (i) the institution of any action, suit, proceeding, investigation or arbitration by any Governmental Authority or other Person against or affecting the Borrower or any of its Subsidiaries or any of their assets, or (ii) any material development in any such action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Lenders), which, in each case might reasonably be expected to have a Material Adverse Effect, the Borrower shall promptly give notice thereof to the Lenders and provide such other information as may be reasonably available to it (with out waiver of any applicable evidentiary privilege) to enable the Lenders to evaluate such matters; and

(g) Together with each set of financial statements required by paragraph (a) above, a certificate of the independent certified public accountants rendering the report and opinion thereon (which certificate may be limited to the extent required by accounting rules or otherwise) (i) stating whether, in connection with their audit, any Default or Event of Default has come to their attention, and if such a Default or Event of Default has come to their attention, specifying the nature and period of existence thereof, and (ii) stating that based on their audit nothing has come to their attention which causes them to believe that the matters specified in paragraph (c)(ii) above for the applicable fiscal year are not stated in accordance with the terms of this Agreement.



(h) Information required to be delivered pursuant to paragraphs (a), (b) and (d) shall be deemed to have been delivered on the date on which the Borrower provides notice to the Administrative Agent that such information has been posted on the Borrower's website on the internet at the website address listed on the signature pages of such notice, at www.sec.gov or at another website identified in such notice and accessible by the Lenders without charge; provided that the Borrower shall deliver paper copies of the reports and financial statements referred to in paragraphs (a), (b) and (d) of this Section 5.1 to the Administrative Agent or any Lender who requests the Borrower to deliver such paper copies until written notice to cease delivering paper copies is given by the Administrative Agent or such Lender.

**SECTION 5.2. Corporate Existence; Compliance with Statutes**

Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its corporate existence, material rights, licenses, permits and franchises and comply, except where failure to comply, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, with all provisions of Applicable Law, and all applicable restrictions imposed by, any Governmental Authority, including without limitation, the Federal Trade Commission's "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" as amended from time to time (16 C.F.R. §§ 436.1 et seq.) and all state laws and regulations of similar import; provided, however, that mergers, dissolutions and liquidations permitted under Section 6.2 shall be permitted.

**SECTION 5.3. Insurance**

Maintain with financially sound and reputable insurers insurance in such amounts and against such risks as are customarily insured against by companies in similar businesses; provided, however, that (a) workmen's compensation insurance or similar coverage may be effected with respect to its operations in any particular state or other jurisdiction through an insurance fund operated by such state or jurisdiction and (b) such insurance may contain self-insurance retention and deductible levels consistent with normal industry practices.

**SECTION 5.4. Taxes and Charges**

Duly pay and discharge, or cause to be paid and discharged, before the same shall become delinquent, all federal, state or local Taxes, assessments, levies and other governmental charges, imposed upon the Borrower or any of its Subsidiaries or their respective properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all claims for labor, materials, or supplies which if unpaid could reasonably be expected to result in a Material Adverse Effect; provided, however, that any such Tax, assessment, charge, levy or claim need not be paid if the validity or amount thereof shall currently be contested in good faith by appropriate proceedings and if the Borrower shall have set aside on its books reserves (the presentation of which is segregated to the extent required by GAAP) adequate with respect thereto if reserves shall be deemed necessary by the Borrower in accordance with GAAP; and provided, further, that the Borrower will pay all such Taxes, assessments, levies or other governmental charges forthwith upon the commencement of proceedings to foreclose any material Lien which may have attached as security therefor (unless the same is fully bonded or otherwise effectively stayed).

**SECTION 5.5. ERISA Compliance and Reports**

Furnish to the Administrative Agent (a) as soon as possible, and in any event within 30 days after any executive officer (as defined in Regulation C under the Securities Act of 1933) of the

Borrower knows that any ERISA Event with respect to any Plan has occurred, a statement of the chief financial officer of the Borrower, setting forth details as to such ERISA Event and the action which it proposes to take with respect thereto, together with a copy of the notice, if any, required to be filed by the Borrower or any of its Subsidiaries of such ERISA Event with the PBGC, (b) promptly upon the reasonable request of the Administrative Agent, copies of each annual and other report with respect to each Plan and (c) promptly after receipt thereof, a copy of any notice the Borrower or any of its Subsidiaries may receive from the PBGC relating to the PBGC's intention to terminate any Plan or to appoint a trustee to administer any Plan; provided that the Borrower shall not be required to notify the Administrative Agent of the occurrence of any of the events set forth in the preceding clauses (a) and (c) unless such event, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect on the Borrower and its Subsidiaries taken as a whole.

**SECTION 5.6. Maintenance of and Access to Books and Records; Examinations**

Maintain or cause to be maintained at all times true and complete books and records of its financial operations (in accordance with GAAP) and provide the Administrative Agent and its representatives reasonable access to all such books and records and to any of their properties or assets during regular business hours (provided that reasonable access to such books and records and to any of the Borrower's properties or assets shall be made available to the Lenders if an Event of Default has occurred and is continuing), in order that the Administrative Agent may make such audits and examinations and make abstracts from such books, accounts and records (in each case subject to the Borrower or its Subsidiaries' obligations under applicable confidentiality provisions) and may discuss the affairs, finances and accounts with, and be advised as to the same by, officers and, so long as a representative of the Borrower is present, independent accountants, all as the Administrative Agent may deem appropriate for the purpose of verifying the various reports delivered pursuant to this Agreement or for otherwise ascertaining compliance with this Agreement. Notwithstanding Section 10.4, unless any such visit or inspection is conducted after the occurrence and during the continuance of a Default or an Event of Default, the Borrower shall not be required to pay any costs or expenses incurred by the Administrative Agent, any Lender or any other Person in connection with such visit or inspection.

**SECTION 5.7. Maintenance of Properties**

Keep its properties which are material to its business in good repair, working order and condition consistent with industry practice.

**SECTION 5.8. Changes in Character of Business**

Cause the Borrower and its Subsidiaries taken as a whole to be primarily engaged in the franchising and services businesses.

6. **NEGATIVE COVENANTS**

From the date of the initial Loan and for so long as any amount shall remain outstanding under any Note or unpaid under this Agreement, unless the Required Lenders shall otherwise consent in writing, the Borrower agrees that it will not, nor will it permit any of its Subsidiaries to, directly or indirectly:

**SECTION 6.1. Limitation on Indebtedness**

Incur, assume or suffer to exist any Indebtedness of any Material Subsidiary except:

- (a) Indebtedness in existence on the Closing Date, or required to be incurred pursuant to a contractual obligation in existence on the Closing Date, but not any extensions or renewals thereof, unless effected on substantially the same terms or on terms not materially more adverse to the Lenders;
- (b) purchase money Indebtedness (including Capital Leases) provided that such Indebtedness is secured by Liens permitted by Section 6.3(c);
- (c) Guaranty Obligations;
- (d) Indebtedness owing by any Material Subsidiary to the Borrower or any other Subsidiary;
- (e) Indebtedness of any Material Subsidiary issued and outstanding prior to the date on which such Person became a Subsidiary of the Borrower (other than Indebtedness issued in connection with, or in anticipation of, such Person becoming a Subsidiary of the Borrower); provided that immediately prior and on a Pro Forma Basis after giving effect to, such Person becoming a Subsidiary of the Borrower, no Default or Event of Default shall occur or then be continuing and the aggregate principal amount of such Indebtedness, when added to the aggregate outstanding principal amount of Indebtedness permitted by paragraphs (f) and (g) below, shall not exceed the greater of 10% of Consolidated Net Worth and \$400,000,000;
- (f) any renewal, extension or modification of Indebtedness under paragraph (e) above so long (i) as such renewal, extension or modification is effected on substantially the same terms or on terms which, in the aggregate, are not materially more adverse to the Lenders and (ii) the principal amount of such Indebtedness is not increased;
- (g) other Indebtedness of any Material Subsidiary in an aggregate principal amounts which, when added to the aggregate outstanding principal amount of Indebtedness permitted by paragraphs (e) and (f) above, does not exceed the greater of 10% of Consolidated Net Worth and \$400,000,000;
- (h) AESOP Indebtedness;
- (i) Indebtedness incurred pursuant to an Asset Financing Transaction;
- (j) to the extent, if any, not included in clause (i), Securitization Indebtedness;
- (k) without limiting any of the foregoing, Indebtedness incurred in connection with any acquisition by the Borrower or any of its Subsidiaries of vehicles directly from a manufacturer pursuant to such manufacturer's repurchase program; provided that (x) such Indebtedness is not greater than the net book value of such vehicles and (ii) such vehicles could not be financed under the AESOP Financing Program;
- (l) in addition to Timeshare Indebtedness permitted pursuant to any of the foregoing, Timeshare Indebtedness in an aggregate principal amount not to exceed \$800,000,000;
- (m) Indebtedness incurred pursuant to Terminal Rental Adjustment Clause (TRAC) lease financings of trucks to be used in the truck rental operations of the Borrower or any Subsidiary;

- (n) Indebtedness secured by trucks to be used in the truck rental operations of the Borrower or any Subsidiary in an aggregate principal amount not to exceed \$200,000,000;
- (o) Indebtedness secured by vehicles owned by the Borrower or any Subsidiary of the Borrower which are located in Australia, New Zealand, Canada and Puerto Rico;
- (p) in addition to Indebtedness secured by relocation receivables permitted pursuant to any of the foregoing, Indebtedness that is secured by relocation receivables of the Borrower or any Subsidiary of the Borrower in an aggregate principal amount not to exceed \$150,000,000;
- (q) deposits raised in the ordinary course of the banking business of any Material Subsidiary that is subject to state and/or federal banking regulations that constitute Indebtedness and any discount or borrowing by such Material Subsidiary in the ordinary course of the banking business of such Material Subsidiary;
- (r) derivatives transactions entered into in the ordinary course of business pursuant to hedging programs; and
- (s) in addition to the Indebtedness permitted by paragraphs (a) - (r) above, Indebtedness of PHH and its Subsidiaries so long as, after giving effect to the incurrence of such Indebtedness and the use of the proceeds thereof, the ratio of Indebtedness (other than Securitization Indebtedness and Other Excluded Indebtedness) of PHH and its Subsidiaries to consolidated shareholders' equity of PHH is less than 8 to 1.

**SECTION 6.2. Consolidation, Merger, Sale of Assets**

(a) Neither the Borrower nor any of its Material Subsidiaries (in one transaction or series of transactions) will wind up, liquidate or dissolve its affairs, or enter into any transaction of merger or consolidation, except any merger, consolidation, dissolution or liquidation (i) in which the Borrower is the surviving entity or if the Borrower is not a party to such transaction then a Subsidiary is the surviving entity or the successor to the Borrower has unconditionally assumed in writing all of the payment and performance obligations of the Borrower under this Agreement and the other Fundamental Documents, (ii) in which the surviving entity becomes a Subsidiary of the Borrower immediately upon the effectiveness of such merger, consolidation, dissolution or liquidation, or (iii) involving a Subsidiary in connection with a transaction permitted by Section 6.2(b); provided, however, that immediately prior to and on a Pro Forma Basis after giving effect to any such transaction described in any of the preceding clauses (i), (ii) and (iii) no Default or Event of Default has occurred and is continuing.

(b) The Borrower and its Subsidiaries (either individually or collectively and whether in one transaction or series of related transactions) will not sell or otherwise dispose of all or substantially all of the assets of the Borrower and its Subsidiaries, taken as a whole.

**SECTION 6.3. Limitations on Liens**

Suffer any Lien on the property of the Borrower or any of the Material Subsidiaries, except:

- (a) Liens for taxes, assessments, governmental charges and other similar obligations not yet due or which are being contested in good faith by appropriate proceedings;

(b) Liens incidental to the conduct of its business or the ownership of its assets which were not incurred in connection with the borrowing of money, and which do not in the aggregate materially detract from the value of its assets or materially impair the use thereof in the operation of its business;

(c) purchase money Liens granted to the vendor or Person financing the acquisition of property, plant or equipment if (i) limited to the specific assets acquired and, in the case of tangible assets, other property which is an improvement to or is acquired for specific use in connection with such acquired property or which is real property being improved by such acquired property; (ii) the debt secured by the Lien is the unpaid balance of the acquisition cost of the specific assets on which the Lien is granted; and (iii) such transaction does not otherwise violate this Agreement;

(d) Liens upon real and/or personal property, which property was acquired after the Closing Date (by purchase, construction or otherwise) by the Borrower or any of its Material Subsidiaries, each of which Liens existed on such property before the time of its acquisition and was not created in anticipation thereof; provided, however, that no such Lien shall extend to or cover any property of the Borrower or such Material Subsidiary other than the respective property so acquired and improvements thereon;

(e) to the extent not covered by clause (b) above, Liens securing judgments which do not constitute an Event of Default;

(f) Liens created under any Fundamental Document;

(g) Liens existing on the Closing Date and any extensions or renewals thereof;

(h) Liens securing (or covering property constituting the source of payment for) any Indebtedness permitted pursuant to clauses (d) and (h) through (q) of Section 6.1;

(i) to the extent not covered by clause (h) above, Liens on equity interests or other securities issued by a Securitization Entity, securing (or covering property constituting the source of payment for) Securitization Indebtedness or Indebtedness incurred pursuant to an Asset Financing Transaction; and

(j) other Liens securing obligations having an aggregate principal amount not to exceed the greater of 15% of Consolidated Net Worth and \$400,000,000.

#### **SECTION 6.4. Sale and Leaseback**

Enter into any arrangement with any Person or Persons, whereby in contemporaneous transactions the Borrower or any of its Subsidiaries sells essentially all of its right, title and interest in a material asset and the Borrower or any of its Subsidiaries acquires or leases back the right to use such property except that the Borrower and its Subsidiaries may enter into sale-leaseback transactions relating to assets not in excess of \$500,000,000 in the aggregate on a cumulative basis, and except (a) any arrangements existing on the Closing Date and any renewals, extensions or modifications thereof, or replacements or substitutions therefor, so long as such renewals, extensions or modifications are effected on substantially the same terms or on terms which, in the aggregate, are not more adverse to the Lenders in any material respect and (b) in connection with any Asset Financing Transaction.

**SECTION 6.5. Debt to Capitalization Ratio**

Permit the Debt to Capitalization Ratio on the last day of any fiscal quarter to be greater than 0.5 to 1.

**SECTION 6.6. Interest Coverage Ratio**

Permit the Interest Coverage Ratio for any Rolling Period to be less than 3.0 to 1.0.

**SECTION 6.7. Accounting Practices**

Establish a fiscal year ending on any date other than December 31, or modify or change accounting treatments or reporting practices except as otherwise required or permitted by GAAP or the SEC.

7. **EVENTS OF DEFAULT**

In the case of the happening and during the continuance of any of the following events (herein called "Events of Default"):

- (a) any representation or warranty made by the Borrower in this Agreement or any other Fundamental Document or in connection with this Agreement or with the execution and delivery of the Notes or the Borrowings hereunder, or any statement or representation made in any report, financial statement, certificate or other document furnished by or on behalf of the Borrower or any of its Subsidiaries to the Administrative Agent or any Lender under or in connection with this Agreement, shall prove to have been false or misleading in any material respect when made or delivered;
- (b) default shall be made in the payment of any principal of or interest on any Loan, the Notes or of any fees or other amounts payable by the Borrower hereunder, when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise, and in the case of payments of interest, such default shall continue unremedied for five days, and in the case of payments other than of any principal amount of or interest on any Loan or the Notes, such default shall continue unremedied for five days after written notice of non-payment has been received by the Borrower from the Administrative Agent;
- (c) default shall be made in the due observance or performance of any covenant, condition or agreement contained in Section 5.1(e) (with respect to notice of Default or Events of Default), 5.8 or Section 6 of this Agreement;
- (d) default shall be made by the Borrower in the due observance or performance of any other covenant, condition or agreement to be observed or performed pursuant to the terms of this Agreement, or any other Fundamental Document and such default shall continue unremedied for thirty days after the Borrower obtains knowledge of such occurrence;
- (e) (i) default in payment shall be made with respect to any Indebtedness of the Borrower or any of its Subsidiaries (other than Securitization Indebtedness) where the amount or amounts of such Indebtedness exceeds \$100,000,000 in the aggregate; or (ii) default in payment or performance shall be made with respect to any Indebtedness of the Borrower or any of its Subsidiaries (other than Securitization Indebtedness) where the amount or amounts of such Indebtedness exceeds \$100,000,000 in the aggregate, if the effect of such default is to result in the acceleration of the maturity of such Indebtedness; or (iii) any other circumstance shall arise (other than the mere passage of time) by reason of

which the Borrower or any Subsidiary of the Borrower is required to redeem or repurchase, or offer to holders the opportunity to have redeemed or repurchased, any such Indebtedness (other than Securitization Indebtedness) where the amount or amounts of such Indebtedness exceeds \$100,000,000 in the aggregate; provided that clause (iii) shall not apply to secured Indebtedness that becomes due as a result of a voluntary sale of the property or assets securing such Indebtedness or Indebtedness that is redeemed or repurchased at the option of the Borrower or any of its Subsidiaries; and provided, that clauses (ii) and (iii) shall not apply to any Indebtedness of any Subsidiary issued and outstanding prior to the date such Subsidiary became a Subsidiary of the Borrower (other than Indebtedness issued in connection with, or in anticipation of, such Subsidiary becoming a Subsidiary of the Borrower) if such default or circumstance arises solely as a result of a "change of control" provision applicable to such Indebtedness which becomes operative as a result of the acquisition of such Subsidiary by the Borrower or any of its Subsidiaries; and provided, further, that in the case of any derivative transaction described in Section 6.1(q), each reference in this clause (e) to the amount of \$100,000,000 shall mean the amount payable by the Borrower or any of its Subsidiaries in connection with a default or "other circumstance" described in clause (i), (ii) or (iii) and not to the notional amount of such derivative transaction;

(f) the Borrower or any of its Material Subsidiaries shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors; or the Borrower or any of its Material Subsidiaries shall commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property or shall file an answer or other pleading in any such case, proceeding or other action admitting the material allegations of any petition, complaint or similar pleading filed against it or consenting to the relief sought therein; or the Borrower or any Material Subsidiary thereof shall take any action to authorize any of the foregoing;

(g) any involuntary case, proceeding or other action against the Borrower or any of its Material Subsidiaries shall be commenced seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of any order for relief against it or (ii) shall remain und dismissed for a period of sixty days;

(h) the occurrence of a Change in Control;

(i) final judgment(s) for the payment of money in excess of \$100,000,000 (to the extent not paid or covered by insurance) shall be rendered against the Borrower or any of its Subsidiaries which within thirty days from the entry of such judgment shall not have been discharged or stayed pending appeal or which shall not have been discharged within thirty days from the entry of a final order of affirmance on appeal; or

(j) an ERISA Event shall have occurred that, when taken together with all other ERISA Events (with respect to which the Borrower has a liability which has not yet been satisfied) that have occurred, would result in a Material Adverse Effect;

then, in every such event and at any time thereafter during the continuance of such event, the Administrative Agent may or shall, if directed by the Required Lenders, declare the principal of and the

interest on the Loans and the Notes and all other amounts payable hereunder or thereunder to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without presentment, demand, protest, notice of acceleration, notice of intent to accelerate or other notice of any kind, all of which are hereby expressly waived, anything in this Agreement or in the Notes to the contrary notwithstanding. If an Event of Default specified in paragraphs (f) or (g) above shall have occurred, the principal of and interest on the Loans and the Notes and all other amounts payable hereunder or thereunder shall thereupon and concurrently become due and payable without presentment, demand, protest, notice of acceleration, notice of intent to accelerate or other notice of any kind, all of which are hereby expressly waived, anything in this Agreement or the Notes to the contrary notwithstanding.

8. THE ADMINISTRATIVE AGENT

**SECTION 8.1.** Administration by Administrative Agent

The general administration of the Fundamental Documents and any other documents contemplated by this Agreement shall be by the Administrative Agent or its designees. Each of the Lenders hereby irrevocably authorizes the Administrative Agent, at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Fundamental Documents, the Notes and any other documents contemplated by this Agreement as are delegated by the terms hereof or thereof, as appropriate together with all powers reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except as set forth in the Fundamental Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.9), and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries or Affiliates that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.9) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Section 4 or elsewhere herein. Any Lender which is not the Administrative Agent (regardless of whether such Lender bears the title of any other Agent or any similar title, as indicated on the signature pages hereto) for the credit facility hereunder shall not have any duties or responsibilities except as a Lender hereunder.

**SECTION 8.2.** Advances and Payments

(a) On the date of the making of the Loans, the Administrative Agent shall be authorized (but not obligated) to advance, for the account of each of the Lenders, the amount of the Loan to be made by it in accordance with this Agreement. Each of the Lenders hereby authorizes and requests the



Administrative Agent to advance for its account, pursuant to the terms hereof, the amount of the Loan to be made by it, unless with respect to any Lender, such Lender has theretofore specifically notified the Administrative Agent that such Lender does not intend to fund that particular Loan. Each of the Lenders agrees forthwith to reimburse the Administrative Agent in immediately available funds for the amount so advanced on its behalf by the Administrative Agent pursuant to the immediately preceding sentence. If any such reimbursement is not made in immediately available funds on the same day on which the Administrative Agent shall have made any such amount available on behalf of any Lender in accordance with this Section 8.2, such Lender shall pay interest to the Administrative Agent at a rate per annum equal to the Administrative Agent's cost of obtaining overnight funds in the New York Federal Funds Market. Notwithstanding the preceding sentence, if such reimbursement is not made by the second Business Day following the day on which the Administrative Agent shall have made any such amount available on behalf of any Lender or such Lender has indicated that it does not intend to reimburse the Administrative Agent, the Borrower shall immediately pay such unreimbursed advance amount (plus any accrued, but unpaid interest at the rate applicable to ABR Loans) to the Administrative Agent.

(b) Any amounts received by the Administrative Agent in connection with this Agreement or the Notes the application of which is not otherwise provided for shall be applied, in accordance with each of the Lenders' pro rata interest therein, first, to pay accrued but unpaid interest on the Loans, second, the principal balance outstanding on the Loans and third, to pay other amounts payable to the Administrative Agent and/or the Lenders. All amounts to be paid to any of the Lenders by the Administrative Agent shall be credited to the Lenders, promptly after collection by the Administrative Agent, in immediately available funds either by wire transfer or deposit in such Lender's correspondent account with the Administrative Agent, or as such Lender and the Administrative Agent shall from time to time agree.

**SECTION 8.3. Sharing of Setoffs and Cash Collateral**

Each of the Lenders agrees that if it shall, through the operation of Sections 2.20, 2.25(g) or 2.25(h) hereof or the exercise of a right of bank's lien, setoff or counterclaim against the Borrower, including, but not limited to, a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim and received by such Lender under any applicable bankruptcy, insolvency or other similar law, or otherwise, obtain payment in respect of its Loan as a result of which the unpaid portion of its Loan is proportionately less than the unpaid portion of any of the other Lenders (a) it shall promptly purchase at par (and shall be deemed to have thereupon purchased) from such other Lenders a participation in the Loans of such other Lenders, so that the aggregate unpaid principal amount of each of the Lenders' Loans and its participation in Loans of the other Lenders shall be in the same proportion to the aggregate unpaid principal amount of all Loans then outstanding as the principal amount of its Loan prior to the obtaining of such payment was to the principal amount of all Loans outstanding prior to the obtaining of such payment and (b) such other adjustments shall be made from time to time as shall be equitable to ensure that the Lenders share such payment pro rata.

**SECTION 8.4. Notice to the Lenders**

Upon receipt by the Administrative Agent from the Borrower of any communication calling for an action on the part of the Lenders, or upon notice to the Administrative Agent of any Event of Default, the Administrative Agent will in turn immediately inform the other Lenders in writing (which shall include telegraphic communications) of the nature of such communication or of the Event of Default, as the case may be.

**SECTION 8.5. Liability of Administrative Agent**

(a) The Administrative Agent, when acting on behalf of the Lenders may execute any of its duties under this Agreement by or through its officers, agents, or employees and neither the Administrative Agent nor its directors, officers, agents, or employees shall be liable to the Lenders or any of them for any action taken or omitted to be taken in good faith, or be responsible to the Lenders or to any of them for the consequences of any oversight or error of judgment, or for any loss, unless the same shall happen through its gross negligence or willful misconduct. The Administrative Agent and its respective directors, officers, agents, and employees shall in no event be liable to the Lenders or to any of them for any action taken or omitted to be taken by it pursuant to instructions received by it from the Required Lenders or in reliance upon the advice of counsel selected by it. Without limiting the foregoing, neither the Administrative Agent nor its directors, officers, employees, or agents shall be responsible to any of the Lenders for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any statement, warranty, or representation in, or for the perfection of any security interest contemplated by, this Agreement or any related agreement, document or order, or for the designation or failure to designate this transaction as a "Highly Leveraged Transaction" for regulatory purposes, or shall be required to ascertain or to make any inquiry concerning the performance or observance by the Borrower of any of the terms, conditions, covenants, or agreements of this Agreement or any related agreement or document.

(b) Neither the Administrative Agent nor its directors, officers, employees, or agents shall have any responsibility to the Borrower on account of the failure or delay in performance or breach by any of the Lenders or the Borrower of any of their respective obligations under this Agreement or the Notes or any related agreement or document or in connection herewith or therewith.

(c) The Administrative Agent, in such capacity hereunder, shall be entitled to rely on any communication, instrument, or document reasonably believed by it to be genuine or correct and to have been signed or sent by a Person or Persons believed by it to be the proper Person or Persons, and it shall be entitled to rely on advice of legal counsel, independent public accountants, and other professional advisers and experts selected by it.

**SECTION 8.6. Reimbursement and Indemnification**

Each of the Lenders severally and not jointly agrees (to the extent not reimbursed or otherwise paid by the Borrower (pursuant to Section 10.5 hereof)) (i) to reimburse the Administrative Agent, in the amount of its proportionate share of the aggregate principal amount of Loans outstanding hereunder on the date on which such reimbursement is sought (or, if indemnification is sought after the date upon which the Loans shall have been repaid in full, in the amount of its proportionate share of the aggregate principal amount of Loans outstanding hereunder immediately prior to such date), for any expenses and fees incurred for the benefit of the Lenders under the Fundamental Documents, including, without limitation, counsel fees and compensation of agents and employees paid for services rendered on behalf of the Lenders, and any other expense incurred in connection with the administration or enforcement thereof and (ii) to indemnify and hold harmless the Administrative Agent and any of its directors, officers, employees, or agents, on demand, in the amount of its proportionate share of the aggregate principal amount of Loans outstanding hereunder on the date on which such indemnification is sought (or, if indemnification is sought after the date upon which the Loans shall have been repaid in full, in the amount of its proportionate share of the aggregate principal amount of Loans outstanding hereunder immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against it or any of them in any way relating to or arising out of the Fundamental Documents or any action taken or omitted by it or any of them under the

Fundamental Documents to the extent not reimbursed by the Borrower or one of its Subsidiaries (except such as shall result from the gross negligence or willful misconduct of the Person seeking indemnification).

**SECTION 8.7. Rights of Administrative Agent**

It is understood and agreed that JPMorgan Chase Bank shall have the same rights and powers hereunder (including the right to give such instructions) as the other Lenders and may exercise such rights and powers, as well as its rights and powers under other agreements and instruments to which it is or may be party, and engage in other transactions with the Borrower or any Subsidiary or other Affiliate thereof as though it were not the Administrative Agent on behalf of the Lenders under this Agreement.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent; provided that no such delegation shall limit or reduce in any way the Administrative Agent's duties and obligations to the Borrower under this Agreement. The Administrative Agent and any such sub-agent, and any Affiliate of the Administrative Agent or any such sub-agent, may perform any and all its duties and exercise its rights and powers through their respective directors, officers, employees, agents and advisors. The exculpatory provisions of Section 8.5 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

**SECTION 8.8. Independent Investigation by Lenders**

Each of the Lenders acknowledges that it has decided to enter into this Agreement based on its own analysis of the transactions contemplated hereby, based on such documents and other information as it has deemed appropriate and on the creditworthiness of the Borrower and agrees that the Administrative Agent shall bear no responsibility therefor.

**SECTION 8.9. Notice of Transfer**

The Administrative Agent may deem and treat any Lender which is a party to this Agreement as the owners of such Lender's respective portions of the Loans, unless and until a written notice of the assignment or transfer thereof executed by any such Lender shall have been received by the Administrative Agent and become effective pursuant to Section 10.3.

**SECTION 8.10. Successor Administrative Agent**

The Administrative Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower. Upon any such resignation, the Borrower (with the consent of the Required Lenders, which shall not be unreasonably withheld or delayed) shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Borrower and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which with the consent of the Borrower, which will not be unreasonably withheld, shall be a commercial bank organized or licensed under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$500,000,000. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and

become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Section 8 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

**SECTION 8.11.** Reserved

**SECTION 8.12.** Agents Generally

Except as expressly set forth herein, no Agent shall have any duties or responsibilities hereunder in its capacity as such; and shall incur no liability, under this Agreement and the other Fundamental Documents.

9. RESERVED

10. MISCELLANEOUS

**SECTION 10.1.** Notices

(a) Notices and other communications provided for herein shall be in writing and shall be delivered or mailed (or in the case of telegraphic communication, if by telegram, delivered to the telegraph company and, if by telex, telecopy, graphic scanning or other telegraphic communications equipment of the sending party hereto, delivered by such equipment) addressed as follows:

(i) if to the Administrative Agent, to it at JPMorgan Chase Bank, N.A., 111 Fannin, 10<sup>th</sup> floor, Houston, Texas 77002, Attention of Vaughan Nguyen (Telephone No. 713-750-3550; Facsimile No. 713-750-2932), with a copy to Randolph Cates (Facsimile No. 212-270-3279);

(ii) if to the Borrower, to it at 9 West 57<sup>th</sup> Street, New York, NY 10019 Attention of Corporate Secretary (Facsimile No. 212-413-1922) and Treasurer (Facsimile No. 973-496-0690), with a copy to Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036, Attention of James M. Douglas (Facsimile No. 917-777-2868); and

(iii) if to a Lender, to it at its address notified to the Administrative Agent (or set forth in its Assignment and Acceptance or other agreement pursuant to which it became a Lender hereunder);

or such other address as such party may from time to time designate by giving written notice to the other parties hereunder.

(b) Any party hereto may change its address or telecopy number and other communications hereunder for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(c) Notices and other communication to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower

may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

**SECTION 10.2. Survival of Agreement, Representations and Warranties, etc.**

All warranties, representations and covenants made by the Borrower herein or in any certificate or other instrument delivered by it or on its behalf in connection with this Agreement shall be considered to have been relied upon by the Administrative Agent and the Lenders and shall survive the making of the Loans herein contemplated and the issuance and delivery to the Administrative Agent of the Notes regardless of any investigation made by the Administrative Agent or the Lenders or on their behalf and shall continue in full force and effect so long as any amount due or to become due hereunder is outstanding and unpaid and so long as the Commitment has not been terminated. All statements in any such certificate or other instrument shall constitute representations and warranties by the Borrower hereunder.

**SECTION 10.3. Successors and Assigns; Syndications; Loan Sales; Participations**

(a) Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party (provided, however, that the Borrower may not assign its rights hereunder without the prior written consent of all the Lenders), and all covenants, promises and agreements by, or on behalf of, the Borrower which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Lenders.

(b) Each of the Lenders may (but only with the prior written consent of the Administrative Agent and the Borrower, which consents shall not be unreasonably withheld or delayed, provided that the consent of the Borrower shall not be required if an Event of Default has occurred and is continuing) assign to one or more banks or other entities either (i) all or a portion of its interests, rights and obligations under this Agreement (including, without limitation, all or a portion of the Loan at the time owing to it and the Note held by it) (a "**Ratable Assignment**") or (ii) all or a portion of its rights and obligations under and in respect of a portion of the Loan at the time owing to it and the Note held by it) (a "**Non-Ratable Assignment**"); provided, however, that (1) each Non-Ratable Assignment shall be of a constant, and not a varying, percentage of all of the assigning Lender's rights and obligations in respect of the Loan which is the subject of such assignment, (2) each Ratable Assignment shall be of a constant, and not a varying, percentage of the assigning Lender's rights and obligations under this Agreement, (3) the amount of the Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Lender) shall be in a minimum principal amount of \$1,000,000 (or, if less, the remaining portion of the assigning Lender's rights and obligations under this Agreement) unless otherwise agreed by the Borrower and the Administrative Agent and (4) the parties to each such assignment shall execute and deliver to the Administrative Agent, for its acceptance and recording in the Register (as defined below), an Assignment and Acceptance, together with a ny Note subject to such assignment and a processing and recordation fee of \$3,500. Upon such execution, delivery, acceptance and recording, and from and after the effective date specified in each Assignment and Acceptance, which effective date shall be not earlier than five Business Days (or such shorter period approved by the Administrative Agent) after the date of acceptance and recording by the Administrative Agent, (x) the assignee thereunder shall be a party hereto and, to the extent provided in such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the assigning Lender thereunder shall, to the extent provided in such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all or the remaining portion of the assigning Lender's rights and obligations under this Agreement, such assigning Lender shall cease to be a party hereto).

(c) Notwithstanding the other provisions of this Section 10.3, each Lender may at any time make a Ratable Assignment or a Non-Ratable Assignment of its interests, rights and obligations under this Agreement to (i) any Affiliate of such Lender or (ii) any other Lender hereunder without the consent of the Administrative Agent or the Borrower provided that it meets the registration requirements in Section 10.3(b)(4).

(d) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than the representation and warranty that it is the legal and beneficial owner of the interest being assigned thereby free and clear of any adverse claim, the assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in, or in connection with, this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Fundamental Documents or any other instrument or document furnished pursuant hereto or thereto; (ii) such Lender assignor makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower or the performance or observance by the Borrower of any of its obligations under the Fundamental Documents; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the most recent financial statements delivered pursuant to Sections 5.1(a) and 5.1(b) (or if none of such financial statements shall have then been delivered, then copies of the financial statements referred to in Section 3.4 hereof) and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance; (iv) such assignee will, independently and without reliance upon the assigning Lender, the Administrative Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee appoints and authorizes the Administrative Agent to take such action as agent on its behalf and to exercise such powers under the Fundamental Documents as are delegated to the Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto; and (vi) such assignee agrees that it will be bound by the provisions of this Agreement and will perform in accordance with its terms all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(e) The Administrative Agent, on behalf of the Borrower, shall maintain at its address at which notices are to be given to it pursuant to Section 10.1, a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders and the Commitments of, and principal amount of the Loans owing to, each Lender from time to time (the "**Register**"). The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register as the owner of a Loan or other obligation hereunder as the owner thereof for all purposes of this Agreement and the other Fundamental Documents, notwithstanding any notice to the contrary. Any assignment shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee, any Notes subject to such assignment and the processing and recordation fee, the Administrative Agent (subject to the right, if any, of the Borrower to require its consent thereto) shall, if such Assignment and Acceptance has been completed and is substantially in the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt written notice thereof to the Borrower. If a portion of the Commitment has been assigned by an assigning Lender, then such Lender shall deliver its Note, if any, at the same time it delivers the applicable Assignment and Acceptance to the Administrative Agent. Within five Business Days after receipt of the notice, the Borrower, at its own expense, shall execute and deliver to the

applicable Lenders at their request a new Note payable to such assignee in an amount equal to the outstanding principal amount of the Loan assumed by it pursuant to such Assignment and Acceptance hereunder, and a new Note payable to the assigning Lender in an amount equal to the outstanding principal amount of the Loan retained by it hereunder. Any new Notes shall be in an aggregate principal amount equal to the aggregate principal amount of the Loans of the respective Lenders. All new Notes shall be dated as of the Closing Date and shall otherwise be in substantially the form of Exhibits A hereto. No assignment shall be effective for purpose of the Agreement unless it has been recorded in the Register as provided in this paragraph.

(g) Each of the Lenders may, without the consent of the Borrower, the Administrative Agent or any Issuing Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of the Loans owing to it and the Note or Notes held by it); provided, however, that (i) any such Lender's obligations under this Agreement shall remain unchanged, (ii) such Participant shall not be granted any voting rights under this Agreement, except with respect to matters requiring the consent of each of the Lenders hereunder, (iii) any such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iv) the participating banks or other entities shall be entitled to the cost protection provisions of Sections 2.15, 2.16, 2.18, 2.22 and 2.25 hereof (and subject to the limitations thereof) but a Participant shall not be entitled to receive pursuant to such provisions an amount larger than its share of the amount to which the Lender granting such participation would have been entitled to receive; provided that a Participant shall not be entitled to the benefits of Section 2.22 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.22(e) as though it were a Lender, and (v) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(h) The Lenders may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 10.3, disclose to the assignee or Participant or proposed assignee or Participant, any information, including confidential information, relating to the Borrower furnished to the Administrative Agent by or on behalf of the Borrower; provided that prior to any such disclosure, each such assignee or Participant or proposed assignee or Participant agrees in writing to be bound by the confidentiality provisions of Section 10.15.

(i) Each Lender hereby represents that it is a commercial lender or financial institution which makes loans in the ordinary course of its business and that it will make the Loans hereunder for its own account in the ordinary course of such business; provided, however, that, subject to preceding clauses (a) through (h), the disposition of the Notes or other evidence of Indebtedness held by that Lender shall at all times be within its exclusive control.

(j) The Borrower consents that any Lender may at any time and from time to time pledge, or otherwise grant a security interest in, any Loan or any Note evidencing such Loan (or any part thereof), including any such pledge or grant to any Federal Reserve Bank, and, with respect to any Lender which is a fund, to the fund's trustee in support of its obligations to such trustee, and this Section shall not apply to any such pledge or grant; provided that no such pledge or grant shall release a Lender from any of its obligations hereunder or substitute any such assignee for such Lender as a party hereto.

#### **SECTION 10.4. Expenses**

Whether or not the transactions hereby contemplated shall be consummated, the Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent in connection with the syndication, preparation, execution, delivery and

administration of this Agreement, the Notes and the making of the Loans, the reasonable and documented fees and disbursements of Simpson Thacher & Bartlett LLP, counsel to the Administrative Agent, as well as all reasonable and documented out-of-pocket expenses incurred by the Lenders in connection with any restructuring or workout of this Agreement and the Notes or in connection with the enforcement or protection of the rights of the Lenders in connection with this Agreement, the Notes or any other Fundamental Document, and with respect to any action which may be instituted by any Person against any Lender in respect of the foregoing, or as a result of any transaction, action or nonaction arising from the foregoing, including but not limited to the reasonable and documented fees and disbursements of any counsel for the Lenders, provided, however, that the Borrower shall not be liable for the fees and expenses of more than one separate firm for the Lenders (unless there shall exist an actual conflict of interest among such Persons, and in such case, not more than two separate firms) in connection with any one such action or any separate but substantially similar or related actions in the same jurisdiction, nor shall the Borrower be liable for any settlement or any proceeding effected without the Borrower's written consent. Such payments shall be made on the Closing Date and thereafter on demand. The obligations of the Borrower under this Section shall survive the termination of this Agreement and/or the payment of the Loans.

**SECTION 10.5.**     Indemnity.

Further, by the execution hereof, the Borrower agrees to indemnify and hold harmless the Administrative Agent and the Lenders and their respective directors, officers, employees and agents (each, an "Indemnified Party") from and against any and all expenses (including reasonable and documented fees and disbursements of counsel), losses, claims, damages and liabilities arising out of any claim, litigation, investigation or proceeding (regardless of whether any such Indemnified Party is a party thereto) in any way relating to the transactions contemplated hereby, but excluding therefrom all expenses, losses, claims, damages, and liabilities arising out of or resulting from the gross negligence or willful misconduct of the Indemnified Party seeking indemnification or any of its Related Parties, provided, however, the Borrower shall not be liable for the fees and expenses of more than one separate firm for all such Indemnified Parties (unless there shall exist an actual conflict of interest among such Indemnified Parties, and in such case, not more than two separate firms) in connection with any one such action or any separate but substantially similar or related actions in the same jurisdiction, nor shall the Borrower be liable for any settlement of any proceeding effected without the Borrower's written consent, and provided further, however, that this Section 10.5 shall not be construed to expand the scope of the reimbursement obligations of the Borrower specified in Section 10.4. The obligations of the Borrower under this Section 10.5 shall survive the termination of this Agreement and/or payment of the Loans.

**SECTION 10.6.**     CHOICE OF LAW

THIS AGREEMENT AND THE NOTES HAVE BEEN EXECUTED AND DELIVERED IN THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED BY, THE LAWS OF SUCH STATE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED WHOLLY WITHIN SUCH STATE AND, IN THE CASE OF PROVISIONS RELATING TO INTEREST RATES, ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

**SECTION 10.7.**     No Waiver

No failure on the part of the Administrative Agent or any Lender to exercise, and no delay in exercising, any right, power or remedy hereunder or under the Notes shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or



further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

**SECTION 10.8. Extension of Maturity**

Except as otherwise specifically provided in Section 1 or 8 hereof, should any payment of principal of or interest on the Notes or any other amount due hereunder become due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, in the case of principal, interest shall be payable thereon at the rate herein specified during such extension.

**SECTION 10.9. Amendments, etc.**

Except as set forth in Section 10.9(b), no modification, amendment or waiver of any provision of this Agreement, and no consent to any departure by the Borrower herefrom or therefrom, shall in any event be effective unless the same shall be in writing and signed or consented to in writing by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given; provided, however, that no such modification or amendment shall without the written consent of each Lender affected thereby alter the stated maturity or principal amount of any Loan or decrease the rate of interest payable thereon or extend the scheduled date of any payment thereof; and provided, further that no such modification or amendment shall without the written consent of all of the Lenders (i) amend or modify any provision of this Agreement which provides for the unanimous consent or approval of the Lenders or (ii) amend this Section 10.9 or the definition of Required Lenders. No such amendment or modification may adversely affect the rights and obligations of the Administrative Agent hereunder without its prior written consent. No notice to or demand on the Borrower shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstances. Each holder of a Note shall be bound by any amendment, modification, waiver or consent authorized as provided herein, whether or not a Note shall have been marked to indicate such amendment, modification, waiver or consent and any consent by any holder of a Note shall bind any Person subsequently acquiring a Note, whether or not a Note is so marked.

**SECTION 10.10. Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**SECTION 10.11. SERVICE OF PROCESS; WAIVER OF JURY TRIAL**

(a) THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE STATE COURTS OF THE STATE OF NEW YORK LOCATED IN NEW YORK COUNTY AND TO THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF BROUGHT BY THE ADMINISTRATIVE AGENT OR A LENDER. THE BORROWER TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) HEREBY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH COURTS, ANY CLAIM THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF THE ABOVE-NAMED COURTS, THAT ITS PROPERTY IS EXEMPT OR IMMUNE FROM ATTACHMENT OR

EXECUTION, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS AGREEMENT OR THE SUBJECT MATTER HEREOF MAY NOT BE ENFORCED IN OR BY SUCH COURT, AND (B) HEREBY WAIVES THE RIGHT TO ASSERT IN ANY SUCH ACTION, SUIT OR PROCEEDING ANY OFFSETS OR COUNTERCLAIMS EXCEPT COUNTERCLAIMS THAT ARE COMPULSORY OR OTHERWISE ARISE FROM THE SAME SUBJECT MATTER. THE BORROWER HEREBY CONSENTS TO SERVICE OF PROCESS BY MAIL AT ITS ADDRESS TO WHICH NOTICES ARE TO BE GIVEN PURSUANT TO SECTION 10.1 HEREOF. THE BORROWER AGREES THAT ITS SUBMISSION TO JURISDICTION AND CONSENT TO SERVICE OF PROCESS BY MAIL IS MADE FOR THE EXPRESS BENEFIT OF THE ADMINISTRATIVE AGENT AND THE LENDERS. FINAL JUDGMENT AGAINST THE BORROWER IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN ANY OTHER JURISDICTION (A) BY SUIT, ACTION OR PROCEEDING ON THE JUDGMENT, A CERTIFIED OR TRUE COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND THE AMOUNT OF INDEBTEDNESS OR LIABILITY OF THE SUBMITTING PARTY THEREIN DESCRIBED OR (B) IN ANY OTHER MANNER PROVIDED BY, OR PURSUANT TO, THE LAWS OF SUCH OTHER JURISDICTION, PROVIDED, HOWEVER, THAT THE ADMINISTRATIVE AGENT OR A LENDER MAY AT ITS OPTION BRING SUIT, OR INSTITUTE OTHER JUDICIAL PROCEEDINGS AGAINST THE BORROWER OR ANY OF ITS ASSETS IN ANY STATE OR FEDERAL COURT OF THE UNITED STATES OR OF ANY COUNTRY OR PLACE WHERE THE BORROWER OR SUCH ASSETS MAY BE FOUND.

(b) TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING OR WHETHER IN CONTRACT OR TORT OR OTHERWISE. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED THAT THE PROVISIONS OF THIS SECTION 10.11(b) CONSTITUTE A MATERIAL INDUCEMENT UPON WHICH THE OTHER PARTIES HAVE RELIED, ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. THE PARTIES HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.11(b) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF SUCH OTHER PARTY TO THE WAIVER OF ITS RIGHTS TO TRIAL BY JURY.

**SECTION 10.12.** Headings

Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

**SECTION 10.13.** Execution in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same instrument.

**SECTION 10.14.** Entire Agreement

This Agreement represents the entire agreement of the parties with regard to the subject matter hereof and the terms of any letters and other documentation entered into among the Borrower, the Administrative Agent, the Syndication Agent or any Lender (other than the provisions of the letter

agreement dated January 18, 2005, among the Borrower, J.P. Morgan Securities Inc. and Citigroup Global Markets, Inc.) prior to the execution of this Agreement which relate to Loans to be made shall be replaced by the terms of this Agreement.

**SECTION 10.15. Confidentiality.**

Each of the Administrative Agent and the Lenders agrees that it will not use, either directly or indirectly, any of the Confidential Information except in connection with this Agreement and the transactions contemplated hereby. Neither the Administrative Agent or any Lender shall disclose to any Person the Confidential Information, except

(a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other professional advisors who need to know the Confidential Information for purposes related to this Agreement or any other Fundamental Document or any transactions contemplated thereby or reasonably incidental to the administration of this Agreement or the other Fundamental Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Confidential Information and agree to keep such Confidential Information confidential in accordance with the provisions of this Section 10.15),

(b) to the extent requested by any regulatory authority having jurisdiction over it or its Affiliates,

(c) to the extent required by Applicable Law, regulations or by any subpoena or similar legal process, provided that the Administrative Agent, or such Lender, as the case may be, shall request confidential treatment of such Confidential Information to the extent permitted by Applicable Law and the Administrative Agent, or such Lender, as the case may be, shall, to the extent permitted by Applicable Law, promptly inform the Borrower with respect thereto so that the Borrower may seek appropriate protective relief to the extent permitted by Applicable Law, provided further that in the event that such protective remedy or other remedy is not obtained, the Administrative Agent, or such Lender, as the case may be, shall furnish only that portion of the Confidential Information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature,

(d) to any other Lender party to this Agreement,

(e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder,

(f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations,

(g) with the prior written consent of the Borrower or

(h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 10.15 or (ii) becomes available to the Administrative Agent, or any Lender on a nonconfidential basis from a source other than the Borrower, its Affiliates or Representatives, which source, to the reasonable knowledge of the Administrative Agent, or any Lender, as may be appropriate, is not prohibited from disclosing such Confidential Information to the Administrative Agent, or such Lender by a contractual, legal or fiduciary obligation, to the Borrower, the Administrative Agent or any Lender.

(i) Neither the Administrative Agent nor any Lender shall make any public announcement, advertisement, statement or communication regarding the Borrower, its Affiliates or this Agreement or the transactions contemplated hereby without the prior written consent of the Borrower. The obligations of the Administrative Agent and each Lender under this Section 10.15 shall survive the termination or expiration of this Agreement.

**SECTION 10.16. USA PATRIOT Act**

Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act. The Borrower shall promptly provide such information upon request by any Lender. In connection therewith, each Lender hereby agrees that the confidentiality provisions set forth in Section 10.15 shall apply to any non-public information provided to it by the Borrower and its Subsidiaries pursuant to this Section 10.16.

**SECTION 10.17. Replacement of Lenders**

If any Lender refuses to consent to an amendment, modification or waiver of this Agreement that is approved by the Required Lenders pursuant to Section 10.9 (a "Non-Consenting Lender"), if any Lender is a Defaulting Lender, or under any other circumstances set forth herein expressly providing that the Borrower shall have the right to replace a Lender as a party to this Agreement, the Borrower may, upon notice to such Lender and the Administrative Agent, replace such Lender by causing such Lender to assign its Commitment (with the assignment fee to be paid by the Borrower in such instance) pursuant to Section 10.3 to one or more banks or other entities procured by the Borrower upon receipt of all amounts due and owing to it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and the year first above written.

CENDANT CORPORATION,  
as Borrower

By: /s/ Ronald L. Nelson

Name: Ronald L. Nelson

Title: President and Chief Financial Officer

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent and Lender

By: /s/ Robert Sacks

Name: Robert Sacks

Title: Managing Director

CITICORP NORTH AMERICA, INC.,  
as Syndication Agent and Lender

By: /s/ William G. Martens, III

Name: William G. Martens, III

Title: Managing Director

SUMITOMO MITSUI BANKING CORPORATION

By: /s/ Edward McColly

Name: Edward McColly

Title: Vice President & Department Head

THE BANK OF TOKYO-MITSUBISHI, LTD., NEW YORK BRANCH

By: /s/ Linda Tam

Name: Linda Tam

Title: Authorized Signatory

THE ROYAL BANK OF SCOTLAND PLC

as Syndication Agent and Lender

By: /s/ Bruce Ferguson

Name: Bruce Ferguson

Title: Senior Vice President

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**PURCHASE AGREEMENT**

Dated as of April 25, 2000

by and between

**CENDANT MOBILITY SERVICES CORPORATION**

as Originator

and

**CENDANT MOBILITY FINANCIAL CORPORATION**

as Buyer

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ARTICLE I  
DEFINITIONS

ARTICLE II  
SALE AND PURCHASE OF ASSETS

Section 2.1	Sale and Purchase	1
Section 2.2	Purchases	3
Section 2.3	No Assumption	3
Section 2.4	No Recourse	3
Section 2.5	True Sales	4
Section 2.6	Servicing of CMSC Purchased Assets	4
Section 2.7	Financing Statements	4

ARTICLE III  
CALCULATION OF CMF PURCHASE PRICE

Section 3.1	Calculation of the CMF Purchase Price	4
-------------	---------------------------------------	---

ARTICLE IV  
PAYMENT OF CMF PURCHASE PRICE

Section 4.1	CMF Purchase Price Payments	5
Section 4.2	The CMF Subordinated Note	5
Section 4.3	Originator Adjustments	5
Section 4.4	Payments and Computations, Etc.	7

ARTICLE V  
CONDITIONS PRECEDENT

Section 5.1	Conditions Precedent to Sales and Purchases	8
Section 5.2	Conditions Precedent to CMF Subordinated Loans	8

**TABLE OF CONTENTS**  
**(continued)**

Page

ARTICLE VI  
REPRESENTATIONS AND WARRANTIES

Section 6.1	Representations and Warranties of the Originator	8
Section 6.2	Representations and Warranties of the Buyer	14

ARTICLE VII  
GENERAL COVENANTS

Section 7.1	Affirmative Covenants of the Originator	14
Section 7.2	Reporting Requirements	18
Section 7.3	Negative Covenants of the Originator	20
Section 7.4	Affirmative Covenants of the Buyer	22

ARTICLE VIII  
ADDITIONAL RIGHTS AND OBLIGATIONS IN  
RESPECT OF THE CMSC PURCHASED ASSETS

Section 8.1	Rights of the Buyer	23
Section 8.2	Responsibilities of the Originator	24
Section 8.3	Further Action Evidencing Purchases	24
Section 8.4	CMSC Collections; Rights of the Buyer and its Assignees	25

ARTICLE IX  
TERMINATION

Section 9.1	CMF Purchase Termination Events	26
Section 9.2	Purchase Termination	27

ARTICLE X  
INDEMNIFICATION; SECURITY INTEREST

Section 10.1	Indemnities by the Originator	28
Section 10.2	Security Interest	30

**TABLE OF CONTENTS**  
**(continued)**

Page

ARTICLE XI MISCELLANEOUS		
Section 11.1	Amendments; Waivers, Etc.	30
Section 11.2	Notices, Etc	30
Section 11.3	Cumulative Remedies	31
Section 11.4	Binding Effect; Assignability; Survival of Provisions	31
Section 11.5	Governing Law	31
Section 11.6	Costs, Expenses and Taxes	31
Section 11.7	Submission to Jurisdiction	31
Section 11.8	Waiver of Jury Trial	32
Section 11.9	Integration	32
Section 11.10	Captions and Cross References	33
Section 11.11	Execution in Counterparts	33
Section 11.12	Acknowledgment and Consent	33
Section 11.13	No Partnership or Joint Venture	34
Section 11.14	No Proceedings	34
Section 11.15	Severability of Provisions	34
Section 11.16	Recourse to the Buyer	34
Section 11.17	Confidentiality	34

APPENDIX

APPENDIX A

Definitions

SCHEDULES

SCHEDULE 2.1

List of Pool Relocation Management Agreements

SCHEDULE 6.1(n)

Principal Place of Business and Chief Executive Office of the Originator and List of Offices Where the Originator Keeps CMSC Records

SCHEDULE 6.1(s)

List of Legal Names for Cendant Mobility Services Corporation

SCHEDULE 11.2

Notice Addresses

EXHIBITS

EXHIBIT 2.1

Form of Notice of Additional Pool Relocation Management Agreements

EXHIBIT 4.2

Form of CMF Subordinated Note

EXHIBIT 6.1(u)

Credit and Collection Policy

EXHIBIT 7.3(j)

Form of Acknowledgment Letter

EXHIBIT C

Forms of Relocation Management Agreements

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "**Agreement**") dated as of April 25, 2000 made by and between CENDANT MOBILITY SERVICES CORPORATION, a Delaware corporation, as originator (the "**Originator**") and Cendant Mobility Financial Corporation, a Delaware corporation, as buyer (the "**Buyer**").

WHEREAS, the Originator wishes to sell Receivables and Related Assets that it now owns and Receivables and Related Assets that it from time to time hereafter will own to the Buyer, and the Buyer is willing to purchase such Receivables and Related Assets from the Originator from time to time, on the terms and subject to the conditions contained in this Agreement; and

WHEREAS, the Buyer intends to transfer the CMSC Purchased Assets, together with additional Receivables and Related Assets that the Buyer from time to time hereafter will own, to Apple Ridge Services Corporation ("**ARSC**") from and after the Closing Date pursuant to the terms of the Receivables Purchase Agreement;

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

ARTICLE I  
DEFINITIONS

Capitalized terms used and not otherwise defined in this Agreement have the meanings specified in Part A of Appendix A. In addition, this Agreement shall be interpreted in accordance with the conventions set forth in Parts B, C and D of Appendix A.

ARTICLE II  
SALE AND PURCHASE OF ASSETS

Section 2.1 Sale and Purchase.

(a) Agreement. Upon the terms and subject to the conditions hereof, the Buyer agrees to buy, and the Originator agrees to sell, all of the Originator's right, title and interest in and to the following:

(i) all Receivables owned by the Originator at the close of business on the Business Day preceding the Closing Date or thereafter created and arising (collectively, the “**Originator Receivables**”);

(ii) all Related Property with respect to the Originator Receivables (collectively, the “**Originator Related Property**”);

(iii) all CMSC Collections;

(iv) all proceeds of and earnings on any of the foregoing; and

(v) all of the right, title and interest, if any, CMSC has in, to or under the CMF Designated Receivables, including all Related Property with respect thereto, rights, any, to reimbursement of, or interest on, such CMF Designated Receivables and all proceeds thereof;

it being understood and agreed that the Originator does not hereby sell, transfer or convey any of its right, title or interest in any Excluded Assets or Excluded Contracts.

The items listed above in clauses (ii), (iii) and (iv), whenever and wherever arising, are collectively referred to herein as the “**Originator Related Assets**.” The Originator Receivables and the Originator Related Assets are sometimes collectively referred to herein as the “**Originator Assets**.”

It is the intent of the parties hereto that CMSC not have any right, title, or interest in, to, or under the CMF Designated Receivables or the other property listed in clause (v) above, and such CMF Designated Receivables and other property is included in the property being sold hereunder solely in case it should be determined, contrary to the intent of the parties hereto, that CMSC does have any right, title, or interest in the CMF Designated Receivables or the other property listed in clause (v) above.

As used herein, “**CMSC Receivables**” means Originator Receivables that are being Purchased or have been Purchased by the Buyer hereunder; “**CMSC Related Property**” means Originator Related Property that is being Purchased or has been Purchased by the Buyer hereunder; “**CMSC Related Assets**” means Originator Related Assets that are being Purchased or have been Purchased by the Buyer hereunder; and “**CMSC Purchased Assets**” means Originator Assets that are being Purchased or have been Purchased by the Buyer hereunder.

Schedule 2.1 sets forth a list of all Relocation Management Agreements subject to this Agreement (each, a “**Pool Relocation Management Agreement**”) as of the Closing Date. Each new Relocation Management Agreement that is not an Excluded Contract and that is entered into by the Originator during any month shall be added to the Pool Relocation Management Agreements on or after the last day of such month by delivering a written notice in the form of Exhibit 2.1 to the Buyer or its designee, whereupon Schedule 2.1 shall be amended by the Originator to add such new Relocation Management Agreement to the list of Pool Relocation Management Agreements set forth therein. A copy of such Exhibit 2.1 appended to

the Receivables Activity Report for such month, upon delivery to the Indenture Trustee, shall be sufficient evidence of inclusion. On or prior to the date of the delivery of any such notice, the Originator shall indicate, or cause to be indicated, in its computer files, books and records that the CMSC Receivables and other CMSC Purchased Assets then existing and thereafter created pursuant to or in connection with each such Pool Relocation Management Agreement are being transferred to the Buyer pursuant to this Agreement.

(b) Treatment of Certain Receivables and Related Assets. It is expressly understood that (i) each CMSC Receivable sold to the Buyer hereunder, together with all CMSC Related Assets then existing or thereafter created and arising with respect thereto, will thereafter be the property of the Buyer (or its assignees), without the necessity of any further purchase or other action by the Buyer (other than satisfaction of the conditions set forth herein) and (ii) the change of a Receivable's status from that of Unsold Home Receivable to Unbilled Receivable or from Unbilled Receivable to Billed Receivable shall not be deemed the creation of a new Receivable for any purpose.

Section 2.2 Purchases. On the Closing Date, the Buyer shall purchase all of the Originator's right, title and interest in and to all Originator Assets and any property described in clause (v) of Section 2.1(a) existing as of the close of business on the immediately preceding Business Day. On each Business Day thereafter until the Termination Date, the Buyer shall purchase all of the Originator's right, title and interest in and to all Originator Assets and any property described in clause (v) of Section 2.1 (a) existing as of the close of business on the immediately preceding Business Day that were not previously purchased by the Buyer hereunder. Notwithstanding the foregoing, if an Insolvency Proceeding is pending with respect to either the Originator or the Buyer prior to the Termination Date, the Originator shall not sell, and the Buyer shall not buy, any Originator Assets hereunder unless and until such Insolvency Proceeding is dismissed or otherwise terminated.

Section 2.3 No Assumption. The sales and Purchases of CMSC Purchased Assets do not constitute and are not intended to result in a creation or an assumption by the Buyer or its successors and assigns of any obligation of the Originator or any other Person in connection with the CMSC Purchased Assets (other than any such obligations as may arise from the ownership of CMSC Receivables) or under the related Contracts or any other agreement or instrument relating thereto, including without limitation any obligation to any Obligor or Transferred Employees. None of the Servicer, the Buyer or the Buyer's assignees shall have any obligation or liability to any Obligor, Transferred Employee or other customer or client of the Originator (including without limitation any obligation to perform any of the obligations of the Originator under any Relocation Management Agreement, CMSC Home Purchase Contract, CMSC Related Property or any other agreement), except such obligations as may arise from the ownership of the CMSC Receivables. Except as expressly provided in Section 3.05(k) of the Transfer and Servicing Agreement, no such obligation or liability to any Obligor, Transferred Employee or other customer or client of the Originator is intended to be assumed by the Servicer or its successors and assigns hereunder or under the Transfer and Servicing Agreement, and any such assumption is expressly disclaimed.

**Section 2.4** **No Recourse.** Except as specifically provided in this Agreement, the sale and Purchase of the CMSC Purchased Assets and any interest of CMSC in and to the CMF Designated Receivables and other property described in clause (v) of Section 2.1(a) under this Agreement shall be without recourse to the Originator; provided, however, that the Originator shall be liable to the Buyer for all representations, warranties, covenants and indemnities made by it pursuant to the terms of this Agreement (it being understood that such obligations of the Originator will not arise solely on account of the credit-related inability of an Obligor to pay a Receivable).

**Section 2.5** **True Sales.** The Originator and the Buyer intend the transfers of CMSC Purchased Assets hereunder to be true sales by the Originator to the Buyer that are absolute and irrevocable and to provide the Buyer with the full benefits of ownership of the CMSC Purchased Assets, and neither the Originator nor the Buyer intends the transactions contemplated hereunder to be, or for any purpose to be characterized as, loans from the Buyer to the Originator, secured by the CMSC Purchased Assets.

**Section 2.6** **Servicing of CMSC Purchased Assets.** Consistent with the Buyer's ownership of all CMSC Purchased Assets and subject to the terms of the Pool Relocation Management Agreements, as between the parties to this Agreement, the Buyer shall have the sole right to service, administer and collect all CMSC Purchased Assets, to assign such right and to delegate such right to others. In consideration of the Buyer's purchase of the CMSC Purchased Assets and as more fully set forth in Section 11.12, the Originator hereby acknowledges and agrees that the Buyer intends to assign for the benefit of ARSC and its successors and assigns the rights and interests granted by the Originator to the Buyer hereunder, and agrees to cooperate fully with the Issuer and its successors and assigns in the exercise of such rights.

**Section 2.7** **Financing Statements.** In connection with the transfer described above, the Originator agrees, at its expense, to record and file financing statements (and continuation statements when applicable) with respect to the CMSC Purchased Assets conveyed by the Originator meeting the requirements of applicable law in such manner and in such jurisdictions as are necessary to perfect and maintain the perfection of the transfer and assignment of its interest in the CMSC Purchased Assets to the Buyer, and to deliver a file stamped copy of each such financing statement or other evidence of such filing to the Buyer as soon as practicable after the Closing Date; provided, however, that prior to recordation pursuant to Section 8.3 or the sale of a CMSC Home to an Ultimate Buyer, record title to such CMSC Home may remain in the name of the related Transferred Employee and no recordation in real estate records of the conveyance pursuant to the related CMSC Home Purchase Contract or CMSC Home Sale Contract shall be made except as otherwise required or permitted under Section 2.01(d)(i) of the Transfer and Servicing Agreement.



ARTICLE III  
CALCULATION OF CMF PURCHASE PRICE

Section 3.1 Calculation of the CMF Purchase Price.

(a) On each Business Day from and including the Closing Date to but excluding the Termination Date, the Originator shall deliver to the Buyer an accounting (each, a “**Daily Originator Report**”) with respect to (i) the Purchases of CMSC Purchased Assets to be made on such Business Day and (ii) the CMF Purchase Price to be paid on account of the foregoing as calculated in accordance with this Section 3.1.

(b) With respect to the Purchase of any CMSC Purchased Assets by the Buyer from the Originator pursuant to Article II, (i) on the Closing Date, the Buyer shall pay to the Originator a purchase price equal to \$654,199,874, and (ii) on any day thereafter, the Buyer shall pay to the Originator a purchase price equal to the fair market value thereof, using a discount rate and expected collection period to be recalculated monthly based on the Buyer’s weighted cost of funds and Average Days Outstanding for the prior month and assuming a reasonable return on the Buyer’s equity (each such purchase price, the “**CMF Purchase Price**”), and adjusted to reflect such factors as the Originator and the Buyer mutually agree will result in a CMF Purchase Price determined to be the fair market value of such CMSC Purchased Assets. The sale of the property described in clause (v) of Section 2.1(a) is in consideration of CMF funding the CMF Designated Receivables or the obligation of the Issuer to reimburse the Servicer for advances in respect of such CMF Designated Receivables.

ARTICLE IV  
PAYMENT OF CMF PURCHASE PRICE

Section 4.1 CMF Purchase Price Payments. On the terms and subject to the conditions of this Agreement, the Buyer shall pay to the Originator on the Closing Date the CMF Purchase Price for the CMSC Purchased Assets sold on such date, by paying such CMF Purchase Price to the Originator in cash. On the terms and subject to the conditions of this Agreement, the Buyer shall pay to the Originator, on each other Business Day on which any CMSC Purchased Assets are purchased from the Originator by the Buyer pursuant to Article II, the CMF Purchase Price for such CMSC Purchased Assets by paying such CMF Purchase Price to the Originator in cash.

Section 4.2 The CMF Subordinated Note. On the Closing Date, the Buyer shall deliver to the Originator the CMF Subordinated Note in the form set forth as Exhibit 4.2. Subject to the limitations set forth in the CMF Subordinated Note, the Originator irrevocably agrees to make each advance (each, a “**CMF Subordinated Loan**”) requested by the Buyer on or prior to the Termination Date for the sole purposes of acquiring CMF Homes pursuant to CMF Home Purchase Contracts (including the making of Equity Payments), making Mortgage Payoffs and Mortgage Payments with respect to CMF Homes and making Seller Adjustments under the Receivables Purchase Agreement. No advance shall be made under the CMF

Subordinated Note on any date if the aggregate principal amount outstanding thereunder on such date, after giving effect to such advance, would exceed an amount equal to five times the net worth of the Buyer (such maximum amount required to be advanced at any time, the “**CMF Subordinated Note Cap**”). The CMF Subordinated Loans shall be evidenced by, and shall be payable as provided in, the CMF Subordinated Note. Notwithstanding any other provision of this Agreement, under no circumstances shall funds borrowed under the CMF Subordinated Note be used for the purpose of paying the CMF Purchase Price for the CMSC Purchased Assets.

**Section 4.3**                      [Originator Adjustments.](#)

(a)                      With respect to any CMSC Receivable purchased by the Buyer from the Originator, if on any day the Buyer (or its assigns), the Servicer or the Originator determines that (i) such CMSC Receivable (A) was not identified by the Originator in the Daily Originator Report as other than an Eligible Receivable on the Business Day such CMSC Receivable was sold hereunder or (B) was otherwise treated as or represented to be an Eligible Receivable in any Receivables Activity Report, but was not in fact an Eligible Receivable on such date or (ii) any of the representations or warranties set forth in Section 6.1(d) or 6.1(k) was not true when made with respect to such CMSC Receivable or the related CMSC Related Assets (each such CMSC Receivable described in clause (i) or clause (ii), a “**CMSC Noncomplying Asset**”), then the Originator shall pay the aggregate Unpaid Balance of such CMSC Receivables (such payment, a “**CMSC Noncomplying Asset Adjustment**”) to the Buyer in accordance with Section 4.3(c).

(b)                      If on any day the Unpaid Balance of any CMSC Receivable (i) is reduced as a result of any cash discount or any adjustment by the Originator or any Affiliate of the Originator (other than the Buyer, ARSC or the Issuer), (ii) is subject to reduction on account of any offsetting account payable of the Originator to an Obligor or is reduced or cancelled as a result of a set-off in respect of any claim by, or defense or credit of, the related Obligor against the Originator or any Affiliate of the Originator (other than the Buyer, ARSC or the Issuer) (whether such claim, defense or credit arises out of the same or a related or an unrelated transaction) or (iii) is reduced on account of the obligation of the Originator to pay to the related Obligor any rebate or refund (each of the reductions and cancellations described above in clauses (i) through (iii), an “**Originator Dilution Adjustment**”), then the Originator shall pay such Originator Dilution Adjustment to the Buyer in accordance with Section 4.3(c).

(c)                      On each Business Day, the Originator shall pay to the Buyer, in cash in accordance with Section 4.4, an amount (an “**Originator Adjustment**”) equal to the sum of (A) the aggregate Originator Dilution Adjustment, if any, for each day from and including the immediately preceding Business Day plus (B) the CMSC Noncomplying Asset Adjustment, if any, for each day from and including the immediately preceding Business Day. The CMSC Receivables that gave rise to any Originator Dilution Adjustment and any related CMSC Related Assets shall remain the property of the Buyer. From and after the day on which any CMSC Noncomplying Asset Adjustment is made, any collections received by the Buyer that are identified as proceeds of the Receivables that gave rise to such CMSC Noncomplying Asset Adjustment and any Related Property with respect to such Receivable shall be promptly returned to the Originator.

[Section 4.4](#) [Payments and Computations, Etc.](#) All amounts to be paid by the Originator to the Buyer hereunder shall be paid in accordance with the terms hereof no later than 11:00 a.m. (New York time) on the day when due in United States dollars in immediately available funds to an account specified in writing from time to time by the Buyer or its designee. Payments received by the Buyer after such time shall be deemed to have been received on the next Business Day. If any payment becomes due on a day that is not a Business Day, then such payment shall be made on the next succeeding Business Day. The Originator shall pay to the Buyer, on demand, interest on all amounts not paid when due hereunder at a rate equal to the Prime Rate plus 2% per annum; provided, however, that such interest rate shall not at any time exceed the maximum rate permitted by applicable law. All computations of interest payable hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed (including the first day but excluding the last day). All payments made under this Agreement shall be made without set-off or counterclaim.

#### ARTICLE V CONDITIONS PRECEDENT

[Section 5.1](#) [Conditions Precedent to Sales and Purchases.](#) No Purchase of CMSC Purchased Assets shall be made hereunder on any date on which the Buyer does not have sufficient funds available to pay the CMF Purchase Price in cash.

[Section 5.2](#) [Conditions Precedent to CMF Subordinated Loans.](#) The Originator's obligation to make each CMF Subordinated Loan under this Agreement shall be subject to the conditions precedent that on the date of such CMF Subordinated Loan:

- (a) the CMF Subordinated Note shall have been duly executed and delivered by the Buyer and shall be in full force and effect;
- (b) no Event of Bankruptcy shall have occurred and be continuing with respect to the Buyer; and
- (c) after giving effect to such CMF Subordinated Loan, the aggregate outstanding principal amount of the CMF Subordinated Note shall not exceed the CMF Subordinated Note Cap.

#### ARTICLE VI REPRESENTATIONS AND WARRANTIES

[Section 6.1](#) [Representations and Warranties of the Originator.](#) In order to induce the Buyer to enter into this Agreement and to make Purchases hereunder, the Originator hereby makes the representations and warranties set forth in this Section 6.1, in each case as of

the date hereof, as of the Closing Date, as of the date of each Purchase hereunder and as of any other date specified in such representation and warranty.

(a) Organization and Good Standing. The Originator is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has full power and authority to own its properties and to conduct its business as such properties are presently owned and such business is presently conducted. The Originator had at all relevant times, and now has, all necessary power, authority and legal right to own and sell the CMSC Purchased Assets.

(b) Due Qualification. The Originator is duly qualified to do business, is in good standing as a foreign corporation, and has obtained all necessary licenses and approvals in all jurisdictions in which the ownership or lease of property or the conduct of its business requires such qualification, licenses or approvals and in which the failure so to qualify or to obtain such licenses and approvals or to preserve and maintain such qualification, licenses or approvals could reasonably be expected to give rise to a Material Adverse Effect.

(c) Power and Authority: Due Authorization. The Originator (i) has all necessary corporate power and authority (A) to execute and deliver this Agreement, the Contracts and the other Transaction Documents to which it is a party, (B) to perform its obligations under this Agreement, the Contracts and the other Transaction Documents to which it is a party and (C) to sell and assign the CMSC Purchased Assets transferred hereunder on and after such date, on the terms and subject to the conditions herein and therein provided and (ii) has duly authorized by all necessary corporate action such sale and assignment and the execution, delivery and performance of, and the consummation of the transactions provided for in, this Agreement, the Contracts and the other Transaction Documents to which it is a party.

(d) Valid Sale; Binding Obligations. This Agreement constitutes a valid sale, transfer, set-over and conveyance to the Buyer of all of the Originator's right, title and interest in, to and under the CMSC Receivables transferred hereunder on such date, which is perfected and of first priority (subject to Permitted Liens and Permitted Exceptions) under the UCC and other applicable law, enforceable against creditors of, and purchasers from, the Originator, free and clear of any Lien (other than Permitted Liens); and this Agreement constitutes, and each other Transaction Document to which the Originator is a party when duly executed and delivered will constitute, a legal, valid and binding obligation of the Originator, enforceable against the Originator in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law. The Originator has no right, title or interest in or to any CMF Home, CMF Home Purchase Contract or any Receivable created or arising under any CMF Home Purchase Contract.

(e) No Conflict or Violation. The execution, delivery and performance of, and the consummation of the transactions contemplated by, this Agreement and the other Transaction Documents to be signed by the Originator, and the fulfillment of the terms hereof

and thereof, will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a material default under (A) the certificate of incorporation or the by-laws of the Originator or (B) any material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument to which the Originator is a party or by which it or any of its properties is bound, (ii) result in the creation or imposition of any Lien on any of the CMSC Purchased Assets pursuant to the terms of any such material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument other than this Agreement and the other Transaction Documents or (iii) conflict with or violate any federal, state, local or foreign law or any decision, decree, order, rule or regulation applicable to the Originator or of any federal, state, local or foreign regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Originator, which conflict or violation described in this clause (iii), individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Litigation and Other Proceedings. (i) There is no action, suit, proceeding or investigation pending, or to the best knowledge of the Originator threatened, against the Originator before any court, arbitrator, regulatory body, administrative agency or other tribunal or governmental instrumentality and (ii) the Originator is not subject to any order, judgment, decree, injunction, stipulation or consent order of or with any court or other government authority that, in the case of either of the foregoing clauses (i) or (ii), (A) asserts the invalidity of this Agreement or any other Transaction Document, (B) seeks to prevent the sale of any CMSC Purchased Asset by the Originator to the Buyer, the creation of a material amount of CMSC Receivables or the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document, (C) seeks any determination or ruling that, in the reasonable judgment of the Originator, would materially and adversely affect the performance by the Originator of its obligations under this Agreement or any other Transaction Document to which it is a party or the validity or enforceability of this Agreement or any other Transaction Document to which it is a party or (D) individually or in the aggregate for all such actions, suits, proceedings and investigations could reasonably be expected to have a Material Adverse Effect.

(g) Governmental Approvals. Except where the failure to obtain or make such authorization, consent, order, approval or action could not reasonably be expected to have a Material Adverse Effect, (i) all authorizations, consents, orders and approvals of, or other actions by, any Governmental Authority that are required to be obtained by the Originator in connection with the conveyance of the CMSC Purchased Assets transferred hereunder on and after such date, or the due execution, delivery and performance by the Originator of this Agreement or any other Transaction Document to which it is a party and the consummation of the transactions contemplated by this Agreement or any other Transaction Documents to which it is a party have been obtained or made and are in full force and effect and (ii) all filings with any Governmental Authority that are required to be obtained in connection with such conveyance and the execution and delivery by the Originator of this Agreement have been made; provided, however, that prior to recordation pursuant to Section 8.3 or the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee and no recordation in real estate records of the conveyance pursuant to the related Home Purchase Contract or Home Sale Contract shall be made except as otherwise required or permitted under Section 2.01(d) (i) of the Transfer and Servicing Agreement.

(h) Margin Regulations. The Originator is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meanings of Regulations T, U and X of the Board of Governors of the Federal Reserve System). The Originator has not taken and will not take any action to cause the use of proceeds of the sales hereunder to violate said Regulations T, U or X.

(i) Taxes. The Originator has filed (or there have been filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to have been filed by it and has paid all taxes, assessments and governmental charges thereby shown to be owing by it, other than any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect.

(j) Solvency. After giving effect to the conveyance of CMSC Purchased Assets hereunder on such date, the Originator is solvent and able to pay its debts as they come due and has adequate capital to conduct its business as presently conducted.

(k) Quality of Title/Valid Transfers.

(i) Immediately before the Purchase to be made by the Buyer hereunder on such date, each CMSC Purchased Asset to be sold to the Buyer shall be owned by the Originator free and clear of any Lien (other than any Permitted Lien), and the Originator shall have made all filings and shall have taken all other action under applicable law in each relevant jurisdiction in order to protect and perfect the ownership interest of the Buyer and its successors and assigns in such CMSC Purchased Assets against all creditors of, and purchasers from, the Originator (subject to Permitted Exceptions).

(ii) With respect to each CMSC Receivable transferred hereunder on such date, the Buyer shall acquire a valid and (subject to Permitted Exceptions) perfected ownership interest in such CMSC Receivable and any identifiable proceeds thereof, free and clear of any Lien (other than any Permitted Liens).

(iii) Immediately prior to the sale of a CMSC Purchased Asset hereunder on such date, no effective financing statement or other instrument similar in effect that covers all or part of any CMSC Purchased Asset or any interest therein is on file in any recording office except such as may be filed (A) in favor of the Originator in accordance with the Pool Relocation Management Agreements, (B) in favor of the Buyer pursuant to this Agreement, (C) in favor of the Buyer's successors and assigns pursuant to the Receivables Purchase Agreement, the Transfer and Servicing Agreement or the Indenture or otherwise filed by or at the direction of the Buyer's successors and assigns or (D) to evidence any Mortgage on a CMSC Home created by a Transferred Employee.

(iv) The CMF Purchase Price constitutes reasonably equivalent value for the CMSC Purchased Assets conveyed in consideration therefor on such date, and no purchase of an interest in such CMSC Purchased Assets by the Buyer from the Originator constitutes a fraudulent transfer or fraudulent conveyance under the United States Bankruptcy Code or applicable state bankruptcy or insolvency laws or is otherwise void or voidable or subject to subordination under similar laws or principles or for any other reason.

(l) Eligible Receivables. Each CMSC Receivable included in the CMSC Purchased Assets transferred hereunder on such date, unless otherwise identified to the Buyer and its assignees by the Originator in the related Daily Originator Report, is an Eligible Receivable on such date.

(m) Accuracy of Information. All written information furnished by the Originator to the Buyer or its successors and assigns pursuant to or in connection with any Transaction Document or any transaction contemplated herein or therein with respect to the CMSC Purchased Assets transferred hereunder on such date is true and correct in all material respects on such date.

(n) Offices. The principal place of business and chief executive office of the Originator is located, and the offices where the Originator keeps all CMSC Records (and all original documents relating thereto) are located, at the addresses specified in Schedule 6.1(n), except that (i) Home Deeds and related documents necessary to close CMSC Home sale transactions, including powers of attorney, may be held by local attorneys or escrow agents acting on behalf of the Originator in connection with the sale of CMSC Homes to Ultimate Buyers, so long as such local attorneys are notified of the interest of the Buyer and the Buyer's assignees therein and (ii) CMSC Records relating to any Pool Relocation Management Agreement and the Receivables arising thereunder or in connection therewith may be maintained at the offices of the related Employer.

(o) Payment Instructions to Obligors. The Originator has instructed (i) all Obligors to remit all payments on the CMSC Purchased Assets directly to one of the Lockboxes or Lockbox Accounts, (ii) all Lockbox Banks to deposit all CMSC Collections remitted to a Lockbox directly to the related Lockbox Account and (iii) all Persons receiving CMSC Home Sale Proceeds to deposit such CMSC Home Sale Proceeds in one of the Lockboxes or Lockbox Accounts within two Business Days after receipt, except to the extent a longer escrow period is required under applicable law, in which case such CMSC Home Sale Proceeds shall be deposited into one of the Lockboxes or Lockbox Accounts within one Business Day after the expiration of such period.

(p) Investment Company Act. The Originator is not, and is not controlled by, an "investment company" registered or required to be registered under the Investment Company Act.

(q) Accounting for Certain Assets. (i) If the CMSC Receivables sold on such date hereunder had not been sold to the Buyer hereunder, and if interests therein had not been transferred by the Buyer in accordance with the Transaction Documents, all CMSC Receivables would have been and at all times would be represented in the financial statements and records of the Originator as accounts receivable or amounts owed from Obligor in accordance with GAAP consistently applied by the Originator and (ii) in accordance with GAAP consistently applied, upon the sale of any CMSC Home to an Ultimate Buyer, any such obligation relating to any Equity Payment, Mortgage Payoff or Mortgage Payment with respect to such CMSC Home would be reduced by the amount of the cash proceeds of the sale of such CMSC Home (in some cases, net of certain Direct Expenses relating to such CMSC Home).

(r) ERISA. Each Plan is in compliance with all applicable material provisions of ERISA, and the Originator or the relevant ERISA Affiliate has received a favorable determination letter from the Internal Revenue Service that each Plan intended to be qualified under Section 401(a) of the Code is so qualified. No Plan has incurred an "accumulated funding deficiency" (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived. Neither the Originator nor any ERISA Affiliate (i) has incurred or expects to incur any liability under Title IV of ERISA with respect to any Plan that could give rise to a lien in favor of the PBGC other than liability for the payment of premiums, all of which have been timely paid when due in accordance with Section 4007 of ERISA, (ii) has incurred or expects to incur any withdrawal liability within the meaning of Section 4201 of ERISA, (iii) is subject to any lien under Section 412(n) of the Code or Sections 302(f) or 4068 of ERISA or arising out of any action brought under Sections 4070 or 4301 of ERISA or (iv) is required to provide security to a Plan under Section 401(a)(29) of the Code. The PBGC has not instituted proceedings to terminate any Plan or to appoint a trustee or administrator of any such Plan, and no circumstances exist that constitute grounds under Section 4042 of ERISA to commence any such proceedings.

(s) Legal Names. Except as described in Schedule 6.1(s), since January 1, 1995, the Originator (i) has not been known by any legal name other than its corporate name as of the date hereof, except as otherwise permitted pursuant to Section 7.3(d), (ii) has not been the subject of any merger or other corporate reorganization that resulted in a change of name, identity or corporate structure and (iii) has not used any trade names other than its actual corporate name.

(t) Compliance with Applicable Laws. The Originator is in compliance with the requirements of all applicable laws, rules, regulations and orders of all Governmental Authorities (federal, state, local or foreign, including without limitation Environmental Laws), a violation of any of which, individually or in the aggregate for all such violations, is reasonably likely to have a Material Adverse Effect.

(u) Credit and Collection Policy. The copy of the Credit and Collection Policy of the Originator attached as Exhibit 6.1(u) to this Agreement is a true and complete copy thereof. As of the date each CMSC Purchased Asset is transferred hereunder, the Originator has complied in all applicable material respects with the Credit and Collection Policy with respect to such CMSC Purchased Asset transferred on such date and the related Contract. There has been



no change to the Credit and Collection Policy that would be reasonably likely to adversely affect the collectibility of any material portion of the CMSC Receivables or other CMSC Purchased Assets or to decrease the credit quality of any newly created CMSC Receivables or other CMSC Purchased Assets.

(v) Environmental. On such date, to the best knowledge of the Originator, (i) there are no (A) pending or threatened claims, complaints, notices or requests for information received by the Originator with respect to any alleged violation of any Environmental Law in connection with any CMSC Home relating to any CMSC Receivable transferred hereunder on such date or (B) pending or threatened claims, complaints, notices or requests for information received by the Originator regarding potential liability under any Environmental Law in connection with any CMSC Home relating to any CMSC Receivable transferred hereunder on such date and (ii) the Originator is in material compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters, if any, that are required to be held by it under applicable law in connection with any CMSC Homes relating to any CMSC Receivable transferred hereunder on such date, other than those that, in the case of either clause (i) or (ii), singly or in the aggregate, are not reasonably likely to have a Material Adverse Effect.

(w) Pool Relocation Management Agreements. The Pool Relocation Management Agreements include all Relocation Management Agreements to which the Originator is a party except for Excluded Contracts.

(x) Indebtedness for Borrowed Money. As of the Closing Date, the Originator has no Indebtedness for Borrowed Money.

Section 6.2 Representations and Warranties of the Buyer. The Buyer hereby represents and warrants, on and as of the date hereof and on and as of the Closing Date, that (a) this Agreement has been duly authorized, executed and delivered by the Buyer and constitutes the Buyer's valid, binding and legally enforceable obligation, except (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, (b) the execution, delivery and performance of this Agreement does not violate any federal, state, local or foreign law applicable to the Buyer or any agreement to which the Buyer is a party and (c) all of the outstanding capital stock of the Buyer is directly or indirectly owned by the Originator, and all such capital stock is fully paid and nonassessable.

ARTICLE VII  
GENERAL COVENANTS

**Section 7.1**                    Affirmative Covenants of the Originator. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Originator hereby agrees that it will perform the covenants and agreements set forth in this Section 7.1.

(a)                    Compliance with Laws, Etc. The Originator will comply in all material respects with all applicable laws, rules, regulations, judgments, decrees and orders (including without limitation those relating to the CMSC Receivables, CMSC Home Purchase Contracts, CMSC Related Assets and all Environmental Laws affecting any CMSC Home), in each case to the extent that any such failure to comply, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b)                    Preservation of Corporate Existence. The Originator (i) will preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation (other than any change in corporate status by reason of a merger or consolidation permitted by Section 7.3(c)) and (ii) will qualify and remain qualified in good standing as a foreign corporation in each jurisdiction in which the failure to preserve and maintain such qualification as a foreign corporation could reasonably be expected to have a Material Adverse Effect.

(c)                    Keeping of Records and Books of Account. The Originator will maintain and implement administrative and operating procedures (including without limitation an ability to recreate records evidencing the CMSC Purchased Assets in the event of the destruction of the originals thereof) and will keep and maintain all documents, books, records and other information that are necessary or advisable, in the reasonable determination of the Buyer, for the collection of all amounts due under any or all CMSC Purchased Assets. Upon the reasonable request of the Buyer or its assignees made at any time after the occurrence and continuance of an Unmatured Servicer Default or a Servicer Default, the Originator will deliver copies of all CMSC Records maintained pursuant to this Section 7.1(c) to the Buyer or its designee. The Originator will maintain at all times accurate and complete books, records and accounts relating to the CMSC Purchased Assets and all CMSC Collections, in which timely entries will be made. The Originator's master data processing records will be marked to indicate the sales of all CMSC Purchased Assets to the Buyer hereunder and will include without limitation all payments received and all credits and extensions granted with respect to the CMSC Purchased Assets.

(d)                    Location of Records and Offices. The Originator will keep its principal place of business and chief executive office and the offices where it keeps all CMSC Records (and all original documents relating thereto other than those CMSC Records that are maintained with local attorneys or escrow agents or at the offices of the relevant Employer as described in Section 6.1(n)) at the addresses specified in Schedule 6.1(n) or, upon not less than 30 days' prior written notice given by the Originator to the Buyer and its assignees, at such other locations in jurisdictions in the United States of America where all action required by Section 8.3 has been taken and completed.

(e) Separate Corporate Existence of the Buyer. The Originator hereby acknowledges that the parties to the Transaction Documents are entering into the transactions contemplated by the Transaction Documents in reliance on the Buyer's identity as a legal entity separate from the Originator and the other CMS Persons. From and after the date hereof until the Final Payout Date, the Originator will, and will cause each other CMS Person to, take such actions on the part of the Originator or such CMS Person as shall be required in order that:

(i) The Buyer's operating expenses will not be paid by any CMS Person, except that certain organizational expenses of the Buyer and expenses relating to creation and initial implementation of the Transaction Documents have been or will be paid by the Originator;

(ii) Any financial statements of any CMS Person that are consolidated to include the Buyer will contain appropriate footnotes clearly stating that (A) all of the Buyer's assets are owned by the Buyer and (B) the Buyer is a separate corporate entity with its own separate creditors that will be entitled to be satisfied out of the Buyer's assets prior to any value in the Buyer becoming available to the Buyer's equity holders;

(iii) Any transaction between the Buyer and a CMS Person will be fair and equitable to the Buyer, will be the type of transaction that would be entered into by a prudent Person in the position of the Buyer with a CMS Person and will be on terms that are at least as favorable as may be obtained from a Person that is not a CMS Person; and

(iv) No CMS Person will be, or will hold itself out to be, responsible for the debts of the Buyer.

(f) Payment Instruction to Obligors. The Originator will (i) instruct all Obligors to submit all payments on the CMSC Purchased Assets either (A) to one of the Lockboxes maintained at the Lockbox Banks for deposit in a Lockbox Account or (B) directly to one of the Lockbox Accounts and (ii) instruct all Persons receiving Home Sale Proceeds to deposit such Home Sale Proceeds in one of the Lockboxes or Lockbox Accounts within two Business Days after such receipt, except to the extent a longer escrow period is required under applicable law, in which case such Home Sale Proceeds will be deposited into one of the Lockboxes or Lockbox Accounts within one Business Day after the expiration of such period. The Originator will direct all Obligors with respect to receivables and related assets that are not CMSC Receivables or CMF Receivables to deposit all collections in respect of such receivables and related assets in an account that is not a Lockbox or Lockbox Account and will take such other steps as the Buyer reasonably may request to ensure that all collections on such receivables and related assets will be segregated from CMSC Collections and CMF Collections.

(g) Segregation of Collections. The Originator will use reasonable efforts to minimize the deposit of any funds other than CMSC Collections or CMF Collections into any of the Lockbox Accounts and, to the extent that any such funds are deposited into any of such Lockbox Accounts, promptly will identify any such funds or will cause such funds to be so

identified to the Servicer, it being understood and agreed that the Originator does not hereby assume any affirmative duty to re-direct Obligors to remit funds to alternate locations.

(h) Identification of Eligible Receivables. The Originator will (i) establish and maintain necessary procedures for determining, no less frequently than each date on which a Daily Originator Report is required to be delivered pursuant to Section 3.1(a), whether each CMSC Receivable qualifies as an Eligible Receivable, and for identifying on any such date all CMSC Receivables to be sold to the Buyer on that date that are not Eligible Receivables and (ii) will provide to the Servicer in a timely manner information that shows whether, and to what extent, the CMSC Receivables described in such Daily Originator Report are Eligible Receivables.

(i) Payment of Taxes. The Originator will file (or there will be filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to be filed by it and will pay all taxes, assessments and governmental charges thereby shown to be owing by it, except for any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect.

(j) Accounting for Certain Assets. To the extent permitted by applicable law and GAAP, the Originator will (i) prepare all financial statements that account for the transactions contemplated hereby as a sale of the CMSC Purchased Assets by the Originator to the Buyer and, in all other respects, will account for and treat the transactions contemplated hereby (including but not limited to accounting and (to the extent taxes are not consolidated) for tax reporting purposes) as a sale of the CMSC Purchased Assets by the Originator to the Buyer and (ii) maintain and prepare its financial statements and records in accordance with GAAP, applied in accordance with the representation contained in Section 6.1(q).

(k) Receivables Reviews. Upon reasonable prior notice, the Originator will permit the Buyer or its assignees (or other Persons designated by the Buyer from time to time) or their agents or representatives (including without limitation certified public accountants or other auditors), at the expense of the Originator and during regular business hours, (i) to examine and make copies of and abstracts from, and to conduct accounting reviews of, all CMSC Records in the possession or under the control of the Originator, including without limitation the related Contracts, invoices and other documents related thereto and (ii) to visit the offices and properties of the Originator for the purpose of examining any materials described in the preceding clause (i) and to discuss matters relating to the CMSC Receivables or the other CMSC Purchased Assets or the performance by the Originator of its obligations under any Transaction Document to which it is a party with any Authorized Officers of the Originator having knowledge of such matters or with the Originator's certified public accountants or other auditors; provided, however, that all such reviews will occur no more frequently than twice per year (with only the first such review in any year being at the Originator's expense) unless (i) CMSC is the Servicer and a Servicer Default has occurred and is continuing or (ii) the Buyer or its successor or assignee has given advance written notice to the Originator that it believes the composition and/or performance of

the CMSC Purchased Assets have deteriorated in a manner materially adverse to the interests of the Buyer or its assignees.

(l) Computer Software, Hardware and Services. The Originator will provide the Buyer and its assignees with such licenses, sublicenses and/or assignments of contracts as the Servicer, the Buyer or the Buyer's assignees require with respect to all services and computer hardware or software that relate to the servicing of the CMSC Receivables or the other CMSC Purchased Assets; provided, however, that with respect to any computer software licensed from a third party, the Originator will be required to provide such licenses, sublicenses and/or assignments of such software only to the extent that provision of the same would not violate the terms of any contracts of the Originator with such third party.

(m) Environmental Claims. The Originator will use commercially reasonable efforts to promptly cure and have dismissed with prejudice to the satisfaction of the Buyer any actions and any proceedings relating to compliance with Environmental Laws relating to any CMSC Home, but only to the extent that the conditions that gave rise to such proceedings were in existence as of the date on which the Buyer acquired the related CMSC Receivable.

(n) Turnover of Collections. If the Originator or any of its agents or representatives at any time receives any cash, checks or other instruments constituting CMSC Collections or CMF Collections, such recipient will segregate and hold such payments in trust for, and in a manner acceptable to, the Servicer and will, promptly upon receipt (and in any event within one Business Day following receipt) remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to a Lockbox Account.

(o) Performance and Compliance by Originator with Relocation Management Agreements. The Originator will, at its expense, timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Pool Relocation Management Agreements, the CMSC Home Purchase Contracts and other Contracts related to the CMSC Purchased Assets.

(p) Compliance with Credit and Collection Policy. The Originator will comply in all applicable material respects with the Credit and Collection Policy with respect to each CMSC Purchased Asset and will not take any action in violation of the Credit and Collection Policy with respect to any other ARSC Purchased Asset.

Section 7.2 Reporting Requirements. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Originator agrees that it will furnish to the Buyer or its assignees:

(a) Annual Financial Statements. As soon as available and in any event within 95 days after the end of each fiscal year of the Performance Guarantor and the Originator, as applicable, copies of (i) the consolidated balance sheet of the Performance Guarantor and its consolidated subsidiaries as at the end of such fiscal year and the related statements of earnings and cash flows and stockholders' equity of the Performance Guarantor and its consolidated subsidiaries for such fiscal year, setting forth in each case in comparative form the corresponding

figures for the preceding fiscal year and prepared in accordance with GAAP applied consistently throughout the periods reflected therein, certified by Deloitte & Touche (or such other independent certified public accountants of nationally recognized standing in the United States of America as shall be selected by the Performance Guarantor) and (ii) copies of the statements of earnings of the Originator on a consolidated basis for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year and certified by the chief financial officer, chief accounting officer or controller of the Originator (it being understood and agreed that such statements of earnings will be prepared in accordance with the Originator's customary management accounting practices as in effect on the date hereof and need not be prepared in accordance with GAAP);

(b) Material Adverse Effect. Promptly and in any event within two Business Days after the president, chief financial officer, controller or treasurer of the Originator has actual knowledge thereof, written notice that describes in reasonable detail any event or occurrence with respect to CMSC that, individually or in the aggregate for all such events or occurrences, has had, or that such Authorized Officer in its reasonable good faith judgment determines could reasonably be expected to have, a Material Adverse Effect (as defined in the Indenture);

(c) Proceedings. Promptly and in any event within five Business Days after an Authorized Officer of the Originator has knowledge thereof, written notice of (i) any litigation, investigation or proceeding of the type described in Section 6.1(f) not previously disclosed to the Buyer, (ii) any material adverse development that has occurred with respect to any such previously disclosed litigation, investigation or proceeding or (iii) any CMF Purchase Termination Event or event which, with the giving of notice or passage of time or both, would constitute a CMF Purchase Termination Event;

(d) ERISA Event. (i) As soon as possible and in any event within 30 days after the Originator or any ERISA Affiliate knows or has reason to know that a "reportable event" (as defined in Section 4043 of ERISA) has occurred with respect to any Plan, a statement of an Authorized Officer of the Originator setting forth details as to such reportable event and the action that the Originator or an ERISA Affiliate proposes to take with respect thereto, together with a copy of the notice of such reportable event, if any, given to the PBGC, the Internal Revenue Service or the Department of Labor; (ii) promptly and in any event within 10 Business Days after receipt thereof, a copy of any notice the Originator or any ERISA Affiliate receives from the PBGC relating to the intention of the PBGC to terminate any Plan or to appoint a trustee to administer any such Plan; (iii) promptly and in any event within 10 Business Days after a filing with the PBGC pursuant to Section 412(n) of the Code of a notice of failure to make a required installment or other payment with respect to a Plan, a statement of the chief financial officer of the Originator setting forth details as to such failure and the action that the Originator or an ERISA Affiliate proposes to take with respect thereto, together with a copy of such notice given to the PBGC; and (iv) promptly and in any event within 30 Business Days after receipt thereof by the Originator or any ERISA Affiliate from the sponsor of a multiemployer plan (as defined in Section 3(37) of ERISA), a copy of each notice received by the Originator or any ERISA Affiliate concerning the imposition of withdrawal liability or a determination that a multiemployer plan is, or is expected to be, terminated or reorganized;

(e) Environmental Claims. Promptly and in any event within five Business Days after receipt thereof, notice and copies of all written claims, complaints, notices, actions, proceedings, requests for information or inquiries relating to the condition of any CMSC Homes or compliance with Environmental Laws relating to the CMSC Homes, other than those received in the ordinary course of business and that, singly or in the aggregate, do not represent events or conditions that would cause the representation set forth in Section 6.1(v) to be incorrect; and

(f) Other. Promptly, from time to time, such other information, documents, records or reports with respect to the CMSC Purchased Assets or the condition or operations, financial or otherwise, of the Originator as the Buyer or its assignees may from time to time reasonably request in order to protect the interests of the Buyer or such assignees under or as contemplated by this Agreement and the other Transaction Documents, including timely delivery of all such information required under any Enhancement Agreement.

**Section 7.3** Negative Covenants of the Originator. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Originator agrees that it will not:

(a) Sales, Liens, Etc. Sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Lien (other than Permitted Liens) of anyone claiming by or through it on or with respect to, any ARSC Purchased Asset or Excluded Asset or any interest therein or any Lockbox or Lockbox Account, other than (i) sales of CMSC Purchased Assets pursuant to this Agreement, (ii) sales of CMSC Homes in accordance with the applicable Contracts and (iii) transfers of Excluded Assets where the transferee has executed and delivered to the Indenture Trustee an Acknowledgement Letter;

(b) Change in Business or Credit and Collection Policy. (i) Make any material change in the Credit and Collection Policy or (ii) make any material change in the character of its employee relocation business or engage in any business unrelated to such business as currently conducted that, in either case, individually or in the aggregate with all other such changes, would be reasonably likely to have a material adverse effect on the composition or performance of the CMSC Purchased Assets;

(c) No Mergers, Etc. Consolidate with or merge with or into any other Person or convey, transfer or sell all or substantially all of its properties and assets to any Person, unless:

(i) (A) the Originator is the surviving entity thereof or, if the Originator is not the surviving entity thereof, (x) the Person formed by such consolidation or into which the Originator is merged or the Person that acquires by conveyance, transfer or sale all or substantially all of the properties and assets of the Originator (any such Person, the “**Surviving Entity**”) is an entity organized and existing under the laws of the United States of America or any State thereof, (y) such Surviving Entity expressly assumes, by an agreement supplemental hereto in form and substance satisfactory to the Buyer and its assignees, performance of every covenant and obligation of the Originator hereunder and under the other Transaction

Documents to which the Originator is a party and (z) such Surviving Entity delivers to the Buyer and its assignees an opinion of counsel that such Surviving Entity is duly organized and validly existing under the laws of its organization, has duly executed and delivered such supplemental agreement, and such supplemental agreement is a valid and binding obligation of such Surviving Entity, enforceable against such Surviving Entity in accordance with its terms (subject to customary exceptions relating to bankruptcy and equitable principles) and covering such other matters as the Buyer or its assignees may reasonably request;

(ii) all actions necessary to maintain the perfection of the security interests or ownership interests of the Buyer in the CMSC Purchased Assets in connection with such consolidation, merger, conveyance or transfer have been taken, as evidenced by an opinion of counsel reasonably satisfactory to the Buyer and its assignees;

(iii) so long as the Originator is the Servicer, no Servicer Default or Unmatured Servicer Default is then occurring or would result from such merger, consolidation, conveyance or transfer; and

(iv) any necessary consents of each applicable Series Enhancer have been obtained.

(d) Change in Name. Change its corporate name or the name under or by which it conducts its core relocation business or the jurisdiction in which it is incorporated unless the Originator has given the Buyer and its assignees and each rating agency then rating any Series of Notes at least 30 days' prior written notice thereof and unless, prior to any such change in name or jurisdiction of incorporation, the Originator has taken and completed all action required by Section 8.3;

(e) Home Deeds. Record any Home Deeds with respect to any Homes except at the direction of the Buyer or its assignees or as permitted by Section 8.3 hereof or by Section 2.01(d)(i) of the Transfer and Servicing Agreement; and

(f) Termination of Relocation Management Agreements. Terminate any Pool Relocation Management Agreement, CMSC Home Purchase Contract, CMSC Home Sale Contract, CMSC Equity Loan Note or CMSC Equity Loan Agreement except in accordance with the Credit and Collection Policy.

(g) Extension or Amendment. Extend, amend or otherwise modify the terms of any Receivable included in the ARSC Purchased Assets, or amend, modify or waive any material term or condition related thereto, except in accordance with Section 3.10 of the Transfer and Servicing Agreement.

(h) Change in Payment Instruction to Obligors. Make any change in its instructions to Obligors or other Persons regarding payments to be made to the Originator



or payments to be made to any Lockbox Account (except for a change in instructions solely for the purpose of directing such Obligor or other Persons to make such payments to another existing Lockbox Account), unless (i) the Indenture Trustee has received copies of a Lockbox Agreement with each new Lockbox Bank duly executed by the Originator, the Buyer, the Issuer, the Indenture Trustee and such Lockbox Bank and (ii) in the case of any termination, the Buyer or its successors and assigns have received evidence to their satisfaction that the Obligor that were making payments into a terminated Lockbox Account have been instructed in writing to make payments into another Lockbox Account then in use.

(i) Home Purchase Contracts. Purchase any Home or make any Equity Payments, Mortgage Payoffs, or Mortgage Payments on or after the Closing Date other than Equity Payments, Mortgage Payoffs and Mortgage Payments with respect to CMSC Homes.

(j) Indebtedness for Borrowed Money. Create, incur, guarantee or permit to exist any Indebtedness for Borrowed Money, except for (A) any such Indebtedness owed on an intercompany basis to the Performance Guarantor or any Affiliate thereof and (B) any such Indebtedness to a Person that has executed and delivered an Acknowledgment Letter in favor of the Originator and the Buyer and its successors and assigns, including any Series Enhancer.

Section 7.4 Affirmative Covenants of the Buyer. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Buyer hereby agrees that it will perform the covenants and agreements set forth in this Section 7.4.

(a) The Buyer hereby acknowledges that the parties to the Transaction Documents are entering into the transactions contemplated by the Transaction Documents in reliance upon the Buyer's identity as a legal entity separate from the Originator and the other CMS Persons. From and after the date hereof until one year and one day after the Final Payout Date, the Buyer will take such actions as shall be required in order that:

(i) The Buyer will conduct its business in office space allocated to it and for which it pays an appropriate rent and overhead allocation;

(ii) The Buyer will maintain corporate records and books of account separate from those of each CMS Person and telephone numbers and stationery that are separate and distinct from those of each CMS Person;

(iii) The Buyer's assets will be maintained in a manner that facilitates their identification and segregation from those of any CMS Person;

(iv) The Buyer will strictly observe corporate formalities in its dealings with the public and with each CMS Person, and funds or other assets of the Buyer will not be commingled with those of any CMS Person, except as expressly permitted by the Transaction Documents. The Buyer will at all times, in its dealings with the public and

with each CMS Person, hold itself out and conduct itself as a legal entity separate and distinct from each CMS Person. The Buyer will not maintain joint bank accounts or other depository accounts to which any CMS Person (other than the Originator in its capacity as Servicer under the Transfer and Servicing Agreement) has independent access;

(v) The duly elected board of directors of the Buyer and duly appointed officers of the Buyer will at all times have sole authority to control decisions and actions with respect to the daily business affairs of the Buyer;

(vi) Not less than one member of the Buyer's board of directors will be an Independent Director. The Buyer will observe those provisions in its certificate of incorporation that provide that the Buyer's board of directors will not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Buyer unless the Independent Director and all other members of the Buyer's board of directors unanimously approve the taking of such action in writing prior to the taking of such action;

(vii) The Buyer will compensate each of its employees, consultants and agents from the Buyer's own funds for services provided to the Buyer;

(viii) The Buyer will not hold itself out to be responsible for the debts of any CMS Person; and

(ix) The Buyer will take all actions necessary on its part to be taken in order to ensure that the facts and assumptions relating to the Buyer set forth in the opinions of Orrick, Herrington & Sutcliffe LLP of even date herewith relating to true sale matters with respect to the Purchase of the CMSC Purchased Assets hereunder and substantive consolidation matters with respect to the Originator and the Buyer will be true and correct at all times.

(b) The Buyer assumes no obligations of the Originator under the Pool Relocation Management Agreements with respect to any CMSC Home Purchase Contracts, including without limitation the obligations of the Originator to make Equity Payments, Mortgage Payoffs and Mortgage Payments with respect to CMSC Homes. The Buyer will enter into all Home Purchase Contracts under the Pool Relocation Management Agreements in its own name and will make all Equity Payments, Mortgage Payoffs and Mortgage Payments from and after the Closing Date other than Equity Payments, Mortgage Payoffs and Mortgage Payments with respect to CMSC Homes.

ARTICLE VIII  
ADDITIONAL RIGHTS AND OBLIGATIONS IN  
RESPECT OF THE CMSC PURCHASED ASSETS

Section 8.1 Rights of the Buyer.

(a) Subject to Section 8.4(b), the Originator hereby authorizes the Buyer and its assignees and designees to take any and all steps in the Originator's name and on behalf of the Originator that the Buyer, the Servicer and/or their respective designees determine are reasonably necessary or appropriate to collect all amounts due under any and all CMSC Purchased Assets, including without limitation endorsing the name of the Originator on checks and other instruments representing CMSC Collections and enforcing such CMSC Purchased Assets.

(b) The Buyer shall have no obligation to account for, to replace, to substitute or to return any CMSC Purchased Asset to the Originator, except as provided in Section 4.3(c).

(c) The Buyer shall have the unrestricted right to further assign, transfer, deliver, hypothecate, subdivide or otherwise deal with the CMSC Purchased Assets and all of the Buyer's right, title and interest in, to and under this Agreement on whatever terms the Buyer determines, pursuant to the Receivables Purchase Agreement or otherwise.

(d) As between the Originator and the Buyer, the Buyer shall have the sole right to retain any gains or profits created by buying, selling or holding the CMSC Purchased Assets.

Section 8.2 Responsibilities of the Originator. Anything herein to the contrary notwithstanding:

(a) The Originator agrees to deliver directly to the Servicer (for the Buyer's account), within one Business Day after receipt thereof, any CMSC Collections or CMF Collections that it receives, in the form so received, and agrees that all such CMSC Collections and CMF Collections will be deemed to be received in trust for the Buyer and its assignees and will be maintained and segregated separate and apart from all other funds and moneys of the Originator until delivery of such CMSC Collections and CMF Collections to the Servicer; and

(b) The Originator hereby grants to the Buyer an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of the Originator all steps necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind held or transmitted by the Originator or transmitted or received by the Buyer (whether or not from the Originator) in connection with any CMSC Purchased Asset (which power of attorney may be exercised by the Buyer's successors and assigns in accordance with Section 8.4 and Section 11.12(b)).

(c) The Originator shall perform all of its obligations hereunder and under the Pool Relocation Management Agreements and other Contracts related to the CMSC Purchased Assets to which it is a party (other than those obligations undertaken by the Buyer as provided in Section 7.4(b)) to the same extent as if such CMSC Purchased Assets had not been sold hereunder, and the exercise by the Buyer or its designee or assignee of the Buyer's rights hereunder or in connection herewith shall not relieve the Originator from any of its obligations under any such Pool Relocation Management Agreements or Contracts related to the CMSC Purchased Assets to which it is a party. Notwithstanding the foregoing, the Originator acknowledges that the Buyer or its designees are entitled to perform such obligations to the extent permitted under the Transaction Documents.

**Section 8.3** **Further Action Evidencing Purchases.** The Originator agrees that from time to time, at its expense and upon reasonable request, it will promptly execute and deliver all further instruments and documents and take all further action as is reasonably necessary to perfect, protect or more fully evidence the Purchase of the CMSC Purchased Assets by the Buyer hereunder, or to enable the Buyer or its assignees to exercise or enforce any of its rights hereunder or under any other Transaction Document to which the Originator is a party; provided, however, that the Originator will not file or record any Home Deeds except (i) in its capacity as the Servicer pursuant to the Transfer and Servicing Agreement and in accordance with the terms thereof and (ii) at any time, to the extent such recordation is required by local law, regulation or custom. No Home Deeds or Home Purchase Contracts may be recorded in the name of the Originator other than Home Deeds relating to CMSC Homes and CMSC Home Purchase Contracts. Without limiting the generality of the foregoing, the Originator shall:

- (a) upon the Buyer's request, execute and file such financing or continuation statements or amendments thereto or assignments thereof and such other instruments or notices as the Buyer or its assignees may reasonably determine to be necessary or appropriate; and
- (b) mark the master data processing records evidencing the CMSC Purchased Assets and, if requested by the Buyer or its assignees, legend the related Pool Relocation Management Agreements and CMSC Home Purchase Contracts to reflect the sale of the CMSC Purchased Assets to the Buyer pursuant to this Agreement.

The Originator hereby authorizes the Buyer and its assignees to file one or more financing or continuation statements and amendments thereto and assignments thereof with respect to all or any of the CMSC Purchased Assets, in each case whether now existing or hereafter generated by the Originator. If (i) the Originator fails to perform any of its agreements or obligations under this Agreement and does not remedy such failure within the applicable cure period, if any, and (ii) the Buyer or its assignees in good faith reasonably believes that the performance of such agreements and obligations is necessary or appropriate to protect the interests of the Buyer or its assignees under this Agreement, then the Buyer or its assignees may (but shall not be required to) perform or cause performance of such agreement or obligation, and the reasonable expenses of the Buyer or its assignees incurred in connection with such performance shall be payable by the Originator as provided in Section 10.1.

Section 8.4

CMSC Collections; Rights of the Buyer and its Assignees.

At any time following the designation of a Servicer other than the Originator pursuant to the Transfer and Servicing Agreement:

- (a) The Buyer or its assignees may direct the Obligors of CMSC Receivables, or any of them, to pay all amounts payable under any CMSC Receivable directly to the Buyer or its assignees;
- (b) At the request of the Buyer or its assignees and at the Originator's expense, the Originator shall give notice of such ownership to each said Obligor and direct that payments be made directly to the Buyer or its assignees;
- (c) At the request of the Buyer or its assignees and at the Originator's expense, the Originator shall (A) assemble all of the CMSC Records, to the extent such CMSC Records are in its possession, and make the same available at a place selected by the Buyer or its successors and assigns, or instruct any escrow agents holding any such documents, instruments and other records on its behalf to make the same available and (B) segregate all cash, checks and other instruments received by it from time to time constituting CMSC Collections or CMF Collections in a manner reasonably acceptable to the Buyer or its assignees and, promptly upon receipt, remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to the Buyer or its assignees; and
- (d) The Originator hereby authorizes the Buyer or its assignees to take any and all steps in the Originator's name and on behalf of the Originator that are necessary or desirable, in the reasonable determination of the Buyer or its assignees, to collect all amounts due under any and all CMSC Purchased Assets, including without limitation endorsing the Originator's name on checks and other instruments representing CMSC Collections and enforcing the CMSC Purchased Assets.

ARTICLE IX  
TERMINATION

Section 9.1

CMF Purchase Termination Events. The following events shall be "**CMF Purchase Termination Events**":

- (a) The occurrence of an Event of Default or an Amortization Event with respect to all outstanding Series of Notes; or
- (b) Any representation or warranty made by the Originator under any of the Transaction Documents, any Receivables Activity Report or other information or report delivered by the Originator (including in its capacity as Servicer) with respect to the Originator or the CMSC Purchased Assets shall prove to have been untrue or incorrect in any material

respect when made or deemed to have been made, and such failure could be reasonably expected to have a Material Adverse Effect and such occurrence remains unremedied for 30 days; provided, however, that any such incorrect representation relating to a CMSC Receivable with respect to which the Originator has made a CMSC Noncomplying Asset Adjustment pursuant to Section 4.3(a) shall not constitute a CMF Purchase Termination Event; or< /DIV>

(c) (i) The Originator shall fail to perform or observe, as and when required, any term, covenant or agreement contained in this Agreement or any of the other Transaction Documents to which it is a party or any Contract required on its part to be performed or observed, and such failure shall remain unremedied for: (A) in the case of a failure to deliver any Daily Originator Report pursuant to Section 3.1(a), ten calendar days (provided, however, that such ten-day period may be extended for an additional three days if such failure to deliver a Daily Originator Report is due to computer failure); (B) in the case of a failure to provide payment instructions to Obligor pursuant to Section 7.1(f), a failure to segregate CMSC Collections or CMF Collections pursuant to Section 7.1(g), a failure to provide records pursuant to Section 7.1(k), a failure to provide required notices pursuant to Section 7.2(c), a failure to provide any required monthly report or a breach of any of the negative covenants of the Originator set forth in Section 7.3, ten calendar days; or (C) in the case of any other failure to perform or observe, as and when required, any term, covenant or agreement, which failure could be reasonably expected to have a Material Adverse Effect, 30 days or (ii) the Performance Guarantor shall fail to make any required payment under the PHH Guarantee and such failure shall remain unremedied for one Business Day or (iii) the Performance Guarantor shall otherwise fail to perform under the PHH Guarantee; or

(d) An Event of Bankruptcy shall have occurred with respect to the Originator or the Performance Guarantor; or

(e) The representation and warranty in Section 6.1(k) shall not be true at any time with respect to a substantial portion of the CMSC Purchased Assets; or

(f) Either (i) the Internal Revenue Service shall file notice of a Lien pursuant to Section 6323 of the Internal Revenue Code with respect to any of the CMSC Receivables or the CMSC Related Assets and such Lien shall not have been released within five days or, if released, proved to the satisfaction of the rating agencies then rating each Series of Notes or (ii) the PBGC shall file, or shall indicate its intention to file, notice of a Lien pursuant to Section 4068 of the Employee Retirement Income Security Act of 1974 with respect to any of the CMSC Receivables or the CMSC Related Assets; or

(g) This Agreement or the PHH Guarantee shall cease to be in full force and effect for any reason other than in accordance with its terms; or

(h) An ARSC Purchase Termination Event or Transfer Termination Event shall have occurred.

If a CMF Purchase Termination Event occurs, the Originator shall promptly give notice to the Buyer and its assignees of such CMF Purchase Termination Event.

**Section 9.2** Purchase Termination. (a) On the Termination Date, the Originator shall cease transferring CMSC Purchased Assets to the Buyer, provided that any right, title and interest of the Originator in and to any CMF Designated Receivables arising from any Servicer Advances made thereafter, including any Related Property relating thereto and proceeds thereof, shall continue to be transferred. Notwithstanding any cessation of the transfer to the Buyer of additional CMSC Purchased Assets, CMSC Purchased Assets transferred to the Buyer prior to the Termination Date and CMSC Collections in respect of such CMSC Purchased Assets and the related Finance Charges, whenever accrued in respect of such CMSC Receivables, shall continue to be property of the Buyer available for transfer by the Buyer pursuant to the Receivables Purchase Agreement. Nothing in this Section 9.2 shall be deemed to prohibit the Buyer from funding CMF Designated Receivables from and after the Termination Date.

(b) Upon the occurrence of a CMF Purchase Termination Event, the Buyer and its assignees shall have, in addition to all other rights and remedies under this Agreement or otherwise, all other rights and remedies provided under the UCC of each applicable jurisdiction and other applicable laws, which rights shall be cumulative. Without limiting the foregoing, the occurrence of a CMF Purchase Termination Event shall not deny to the Buyer or its assignees any remedy in addition to termination of its obligation to make Purchases hereunder to which the Buyer or its assignees may be otherwise appropriately entitled, whether by statute or applicable law, at law or in equity.

## ARTICLE X INDEMNIFICATION; SECURITY INTEREST

**Section 10.1** Indemnities by the Originator. Without limiting any other rights that any CMSC Indemnified Party may have hereunder or under applicable law, the Originator agrees to indemnify the Buyer and each of its successors, permitted transferees and assigns, and all officers, directors, shareholders, controlling Persons, employees and agents of any of the foregoing (each of the foregoing Persons, a “**CMSC Indemnified Party**”), from and against any and all damages, losses, claims (whether on account of settlements or otherwise), actions, suits, demands, judgments, liabilities (including penalties), obligations or disbursements of any kind or nature and related costs and expenses (including reasonable attorneys’ fees and disbursements) awarded against or incurred by any of them, arising out of or as a result of any of the following (all of the foregoing, collectively, “**CMSC Indemnified Losses**”):

(a) any representation or warranty made by the Originator under any of the Transaction Documents to which it is a party, any Receivables Activity Report or any other information or report delivered by the Originator (including in its capacity as Servicer) with respect to the Originator or the CMSC Purchased Assets, having been untrue or incorrect in any respect when made or deemed to have been made; provided, however, that the Originator’s obligation to make a CMSC Noncomplying Asset Adjustment pursuant to Section 4.3(a) with respect to any representation made in Section

6.1(1) as to Eligible Receivables having been incorrect when made shall be the only remedy available to the Buyer or its assignees relating to such incorrect representation;

(b) the failure by the Originator to comply with any material applicable law, rule or regulation applicable to the Originator with respect to any CMSC Purchased Asset or any failure of a CMSC Purchased Asset to comply with any such law, rule or regulation as of the date of sale of such CMSC Purchased Asset hereunder;

(c) the failure to vest and maintain in the Buyer a valid ownership interest in the CMSC Purchased Assets, free and clear of any Lien arising through the Originator or anyone claiming through or under the Originator (including without limitation any such failure arising from a circumstance described in the definition of Permitted Exceptions);

(d) any failure of the Originator to perform its duties or obligations in accordance with the provisions of the Transaction Documents or any Contract, in each case to which it is a party;

(e) the failure to file, or any delay in filing, financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other applicable laws with respect to the transfer of any CMSC Purchased Assets to the Buyer, whether at the time of any sale or at any subsequent time;

(f) the failure by the Originator to pay when due any taxes owing by it (including sales, excise or property taxes) payable in connection with the CMSC Purchased Assets, other than any such taxes, assessments or charges that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens);

(g) any reduction in the Unpaid Balance of any Receivable included in the ARSC Purchased Assets as a result of (i) any cash discount or any adjustment by the Originator, (ii) any offsetting account payable of the Originator to an Obligor, (iii) a set-off in respect of any claim by, or defense or credit of, the related Obligor against the Originator (whether such claim, defense or credit arises out of the same or a related or an unrelated transaction) or (iv) the obligation of the Originator to pay to the related Obligor any rebate or refund;

(h) any product liability or personal injury claim in connection with the service that is the subject of any CMSC Purchased Asset; and

(i) any investigation, litigation or proceeding related to any use by CMSC of the proceeds of any Purchase made hereunder.

Notwithstanding anything to the contrary in this Agreement, any representations, warranties and covenants made by the Originator in this Agreement or the other Transaction Documents that are qualified by or limited to events or circumstances that have, or are



reasonably likely to have, given rise to a Material Adverse Effect shall (solely for purposes of the indemnification obligations set forth in this Section 10.1) be deemed not to be so qualified or limited.

Notwithstanding the foregoing (and with respect to clause (ii) below, without prejudice to the rights that the Buyer may have pursuant to the other provisions of this Agreement or the provisions of any of the other Transaction Documents), in no event shall any CMSC Indemnified Party be indemnified for any CMSC Indemnified Losses (i) resulting from negligence or willful misconduct on the part of such CMSC Indemnified Party, (ii) to the extent the same includes losses in respect of CMSC Purchased Assets and reimbursement therefor that would constitute credit recourse to the Originator for the amount of any CMSC Receivable not paid by the related Obligor or (iii) resulting from the action or omission of the Servicer (unless the Servicer is the Originator or an Affiliate thereof (other than the Buyer, ARSC or the Issuer)).

If for any reason the indemnification provided in this Section 10.1 is unavailable to an CMSC Indemnified Party or is insufficient to hold an CMSC Indemnified Party harmless, then the Originator shall contribute to the maximum amount payable or paid to such CMSC Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by such CMSC Indemnified Party on the one hand and the Originator on the other hand, but also the relative fault of such CMSC Indemnified Party and the Originator, and any other relevant equitable considerations.

**Section 10.2**                      **Security Interest.** Without prejudice to the provisions of Section 2.1 providing for the absolute transfer of the Originator's interest in the CMSC Purchased Assets and the proceeds thereof and any interest of the Originator in the other property described in clause (v) of Section 2.1(a) to the Buyer, in order to secure the prompt payment and performance of all obligations of the Originator to the Buyer arising in connection with this Agreement, whether now or hereafter existing, due or to become due, direct or indirect, or absolute or contingent, the Originator hereby assigns and grants to the Buyer a first priority security interest in the Originator's right, title and interest, if any, in, to and under all of the CMSC Purchased Assets and the proceeds thereof and any interest of the Originator in the other property described in clause (v) of Section 2.1(a), whether now or hereafter existing.

## ARTICLE XI MISCELLANEOUS

### **Section 11.1**                      **Amendments; Waivers, Etc.**

(a)                      The provisions of this Agreement may be amended, modified or waived from time to time if such amendment, modification or waiver is in writing and signed by the Originator and the Buyer and its assignees. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b)                      No failure or delay on the part of the Buyer or its assignees, or any CMSC Indemnified Party, or any other third party beneficiary referred to in Section 11.12(a) in

exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to, or demand on, the Originator shall entitle it in any case to any notice or demand in similar or other circumstances. No waiver or approval by the Buyer or its assignees under this Agreement shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval under this Agreement shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

**Section 11.2**                      **Notices, Etc.** Unless otherwise stated herein, all notices, demands, consents, approvals and other communications provided for hereunder shall be in writing (including via telecopier) and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by telecopier or by overnight courier to the intended party at the address or telecopier number of such party set forth on Schedule 11.2 hereof, or at such other address or telecopier number as shall be designated by such party in a written notice to the other party hereto given in accordance with this Section 11.2. Copies of all notices and other communications provided for hereunder shall be delivered to ARSC and the Issuer at their respective addresses for notices set forth in the Receivables Purchase Agreement. All notices and communications provided for hereunder shall be effective when received.

**Section 11.3**                      **Cumulative Remedies.** The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Section 11.4**                      **Binding Effect; Assignability; Survival of Provisions.** This Agreement shall be binding upon, and inure to the benefit of, the Buyer and the Originator and their respective successors and assigns. Except as permitted pursuant to Section 7.3(c), the Originator may not assign any of its rights hereunder or any interest herein without the prior written consent of the Buyer and its assignees. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms and shall remain in full force and effect until terminated pursuant hereto. Such termination shall not occur prior to the Final Payout Date. The rights and remedies with respect to any breach of any representation and warranty made by the Originator pursuant to Article VI and the indemnification and payment provisions of Article X and Section 11.6 and the provisions of Section 11.14 and Section 11.16 shall be continuing and shall survive any termination of this Agreement.

**Section 11.5**                      **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

**Section 11.6**                      **Costs, Expenses and Taxes.** In addition to the obligations of the Originator under Article X, the Originator agrees to pay on demand:

- (a) all reasonable costs and expenses incurred by the Buyer and its assignees in connection with the negotiation, preparation, execution and delivery of, the administration (including periodic auditing), the preservation of any rights under, or the

enforcement of, or any breach of, this Agreement (including any amendment, supplement or modification hereto), including without limitation (i) the reasonable fees, expenses and disbursements of counsel to any such Persons incurred in connection with any of the foregoing or in advising such Persons as to their respective rights and remedies under this Agreement and (ii) all reasonable out-of-pocket expenses (including reasonable fees and expenses of independent accountants) incurred in connection with any review of the Originator's books and records either prior to the execution and delivery hereof or pursuant to Section 7.1(k), and

(b) all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement or any amendment, supplement or modification thereto, and agrees to indemnify each CMSC Indemnified Party against any liabilities with respect to, or resulting from, any delay in paying or omission to pay such taxes and fees.

**Section 11.7** **Submission to Jurisdiction.** EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK, NEW YORK, OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND HEREBY (a) IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (b) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING; AND (c) IRREVOCABLY APPOINTS CT CORPORATION SYSTEM (THE "PROCESS AGENT"), WITH AN OFFICE ON THE DATE HEREOF AT 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011, UNITED STATES OF AMERICA, AS ITS AGENT TO RECEIVE ON BEHALF OF IT AND ITS PROPERTY SERVICE OF COPIES OF THE SUMMONS AND COMPLAINT AND ANY OTHER PROCESS THAT MAY BE SERVED IN ANY SUCH ACTION OR PROCEEDING. SUCH SERVICE MAY BE MADE BY MAILING OR DELIVERING A COPY OF SUCH PROCESS IN CARE OF THE PROCESS AGENT AT THE PROCESS AGENT'S ABOVE ADDRESS, AND EACH PARTY HERETO HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS THE PROCESS AGENT TO ACCEPT SUCH SERVICE ON ITS BEHALF. EACH PARTY HERETO AGREES TO ENTER INTO ANY AGREEMENT RELATING TO SUCH APPOINTMENT THAT THE PROCESS AGENT MAY CUSTOMARILY REQUIRE AND TO PAY THE PROCESS AGENT'S CUSTOMARY FEES UPON DEMAND. AS AN ALTERNATIVE METHOD OF SERVICE, EACH PARTY HERETO ALSO IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PARTY AT ITS ADDRESS SPECIFIED PURSUANT TO SECTION 11.2. NOTHING IN THIS SECTION 11.7 SHALL AFFECT THE RIGHT OF EITHER PARTY HERETO TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF EITHER PARTY HERETO TO BRING ANY ACTION OR PROCEEDING AGAINST THE OTHER PARTY HERETO OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.

[Section 11.8](#) [Waiver of Jury Trial](#). EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR RELATING TO THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREwith OR ARISING FROM ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), ACTIONS OF EITHER OF THE PARTIES HERETO OR ANY OTHER RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

[Section 11.9](#) [Integration](#). This Agreement contains a final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof, superseding all prior oral or written understandings.

[Section 11.10](#) [Captions and Cross References](#). The various captions (including without limitation the table of contents) in this Agreement are provided solely for convenience of reference and shall not affect the meaning or interpretation of any provision of this Agreement.

[Section 11.11](#) [Execution in Counterparts](#). This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

[Section 11.12](#) [Acknowledgment and Consent](#).

(a) The Originator acknowledges that, from time to time prior to the Termination Date, the Buyer intends to sell all of the Buyer's right, title and interest in, to and under the CMSC Purchased Assets, this Agreement and all of the other Transaction Documents pursuant to the Receivables Purchase Agreement, and that the interests of the Buyer hereunder will be further assigned pursuant to the Transfer and Servicing Agreement and the Indenture. The Originator acknowledges and agrees to each such sale by the Buyer and consents to the sale and assignment by the Buyer of all or any portion of its right, title and interest in, to and under the CMSC Purchased Assets, this Agreement and the other Transaction Documents and all of the Buyer's rights, remedies, powers and privileges and all claims of the Buyer against the Originator under or with respect to this Agreement and the other Transaction Documents (whether arising pursuant to the terms of this Agreement or otherwise available at law or in equity), including without limitation (whether or not an Unmatured Servicer Default or a Servicer Default has occurred and is continuing) (i) the right of the Buyer at any time to enforce this Agreement against the Originator and the obligations of the Originator hereunder and (ii) the right at any time to give or withhold any and all consents, requests, notices, directions, approvals, demands, extensions or waivers under or with respect to this Agreement, any other Transaction Document or the obligations in respect of the Originator thereunder, all of which rights, remedies, powers, privileges and claims may be exercised and/or enforced by the Buyer

successors and assigns to the same extent as the Buyer may do. Each of the parties hereto acknowledges and agrees that the Buyer's successors and assigns are third party beneficiaries of this Agreement, including without limitation the rights of the Buyer arising hereunder, and may rely on the Originator's representations and warranties made herein as if made directly to them. The Originator hereby acknowledges and agrees that, except with respect to its rights under Section 4.3, it has no claim to or interest in any of the Lockbox Accounts.

(b) The Originator hereby agrees to execute all agreements, instruments and documents and to take all other actions that the Buyer or its assignees determines are necessary or appropriate to evidence its consent described in Section 11.12(a). The Originator hereby acknowledges and agrees that the Buyer in all of its capacities may assign to the Buyer's successors and assigns such powers of attorney and other rights and interests granted by the Originator to the Buyer hereunder and agrees to cooperate fully with the Buyer's successors and assigns in the exercise of such rights.

(c) The Originator hereby acknowledges that the Buyer's successors and assigns are entering into the Transaction Documents in reliance on the Buyer's identity as a legal entity separate from the Originator.

[Section 11.13](#) [No Partnership or Joint Venture](#). Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture.

[Section 11.14](#) [No Proceedings](#). The Originator hereby agrees that it will not institute against the Buyer or its successors or join any other Person in instituting against the Buyer or its successors any Insolvency Proceeding so long as there shall not have elapsed one year plus one day since the Final Payout Date. The foregoing shall not limit the right of the Originator to file any claim in or otherwise take any action with respect to any Insolvency Proceeding that was instituted against the Buyer or its successors by any Person other than the Originator or any other CMS Person.

[Section 11.15](#) [Severability of Provisions](#). If any one or more of the covenants, agreements, provisions or terms of this Agreement are for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

[Section 11.16](#) [Recourse to the Buyer](#). Except to the extent expressly provided otherwise in the Transaction Documents, the obligations of the Buyer under the Transaction Documents to which it is a party are solely the obligations of the Buyer, and no recourse shall be had for payment of any fee payable by or other obligation of or claim against the Buyer that arises out of any Transaction Document to which the Buyer is a party against any director, officer or employee of the Buyer. The provisions of this Section 11.16 shall survive the termination of this Agreement.

[Section 11.17](#) [Confidentiality](#). The Buyer agrees to maintain the confidentiality of any information regarding the Originator, Cendant Corporation and PHH obtained in accordance with the terms of this Agreement that is not publicly available; provided, however, that the Buyer may reveal such information (a) as necessary or appropriate in connection with the administration or enforcement of this Agreement or its funding of Purchases under this Agreement or (b) as required by law, government regulation, court proceeding or subpoena. Notwithstanding anything herein to the contrary, none of the Originator, Cendant Corporation nor PHH shall have any obligation to disclose to the Buyer or its assignees any personal and confidential information relating to a Transferred Employee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

CENDANT MOBILITY SERVICES CORPORATION

By: /s/ Dennis O'Gara

Name: Dennis O'Gara

Title: SVP, CFO

CENDANT MOBILITY FINANCIAL CORPORATION

By: /s/ Eric J. Barnes

Name: Eric J. Barnes

Title: VP, Controller

[Signature Page to Purchase Agreement]

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APPENDIX A

DEFINITIONS

A. Defined Terms. As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

“Acknowledgment Letter” shall mean a letter substantially in the form attached hereto as Exhibit 7.3(j).

“Advance Billing Receivable” shall mean a Billed Receivable for Advance Payments owed by an Obligor.

“Advance Payment” shall mean an amount paid by an Obligor pursuant to a Pool Relocation Management Agreement or otherwise for application to existing or future Receivables (other than existing Billed Receivables), including without limitation any payments of anticipated fees and expenses under a Pool Relocation Management Agreement.

“Affiliate” shall mean, when used with respect to a Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. As used in this definition of Affiliate, the term “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of such Person’s voting securities, by contract or otherwise, and the terms “affiliated,” “controlling” and “controlled” have correlative meanings.

“Aggregate Employer Balance” shall have the meaning set forth in the Indenture.

“Amortization Event” shall have the meaning provided in the Indenture.

“ARSC” shall have the meaning set forth in the Preliminary Statement to this Agreement.

“ARSC Purchased Assets” shall have the meaning set forth in the Receivables Purchase Agreement.

“Authorized Officer” shall mean, with respect to any Transaction Party, the President, the Chief Financial Officer, the Controller, the Treasurer, any Assistant Treasurer, any Senior Vice President, any Vice President, the Secretary or any Assistant Secretary of such Transaction Party.

“Average Days Outstanding” shall have the meaning set forth in the Indenture.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, as amended from time to time (Title 11 of the United States Code).

“Billed Receivable” shall mean any CMSC Receivable or CMF Receivable that has been billed to an Obligor.



“Business Day” shall mean a day (other than a Saturday or Sunday) on which commercial banks in New York, New York and Chicago, Illinois are not authorized or required to be closed.

“Buyer” shall mean Cendant Mobility Financial Corporation, in its capacity as the buyer under this Agreement.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” shall mean April 25, 2000.

“CMF Collections” shall have the meaning set forth in the Receivables Purchase Agreement.

“CMF Designated Receivable” shall mean any Receivable arising from an amount advanced by CMF or the Servicer on behalf of CMF in respect of Equity Payments, Mortgage Payoffs, Direct Expenses, Mortgage Payments or Other Reimbursable Expenses, even though such amounts may be advanced after the Termination Date.

“CMF Home” shall have the meaning set forth in the Receivables Purchase Agreement.

“CMF Home Purchase Contract” shall have the meaning set forth in the Receivables Purchase Agreement.

“CMF Home Sale Contract” shall have the meaning set forth in the Receivables Purchase Agreement.

“CMF Purchase Price” shall have the meaning set forth in Section 3.1(b).

“CMF Purchase Termination Event” shall have the meaning set forth in Section 9.1.

“CMF Receivable” shall have the meaning set forth in the Receivables Purchase Agreement.

“CMF Subordinated Loan” shall have the meaning set forth in Section 4.2.

“CMF Subordinated Note” shall mean the CMF Subordinated Note dated the Closing Date, made by the Buyer and payable to the order of the Originator substantially in the form of Exhibit 4.2, as such note may be amended, supplemented, otherwise modified or replaced from time to time.

“CMF Subordinated Note Cap” shall have the meaning set forth in Section 4.2.

“CMSC” shall mean Cendant Mobility Services Corporation, a Delaware corporation.

“CMSC Collections” shall mean all funds that are received on account of or otherwise in connection with any CMSC Purchased Asset, including without limitation all funds received (a) from or on behalf of any Obligor in payment of or otherwise in respect of any CMSC Receivable included in the CMSC Purchased Assets (including without limitation funds received in respect of Advance Payments, but only including any such Advance Payments to the extent necessary to reduce the Aggregate Employer Balance of Receivables with respect to the related Employer to zero), (b) from or on behalf of any Ultimate Buyer or any other Person in respect of CMSC Home Sale Proceeds, (c) from any other Person to the extent such funds were applied, or should have been applied, pursuant to any Contract to repay or discharge any CMSC Receivable or CMSC Related Asset included in the CMSC Purchased Assets (including without limitation insurance payments that any Transaction Party applies in the ordinary course of its business to amounts owed in respect of such CMSC Purchased Assets and the amount of any Equity Payments applied to repayment of Equity Loans), (d) from the Originator in respect of Originator Adjustments under this Agreement or any other obligation of the Originator hereunder, (e) if the Servicer is CMSC, from the Servicer in respect of Servicer Dilution Adjustments with respect to CMSC Purchased Assets under Section 3.10(a) of the Transfer and Servicing Agreement and (f) from PHH in respect of any payments made by PHH as guarantor of the obligations of CMSC under the PHH Guarantee; provided, however, that any proceeds of Receivables that gave rise to CMSC Noncomplying Asset Adjustments that have been paid as provided in Section 4.3 hereof and any Related Property with respect to such Receivables shall not constitute CMSC Collections and shall be promptly returned to the Originator as provided in Section 4.3 hereof.

“CMSC Equity Loan” shall mean an Equity Loan made by the Originator.

“CMSC Equity Loan Agreement” shall mean a loan agreement entered into by the Originator and a Transferred Employee in connection with a CMSC Equity Loan.

“CMSC Equity Loan Note” shall mean a promissory note executed to evidence a CMSC Equity Loan.

“CMSC Home” shall mean any Home subject to a CMSC Home Purchase Contract.

“CMSC Home Purchase Contract” shall mean any Home Purchase Contract that was executed, and pursuant to which CMSC purchased a Home, prior to the Closing Date and that relates to a Receivable included in the CMSC Purchased Assets.

“CMSC Home Sale Contract” shall mean any Home Sale Contract with respect to a CMSC Home.

“CMSC Home Sale Proceeds” shall mean any Home Sale Proceeds arising under a CMSC Home Sale Contract.

“CMSC Indemnified Losses” shall have the meaning set forth in Section 10.1.

“CMSC Indemnified Party” shall have the meaning set forth in Section 10.1.

“CMSC Noncomplying Asset” shall have the meaning set forth in Section 4.3(a).

“CMSC Noncomplying Asset Adjustment” shall have the meaning set forth in Section 4.3(a).

“CMSC Purchased Assets” shall have the meaning set forth in Section 2.1(a).

“CMSC Receivable” shall have the meaning set forth in Section 2.1(a).

“CMSC Records” shall mean all Records maintained by the Originator with respect to the CMSC Purchased Assets and/or the related Obligor.

“CMSC Related Assets” shall have the meaning set forth in Section 2.1(a).

“CMSC Related Property” shall have the meaning set forth in Section 2.1(a).

“CMSC Person” shall mean the Originator and each of its Subsidiaries and Affiliates other than CMF, ARSC or the Issuer.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Contract” shall mean a Pool Relocation Management Agreement and any other related contract entered into pursuant thereto or in connection therewith, pursuant to or under which any Person (other than a Transaction Party) is obligated to make payments from time to time, including as the context may require any Equity Loan Note, Equity Loan Agreement, Home Purchase Contract or Home Sale Contract.

“Credit and Collection Policy” shall mean those credit and collection policies and practices of the Originator relating to the Contracts and Receivables described in Exhibit 6.1(u), as such credit and collection policies may be modified from time to time in accordance with Section 7.3(b).

“Cut-Off Date” shall mean the last day of any Monthly Period.

“Daily Originator Report” shall have the meaning set forth in Section 3.1(a).

“Defaulted Receivable” shall mean any Receivable that:

- (a) has been or should have been written off as uncollectible in conformity with the Credit and Collection Policy; or
- (b) is owed by an Obligor who is in Insolvency Proceedings or with respect to which an Event of Bankruptcy has occurred; or
- (c) has been billed and remains unpaid more than 150 days after the invoice date thereof.

“Direct Expenses” shall mean, with respect to any Home, any costs attributable to the provision of services to a Transferred Employee, including without limitation appraisals, broker’s market analyses and inspections, brokerage commissions, title and title search fees, transfer taxes, mortgage payments, mortgage interest (or interest on the mortgage payments at the mortgage interest rate), insurance premiums, property taxes, cost of establishment and maintenance of appropriate files, overnight delivery charges, wire transfer fees, cost of interest in the manner specified in the related Contract, cost of improvements, cost of removal and mitigation of Hazardous Materials or gases (such as removal of asbestos, lead paint, radon gas or urea formaldehyde insulation) and re-insulation with suitable replacement materials, repair and maintenance costs, utilities, sales loss on resale, buyer incentive costs and real estate closing costs.

“Eligible Contract” shall mean:

(a) a Relocation Management Agreement (i) that has been duly executed and delivered by an Employer that is an Eligible Obligor and is in full force and effect, (ii) (A) the rights to payment under which are assignable without the consent of the Employer party thereto or any other Person (other than the Originator), other than any such consent that has been obtained and remains in effect, or (B) which, if subject to any restriction on assignment of rights to payment, is in effect on the date of this Agreement and all of the Receivables under such Contract that are subject to such restriction constitute rights to payment for services rendered not evidenced by an instrument or chattel paper, (iii) that provides for the payment in full by the Employer of all Direct Expenses, Service Fees and Other Reimbursable Expenses and any loss sustained with respect to a Home covered thereby following the sale of such Home (less any Advance Payment with respect to such Home and after giving effect to the application of the Home Sale Proceeds with respect to such Home) (it being understood that any Contract that permits an Employer to approve any expenses or the price at which any Home is sold shall not, for that reason alone, fail to qualify as an Eligible Contract), (iv) that was originated in accordance with the Credit and Collection Policy, (v) the Receivables under which, once billed, are required to be paid within 65 days of the original invoice date and (vi) that is substantially in the form of Relocation Management Agreement attached as Exhibit C, with such Permitted Changes to such form as may be made by the Originator in the ordinary course of its business (or such other form as has been approved in writing by the Buyer and its successors and assigns);

(b) an Equity Loan Agreement or Equity Loan Note (i) that has been duly executed and delivered by a Transferred Employee that is an Eligible Obligor and that is an employee of an Employer that is a party to a Pool Relocation Management Agreement (which Pool Relocation Management Agreement is then an Eligible Contract), (ii) that is substantially in the form of Equity Loan Agreement attached as Exhibit C or the form of Equity Loan Note attached as Exhibit C, as applicable, with such Permitted Changes to such forms as may be made by the Originator in the ordinary course of its business (or, in either case, such other form as has been approved in writing by the Buyer and its successors and assigns) and (iii) the obligations of the Transferred Employee under which are fully covered by the Guaranty or loss indemnity of the related Employer or

Employer-purchased insurance policy under the applicable Pool Relocation Management Agreement;

(c) a Home Purchase Contract that (i) has been duly executed and delivered by a Transferred Employee of an Employer that is a party to a Pool Relocation Management Agreement (which Pool Relocation Management Agreement is then an Eligible Contract) and (ii) is substantially in the form of Home Purchase Contract attached as Exhibit C, with such Permitted Changes to such form as may be made by the Originator in the ordinary course of its business (or such other form as has been approved in writing by the Buyer and its successors and assigns); or

(d) a Home Sale Contract that (i) was entered into under or in connection with a Pool Relocation Management Agreement (which Pool Relocation Management Agreement is then an Eligible Contract), (ii) has been duly executed and delivered by the applicable Ultimate Buyer and is in full force and effect and (iii) is substantially in the form of the contract of purchase and sale used in the area where the property is located, or on a form prescribed by the Originator for that area, with such amendments and additions as may be reasonably negotiated to efficiently sell the Home (or such other form as has been approved in writing by the Buyer and its assignees and assigns).

“Eligible Home” shall mean a Home (a) that is located within the United States, (b) record title for which is not in the name of any Transaction Party or any Affiliate of a Transaction Party and (c) that satisfies the requirements specified in the definition of “Home” in the applicable Pool Relocation Management Agreement or, if such term is not defined therein, in the applicable Home Sale Service Supplement; provided, however, that a Home that does not satisfy the requirement specified in clause (b) may nonetheless be treated as an Eligible Home if and to the extent that either (i) title is recorded on terms and conditions reasonably satisfactory to the Buyer and its assignees or (ii) the aggregate Unpaid Balance of all Eligible Unsold Home Receivables that do not satisfy the requirement specified in clause (b) would not exceed 10% of the aggregate Unpaid Balance of all Eligible Unsold Home Receivables; and provided, further, that a Home that does not satisfy the requirements specified in clause (c) may nonetheless constitute an Eligible Home if and to the extent that (i) the applicable Employer has acknowledged in writing that such property constitutes a “Special Home Transaction” within the meaning of the applicable Home Sale Service Supplement and (ii) the Originator and its Affiliates followed all necessary procedures and obtained all necessary approvals with respect to such Home (including without limitation approvals of the applicable Employer) as may be required by the Credit and Collection Policy and the customary practices of the Originator with respect to such Homes.

“Eligible Obligor” shall mean an Obligor that:

(a) is a United States resident (which term includes a United States division or branch of an entity organized in a jurisdiction outside of the United States, so long as such division or branch maintains a place of business in the United States to which all Receivables are billed);

- (b) is not the United States of America, any state or local government or any agency or instrumentality of any of the foregoing;
- (c) is not an Affiliate of the Originator or the Buyer;
- (d) is not the subject of an Insolvency Proceeding; and
- (e) has been instructed by the Originator to remit all payments on the CMSC Purchased Assets directly to one of the Lockboxes or Lockbox Accounts.

“Eligible Receivable” shall mean any Receivable:

- (a) the Obligor of which is an Eligible Obligor;
- (b) that is denominated and payable only in U.S. dollars;
- (c) that was generated in the ordinary course of the Originator’s business;
- (d) either (1) with respect to which all of the Originator’s right, title and interest has been (or will be, at the time such Receivable becomes included in the CMSC Purchased Assets) validly transferred to the Buyer under and in accordance with the terms of this Agreement; or (2) with respect to any CMF Receivable only, that arose out of or with respect to an Equity Payment, Mortgage Payment or Mortgage Payoff made by the Buyer in respect of a CMF Home Purchase Contract;
- (e) that arises under or in connection with a Pool Relocation Management Agreement that is then an Eligible Contract, and with respect to which any Home Sale Contract, Home Purchase Contract, Equity Loan Agreement or Equity Loan Note relating to such Receivable is also an Eligible Contract;
- (f) that is not a Defaulted Receivable;
- (g) that is an “eligible asset” within the meaning of Rule 3a-7 promulgated under the Investment Company Act of 1940, as amended;
- (h) that constitutes an “account” or a “general intangible” or “chattel paper” and not an “instrument” (except in the case of an Equity Loan, to the extent the same is evidenced by an Equity Loan Note), in each case within the meaning of the New York UCC;
- (i) the transfer of which (including without limitation the sale by the Originator to the Buyer or by the Buyer to ARSC) does not contravene or conflict with any law, rule or regulation or any contractual or other restriction, limitation or encumbrance that applies to the Originator (or, with respect to any CMF Receivable only, the Buyer) (including without limitation the related Contract), and the sale, assignment or transfer of which, and the granting of a security interest in which, does not require the consent of the Obligor thereof or any other Person other than any such consent that has

been previously obtained and is in effect; provided, however, that a Receivable arising out of a Relocation Management Agreement that is subject to a restriction on assignment may nonetheless be an Eligible Receivable hereunder if such Receivable constitutes a right to payment for services rendered not evidenced by an instrument or chattel paper;

(j) that has not been compromised, adjusted, amended or otherwise modified (including by extension of time for payment or the granting of any discounts, allowances or credits) except in a manner that is expressly permitted under Section 3.10(b) of the Transfer and Servicing Agreement;

(k) that, together with the Contracts related thereto, conforms in all material respects with all applicable laws, rules, regulations, orders, judgments, decrees and determinations of all courts and other Governmental Authorities (whether federal, state, local or foreign and including without limitation usury laws);

(l) that is not subject to an asserted reduction (other than any reduction on account of any offsetting account payable of the Originator or the Buyer to an Obligor or any Advance Payment made by the related Obligor so long as such reduction is included in the determination of the Aggregate Employer Balance with respect to the related Obligor) cancellation, rebate or refund or any dispute, offset, counterclaim, lien or defense whatsoever;

(m) with respect to which the representations and warranties of the Originator in Section 6.1(k) of this Agreement (or with respect to any CMF Receivable only, of the Buyer in Section 6.1(k) of the Receivables Purchase Agreement) are true and correct;

(n) that represents a bona fide obligation arising under a Contract that has been duly authorized and that, together with such Receivable, is in full force and effect and constitutes the legal, valid and binding obligation of the Obligor of such Receivable, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and general principles of equity;

(o) that, in the case of a Receivable arising on account of any Equity Payment, Mortgage Payoff, Mortgage Payment, Direct Expenses or any Service Fee or Finance Charge arising in connection with any of the foregoing, relates to an Eligible Home as to which (i) a Home Purchase Contract has been executed and delivered by the related Homeowner and the Originator or the Buyer, as applicable and, to the best knowledge of the Originator (or the Buyer, with respect to CMF Homes only), constitutes the legal, valid and binding obligation of such Homeowner, (ii) a Home Deed has been executed and delivered by the related Homeowner naming the Originator or the Buyer, as applicable, as transferee or with the transferee's name blank, (iii) such Home Purchase Contract and Home Deed have been delivered to and are then in the possession of the agent of CMSC (with respect to

CMSC Homes) or the agent of CMF (with respect to CMF Homes) and (iv) either no Mortgage is outstanding or, if a Mortgage is outstanding, no more than one monthly payment on such Mortgage is past due;

(p) that, in the case of a Receivable that arises from an Equity Loan, arose under an Equity Loan Agreement and an Equity Loan Note, each of which are Eligible Contracts and are then in the possession of the Servicer;

(q) that, in the case of an Unbilled Receivable, represents the right to payment for services rendered; and

(r) that, in the case of a Billed Receivable (other than an Advance Billing Receivable), has been fully earned by performance.

“Eligible Unsold Home Receivable” shall mean an Unsold Home Receivable that is an Eligible Receivable.

“Employer” shall mean a customer of the Originator that has executed a Relocation Management Agreement with the Originator.

“Enhancement Agreement” shall have the meaning provided in the Indenture.

“Environmental Laws” shall mean all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations and guidelines (including consent decrees and administrative orders) relating to public health and safety and protection of the environment.

“Equity Loan” shall mean an advance of all or a portion of the Equity Payment to be made to a Homeowner prior to the execution of the Home Purchase Contract by such Homeowner.

“Equity Loan Agreement” shall mean a loan agreement entered into by a Transferred Employee in connection with an Equity Loan or a proposed Equity Loan.

“Equity Loan Note” shall mean a promissory note made by a Transferred Employee to evidence the Transferred Employee’s obligations in respect of an Equity Loan, which may be included in the same document as an Equity Loan Agreement.

“Equity Payment” shall mean, with respect to any Homeowner, a payment or credit (other than an Equity Loan) made to such Homeowner at the time of, or following the execution of, the related Home Purchase Contract by such Homeowner in respect of its equity interest in a Home as determined pursuant to the applicable Home Purchase Contract.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974 and the rules and regulations thereunder, each as amended from time to time.

“ERISA Affiliate” shall mean any trade or business (whether or not incorporated) that is treated as a single employer with the Originator under Section 414 of the Code.



“Event of Bankruptcy” shall be deemed to have occurred with respect to a Person if either:

(a) a case or other proceeding has been commenced in any court without the application or consent of such Person, seeking the liquidation, reorganization, debt arrangement, dissolution, winding up or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or any substantial part of its assets, or any similar action with respect to such Person under any law (foreign or domestic) relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts and such case or proceeding continues undismissed or unstay ed and in effect for a period of 60 days; or an order for relief with respect to such Person has been entered in an involuntary case under the Bankruptcy Code or other similar laws (foreign or domestic) now or hereafter in effect; or

(b) such Person has commenced a voluntary case or other proceeding under any applicable bankruptcy, insolvency, reorganization, debt arrangement, dissolution or other similar law now or hereafter in effect or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for, such Person or for any substantial part of its property, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to, pay its debts generally as they become due.

“Excluded Asset” shall mean any receivable or related asset that arises under or relates to an Excluded Contract.

“Excluded Contract” shall mean (a) any of the following, to the extent that either the same have not been identified as Pool Relocation Management Agreements or all CMSC Receivables and CMF Receivables arising thereunder have been the subject of a CMSC Noncomplying Asset Adjustment or CMF Noncomplying Asset Adjustment that has been fully paid: (i) if the Originator merges with any other Person that is engaged in the relocation management business, any agreement for relocation management services originated by such other Person prior to the date of such merger and, so long as such business is maintained and operated as a separate division of the Originator, any additional agreements for relocation management services originated by such division, (ii) any agreement for relocation management services that is not an Eligible Contract or (iii) any agreement for relocation management services the receivables arising under which would not be Eligible Receivables because the Employer party thereto is not obligated to provide reimbursement for losses on resale of homes or because the homes relating to such agreement would be located solely outside of the United States and (b) any home purchase contract, home sale contract, equity loan note, equity loan agreement or similar agreement entered into pursuant to any agreement referred to in clause (a) above.

“Final Payout Date” shall mean the earlier of the date after the satisfaction and discharge of the Indenture pursuant to Article IV thereof on which either (i) all of the Notes have been paid in full or (ii) the Unpaid Balance of all outstanding CMSC Receivables has been reduced to zero; provided that for purposes of this definition of Final Payout Date, the Unpaid

Balance of a Defaulted Receivable shall be deemed to be outstanding until all Homes related thereto have been sold and such Receivable has been written off as uncollectible.

“Finance Charge” shall mean any interest, late payment fee or other finance charge with respect to a Receivable or other Related Property, including without limitation any interest accrued or to accrue on an Equity Loan, Equity Payment, Mortgage Payoff or Mortgage Payment under the terms of the applicable Contract or Contracts.

“GAAP” shall mean generally accepted accounting principles, including the opinions, statements and pronouncements of the American Institute of Certified Public Accountants, the Financial Accounting Standards Board and the Securities and Exchange Commission, as in effect from time to time.

“Governmental Authority” shall mean the United States of America, any State or other political subdivision thereof and any entity in the United States of America or any applicable foreign jurisdiction that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Guaranty” shall mean any agreement, undertaking or arrangement by which any Person guarantees, endorses, agrees to purchase or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions on the shares of any other Person.

“Hazardous Material” shall mean (a) any “hazardous substance” as defined under CERCLA, (b) any “hazardous waste” as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 690, et seq., as amended, (c) any petroleum product or (d) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any Environmental Laws.

“Home” shall mean a family residence or other improved real estate that is the subject of any services provided under a Pool Relocation Management Agreement, including without limitation any Home or property subject to a “Special Home Transaction” within the meaning of the applicable Home Sale Service Supplement.

“Home Deed” shall mean, with respect to any Home, a deed or other instrument of conveyance executed by the related Homeowner that effects the conveyance of such Home pursuant to the related Home Purchase Contract.

“Home Purchase Contract” shall mean the contract by which a Home is purchased from a Homeowner pursuant to, or in connection with, a Pool Relocation Management Agreement.

“Home Sale Contract” shall mean, with respect to any Home, the contract by which such Home is sold to an Ultimate Buyer.

“Home Sale Proceeds” shall mean, with respect to any Home, the cash sale proceeds received upon the sale of such Home to an Ultimate Buyer, net of any unpaid mortgage loan amounts, closing costs, brokerage costs, commissions owed to third parties and any other amounts payment of which are necessary to clear title to such Home.

“Home Sale Service Supplement” shall mean a supplement to a Pool Relocation Management Agreement substantially in the form attached as Exhibit C.

“Homeowner” shall mean, with respect to any Home, the Transferred Employee and any other homeowner of record with respect to such Home.

“Indebtedness” of any Person shall mean, in the aggregate, without duplication, (i) all indebtedness, obligations and other liabilities of such Person and its Subsidiaries that are, at the date as of which Indebtedness is to be determined, includable as liabilities in a consolidated balance sheet of such Person and its Subsidiaries, other than (x) accounts payable and accrued expenses, (y) advances from clients obtained in the ordinary course of the relocation management services business of any such Person and (z) current and deferred income taxes and other similar liabilities, (ii) the maximum aggregate amount of all liabilities of such Person or any of its Subsidiaries under any Guaranty, indemnity or similar undertaking given or assumed of or in respect of, the indebtedness, obligations or other liabilities, assets, revenues, income or dividends of any Person other than such Person or one of its Subsidiaries and (iii) all other obligations or liabilities of such Person or any of its Subsidiaries with respect to the discharge of the obligations of any Person other than itself or one of its Subsidiaries. For purposes of the Transaction Documents, the Indebtedness of any Person includes the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer.

“Indebtedness for Borrowed Money” shall mean, with respect to any Person, (i) any Indebtedness of such Person, contingent or otherwise, in respect of borrowed money including all principal, interest, fees and expenses with respect thereto (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof), or evidenced by bonds, notes, acceptances, debentures or other instruments or letters of credit (or reimbursement obligations with respect thereto) but excluding capitalized lease obligations and excluding obligations representing the deferred and unpaid purchase price of any property.

“Indenture” shall mean the Indenture dated as of April 25, 2000 by and between the Issuer and the Indenture Trustee.

“Indenture Supplement” shall have the meaning set forth in the Indenture.

“Indenture Trustee” shall mean Bank One, National Association, as indenture trustee under the Indenture, and any successor thereto.

“Independent Director” shall mean, with respect to the Buyer, ARSC or the Issuer, an individual who is an Independent Director as defined in the organizational documents of such entity as in effect on the date of this Agreement.

“Insolvency Proceeding” shall mean, with respect to any Person, any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any Federal or state

bankruptcy or similar law or any other proceeding of the type described in the definition of Event of Bankruptcy, whether voluntary or involuntary.

“Issuer” shall mean Apple Ridge Funding LLC, a Delaware limited liability company.

“Lien” shall mean, when used with respect to any Person, any interest in any real or personal property, asset or other right held, owned or being purchased or acquired by such Person for its own use, consumption or enjoyment in its business that secures payment or performance of any obligation, and includes any mortgage, lien, pledge, encumbrance, charge, retained security title of a conditional vendor or lessor or other security interest of any kind, whether arising under a security agreement, mortgage, deed of trust, chattel mortgage, assignment, pledge, retention of security title, financing or similar statement or notice or arising as a matter of law, judicial process or otherwise.

“Lockbox” shall mean any post office box to which the Obligors remit CMSC Collections established pursuant to the Transfer and Servicing Agreement.

“Lockbox Account” shall mean any lockbox account, concentration account, depository account or similar account (including any associated demand deposit account) established pursuant to the Transfer and Servicing Agreement, in which any CMSC Collections or CMF Collections are collected or deposited.

“Lockbox Agreement” shall have the meaning provided in the Transfer and Servicing Agreement.

“Lockbox Bank” shall mean any institution at which a Lockbox or Lockbox Account is maintained.

“Material Adverse Effect” shall mean, with respect to any event or circumstance, a material adverse effect on (a) the business, financial condition, operations or assets of the Originator, (b) the ability of the Originator to perform its obligations under any Transaction Document or all or any substantial portion of the Contracts, (c) the validity or enforceability of, or collectibility of, amounts payable by the Originator under any Transaction Document, (d) the status, existence, perfection or priority of the interest of the Buyer (and its assignees) in the CMSC Purchased Assets, taken as a whole, in each case free and clear of any Lien (other than Permitted Liens) or (e) the validity, enforceability or collectibility of all or any substantial portion of the ARSC Purchased Assets.

“Monthly Period” shall mean (i) a calendar month or (ii) with respect to the initial Monthly Period for any Series, the period commencing on the closing date with respect to such Series and ending on the last day of the same month, or such other period set forth in the related Indenture Supplement.

“Mortgage” shall mean, with respect to a Home, either or both of (a) any indebtedness of the relevant Homeowner secured by a mortgage, deed of trust or other Lien on such Home and (b) such mortgage, deed of trust or other Lien, as the context may require.

“Mortgage Payment” shall mean, with respect to any Home, any payment actually made under any Mortgage on such Home (other than a Mortgage Payoff), including without limitation payments of principal and interest and for taxes and insurance.

“Mortgage Payoff” shall mean, with respect to any Home, the amount, if any, paid to retire the entire remaining principal balance of any Mortgage on such Home, together with interest accrued thereon to the date of payment.

“Notes” shall have the meaning set forth in the Indenture.

“Obligor” shall mean, with respect to any Contract, the Person or Persons obligated to make payments in respect of Receivables arising thereunder, including without limitation (i) with respect to any Equity Payment, Mortgage Payoff or Mortgage Payment, the related Employer, (ii) with respect to any Equity Loan, both the Transferred Employee and the related Employer and (iii) with respect to any Unsold Home Receivable, the Employer party to the related Relocation Management Agreement.

“Originator” shall mean CMSC and its successors and permitted assigns.

“Originator Adjustment” shall have the meaning set forth in Section 4.3(c).

“Originator Assets” shall have the meaning set forth in Section 2.1(a).

“Originator Dilution Adjustment” shall have the meaning set forth in Section 4.3(b).

“Originator Receivables” shall have the meaning set forth in Section 2.1(a).

“Originator Related Assets” shall have the meaning set forth in Section 2.1(a).

“Originator Related Property” shall have the meaning set forth in Section 2.1(a).

“Other Reimbursable Expense” shall mean a cost or expense that is incurred and paid in connection with services under a Pool Relocation Management Agreement or reimbursable by the Obligor under the applicable Pool Relocation Management Agreement, and that is not included in the calculation of Direct Expenses thereunder.

“PBGC” shall mean the Pension Benefit Guaranty Corporation and any successor thereto.

“Performance Guarantor” shall mean PHH.

“Permitted Change” shall mean, with respect to any Contract the form of which is attached hereto in Exhibit C, any revisions or modifications to such form that (i) are made by the Originator in the ordinary course of its business consistent with the Credit and Collection Policy, (ii) do not, individually or in the aggregate, materially adversely affect the collectibility of the CMSC Receivables or any Receivables arising under or in connection with any CMF Home Purchase Contract, (iii) do not, individually or in the aggregate, materially alter (in a manner

adverse to the Originator or any of its assigns) the reimbursement or indemnification obligations of such Obligor thereunder or the composition of the losses, costs or expenses to which such reimbursement or indemnification obligations pertain, (iv) would not cause such Contract to cease to be an Eligible Contract or the Receivables arising thereunder to cease to be Eligible Receivables and (v) do not violate any of the terms and provisions of this Agreement.

“Permitted Exception” shall mean that, with respect to any representation, warranty or covenant with respect to the interest of the Buyer and its assignees in the ARSC Purchased Assets or any Servicer Default, that (i) prior to recordation (A) pursuant to Section 8.3 of this Agreement and/or Section 2.01(d)(i) of the Transfer and Servicing Agreement or (B) upon the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee, and no recordation in real estate records of any mortgage or any conveyance pursuant to the related Home Purchase Contract or Home Sale Contract in favor of any Transaction Party or any of the Buyer’s assignees and assigns pursuant to the Receivables Purchase Agreement will be made except as otherwise permitted under Section 2.01(d)(i) of the Transfer and Servicing Agreement and (ii) no delivery of any Home Purchase Contracts, Home Deeds and Equity Loan Notes to any custodian will be required.

“Permitted Lien” shall mean:

- (a) with respect to any Home, the related Receivables or Related Property with respect thereto, (i) an inchoate Lien on the Home for real estate taxes not yet due and payable, (ii) a Mortgage on the Home created by the related Transferred Employee and (iii) any Lien that is fully covered by the terms of the indemnity provisions of the applicable Pool Relocation Management Agreement and that arises in the ordinary course of the Originator’s business;
- (b) with respect to any CMSC Purchased Asset, any Lien in favor of the Buyer pursuant to this Agreement; and
- (c) with respect to any ARSC Purchased Asset, any Lien created pursuant to the Transaction Documents.

“Person” shall mean an individual, partnership, corporation (including a business trust), joint stock company, trust, limited liability company, unincorporated association, joint venture, government or any agency or political subdivision thereof or any other entity.

“PHH” shall mean PHH Corporation, a Maryland corporation, and any successor thereto.

“PHH Guarantee” shall mean the performance guarantee dated as of the Closing Date, executed by the Performance Guarantor in favor of the Buyer and the Issuer.

“Plan” shall mean each employee benefit plan (as defined in Section 3(3) of ERISA) currently sponsored, maintained or contributed to by the Originator or any ERISA Affiliate or with respect to which the Originator or any ERISA Affiliate has any liability.

“Pool Relocation Management Agreement” shall have the meaning set forth in Section 2.1(a).

“Prime Rate” shall mean the Prime Rate as most recently published in The Wall Street Journal in New York City.

“Purchase” shall mean each purchase of CMSC Receivables and other CMSC Purchased Assets by the Buyer from the Originator hereunder.

“Receivable” shall mean any right arising under a Contract to receive any payment or any funds from or on behalf of an Obligor, whether or not earned by performance and whether constituting an account, chattel paper, instrument, general intangible or otherwise. The term “Receivable” includes without limitation rights to payment (whether matured or unmatured and whether absolute or contingent) arising out of or with respect to Equity Loans, Equity Payments, Direct Expenses, Mortgage Payments, Mortgage Payoffs, Service Fees and Other Reimbursable Expenses and the right to payment of any and all Finance Charges with respect to any of the foregoing, whether such amounts are owed by an Employer, a Transferred Employee, an Ultimate Buyer or any other Obligor. The change of a Receivable’s status from that of Unsold Home Receivable to Unbilled Receivable or from Unbilled Receivable to Billed Receivable shall not be deemed the creation of a new Receivable for any purpose hereunder.

“Receivables Activity Report” shall have the meaning provided in the Transfer and Servicing Agreement.

“Records” shall mean all Contracts, purchase orders, invoices, customer lists, credit files and other agreements, documents, books, records and other media for the storage of information (including without limitation tapes, disks, punch cards, computer software and databases and related property) with respect to the Receivables, the Related Property and/or the related Obligors.

“Related Property” shall mean, with respect to any Receivable, (i) all security interests or liens and property subject thereto from time to time purporting to secure payment of such Receivable, whether pursuant to the related Relocation Management Agreement or any other Contract related to such Receivable or otherwise; (ii) all guarantees and other agreements or arrangements of whatever character from time to time supporting or securing payment of such Receivable, (iii) all rights under warranties, indemnities or insurance with respect to such Receivable, related Contracts, CMSC Related Assets (with respect to CMSC Re ceivables) or CMF Related Assets (with respect to CMF Receivables), (iv) all rights to the CMSC Home Sale Proceeds arising out of or with respect to any CMSC Homes and CMF Home Sale Proceeds arising out of or with respect to any CMF Homes under the related Relocation Management Agreement and (v) all Records.

“Relocation Management Agreement” shall mean an agreement pursuant to which the Originator agrees to provide employee relocation, asset management or other services, as the same may be amended, restated or otherwise modified from time to time, including any and all supplements thereto, and any similar agreement, howsoever denominated, and any agreement for intercultural services.

“Self-Funding Obligor” shall mean an Employer that deposits funds with the Originator in order to fund Equity Payments, Other Reimbursable Expenses or other payments made to or on behalf of the Transferred Employees of such Employer under the terms of the Employer’s Relocation Management Agreement.

“Seller Adjustment” shall have the meaning set forth in the Receivables Purchase Agreement.

“Series” shall have the meaning set forth in the Indenture.

“Series Enhancer” shall have the meaning set forth in the Indenture.

“Service Fee” shall mean any fee payable by an Employer under a Pool Relocation Management Agreement, including without limitation any fee payable with respect to the marketing and sale of a particular Home or otherwise in connection with any employee relocation services or asset management services performed under or in connection with such Pool Relocation Management Agreement.

“Servicer” shall mean the Originator, in its capacity as the Servicer under the Transfer and Servicing Agreement, and any successor thereto in such capacity appointed pursuant to Article IX of the Transfer and Servicing Agreement.

“Servicer Default” shall have the meaning set forth in the Transfer and Servicing Agreement.

“Servicer Dilution Adjustment” shall have the meaning set forth in the Transfer and Servicing Agreement.

“Subsidiary” shall mean, with respect to any Person, any corporation or other entity of which more than 50% of the outstanding capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors of such corporation (notwithstanding that at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) or other persons performing similar functions is at the time directly or indirectly owned by such Person.

“Surviving Entity” shall have the meaning provided in Section 7.3(c)(i).

“Termination Date” shall mean the date specified by the Indenture Trustee following the occurrence of a CMF Purchase Termination Event; provided, however, that if an Event of Bankruptcy has occurred with respect to either the Originator or the Buyer, the Termination Date shall be deemed to have occurred automatically without any such notice.

“Transaction Documents” shall mean, collectively, this Agreement, the Receivables Purchase Agreement, the Transfer and Servicing Agreement, the PHH Guarantee, the CMF Subordinated Note, the Lockbox Agreements and all agreements, instruments, certificates, reports and documents (other than any of the Contracts) executed and delivered or to be executed and delivered under or in connection with any of the foregoing, as any of the foregoing may be amended, supplemented, restated or otherwise modified from time to time.



“Transaction Party” shall mean the Buyer, the Originator, ARSC, the Issuer or the Servicer (so long as the Servicer is the Originator or an Affiliate thereof).

“Transfer and Servicing Agreement” shall mean the transfer and servicing agreement dated as of April 25, 2000 by and between the Originator, the Buyer, ARSC, the Servicer and the Issuer.

“Transferred Employee” shall mean an individual designated by an authorized representative of an Employer pursuant to the applicable Relocation Management Agreement as a person entitled to the benefits of such Relocation Management Agreement.

“UCC” shall mean the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction or jurisdictions.

“Ultimate Buyer” shall mean the buyer of a Home from the Originator (or from the Buyer or its assignee, as the case may be).

“Unbilled Receivable” shall mean any CMSC Receivable or CMF Receivable (other than any Unsold Home Receivable) that has not yet been billed to the related Obligor.

“Unmatured Servicer Default” shall have the meaning set forth in the Transfer and Servicing Agreement.

“Unpaid Balance” of any Receivable shall mean at any time the unpaid amount thereof at such time; provided, however, that the Unpaid Balance of Unsold Home Receivables with respect to any Home shall be the aggregate amount (without duplication) of Receivables arising from Equity Payments, Mortgage Payoffs, Mortgage Payments and Equity Loans in respect of such Home.

“Unsold Home Receivable” shall mean any CMSC Receivable or CMF Receivable, including any Finance Charges in respect thereof, incurred in respect of an Equity Loan, Equity Payment, Mortgage Payoff or Direct Expenses on a Home that has not yet been sold to an Ultimate Buyer (or the sale of which has not been closed or the Home Sale Proceeds of which have not been received).

B. Other Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP or with United States generally accepted regulatory principles, as applicable. To the extent that the definitions of accounting terms in this Agreement are inconsistent with the meanings of such terms under GAAP or regulatory accounting principles, the definitions contained in this Agreement shall control. All terms used in Article 9 of the UCC in the State of New York and not specifically defined herein are used herein as defined in such Article 9.

C. Computation of Time Periods. Unless otherwise stated in this Agreement with respect to computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words ‘to’ and ‘until’ means “to but excluding”.

D. Reference. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and references to “Section”, “subsection”, “Appendix”, “Schedule” and “Exhibit” in this Agreement are references to Sections, subsections, Appendices, Schedules and Exhibits in or to this Agreement unless otherwise specified in this Agreement.

SCHEDULE 2.1

to

PURCHASE AGREEMENT

Dated as of April 25, 2000

List of Pool Relocation Management Agreements

Attached.

SCHEDULE 6.1(n)

to

PURCHASE AGREEMENT

Dated as of April 25, 2000

Principal Place of Business  
and Chief Executive Office of the Originator

**Cendant Mobility Services Corporation**  
40 Apple Ridge Road  
Danbury, Connecticut 06810

List of Offices Where  
the Originator Keeps CMSC Records

**Cendant Mobility Services Corporation**  
40 Apple Ridge Road  
Danbury, CT 06810

**Cendant Mobility Services Corporation**  
8081 Royal Ridge Parkway  
Suite 200  
Irving, TX 75063

**Cendant Mobility Services Corporation**  
27271 Las Ramblas  
Mission Viejo, CA 92691

**Cendant Mobility Services Corporation**  
2221 Camden Court  
Oakbrook, IL 60523

**Cendant Mobility Services Corporation**  
401 Lennon Lane  
Suite 200  
Walnut Creek, CA 94598

SCHEDULE 6.1(s)  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

List of Legal Names for Cendant Mobility Services Corporation

Cendant Mobility Services Corporation  
Coldwell Banker Moving Services, Inc.  
Coldwell Banker Relocation Services, Inc.  
Executrans, Inc.  
HFS Mobility Services, Inc.  
PHH Homequity Corporation  
PHH Real Estate Services Corporation  
Relocation 1, Inc.  
Worldwide Relocation Management Inc.

SCHEDULE 11.2  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

Notice Addresses

**Cendant Mobility Services Corporation**

40 Apple Ridge Road  
Danbury, Connecticut 06810  
Fax: (203) 205-3704

**Cendant Mobility Financial Corporation**

40 Apple Ridge Road  
Suite 6000  
Danbury, Connecticut 06910  
Fax: (203) 205-3054

EXHIBIT 2.1  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

FORM OF NOTICE OF ADDITIONAL  
POOL RELOCATION MANAGEMENT AGREEMENTS

[DATE]

Cendant Mobility Financial Corporation  
40 Apple Ridge Road  
Suite 6000  
Danbury, CT 06810

Re: Additional Pool Relocation Management Agreements

Dear Sir or Madam:

Reference is made to the Purchase Agreement, dated as of April 25, 2000 (the "Purchase Agreement"), between Cendant Mobility Services Corporation and Cendant Mobility Financial Corporation. Capitalized terms used herein and not defined herein shall have the meanings assigned to them in the Purchase Agreement.

Pursuant to Section 2.1 of the Purchase Agreement, we are required to deliver a notice to you on the last of day of each month setting forth the new Relocation Management Agreements which were executed during such month. Attached hereto is a list of Pool Relocation Management Agreements that were executed during [Month/Year]. Pursuant to Section 2.1 of the Purchase Agreement, Schedule 2.1 to the Purchase Agreement is hereby amended to include the Relocation Management Agreements attached hereto.

Very truly yours,

CENDANT MOBILITY SERVICES  
CORPORATION

By: \_\_\_\_\_

Name:

Title:

EXHIBIT 4.2  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

FORM OF CMF SUBORDINATED NOTE

April 25, 2000

1. Note. FOR VALUE RECEIVED, the undersigned, CENDANT MOBILITY FINANCIAL CORPORATION, a Delaware corporation (the "Buyer"), hereby unconditionally promises to pay to the order of CENDANT MOBILITY SERVICES CORPORATION, a Delaware corporation (the "Originator"), in lawful money of the United States of America and in immediately available funds, on the day following the Final Payout Date, the aggregate unpaid principal sum outstanding of all "CMF Subordinated Loans" made from time to time by the Originator to the Buyer pursuant to and in accordance with the terms of that certain Purchase Agreement dated as of April 25, 2000, between the Originator and the Buyer (as amended, restated, supplemented, or otherwise modified from time to time, the "Purchase Agreement"). Reference to Sections 4.2 and 5.2 of the Purchase Agreement is hereby made for a statement of the terms and conditions under which the loans evidenced hereby have been and will be made. All capitalized terms used herein that are not otherwise specifically defined herein shall have the meanings given to such terms in the Purchase Agreement. No advance shall be made hereunder on any date if the aggregate principal amount outstanding hereunder on such date after giving effect to such advance, plus the aggregate amount then outstanding under the Notes, would exceed an amount equal to five times the net worth of CMF. Proceeds of amounts advanced hereunder shall not be used for any purpose except to purchase CMF Homes (including the making of Equity Payments), to make Mortgage Payments and Mortgage Payoffs with respect to CMF Homes and to pay Seller Adjustments.

2. Interest. The Buyer further promises to pay interest on the outstanding unpaid principal amount hereof from the date hereof until payment in full hereof at a rate equal to LIBOR plus 2.25%; provided, however, that if the Buyer defaults in the payment of any principal hereof, the Buyer promises to pay, on demand, interest at the Prime Rate plus 2.00% per annum on any such unpaid amounts, accrued with respect to each Interest Period from the date such payment is due to the date of actual payment. LIBOR shall be determined on each LIBOR Determination Date on the basis of the rate for deposits in United States dollars for a one-month period which appears on Telerate Page 3750 as of 11:00 a.m., London time, on such date. If such rate does not appear on Telerate Page 3750, the rate for that LIBOR Determination Date shall be determined on the basis of the rates quoted by the four major banks in the London interbank market selected by the Paying Agent to the Paying Agent as the rates at which deposits in United States dollars are offered by such banks in the London interbank market at approximately 11:00 a.m., London time, on that day to prime banks in the London interbank market for a one-month period. Notwithstanding the foregoing, interest shall accrue at a rate equal to 8.46% per annum during the first Interest Period. Interest shall be payable on the



Distribution Date in each month in arrears. The outstanding principal of any loan made under this CMF Subordinated Note shall be due and payable on the day after the Final Payout Date, and may be repaid or prepaid at any time without premium or penalty.

LIBOR Determination Date means the second London Business Day prior to the commencement of the second and each subsequent Interest Period. A London Business Day is any Business Day on which dealings in deposits in U.S. dollars are transacted in the London interbank market and banking institutions in London are not authorized or obligated by law or regulation to close. An Interest Period is the period beginning on and including the Distribution Date immediately preceding such Distribution Date and ending on and excluding such Distribution Date; provided that the first Interest Period shall begin on and include April 25, 2000 and end on and exclude June 15, 2000. A Distribution Date means June 15, 2000 and the fifteenth day of each calendar month thereafter, or if such fifteenth day is not a Business Day, the next succeeding Business Day.

3. Principal Payments. The Originator is authorized and directed by the Buyer to enter in its books and records the date and amount of each loan made by it that is evidenced by this CMF Subordinated Note and the amount of each payment of principal made by the Buyer and, absent manifest error, such entries shall constitute prima facie evidence of the accuracy of the information so entered; provided that neither the failure of the Originator to make any such entry or any error therein shall expand, limit or affect the obligations of the Buyer hereunder.

4. Subordination. The indebtedness evidenced by this CMF Subordinated Note is subordinated to the prior payment in full of all of the Buyer's recourse obligations under the Receivables Purchase Agreement. The subordination provisions contained herein are for the direct benefit of, and may be enforced by, the Buyer's successors and assigns and/or any of their respective assignees (collectively, the "Senior Claimants") under the Receivables Purchase Agreement. Until the date after the Final Payout Date on which all advances outstanding under the Receivables Purchase Agreement have been repaid in full and all other obligations of the Buyer thereunder (all such obligations, collectively, the "Senior Claims") have been indefeasibly paid and satisfied in full, the Originator shall not demand, accelerate, sue for, take, receive or accept from the Buyer, directly or indirectly, in cash or other property or by set-off or any other manner (including without limitation from or by way of collateral) any payment or security of all or any of the indebtedness under this CMF Subordinated Note or exercise any remedies or take any action or proceeding to enforce the same; provided, however, that (i) the Originator hereby agrees that it will not institute against the Buyer any Insolvency Proceeding unless and until a period of one year and one day has elapsed after the Final Payout Date and (ii) nothing in this paragraph shall restrict the Buyer from paying, or the Originator from requesting, any payments under this CMF Subordinated Note so long as the Buyer is not required under the Receivables Purchase Agreement to set aside the funds used for such payments for the benefit of, or otherwise pay over to, any of the Senior Claimants; and provided, further, that the making of such payment would not otherwise violate the terms and provisions of the Receivables Purchase Agreement. Should any payment, distribution or security or proceeds thereof be received by the Originator in violation of the immediately preceding sentence, the Originator agrees that such payment shall be segregated, received and held in trust for the benefit of, and deemed to be the

property of, and shall be immediately paid over and delivered to the Indenture Trustee for the benefit of the Senior Claimants.

5. Bankruptcy; Insolvency. Upon the occurrence of any Insolvency Proceeding involving the Buyer as debtor, then and in any such event the Senior Claimants shall receive payment in full of all amounts due under the Receivables Purchase Agreement (whether or not any or all of such amount is an allowable claim in any such proceeding) before the Originator is entitled to receive payment on account of this CMF Subordinated Note and, to that end, any payment or distribution of assets of the Buyer of any kind or character, whether in cash, securities or other property in any applicable Insolvency Proceeding which would otherwise be payable to, or deliverable upon or with respect to, any or all indebtedness under this CMF Subordinated Note, is hereby assigned to and shall be paid or delivered by the Person making such payment or delivery (whether a trustee in bankruptcy, a receiver, custodian or liquidating trustee or otherwise) pursuant to the Receivables Purchase Agreement for application to, or as collateral for the payment of, the Senior Claim until such Senior Claim shall have been paid in full and satisfied.

6. **GOVERNING LAW. THIS CMF SUBORDINATED NOTE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF NEW YORK. WHEREVER POSSIBLE EACH PROVISION OF THIS CMF SUBORDINATED NOTE SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS CMF SUBORDINATED NOTE SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS CMF SUBORDINATED NOTE.**

7. Waivers. All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor. Originator additionally expressly waives all notice of the acceptance by any Senior Claimant of the subordination and other provisions of this CMF Subordinated Note and expressly waives reliance by any Senior Claimant upon the subordination and other provisions herein provided.

8. Assignment. Prior to the satisfaction and discharge of the Indenture pursuant to Article IV thereof, this CMF Subordinated Note may not be assigned, pledged or otherwise transferred to any party other than Originator except in accordance with the Receivables Purchase Agreement.

Cendant Mobility Financial Corporation

By: \_\_\_\_\_

Name:

Title:

EXHIBIT 6.1(u)  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

CREDIT AND COLLECTION POLICY

Attached.

EXHIBIT 7.3(j)  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

FORM OF ACKNOWLEDGMENT LETTER

[Date]

Bank One, National Association,  
as Indenture Trustee  
[Address]  
Attn: [Corporate Trust Department]

MBIA Insurance Corporation,  
as Insurer  
113 King Street  
Armonk, NY 10504  
Attn: [ ]

Re: Apple Ridge Funding, LLC Notes, Series 2000-1

Ladies and Gentlemen:

Reference is made to that certain Transfer and Servicing Agreement dated March \_\_, 2000 (as amended, modified, restated or supplemented from time to time, the "Transfer Agreement") among Cendant Mobility Services Corporation ("CMSC") as an Originator and as Servicer, Cendant Mobility Financial Corporation ("CMF"), as an Originator, Apple Ridge Services Corporation, as Transferor (the "Transferor"), Apple Ridge Funding, LLC, as Issuer (the "Issuer") and Bank One, National Association, as Indenture Trustee (the "Indenture Trustee"). Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Transfer Agreement.

1. The undersigned [creditor of] [buyer from] CMSC (the "CMSC Creditor" ["CMSC Buyer"]) hereby acknowledges that: (a) CMF is a limited purpose corporation whose primary activities are restricted in its certificate of incorporation to purchasing Receivables arising under certain Pool Relocation Management Agreements (the "Pool Contracts") and other CMSC Purchased Assets from CMSC, making Equity Advances to employees or otherwise purchasing Homes in connection with the Pool Contracts, funding such activities through the sale of Receivables (the "Pool Receivables") to the Transferor, and such other activities as it deems necessary or appropriate in connection therewith; (b) the Transferor is a limited purpose corporation whose primary activities are restricted in its certificate of incorporation to purchasing from CMF all Pool Receivables acquired by CMF from CMSC or otherwise originated by CMF, funding such acquisitions through the sale of the Pool Receivables to the Issuer and such other

activities as it deems necessary or appropriate to carry out such activities; and (c) the Issuer is a limited purpose limited liability company whose activities are limited in its certificate of formation to purchasing the Pool Receivables from the Transferor, funding such acquisitions through the issuance of the Notes and other securities, pledging such Pool Receivables to the Indenture Trustee and such other activities as it deems necessary or appropriate to carry out such activities.

2. The CMSC [Creditor] [Buyer] hereby acknowledges and agrees that: (a) the foregoing transfers are intended to be true and absolute sales as a result of which CMSC has no right, title and interest in and to the Pool Receivables, any Homes acquired by CMF in connection therewith nor any related property sold or purported to be sold by CMSC to CMF or by CMF to the Transferor or by the Transferor to the Issuer under the transactions described above, including any proceeds thereof or earnings thereon (collectively, the "Pool Assets"); (b) none of CMF, the Transferor and the Issuer are parties to the < STRONG>[Insert name of agreement to which the CMSC [Creditor] [Buyer]/Buyer is a party and by which CMSC is bound] [(the "CMSC [Credit], [Securitization] Agreement")]; (b) the CMSC [Creditor] [Buyer] is not a creditor of, and has no recourse to CMF, the Transferor or the Issuer pursuant to the CMSC [Credit] [Securitization] Agreement or any other documents executed in connection therewith; and (c) the CMSC [Creditor] [Buyer] has no lien on or claim, contractual or otherwise, arising under the CMSC [Credit] [Securitization] Agreement to the Pool Assets (whether now existing or hereafter acquired and whether tangible or intangible); provided that nothing herein shall limit any rights the CMSC [Creditor] [Buyer] may have to any proceeds or earnings which are transferred from time to time to CMSC by CMF, the Transferor or the Issuer.

3. The CMSC [Creditor] [Buyer] hereby covenants and agrees that it will not file nor join with any other person in filing against CMF, the Transferor or the Issuer any involuntary bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding under any Federal or state bankruptcy or similar law at any time other than a date which is at least one year and one day after all amounts under the Indenture have been paid in full; provided, that, the foregoing shall not limit the right of the CMSC [Creditor] [Buyer] to file any claim in or otherwise take any action (not inconsistent with the express provisions of this agreement) permitted or required by applicable law with respect to any insolvency proceeding instituted against CMF, the Transferor or the Issuer by any other person.

4. Without limiting the foregoing, in the event of any voluntary or involuntary proceeding of the type described in paragraph 3 above involving CMSC, CMF, the Transferor or the Issuer or any other affiliates of CMSC as debtor, or otherwise, the undersigned agrees that if, notwithstanding the intent of the parties, CMSC is found to have a property interest in the Pool Assets, then, in such event, CMF and its assigns, including the Indenture Trustee for the benefit of the Noteholders and the Insurer, shall have a first and prior claim to the Pool Assets, and any claim or rights the CMSC [Creditor] [Buyer] may have to the Pool Assets, contractual or otherwise, shall be subject to the prior claims of the Indenture Trustee and the Noteholders until all amounts owing under the Indenture shall have been paid in full and the CMSC [Creditor] [Buyer] agrees to turn over to the Indenture Trustee any amounts received contrary to the provisions of this paragraph 4.

5. The CMSC [Creditor] [Buyer] hereby covenants and agrees that it will not agree to any amendment, supplement or other modification of this agreement, without the prior written consent of the Insurer and the Indenture Trustee. The CMSC [Creditor] [Buyer] further agrees that the provisions of this agreement are made for the benefit of, and may be relied upon and enforced by, the Indenture Trustee and the Insurer and that such parties shall be third-party beneficiaries hereof.

[NAME OF CMSC CREDITOR/BUYER]

By: \_\_\_\_\_

Name:

Title:

EXHIBIT C  
to  
PURCHASE AGREEMENT  
Dated as of April 25, 2000

FORMS OF RELOCATION MANAGEMENT AGREEMENTS

Attached.





**RECEIVABLES PURCHASE AGREEMENT**

Dated as of April 25, 2000

by and between

**CENDANT MOBILITY FINANCIAL CORPORATION**

as originator and seller,

and

**APPLE RIDGE SERVICES CORPORATION**

as buyer

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**TABLE OF CONTENTS**

**Page**

<b>ARTICLE I</b>	
<b>DEFINITIONS</b>	
<b>ARTICLE II</b>	
<b>SALE AND PURCHASE OF ASSETS</b>	
Section 2.1 Sale and Purchase	1
Section 2.2 Purchases	2
Section 2.3 No Assumption	3
Section 2.4 No Recourse	3
Section 2.5 True Sales	3
Section 2.6 Servicing of ARSC Purchased Assets	3
Section 2.7 Financing Statements	3
<b>ARTICLE III</b>	
<b>CALCULATION OF ARSC PURCHASE PRICE</b>	
Section 3.1 Calculation of the ARSC Purchase Price	4
<b>ARTICLE IV</b>	
<b>PAYMENT OF ARSC PURCHASE PRICE</b>	
Section 4.1 ARSC Purchase Price Payments	4
Section 4.2 The ARSC Subordinated Note	5
Section 4.3 Seller Adjustments; Originator Adjustments	5
Section 4.4 Payments and Computations, Etc	6
<b>ARTICLE V</b>	
<b>CONDITIONS PRECEDENT</b>	
Section 5.1 Conditions Precedent to Sales and Purchases	6
Section 5.2 Conditions Precedent to ARSC Subordinated Loans	6

**TABLE OF CONTENTS**  
**(continued)**

**Page**

ARTICLE VI REPRESENTATIONS AND WARRANTIES	
Section 6.1 Representations and Warranties of the Seller	7
Section 6.2 Representations and Warranties of ARSC	11
ARTICLE VII GENERAL COVENANTS	
Section 7.1 Affirmative Covenants of the Seller	12
Section 7.2 Reporting Requirements	15
Section 7.3 Negative Covenants of the Seller	17
Section 7.4 Affirmative Covenants of ARSC	18
ARTICLE VIII ADDITIONAL RIGHTS AND OBLIGATIONS IN RESPECT OF THE ARSC PURCHASED ASSETS	
Section 8.1 Rights of ARSC	19
Section 8.2 Responsibilities of the Seller	20
Section 8.3 Further Action Evidencing Purchases	20
Section 8.4 CMF Collections; Rights of ARSC and its Assignees	21
ARTICLE IX TERMINATION	
Section 9.1 ARSC Purchase Termination Events	22
Section 9.2 Purchase Termination	22

**TABLE OF CONTENTS**  
**(continued)**

**Page**

ARTICLE X  
INDEMNIFICATION; SECURITY INTEREST

Section 10.1 Indemnities by the Seller	23
Section 10.2 Security Interest	25

ARTICLE XI  
MISCELLANEOUS

Section 11.1 Amendments; Waivers, Etc.	
Section 11.2 Notices, Etc.	26
Section 11.3 Cumulative Remedies	26
Section 11.4 Binding Effect; Assignability; Survival of Provisions	26
Section 11.5 Governing Law	26
Section 11.6 Costs, Expenses and Taxes	26
Section 11.7 Submission to Jurisdiction	27
Section 11.8 Waiver of Jury Trial	28
Section 11.9 Integration	28
Section 11.10 Captions and Cross References	28
Section 11.11 Execution in Counterparts	28
Section 11.12 Acknowledgment and Consent	28
Section 11.13 No Partnership or Joint Venture	29
Section 11.14 No Proceedings	29
Section 11.15 Severability of Provisions	29
Section 11.16 Recourse to the Seller	29
Section 11.17 Recourse to ARSC	29
Section 11.18 Confidentiality	30

APPENDIX

APPENDIX A

Definitions

SCHEDULES

SCHEDULE 2.1

List of CMF Home Purchase Contracts

SCHEDULE 6.1(n)

Principal Place of Business and Chief Executive Office of the Seller and List of Offices Where the Seller Keeps CMF Records

EXHIBITS

EXHIBIT 2.1

Form of Notice of Additional CMF Home Purchase Contracts

EXHIBIT 4.2

Form of ARSC Subordinated Note

RECEIVABLES PURCHASE AGREEMENT

THIS RECEIVABLES PURCHASE AGREEMENT (this “**Agreement**”) dated as of April 25, 2000 made by and between CENDANT MOBILITY FINANCIAL CORPORATION, a Delaware corporation, as originator and seller (the “**Seller**”) and APPLE RIDGE SERVICES CORPORATION, a Delaware Corporation, as buyer (“**ARSC**”).

WHEREAS, the Seller has purchased certain Receivables and Related Assets from Cendant Mobility Services Corporation (“**CMSC**”) and from time to time hereafter will create, and will purchase from CMSC, additional Receivables and Related Assets; and

WHEREAS, the Seller wishes to sell Receivables and Related Assets that it now owns and Receivables and Related Assets that it from time to time hereafter will own to ARSC, and ARSC is willing to purchase such Receivables and Related Assets from the Seller from time to time, on the terms and subject to the conditions contained in this Agreement; and

WHEREAS, ARSC intends to transfer the ARSC Purchased Assets to the Issuer from and after the Closing Date pursuant to the terms of the Transfer and Servicing Agreement;

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

ARTICLE I  
DEFINITIONS

Capitalized terms used and not otherwise defined in this Agreement have the meanings specified in Part A of Appendix A or as specified in Appendix A of the Purchase Agreement. In addition, this Agreement shall be interpreted in accordance with the conventions set forth in Parts B, C and D of Appendix A.

ARTICLE II  
SALE AND PURCHASE OF ASSETS

Section 2.1 [Sale and Purchase.](#)

(a) Agreement. Upon the terms and subject to the conditions hereof, ARSC agrees to buy, and the Seller agrees to sell, all of the Seller’s right, title and interest in and to the following:

- (i) all CMSC Purchased Assets owned by the Seller on the Closing Date or thereafter purchased, and all rights of the Seller under the Purchase Agreement

and the PHH Guarantee with respect to the CMSC Purchased Assets (collectively, the “**Seller Purchased Assets**”);

(ii) all Receivables arising out of or with respect to Equity Payments, Mortgage Payments and Mortgage Payoffs made by the Seller in respect of Home Purchase Contracts to which CMF is a party from and after the Closing Date (collectively, the “**Seller Receivables**”);

(iii) all Related Property with respect to the Seller Receivables (collectively, the “**Seller Related Property**”);

(iv) all CMF Collections;

(v) all proceeds of and earnings on any of the foregoing; and

(vi) all of the right, title and interest (if any) CMF has in, to or under CMF Designated Receivables, including all Related Property with respect thereto and all proceeds thereof, including all rights, if any, to reimbursement of, or interest on, such CMF Designated Receivables.

The items listed above in clauses (iii), (iv) and (v), whenever and wherever arising, are collectively referred to herein as the “**Seller Related Assets**.” The Seller Purchased Assets, the Seller Receivables and the Seller Related Assets are sometimes collectively referred to herein as the “**Seller Assets**.”

As used herein, “**CMF Purchased Assets**” means Seller Purchased Assets that are being purchased or have been Purchased by ARSC hereunder; “**CMF Receivables**” means Seller Receivables that are being purchased or have been Purchased by ARSC hereunder; “**CMF Related Property**” means Seller Related Property that is being purchased or has been Purchased by ARSC hereunder; “**CMF Related Assets**” means Seller Related Assets that are being purchased or have been Purchased by ARSC hereunder; and “**ARSC Purchased Assets**” means Seller Assets that are being purchased or have been Purchased by ARSC hereunder.

Schedule 2.1 sets forth a list of all CMF Home Purchase Contracts as of the Closing Date. Each new Home Purchase Contract that is not an Excluded Contract and that is entered into by the Seller on any day in a month shall be added to the CMF Home Purchase Contracts and shall be reported on the last day of such month by delivering a notice as set forth in Exhibit 2.1 to ARSC or its designee, whereupon Schedule 2.1 shall be amended by the Seller to add such new Home Purchase Contract to the list of CMF Home Purchase Contracts set forth therein. On or prior to the date of the delivery of any such notice, the Seller shall indicate, or cause to be indicated, in its computer files, books and records that the CMF Receivables and other ARSC Purchased Assets then existing and thereafter created pursuant to or in connection with each such CMF Home Purchase Contract are being transferred to ARSC pursuant to this Agreement.

(b) Treatment of Certain Receivables and CMF Related Assets. It is expressly understood that (i) each Pool Receivable sold to ARSC hereunder, together with all other CMSC Purchased Assets and all CMF Related Assets then existing or thereafter created and arising with

respect thereto, will thereafter be the property of ARSC (or its assignees), without the necessity of any further purchase or other action by ARSC (other than satisfaction of the conditions set forth herein) and (ii) the change of a Receivable's status from that of Unsold Home Receivable to Unbilled Receivable or from Unbilled Receivable to Billed Receivable shall not be deemed the creation of a new Receivable for any purpose.

**Section 2.2** **Purchases.** On the Closing Date, ARSC shall purchase all of the Seller's right, title and interest in and to all Seller Assets and in any property described in clause (vi) of Section 2.1 existing as of the close of business on the immediately preceding Business Day. On each Business Day thereafter until the ARSC Termination Date, ARSC shall purchase all of the Seller's right, title and interest in and to all Seller Assets and in any property described in clause (vi) of Section 2.1 existing as of the close of business on the immediately preceding Business Day that were not previously purchased by ARSC hereunder. Notwithstanding the foregoing, if an Insolvency Proceeding is pending with respect to either the Seller or ARSC prior to the Termination Date, the Seller shall not sell and ARSC shall not buy any ARSC Purchased Assets hereunder unless and until such Insolvency Proceeding is dismissed or otherwise terminated.

**Section 2.3** **No Assumption.** The sales and Purchases of ARSC Purchased Assets do not constitute and are not intended to result in a creation or an assumption by ARSC or its successors and assigns of any obligation of CMSC, the Seller or any other Person in connection with the ARSC Purchased Assets (other than such obligations as may arise from the ownership of the Pool Receivables) or under the related Contracts or any other agreement or instrument relating thereto, including without limitation any obligation to any Obligor or Transferred Employees. None of the Servicer, ARSC or ARSC's assignees shall have any obligation or liability to any Obligor, Transferred Employee or other customer or client of CMSC (including without limitation any obligation to perform any of the obligations of CMSC under any Relocation Management Agreement, CMSC Home Purchase Contract, CMSC Related Property or any other agreement or any obligation of the Seller under any CMF Home Purchase Contract), except such obligations as may arise from the ownership of the Pool Receivables. Except as expressly provided in Section 3.05(j) of the Transfer and Servicing Agreement, no such obligation or liability to any Obligor, Transferred Employee or other customer or client of CMSC is intended to be assumed by the Servicer or its successors and assigns hereunder or under the Transfer and Servicing Agreement, and any such assumption is expressly disclaimed.

**Section 2.4** **No Recourse.** Except as specifically provided in this Agreement, the sale and Purchase of the ARSC Purchased Assets and any other property described in clause (vi) of Section 2.1(a) under this Agreement shall be without recourse to the Seller; provided, however, that the Seller shall be liable to ARSC and its successors and assigns for all representations, warranties, covenants and indemnities made by it pursuant to the terms of this Agreement (it being understood that such obligations of the Seller will not arise solely on account of the credit-related inability of an Obligor to pay a Receivable).

**Section 2.5** **True Sales.** The Seller and ARSC intend the transfers of ARSC Purchased Assets hereunder to be true sales by the Seller to ARSC that are absolute and irrevocable and to provide ARSC with the full benefits of ownership of the ARSC Purchased Assets, and neither the Seller nor ARSC intends the transactions contemplated hereunder to be,



or for any purpose to be characterized as, loans from ARSC to the Seller, secured by the ARSC Purchased Assets.

**Section 2.6**                                 Servicing of ARSC Purchased Assets. Consistent with ARSC’s ownership of all ARSC Purchased Assets and subject to the terms of the Pool Relocation Management Agreements, as between the parties to this Agreement, ARSC shall have the sole right to service, administer and collect all ARSC Purchased Assets, to assign such right and to delegate such right to others. In consideration of ARSC’s purchase of the ARSC Purchased Assets and as more fully set forth in Section 11.12, the Seller hereby acknowledges and agrees that ARSC intends to assign for the benefit of the Issuer and its successors and assigns the rights and interests granted by the Seller to ARSC hereunder, and agrees to cooperate fully with the Issuer and its successors and assigns in the exercise of such rights.

**Section 2.7**                                 Financing Statements. In connection with the transfer described above, the Seller agrees, at its expense, to record and file financing statements (and continuation statements when applicable) with respect to the ARSC Purchased Assets conveyed by the Seller meeting the requirements of applicable law in such manner and in such jurisdictions as are necessary to perfect and maintain the perfection of the transfer and assignment of its interest in the ARSC Purchased Assets to ARSC, and to deliver a file stamped copy of each such financing statement or other evidence of such filing to ARSC as soon as practicable after the Closing Date; provided, however, that prior to recordation pursuant to Section 8.3 or the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee and no recordation in real estate records of the conveyance pursuant to the related Home Purchase Contract or Home Sale Contract shall be made except as otherwise required or permitted under Section 2.01(d)(i) of the Transfer and Servicing Agreement.

**ARTICLE III**  
**CALCULATION OF ARSC PURCHASE PRICE**

**Section 3.1**                                 Calculation of the ARSC Purchase Price.

(a) On each Business Day from and including the Closing Date to but excluding the Termination Date, the Seller shall deliver, or cause the Servicer to deliver, to ARSC an accounting (each, a “**Daily Seller Report**”) with respect to (i) the Purchases of ARSC Purchased Assets to be made on such Business Day and (ii) the ARSC Purchase Price to be paid on account of the foregoing as calculated in accordance with this Section 3.1.

(b) With respect to the Purchase of any ARSC Purchased Assets by ARSC from the Seller pursuant to Article II, (i) on the Closing Date, ARSC shall pay to the Seller a purchase price equal to \$653,974,274, and (ii) on any day thereafter ARSC shall pay to the Seller a purchase price equal to the fair market value thereof using a discount rate and expected collection period to be recalculated monthly based on ARSC’s weighted cost of funds and Average Days Outstanding for the prior month and assuming a reasonable return on ARSC’s equity (each such purchase price, the “**ARSC Purchase Price**”), calculated in the case of each CMF Receivable at the time of such CMF Receivable’s sale to ARSC, and adjusted to reflect

such factors as the Seller and ARSC mutually agree will result in an ARSC Purchase Price determined to be the fair market value of such ARSC Purchased Assets.

**ARTICLE IV**  
**PAYMENT OF ARSC PURCHASE PRICE**

**Section 4.1**                    [ARSC Purchase Price Payments](#). On the terms and subject to the conditions of this Agreement, ARSC shall pay to the Seller on the Closing Date the ARSC Purchase Price for the ARSC Purchased Assets sold on such date, by paying such ARSC Purchase Price to the Seller in cash. On the terms and subject to the conditions of this Agreement, ARSC shall pay to the Seller, on each other Business Day on which any ARSC Purchased Assets are purchased from the Seller by ARSC pursuant to Article II, the ARSC Purchase Price for such ARSC Purchased Assets by paying such ARSC Purchase Price to the Seller in cash (including funds borrowed under the ARSC Subordinated Note as provided in the ARSC Subordinated Note and in Sections 4.2 and 5.2 of this Agreement).

**Section 4.2**                    [The ARSC Subordinated Note](#). On the Closing Date, ARSC shall deliver to CMSC the ARSC Subordinated Note in the form set forth as Exhibit 4.2. Pursuant to the terms of, and subject to the limitations set forth in, the ARSC Subordinated Note, CMF will request from CMSC an advance (each, an “**ARSC Subordinated Loan**”) on or prior to the ARSC Termination Date for the purpose of purchasing ARSC Purchased Assets hereunder. Pursuant to the terms of the ARSC Subordinated Note, ARSC shall not request or receive any advance thereunder on any date if the aggregate principal amount outstanding thereunder on such date, after giving effect to such advance, would exceed an amount equal to five times the net worth of ARSC (such maximum amount required to be advanced at any time, the “**ARSC Subordinated Note Cap**”). The ARSC Subordinated Loans shall be evidenced by, and shall be payable in accordance with the terms and provisions of, the ARSC Subordinated Note. Notwithstanding any other provision of this Agreement, ARSC shall not use funds borrowed under the ARSC Subordinated Note for any purpose other than paying the ARSC Purchase Price.

**Section 4.3**                    [Seller Adjustments; Originator Adjustments](#)

(a) With respect to any CMF Receivable created by the Seller, if on any day ARSC (or ARSC’s assignee), the Servicer or the Seller determines that (i) any CMF Receivable that (A) was not identified by or on behalf of the Seller in the Daily Seller Report as other than an Eligible Receivable on the Business Day such CMF Receivable was sold hereunder or (B) was otherwise treated as or represented to be an Eligible Receivable in any Receivables Activity Report, was not in fact an Eligible Receivable on such date or (ii) any of the representations or warranties set forth in Section 6.1(d) or 6.1(k) was not true when made with respect to such CMF Receivable or the related CMF Related Asset (each such CMF Receivable described in clause (i) or clause (ii), a “**CMF Noncomplying Asset**”), then the Seller shall pay the aggregate Unpaid Balance of such CMF Receivables (such payment, the “**CMF Noncomplying Asset Adjustment**”) to ARSC in accordance with Section 4.3(c).

(b) If on any day the Unpaid Balance of any CMF Receivable (i) is reduced as a result of any cash discount or any adjustment by the Seller, (ii) is subject to reduction on

account of any offsetting account payable of the Seller to an Obligor or is reduced or cancelled as a result of a set-off in respect of any claim by, or defense or credit of, the related Obligor against the Seller (whether such claim, defense or credit arises out of the same or a related or an unrelated transaction) or (iii) is reduced on account of the obligation of the Seller to pay to the related Obligor any rebate or refund (each of the reductions and cancellations described above in clauses (i) through (iii), a “**Seller Dilution Adjustment**”), then the Seller shall pay such Seller Dilution Adjustment to ARSC in accordance with Section 4.3(c).

(c) On each Business Day, the Seller shall pay to ARSC in cash in accordance with Section 4.4, an amount (a “**Seller Adjustment**”) equal to the sum of (A) the aggregate Seller Dilution Adjustment, if any, for each day from and including the immediately preceding Business Day **plus** (B) the CMF Noncomplying Asset Adjustment, if any, for each day from and including the immediately preceding Business Day. The CMF Receivables that gave rise to any CMF Noncomplying Asset Adjustment shall remain the property of ARSC. From and after the day on which any CMSC Noncomplying Asset Adjustment or CMF Noncomplying Asset Adjustment is made, any collections received by ARSC that are identified as proceeds of the Receivables that gave rise to such CMSC Noncomplying Asset Adjustment or CMF Noncomplying Asset Adjustment and any Related Property with respect to such Receivable shall be promptly returned to the Seller.

(d) The Seller shall pay to ARSC in cash, on the date of receipt by the Seller, any payment in respect of Originator Adjustments relating to the ARSC Purchased Assets made by CMSC to the Seller pursuant to the Purchase Agreement. The Seller shall instruct CMSC to deposit all payments in respect of such Originator Adjustments directly in the Collection Account.

**Section 4.4**                      Payments and Computations, Etc. All amounts to be paid by the Seller to ARSC hereunder shall be paid in accordance with the terms hereof no later than 11:00 a.m. (New York time) on the day when due in United States dollars in immediately available funds to an account specified in writing from time to time by ARSC or its designee. Payments received by ARSC after such time shall be deemed to have been received on the next Business Day. If any payment becomes due on a day that is not a Business Day, then such payment shall be made on the next succeeding Business Day. The Seller shall pay to ARSC, on demand, interest on all amounts not paid when due hereunder at a rate equal to the Prime Rate plus 2% per annum; provided, however, that such interest rate shall not at any time exceed the maximum rate permitted by applicable law. All computations of interest payable hereunder shall be made on the basis of a year of 360 days for the actual number of days elapsed (including the first day but excluding the last day). All payments made under this Agreement shall be made without set-off or counterclaim.

## ARTICLE V CONDITIONS PRECEDENT

**Section 5.1**                      Conditions Precedent to Sales and Purchases. No Purchase of ARSC Purchased Assets shall be made hereunder on any date on which ARSC does not have

sufficient funds available to pay the ARSC Purchase Price in cash (including cash made available to ARSC under the ARSC Subordinated Loan).

**Section 5.2**                      Conditions Precedent to ARSC Subordinated Loans. ARSC shall not request any ARSC Subordinated Loan under the ARSC Subordinated Note unless the following conditions precedent have been satisfied on the date of such ARSC Subordinated Loan:

- (a) the ARSC Subordinated Note shall have been duly executed and delivered by ARSC and shall be in full force and effect;
- (b) no Event of Bankruptcy shall have occurred and be continuing with respect to ARSC; and
- (c) after giving effect to such ARSC Subordinated Loan, the aggregate outstanding principal amount of the ARSC Subordinated Note shall not exceed the ARSC Subordinated Note Cap.

**ARTICLE VI  
REPRESENTATIONS AND WARRANTIES**

**Section 6.1**                      Representations and Warranties of the Seller. In order to induce ARSC to enter into this Agreement and to make Purchases hereunder, the Seller hereby makes the representations and warranties set forth in this Section 6.1, in each case as of the date hereof, as of the Closing Date, as of the date of each Purchase hereunder and as of any other date specified in such representation and warranty.

(a)     Organization and Good Standing. The Seller is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has full power and authority to own its properties and to conduct its business as such properties are presently owned and such business is presently conducted. The Seller had at all relevant times, and now has, all necessary power, authority and legal right to own and sell the ARSC Purchased Assets.

(b)     Due Qualification. The Seller is duly qualified to do business, is in good standing as a foreign corporation, and has obtained (or has filed all necessary applications for and will obtain within 60 days of the Closing Date) all necessary licenses and approvals in all jurisdictions in which the ownership or lease of property or the conduct of its business requires such qualification, licenses or approvals and in which the failure so to qualify or to obtain such licenses and approvals or to preserve and maintain such qualification, licenses or approvals could reasonably be expected to give rise to a Material Adverse Effect.

(c)     Power and Authority; Due Authorization. The Seller (i) has all necessary corporate power and authority (A) to execute and deliver this Agreement, the Contracts and the other Transaction Documents to which it is a party, (B) to perform its obligations under this Agreement, the Contracts and the other Transaction Documents to which it is a party and (C) to

sell and assign the ARSC Purchased Assets transferred hereunder on and after such date, on the terms and subject to the conditions herein and therein provided and (ii) has duly authorized by all necessary corporate action such sale and assignment and the execution, delivery and performance of, and the consummation of the transactions provided for in, this Agreement, the Contracts and the other Transaction Documents to which it is a party.

(d) Valid Sale; Binding Obligations. This Agreement constitutes a valid sale, transfer, set-over and conveyance to ARSC of all of the Seller's right, title and interest in, to and under the Pool Receivables transferred hereunder on such date, which is perfected and of first priority (subject to Permitted Liens and Permitted Exceptions) under the UCC and other applicable law, enforceable against creditors of, and purchasers from, the Seller, free and clear of any Lien (other than Permitted Liens); and this Agreement constitutes, and each other Transaction Document to which the Seller is a party when duly executed and delivered will constitute, a legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) No Conflict or Violation. The execution, delivery and performance of, and the consummation of the transactions contemplated by, this Agreement and the other Transaction Documents to be signed by the Seller, and the fulfillment of the terms hereof and thereof, will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a material default under (A) the certificate of incorporation or the by-laws of the Seller or (B) any material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument to which the Seller is a party or by which it or any of its properties is bound, (ii) result in the creation or imposition of any Lien on any of the ARSC Purchased Assets pursuant to the terms of any such material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument other than this Agreement and the other Transaction Documents or (iii) conflict with or violate any federal, state, local or foreign law or any decision, decree, order, rule or regulation applicable to the Seller or of any federal, state, local or foreign regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Seller, which conflict or violation described in this clause (iii), individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Litigation and Other Proceedings. (i) There is no action, suit, proceeding or investigation pending, or to the best knowledge of the Seller threatened, against the Seller before any court, arbitrator, regulatory body, administrative agency or other tribunal or governmental instrumentality and (ii) the Seller is not subject to any order, judgment, decree, injunction, stipulation or consent order of or with any court or other government authority that, in the case of either of the foregoing clauses (i) or (ii), (A) asserts the invalidity of this Agreement or any other Transaction Document, (B) seeks to prevent the sale of any ARSC Purchased Asset by the Seller to ARSC, the creation of a material amount of CMF Receivables or the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document, (C) seeks any determination or ruling that, in the reasonable judgment of the Seller, would materially and adversely affect the performance by the Seller of its obligations

under this Agreement or any other Transaction Document to which it is a party or the validity or enforceability of this Agreement or any other Transaction Document to which it is a party or (D) individually or in the aggregate for all such actions, suits, proceedings and investigations could reasonably be expected to have a Material Adverse Effect.

(g) Governmental Approvals. Except where the failure to obtain or make such authorization, consent, order, approval or action could not reasonably be expected to have a Material Adverse Effect, (i) all authorizations, consents, orders and approvals of, or other actions by, any Governmental Authority that are required to be obtained by the Seller in connection with the conveyance of the ARSC Purchased Assets transferred hereunder on and after such date, or the due execution, delivery and performance by the Seller of this Agreement or any other Transaction Document to which it is a party and the consummation of the transactions contemplated by this Agreement or any other Transaction Documents to which it is a party have been obtained or made and are in full force and effect and (ii) all filings with any Governmental Authority that are required to be obtained in connection with such conveyance and the execution and delivery by the Seller of this Agreement have been made; provided, however, that prior to recordation pursuant to Section 8.3 or the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee and no recordation in real estate records of the conveyance pursuant to the related Home Purchase Contract or Home Sale Contract shall be made except as otherwise required or permitted under Section 2.01(d)(i) of the Transfer and Servicing Agreement.

(h) Margin Regulations. The Seller is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meanings of Regulations T, U and X of the Board of Governors of the Federal Reserve System). The Seller has not taken and will not take any action to cause the use of proceeds of the sales hereunder to violate said Regulations T, U or X.

(i) Taxes. The Seller has filed (or there have been filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to have been filed by it and has paid all taxes, assessments and governmental charges thereby shown to be owing by it, other than any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect.

(j) Solvency. After giving effect to the conveyance of ARSC Purchased Assets hereunder on such date, the Seller is solvent and able to pay its debts as they come due and has adequate capital to conduct its business as presently conducted.

(k) Quality of Title/Valid Transfers.

(i) Immediately before the Purchase to be made by ARSC hereunder on such date, each ARSC Purchased Asset to be sold to ARSC shall be owned by the Seller free and clear of any Lien (other than any Permitted Lien), and the Seller shall have made all filings and shall have taken all other action under applicable law in each relevant jurisdiction in order to protect and perfect the

ownership interest of ARSC and its successors and assigns in such ARSC Purchased Assets against all creditors of, and purchasers from, the Seller (subject to Permitted Exceptions).

(ii) With respect to each Pool Receivable transferred hereunder on such date, ARSC shall acquire a valid and (subject to Permitted Exceptions) perfected ownership interest in such Pool Receivable and any identifiable proceeds thereof, free and clear of any Lien (other than any Permitted Liens).

(iii) Immediately prior to the sale of an ARSC Purchased Asset hereunder on such date, no effective financing statement or other instrument similar in effect that covers all or part of any ARSC Purchased Asset or any interest therein is on file in any recording office except such as may be filed (A) in favor of CMSC in accordance with the Pool Relocation Management Agreements, (B) in favor of the Seller in accordance with the Purchase Agreement, (C) in favor of ARSC pursuant to this Agreement, (D) in favor of ARSC's successors and assigns pursuant to the Transfer and Servicing Agreement or the Indenture or otherwise filed by or at the direction of ARSC's successors and assigns or (E) to evidence any Mortgage on a CMSC Home or CMF Home created by a Transferred Employee.

(iv) The ARSC Purchase Price constitutes reasonably equivalent value for the ARSC Purchased Assets conveyed in consideration therefor on such date, and no purchase of an interest in such ARSC Purchased Assets by ARSC from the Seller constitutes a fraudulent transfer or fraudulent conveyance under the United States Bankruptcy Code or applicable state bankruptcy or insolvency laws or subject to subordination under similar laws or principles or for any other reason.

(l) Eligible Receivables. Each CMF Receivable included in the ARSC Purchased Assets transferred hereunder on such date, unless otherwise identified to ARSC and its assignees by the Seller in the related Daily Seller Report, is an Eligible Receivable on such date.

(m) Accuracy of Information. All written information furnished by the Seller to ARSC or its successors and assigns pursuant to or in connection with any Transaction Document or any transaction contemplated herein or therein with respect to the ARSC Purchased Assets transferred hereunder on such date is true and correct in all material respects on such date.

(n) Offices. The principal place of business and chief executive office of the Seller is located, and the offices where the Seller keeps all CMF Records (and all original documents relating thereto) are located, at the addresses specified in Schedule 6.1(n), except that (i) Home Deeds and related documents necessary to close CMF Home sale transactions, including powers of attorney, may be held by local attorneys or escrow agents acting on behalf of the Seller in connection with the sale of CMF Homes to Ultimate Buyers, so long as such local attorneys are notified that such Home Deeds constitute property of CMF and also are notified of the interest of ARSC's assignees therein and (ii) CMF Records relating to the ARSC Purchased Assets arising under or in connection with any Pool Relocation Management Agreement may be maintained at the offices of the related Employer.

(o) Payment Instructions to Obligors. The Seller has instructed (i) all Obligors to remit all payments on the ARSC Purchased Assets directly to one of the Lockboxes or Lockbox Accounts, (ii) all Lockbox Banks to deposit all Pool Collections remitted to a Lockbox directly to the related Lockbox Account and (iii) all Persons receiving Home Sale Proceeds to deposit such Home Sale Proceeds in one of the Lockboxes or Lockbox Accounts within two Business Days after receipt, except to the extent a longer escrow period is required under applicable law, in which case such Home Sale Proceeds shall be deposited into one of the Lockboxes or Lockbox Accounts within one Business Day after the expiration of such period.

(p) Investment Company Act. The Seller is not, and is not controlled by, an "investment company" registered or required to be registered under the Investment Company Act.

(q) Legal Names. Except as described in Schedule 6.1(q), since January 1, 1995, the Seller (i) has not been known by any legal name other than its corporate name as of the date hereof, (ii) has not been the subject of any merger or other corporate reorganization that resulted in a change of name, identity or corporate structure and (iii) has not used any trade names other than its actual corporate name.

(r) Compliance with Applicable Laws. The Seller is in compliance with the requirements of all applicable laws, rules, regulations and orders of all Governmental Authorities (federal, state, local or foreign, including without limitation Environmental Laws), a violation of any of which, individually or in the aggregate for all such violations, is reasonably likely to have a Material Adverse Effect.

(s) Credit and Collection Policy. As of the date each CMF Receivable is transferred hereunder, the Seller has complied in all applicable material respects with the Credit and Collection Policy with respect to such CMF Receivable transferred on such date and the related Contract.

(t) Environmental. On such date, to the best knowledge of Seller, (i) there are no (A) pending or threatened claims, complaints, notices or requests for information received by Seller with respect to any alleged violation of any Environmental Law in connection with any CMF Home relating to any CMF Receivable transferred hereunder on such date or (B) pending or threatened claims, complaints, notices or requests for information received by Seller regarding potential liability under any Environmental Law in connection with any CMF Home relating to any CMF Receivable transferred hereunder on such date and (ii) the Seller is in material compliance with all permits, certificates, approvals, licenses and other authorizations relating to environmental matters, if any, that are required to be held by it under applicable law in connection with any CMF Homes relating to any CMF Receivable transferred hereunder on such date, other than those that, in the case of either clause (i) or (ii), singly or in the aggregate, are not reasonably likely to have a Material Adverse Effect.

(u) Business and Indebtedness of Seller. The Seller has no Indebtedness for Borrowed Money except as permitted under this Agreement. The Seller has not engaged in any business other than the Purchase of CMSC Receivables and other CMSC Purchased Assets under the Purchase Agreement, the sale of ARSC Purchased Assets under this Agreement and the



purchase and sale of CMF Homes and creation of CMF Receivables pursuant to related Equity Payments, Mortgage Payments and Mortgage Payoffs, and incidental activities related thereto.

**Section 6.2**                      **Representations and Warranties of ARSC.** ARSC hereby represents and warrants, on and as of the date hereof and on and as of the Closing Date, that (a) this Agreement has been duly authorized, executed and delivered by ARSC and constitutes ARSC's valid, binding and legally enforceable obligation, except (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, (b) the execution, delivery and performance of this Agreement does not violate any federal, state, local or foreign law applicable to ARSC or any agreement to which ARSC is a party and (c) all of the outstanding capital stock of ARSC is directly or indirectly owned by the Seller, and all such capital stock is fully paid and nonassessable.

## **ARTICLE VII GENERAL COVENANTS**

**Section 7.1**                      **Affirmative Covenants of the Seller.** From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Seller hereby agrees that it will perform the covenants and agreements set forth in this Section 7.1.

(a)     **Compliance with Laws, Etc.** The Seller will comply in all material respects with all applicable laws, rules, regulations, judgments, decrees and orders (including without limitation those relating to the CMF Receivables, CMF Home Purchase Contracts, CMF Related Assets and all Environmental Laws affecting any CMF Home), in each case to the extent that any such failure to comply, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b)     **Preservation of Corporate Existence.** The Seller (i) will preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation and (ii) will qualify and remain qualified in good standing as a foreign corporation in each jurisdiction in which the failure to preserve and maintain such qualification as a foreign corporation could reasonably be expected to have a Material Adverse Effect.

(c)     **Keeping of Records and Books of Account.** The Seller will maintain and implement administrative and operating procedures (including without limitation an ability to recreate records evidencing the CMF Receivables and the related CMF Related Assets in the event of the destruction of the originals thereof) and will keep and maintain all documents, books, records and other information that are necessary or advisable, in the reasonable determination of ARSC, for the collection of all amounts due under any or all CMF Receivables and the related CMF Related Assets. Upon the reasonable request of ARSC or its assignees made at any time after the occurrence and continuance of an Unmatured Servicer Default or a Servicer Default, the Seller will deliver copies of all CMF Records maintained pursuant to this Section 7.1(c) to ARSC or its designee. The Seller will maintain at all times accurate and complete books, records and accounts relating to the CMF Receivables and the related CMF

Related Assets, in which timely entries will be made. The Seller's computer files, books and records will be marked to indicate the sales of all ARSC Purchased Assets to ARSC hereunder and will include without limitation all payments received and all credits and extensions granted with respect to the ARSC Purchased Assets.

(d) Location of Records and Offices. The Seller will keep its principal place of business and chief executive office and the offices where it keeps all CMF Records (and all original documents relating thereto other than those CMF Records that are maintained with local attorneys or escrow agents or at the offices of the relevant Employer as described in Section 6.1(n)) at the addresses specified in Schedule 6.1(n) or, upon not less than 30 days' prior written notice given by the Seller to ARSC and its assignees, at such other locations in jurisdictions in the United States of America where all action required by Section 8.3 has been taken and completed.

(e) Separate Corporate Existence of the Seller. The Seller hereby acknowledges that the parties to the Transaction Documents are entering into the transactions contemplated by the Transaction Documents in reliance upon the Seller's identity as a legal entity separate from CMSC and the other CMS Persons. From and after the date hereof until the Final Payout Date, the Seller will take such actions as shall be required in order that:

(i) The Seller will conduct its business in office space allocated to it and for which it pays an appropriate rent and overhead allocation;

(ii) The Seller will maintain corporate records and books of account separate from those of each CMS Person and telephone numbers and stationery that are separate and distinct from those of each CMS Person;

(iii) The Seller's assets will be maintained in a manner that facilitates their identification and segregation from those of any CMS Person;

(iv) The Seller will strictly observe corporate formalities in its dealings with the public and with each CMS Person, and funds or other assets of the Seller will not be commingled with those of any CMS Person. The Seller will at all times, in its dealings with the public and with each CMS Person, hold itself out and conduct itself as a legal entity separate and distinct from each CMS Person. The Seller will not maintain joint bank accounts or other depository accounts to which any CMS Person (other than the Servicer) has independent access;

(v) The duly elected board of directors of the Seller and duly appointed officers of the Seller will at all times have sole authority to control decisions and actions with respect to the daily business affairs of the Seller;

(vi) Not less than one member of the Seller's board of directors will be an Independent Director. The Seller will observe those provisions in its certificate of incorporation that provide that the Seller's board of directors will not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Seller unless the Independent Director and all other members of the Seller's board of directors unanimously approve the taking of such action in writing prior to the taking of such action;

(vii) The Seller will compensate each of its employees, consultants and agents from the Seller's own funds for services provided to the Seller; and

(viii) The Seller will not hold itself out to be responsible for the debts of any CMS Person.

(f) Payment Instruction to Obligors. The Seller will (or will cause the Servicer to) (i) instruct all Obligors to submit all payments on the Pool Receivables either (A) to one of the Lockboxes maintained at the Lockbox Banks for deposit in a Lockbox Account or (B) directly to one of the Lockbox Accounts and (ii) instruct all Persons receiving Home Sale Proceeds to deposit such Home Sale Proceeds in one of the Lockboxes or Lockbox Accounts within two Business Days after such receipt, except to the extent a longer escrow period is required under applicable law, in which case such Home Sale Proceeds will be deposited into one of the Lockboxes or Lockbox Accounts within one Business Day after the expiration of such period.

(g) Segregation of Collections. The Seller will use reasonable efforts to minimize the deposit of any funds other than Pool Collections into any of the Lockbox Accounts and, to the extent that any such funds are deposited into any of such Lockbox Accounts, promptly will identify any such funds or will cause such funds to be so identified to the Servicer, it being understood and agreed that the Seller does not hereby assume any affirmative duty to re-direct Obligors to remit funds to alternate locations.

(h) Identification of Eligible Receivables. The Seller will (or will cause the Servicer to) (i) establish and maintain necessary procedures for determining, no less frequently than each date on which a Daily Seller Report is required to be delivered pursuant to Section 3.1(a), whether each Receivable qualifies as an Eligible Receivable, and for identifying on any such date all CMF Receivables to be sold to ARSC on that date that are not Eligible Receivables and (ii) will provide to the Servicer in a timely manner information that shows whether, and to what extent, the CMF Receivables described in such Daily Seller Report are Eligible Receivables.

(i) Payment of Taxes. The Seller will file (or there will be filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to be filed by it and will pay all taxes, assessments and governmental charges thereby shown to be owing by it, except for any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect.

(j) Receivables Reviews. Upon reasonable prior notice, the Seller will permit ARSC or its assignees (or other Persons designated by ARSC from time to time) or their agents or representatives (including without limitation certified public accountants or other auditors), at the expense of the Seller and during regular business hours, (i) to examine and make copies of and abstracts from, and to conduct accounting reviews of, all CMF Records in the possession or under the control of the Seller, including without limitation the related Contracts, invoices and other documents related thereto and (ii) to visit the offices and properties of the Seller for the

purpose of examining any materials described in the preceding clause (i) and to discuss matters relating to the CMF Receivables or the other ARSC Purchased Assets or the performance by the Seller of its obligations under any Transaction Document to which it is a party with any Authorized Officers of the Seller having knowledge of such matters or with the Seller's certified public accountants or other auditors; provided, however, that all such reviews will occur no more frequently than twice per year (with only the first such review in any year being at the Seller's expense) unless (i) a Servicer Default has occurred and is continuing or (ii) ARSC or its successor or assignee has given advance written notice to the Seller that it believes the composition and/or performance of the ARSC Purchased Assets have deteriorated in a manner materially adverse to the interests of ARSC or its assignees.

(k) Environmental Claims. The Seller will use commercially reasonable efforts to promptly cure and have dismissed with prejudice to the satisfaction of ARSC any actions and any proceedings relating to compliance with Environmental Laws relating to any CMF Home, but only to the extent that the conditions that gave rise to such proceedings were in existence as of the date on which ARSC acquired the related CMF Receivable.

(l) Turnover of Collections. If the Seller or any of its agents or representatives at any time receives any cash, checks or other instruments constituting Pool Collections, such recipient will segregate and hold such payments in trust for, and in a manner acceptable to, the Servicer and will, promptly upon receipt (and in any event within one Business Day following receipt) remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to a Lockbox Account.

(m) Performance and Compliance by Seller with CMF Home Purchase Contracts and other Contracts. The Seller will, at its expense, timely and fully perform and comply with, or cause to be timely and fully performed and complied with all provisions, covenants and other promises required to be observed by it under the CMF Home Purchase Contracts and other Contracts related to the CMF Receivables.

(n) Compliance with Credit and Collection Policy. The Seller will (or will cause the Servicer to) comply in all material respects with the Credit and Collection Policy with respect to each CMF Receivable and the related Contract.

(o) Home Purchase Contracts. From and after the Closing Date, the Seller will enter into, and purchase the related Homes pursuant to, all Home Purchase Contracts relating to the Pool Relocation Management Agreements and will make all Equity Payments, Mortgage Payments and Mortgage Payoffs to be made in connection therewith in accordance with the Pool Relocation Management Agreements.

Section 7.2 Reporting Requirements. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Seller agrees that it will furnish to ARSC or its assignees:

(a) Annual Financial Statements. As soon as available and in any event within 95 days after the end of each fiscal year of the Performance Guarantor and the Seller, as applicable, copies of (i) to the extent received by the Seller pursuant to Section 7.2(a) of the Purchase Agreement, the consolidated balance sheet of the Performance Guarantor and its

consolidated subsidiaries as at the end of such fiscal year and the related statements of earnings and cash flows and stockholders' equity of the Performance Guarantor and its consolidated subsidiaries for such fiscal year and (ii) copies of the statements of earnings of the Seller on a consolidated basis for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year and certified by the chief financial officer, chief accounting officer or controller of the Seller (it being understood and agreed that such statements of earnings will be prepared in accordance with the Seller's customary management accounting practices as in effect on the date hereof and need not be prepared in accordance with GAAP);

(b) Material Adverse Effect. Promptly and in any event within two Business Days after the president, chief financial officer, controller or treasurer of the Seller has actual knowledge thereof, written notice that describes in reasonable detail any event or occurrence that, individually or in the aggregate for all such events or occurrences, has had, or that such Authorized Officer in its reasonable good faith judgment determines could reasonably be expected to have, a Material Adverse Effect (as defined in the Indenture);

(c) Proceedings. Promptly and in any event within five Business Days after an Authorized Officer of the Seller has knowledge thereof, written notice of (i) any litigation, investigation or proceeding of the type described in Section 6.1(f) not previously disclosed to ARSC, (ii) any material adverse development that has occurred with respect to any such previously disclosed litigation, investigation or proceeding or (iii) any CMF Purchase Termination Event or ARSC Purchase Termination Event or event that, with the giving of notice or passage of time or both, would constitute an ARSC Purchase Termination Event;

(d) ERISA Event. (i) As soon as possible and in any event within 30 days after the Seller knows or has reason to know that a "reportable event" (as defined in Section 4043 of ERISA) has occurred with respect to any Plan, a statement of an Authorized Officer of the Seller setting forth details as to such reportable event and the action that the Seller or an ERISA Affiliate proposes to take with respect thereto, together with a copy of the notice of such reportable event, if any, given to the PBGC, the Internal Revenue Service or the Department of Labor; (ii) promptly and in any event within 10 Business Days after receipt thereof (or knowledge of the receipt by an ERISA Affiliate thereof), a copy of any notice the Seller receives relating to the intention of the PBGC to terminate any Plan or to appoint a trustee to administer any such Plan; (iii) promptly and in any event within 10 Business Days after a filing with the PBGC pursuant to Section 412(n) of the Code of a notice of failure to make a required installment or other payment with respect to a Plan, a statement of the chief financial officer of the Seller setting forth details as to such failure and the action that the Seller proposes to take (or knows will be taken) with respect thereto, together with a copy of such notice given to the PBGC; and (iv) promptly and in any event within 30 Business Days after receipt thereof by the Seller from the sponsor of a multiemployer plan (as defined in Section 3(37) of ERISA), a copy of each notice received by the Seller concerning the imposition of withdrawal liability or a determination that a multiemployer plan is, or is expected to be, terminated or reorganized;

(e) Environmental Claims. Promptly and in any event within five Business Days after receipt thereof, notice and copies of all written claims, complaints, notices, actions, proceedings, requests for information or inquiries relating to the condition of any CMF Homes or compliance with Environmental Laws relating to the CMF Homes, other than those received in

the ordinary course of business and that, singly or in the aggregate, do not represent events or conditions that would cause the representation set forth in Section 6.1(t) to be incorrect; and

(f) Other. Promptly, from time to time, such other information, documents, records or reports with respect to the ARSC Purchased Assets or the condition or operations, financial or otherwise, of the Seller as ARSC or its assignees may from time to time reasonably request in order to protect the interests of ARSC or such assignees under or as contemplated by this Agreement and the other Transaction Documents, including timely delivery of all such information required under any Enhancement Agreement.

**Section 7.3** Negative Covenants of the Seller. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, the Seller agrees that it will not:

(a) Sales, Liens, Etc. Sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Lien (other than Permitted Liens) of anyone claiming by or through it on or with respect to, any ARSC Purchased Asset or any interest therein or any Lockbox or Lockbox Account, other than (i) sales of ARSC Purchased Assets pursuant to this Agreement and (ii) sales of Homes in accordance with the applicable Contracts;

(b) No Mergers, Etc. Consolidate with or merge with or into any other Person or convey, transfer or sell all or substantially all of its properties and assets to any Person;

(c) Change in Name. Change its corporate name or the name under or by which it conducts its business or the jurisdiction in which it is incorporated unless the Seller has given ARSC and its assignees and the rating agencies then rating each Series of Notes at least 30 days' prior written notice thereof and unless, prior to any such change in name or jurisdiction of incorporation, the Seller has taken and completed all action required by Section 8.3;

(d) Home Deeds. Record any Home Deeds with respect to any Homes except at the direction of ARSC or its assignees or as permitted by Section 8.3 hereof or by Section 2.01(d) of the Transfer and Servicing Agreement; and

(e) Extension or Amendment of ARSC Purchased Assets. Extend, amend or otherwise modify the terms of any CMF Receivable included in the ARSC Purchased Assets, or amend, modify or waive any material term or condition related thereto, except in accordance with Section 3.10 of the Transfer and Servicing Agreement.

(f) Change in Payment Instruction to Obligors. Make any change in its instructions to Obligors or other Persons regarding payments to be made to the Seller or payments to be made to any Lockbox Account (except for a change in instructions solely for the purpose of directing such Obligors or other Persons to make such payments to another existing Lockbox Account), unless (i) the Indenture Trustee has received copies of a Lockbox Agreement with each new Lockbox Bank duly executed by the Originator, the Seller, the Issuer, the Indenture Trustee and such Lockbox Bank and (ii) in the case of any termination, ARSC or its successors and assigns have received evidence to their satisfaction that the Obligors that were making payments into a terminated Lockbox Account have been instructed in writing to make payments into another Lockbox Account then in use.

(g) Indebtedness. Create, incur or permit to exist, or give any guarantee or indemnity in respect of, any Indebtedness except for (A) liabilities created or incurred by the Seller pursuant to the Transaction Documents to which it is a party or contemplated by such Transaction Documents and (B) other reasonable and customary operating expenses.

(h) Amendments, Etc. Permit the validity or effectiveness of any Transaction Document to which it is a party or the rights and obligations created thereby or pursuant thereto to be amended, terminated, postponed or discharged, or permit any amendment to any Transaction Document to which it is a party without the consent of the Issuer and the Indenture Trustee, or permit any person whose obligations form part of the ARSC Purchased Assets to be released from such obligations, except in accordance with the terms of such Transaction Document.

(i) Capital Expenditures. Incur or make any expenditure (by long-term or operating lease or otherwise) for capital assets (either realty or personalty).

(j) Limitation on Business. Engage in any business other than financing, purchasing, owning and selling and managing the ARSC Purchased Assets and the CMF Homes in the manner contemplated by the Transaction Documents and all activities incidental thereto, or enter into or be a party to any agreement or instrument other than any Transaction Document or documents and agreements incidental thereto.

(k) Capital Contributions. Except as contemplated by the Transaction Documents, make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person.

(l) Charter Amendments. Amend any provision of its certificate of incorporation or by-laws unless (a) (i) ARSC shall have received not less than five Business Days' prior written notice thereof and (ii) the certificate of incorporation of the Seller, as in effect on the date hereof, provides that such amendment can be made without the vote of the Seller's Independent Directors or (b) the Majority Investors have consented to such amendment.

(m) Net Worth Requirements. Declare or pay any distributions on any of its common stock or make any purchase, redemption or other acquisition of, any of its common stock if, after giving effect thereto, (i) the aggregate principal amount outstanding under the CMF Subordinated Note would exceed five times the net worth of the Seller or (ii) the net worth of the Seller would be less than \$8,000,000.

Section 7.4 Affirmative Covenants of ARSC. From the Closing Date until the termination of this Agreement in accordance with Section 11.4, ARSC hereby agrees that it will perform the covenants and agreements set forth in this Section 7.4.

(a) ARSC hereby acknowledges that the parties to the Transaction Documents are entering into the transactions contemplated by the Transaction Documents in reliance upon

ARSC's identity as a legal entity separate from CMSC and the other CMS Persons. From and after the date hereof until one year and one day after the Final Payout Date, ARSC will take such actions as shall be required in order that:

- (i) ARSC will conduct its business in office space allocated to it and for which it pays an appropriate rent and overhead allocation;
- (ii) ARSC will maintain corporate records and books of account separate from those of each CMS Person and telephone numbers and stationery that are separate and distinct from those of each CMS Person;
- (iii) ARSC's assets will be maintained in a manner that facilitates their identification and segregation from those of any CMS Person;
- (iv) ARSC will strictly observe corporate formalities in its dealings with the public and with each CMS Person, and funds or other assets of ARSC will not be commingled with those of any CMS Person, except as expressly permitted by the Transaction Documents. ARSC will at all times, in its dealings with the public and with each CMS Person, hold itself out and conduct itself as a legal entity separate and distinct from each CMS Person. ARSC will not maintain joint bank accounts or other depository accounts to which any CMS Person (other than CMSC in its capacity as Servicer under the Transfer and Servicing Agreement) has independent access;
- (v) The duly elected board of directors of ARSC and duly appointed officers of ARSC will at all times have sole authority to control decisions and actions with respect to the daily business affairs of ARSC;
- (vi) Not less than one member of ARSC's board of directors will be an Independent Director. ARSC will observe those provisions in its certificate of incorporation that provide that ARSC's board of directors will not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to ARSC unless the Independent Director and all other members of ARSC's board of directors unanimously approve the taking of such action in writing prior to the taking of such action;
- (vii) ARSC will compensate each of its employees, consultants and agents from ARSC's own funds for services provided to ARSC;
- (viii) ARSC will not hold itself out to be responsible for the debts of any CMS Person; and

ARSC will take all actions necessary on its part to be taken in order to ensure that the facts and assumptions relating to ARSC set forth in the opinion of Orrick, Herrington & Sutcliffe LLP of even date herewith relating to substantive consolidation matters with respect to CMSC and CMF will be true and correct at all times.

- (b) ARSC assumes no obligations of the Originator under the Pool Relocation Management Agreements with respect to any Home Purchase Contracts, including without



limitation the obligations of the Originator to make Equity Payments, Mortgage Payoffs and Mortgage Payments with respect to CMSC Homes or of the Seller to make Equity Payments, Mortgage Payoffs and Mortgage Payments with respect to CMF Homes.

ARTICLE VIII  
ADDITIONAL RIGHTS AND OBLIGATIONS IN  
RESPECT OF THE ARSC PURCHASED ASSETS

Section 8.1 Rights of ARSC.

- (a) Subject to Section 8.4(b), the Seller hereby authorizes ARSC and its assignees and designees to take any and all steps in the Seller's name and on behalf of the Seller that ARSC, the Servicer and/or their respective designees determine are reasonably necessary or appropriate to collect all amounts due under any and all ARSC Purchased Assets, including without limitation endorsing the name of the Seller on checks and other instruments representing Pool Collections and enforcing such ARSC Purchased Assets.
- (b) ARSC shall have no obligation to account for, to replace, to substitute or to return any ARSC Purchased Asset to the Seller, except as provided in Section 4.3(c).
- (c) ARSC shall have the unrestricted right to further assign, transfer, deliver, hypothecate, subdivide or otherwise deal with the ARSC Purchased Assets and all of ARSC's right, title and interest in, to and under this Agreement on whatever terms ARSC determines, pursuant to the Transfer and Servicing Agreement or otherwise.
- (d) As between the Seller and ARSC, ARSC shall have the sole right to retain any gains or profits created by buying, selling or holding the ARSC Purchased Assets.

Section 8.2 Responsibilities of the Seller. Anything herein to the contrary notwithstanding:

- (a) The Seller agrees to deliver directly to the Servicer (for ARSC's account), within one Business Day after receipt thereof, any Pool Collections that it receives, in the form so received, and agrees that all such Pool Collections shall be deemed to be received in trust for ARSC and its assignees and shall be maintained and segregated separate and apart from all other funds and moneys of the Seller until delivery of such Pool Collections to the Servicer; and
- (b) The Seller hereby grants to ARSC an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of the Seller all steps necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind held or transmitted by the Seller or transmitted or received by ARSC (whether or not from the Seller) in connection with any ARSC Purchased Asset (which power of attorney may be exercised by ARSC's successors and assigns in accordance with Section 8.4 and Section 11.12(b)).
- (c) The Seller shall perform, or cause to be performed, all of its obligations hereunder and under the CMF Home Purchase Contracts and other Contracts related to the CMF

Receivables to which it is a party to the same extent as if such CMF Receivables had not been sold hereunder, and the exercise by ARSC or its designee or assignee of ARSC's rights hereunder or in connection herewith shall not relieve the Seller from any of its obligations under any such CMF Home Purchase Contracts or Contracts related to the CMF Receivables.

**Section 8.3**

**Further Action Evidencing Purchases.**

The Seller agrees that from time to time, at its expense and upon reasonable request, it will promptly execute and deliver all further instruments and documents and take all further action as is reasonably necessary to perfect, protect or more fully evidence the Purchase of the ARSC Purchased Assets by ARSC hereunder, or to enable ARSC or its assignees to exercise or enforce any of its rights hereunder or under any other Transaction Document to which the Seller is a party; provided, however, that the Seller will not file or record any Home Deeds except to the extent such recordation is required by local law, regulation or custom. Without limiting the generality of the foregoing, the Seller shall:

(a) upon ARSC's request, execute and file such financing or continuation statements or amendments thereto or assignments thereof and such other instruments or notices as ARSC or its assignees may reasonably determine to be necessary or appropriate; and

(b) mark the master data processing records evidencing the ARSC Purchased Assets and, if requested by ARSC or its assignees, legend (or cause the Servicer to legend) the CMF Home Purchase Contracts to reflect the sale of the ARSC Purchased Assets to ARSC pursuant to this Agreement.

The Seller hereby authorizes ARSC and its assignees to file one or more financing or continuation statements and amendments thereto and assignments thereof with respect to all or any of the ARSC Purchased Assets, in each case whether now existing or hereafter purchased or generated by the Seller. If (i) the Seller fails to perform any of its agreements or obligations under this Agreement and does not remedy such failure within the applicable cure period, if any, and (ii) ARSC or its assignees in good faith reasonably believes that the performance of such agreements and obligations is necessary or appropriate to protect the interests of ARSC or its assignees under this Agreement, then ARSC or its assignees may (but shall not be required to) perform or cause performance of such agreement or obligation, and the reasonable expenses of ARSC or its assignees incurred in connection with such performance shall be payable by the Seller as provided in Section 10.1.

**Section 8.4**

**Collections; Rights of ARSC and its Assignees.**

(a) The Seller hereby transfers to ARSC the ownership of, and the exclusive dominion and control over, each of the Lockboxes and Lockbox Accounts owned by the Seller, and the Seller hereby agrees to take any further action that ARSC or its assignees may reasonably request in order to effect or complete such transfer.

(b) At any time following the designation of a Servicer other than CMSC pursuant to the Transfer and Servicing Agreement:

(i) ARSC or its assignees may direct the Obligor of Pool Receivables, or any of them, to pay all amounts payable under any Pool Receivable directly to ARSC or its assignees;

(ii) At the request of ARSC or its assignees and at the Seller's expense, the Seller shall give notice of such ownership to each said Obligor and direct that payments be made directly to ARSC or its assignees;

(iii) At the request of ARSC or its assignees and at the Seller's expense, the Seller shall (A) assemble all of the CMF Records, to the extent such CMF Records are in its possession, or instruct any escrow agents holding any such documents, instruments and other records on its behalf to make the same available and (B) segregate all cash, checks and other instruments received by it from time to time constituting Pool Collections in a manner reasonably acceptable to ARSC or its assignees and, promptly upon receipt, remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to ARSC or its assignees; and

(iv) The Seller hereby authorizes ARSC or its assignees to take any and all steps in the Seller's name and on behalf of the Seller that are necessary or desirable, in the reasonable determination of ARSC or its assignees, to collect all amounts due under any and all ARSC Purchased Assets, including without limitation endorsing the Seller's name on checks and other instruments representing Pool Collections and enforcing the ARSC Purchased Assets.

## ARTICLE IX TERMINATION

**Section 9.1** ARSC Purchase Termination Events. The following events shall be "ARSC Purchase Termination Events":

(a) The occurrence of an Event of Default or an Amortization Event with respect to all outstanding Series of Notes; or

(b) Any representation or warranty made by the Seller under any of the Transaction Documents, any Daily Seller Report or other information or report delivered by the Seller with respect to the Seller or the ARSC Purchased Assets shall prove to have been untrue or incorrect in any material respect when made or deemed to have been made, such failure could reasonably be expected to have a Material Adverse Effect and such occurrence remains unremedied for 30 days; provided, however, that any such incorrect representation relating to a CMF Receivable with respect to which the Seller has made a CMF Noncomplying Asset Adjustment pursuant to Section 4.3(a) of this Agreement shall not constitute an ARSC Purchase Termination Event; or

(c) (i) The Seller shall fail to perform or observe, or cause to be performed or observed, as and when required, any term, covenant or agreement contained in this Agreement or any of the other Transaction Documents to which it is a party, or any CMF Home Purchase

Contract to which it is a party required on its part to be performed or observed, and such failure shall remain unremedied for: (A) in the case of a failure to maintain its separate corporate existence pursuant to Section 7.1(p), a failure to provide payment instructions to Obligor pursuant to Section 7.1(f), a failure to segregate Pool Collections pursuant to Section 7.1(g), a failure to provide access to records and required reports pursuant to Section 7.1(j), or a breach of any of the negative covenants of the Seller set forth in Section 7.3, ten calendar days or (B) in the case of any other failure to perform or observe, as and when required, any term, covenant or agreement, which failure could reasonably be expected to have a Material Adverse Effect, 30 days or (iii) the Performance Guarantor shall fail to make any required payment under the PHH Guarantee and such failure shall remain unremedied for one Business Day or (iv) the Performance Guarantor otherwise fails to perform under the PHH Guarantee; or

(d) An Event of Bankruptcy shall have occurred with respect to the Seller, CMSC or the Performance Guarantor; or

(e) The representation and warranty in Section 6.1(k) shall not be true at any time with respect to a substantial portion of the ARSC Purchased Assets; or

(f) Either (i) the Internal Revenue Service shall file notice of a Lien pursuant to Section 6323 of the Internal Revenue Code with respect to any of the ARSC Purchased Assets and such Lien shall not have been released within five days or if released, proved to the satisfaction of the rating agencies then rating each Series of Notes or (ii) the PBGC shall file, or shall indicate its intention to file, notice of a Lien pursuant to Section 4068 of the Employee Retirement Income Security Act of 1974 with respect to any of the ARSC Purchased Assets; or

(g) This Agreement, the Purchase Agreement or the PHH Guarantee shall cease to be in full force and effect for any reason other than in accordance with its terms; or

(h) A CMF Purchase Termination Event or Transfer Termination Event shall have occurred.

If an ARSC Purchase Termination Event occurs, the Seller shall promptly give notice to ARSC and its assignees of such ARSC Purchase Termination Event.

[Section 9.2](#) [Purchase Termination](#). (a) On the ARSC Termination Date, the Seller shall cease transferring ARSC Purchased Assets to ARSC, provided that any right, title and interest of the Seller in and to any CMF Designated Receivables arising from any Servicer Advances made thereafter, including any Related Property relating thereto and proceeds thereof, shall continue to be transferred. Notwithstanding any cessation of the transfer to ARSC of additional ARSC Purchased Assets, ARSC Purchased Assets transferred to ARSC prior to the Termination Date and Pool Collections in respect of such ARSC Purchased Assets and the related Finance Charges, whenever accrued in respect of such ARSC Purchased Assets, shall continue to be property of ARSC available for transfer by ARSC pursuant to the Transfer and Servicing Agreement.

(b) Upon the occurrence of an ARSC Purchase Termination Event, ARSC and its assignees shall have, in addition to all other rights and remedies under this Agreement or otherwise, all other rights and remedies provided under the UCC of each applicable jurisdiction and other applicable laws, which rights shall be cumulative. Without limiting the foregoing, the occurrence of an ARSC Purchase Termination Event shall not deny to ARSC or its assignees any remedy in addition to termination of its obligation to make Purchases hereunder to which ARSC or its assignees may be otherwise appropriately entitled, whether by statute or applicable law, at law or in equity.

ARTICLE X  
INDEMNIFICATION; SECURITY INTEREST

**Section 10.1**                      **Indemnities by the Seller.** Without limiting any other rights that any CMF Indemnified Party may have hereunder or under applicable law, the Seller agrees to indemnify ARSC and each of its successors, permitted transferees and assigns, and all officers, directors, shareholders, controlling Persons, employees and agents of any of the foregoing (each of the foregoing Persons, a “**CMF Indemnified Party**”), **from and against any and all damages, losses, claims (whether on account of settlements or otherwise), actions, suits, demands, judgments, liabilities (including penalties), obligations or disbursements of any kind or nature and related costs and expenses (including reasonable attorneys’ fees and disbursements) awarded against or incurred by any of them, arising out of or as a result of any of the following (all of the foregoing, collectively, “CMF Indemnified Losses”):**

- (a) any representation or warranty made by the Seller under any of the Transaction Documents, any Daily Seller Report or any other information or report delivered by the Seller with respect to the Seller or the ARSC Purchased Assets, having been untrue or incorrect in any respect when made or deemed to have been made; **provided, however,** that the Seller’s obligation to make a CMF Noncomplying Asset Adjustment pursuant to Section 4.3(a) with respect to any representation made in Section 6.1(l) as to Eligible Receivables having been incorrect when made shall be the only remedy available to ARSC or its assignees relating to such incorrect representation;
- (b) the failure by the Seller to comply with any material applicable law, rule or regulation applicable to the Seller with respect to any ARSC Purchased Asset or any failure of a ARSC Purchased Asset to comply with any such law, rule or regulation as of the date of the sale of such ARSC Purchased Asset hereunder;
- (c) the failure to vest and maintain in ARSC a valid ownership or security interest in the ARSC Purchased Assets, free and clear of any Lien arising through the Seller or anyone claiming through or under the Seller (including without limitation any such failure arising from a circumstance described in the definition of Permitted Exceptions);
- (d) any failure of the Seller to perform its duties or obligations in accordance with the provisions of the Transaction Documents or any Contract, in each case to which it is a party;
- (e) the failure to file, or any delay in filing, financing statements or other similar instruments or documents under the UCC of any applicable jurisdiction or other

applicable laws with respect to the transfer of any ARSC Purchased Assets to ARSC, whether at the time of any sale or at any subsequent time;

(f) the failure by the Seller to pay when due any taxes owing by it (including sales, excise or property taxes) payable in connection with the ARSC Purchased Assets, other than any such taxes, assessments or charges that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens);

(g) any reduction in the Unpaid Balance of any CMF Receivable included in the ARSC Purchased Assets as a result of (i) any cash discount or any adjustment by the Seller or any Affiliate of the Seller (other than CMSC, the Issuer or ARSC), (ii) any offsetting account payable of the Seller to an Obligor, (iii) a set-off in respect of any claim by, or defense or credit of, the related Obligor against the Seller or any Affiliate of the Seller (other than CMSC, the Issuer or ARSC) (whether such claim, defense or credit arises out of the same or a related or an unrelated transaction) or (iv) the obligation of the Seller to pay to the related Obligor any rebate or refund;

(h) any product liability or personal injury claim in connection with the service which is the subject of any CMF Receivable or CMF Related Property; and

(i) any investigation, litigation or proceeding related to any use by the Seller of the proceeds of any Purchase made hereunder.

Notwithstanding anything to the contrary in this Agreement, any representations, warranties and covenants made by the Seller in this Agreement or the other Transaction Documents that are qualified by or limited to events or circumstances that have, or are reasonably likely to have, given rise to a Material Adverse Effect, shall (solely for purposes of the indemnification obligations set forth in this Section 10.1) be deemed not to be so qualified or limited.

Notwithstanding the foregoing, no indemnification payments shall be payable by the Seller pursuant to this Section 10.1 until all amounts owing by the Issuer under the Indenture have been paid in full and all amounts payable by the Seller to CMSC under the CMF Subordinated Note have been paid in full.

Notwithstanding the foregoing (and with respect to clause (ii) below, without prejudice to the rights that ARSC may have pursuant to the other provisions of this Agreement or the provisions of any of the other Transaction Documents), in no event shall any CMF Indemnified Party be indemnified for any CMF Indemnified Losses (i) resulting from negligence or willful misconduct on the part of such CMF Indemnified Party, (ii) to the extent the same includes losses in respect of ARSC Purchased Assets and reimbursement therefor that would constitute credit recourse to the Seller for the amount of any ARSC Purchased Asset not paid by the related Obligor or (iii) resulting from the action or omission of the Servicer.

If for any reason the indemnification provided in this Section 10.1 is unavailable to a CMF Indemnified Party or is insufficient to hold a CMF Indemnified Party harmless, then the Seller shall contribute to the maximum amount payable or paid to such CMF Indemnified

Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by such CMF Indemnified Party on the one hand and the Seller on the other hand, but also the relative fault of such CMF Indemnified Party and the Seller, and any other relevant equitable considerations.

**Section 10.2**                      **Security Interest.** Without prejudice to the provisions of Section 2.1 providing for the absolute transfer of the Seller's interest in the ARSC Purchased Assets and the proceeds thereof and any interest of the Seller in the other property described in clause (vi) of Section 2.1(a) to ARSC in order to secure the prompt payment and performance of all obligations of the Seller to ARSC arising in connection with this Agreement, whether now or hereafter existing, due or to become due, direct or indirect, or absolute or contingent, the Seller hereby assigns and grants to ARSC a first priority security interest in the Seller's right, title and interest, if any, in, to and under all of the ARSC Purchased Assets and the proceeds thereof and any interest of the Seller in the other property described in clause (vi) of Section 2.1(a), whether now or hereafter existing.

## **ARTICLE XI MISCELLANEOUS**

### **Section 11.1**                      **Amendments; Waivers, Etc.**

(a)        The provisions of this Agreement may be amended, modified or waived from time to time if such amendment, modification or waiver is in writing and signed by the Seller and ARSC and its assignees; provided, however, that no amendment, modification or waiver of this Agreement shall be effective unless the Indenture Trustee shall consent to such amendment, modification or waiver in writing and the rating agencies then rating each Series of Notes shall have been notified of such amendment, modification or waiver. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b)        No failure or delay on the part of ARSC or its assignees, or any CMF Indemnified Party, or any other third party beneficiary referred to in Section 11.12(a) in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any other power or right. No notice to, or demand on, the Seller shall entitle it in any case to any notice or demand in similar or other circumstances. No waiver or approval by ARSC or its assignees under this Agreement shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval under this Agreement shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

**Section 11.2**                      **Notices, Etc.** Unless otherwise stated herein, all notices, demands, consents, approvals and other communications provided for hereunder shall be in writing (including via telecopier) and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, by telecopier or by overnight courier to the intended party at the address or telecopier number of such party set forth on Schedule 11.2 hereof, or at such other address or telecopier number as shall be designated by such party in a written notice to the other

party hereto given in accordance with this Section 11.2. Copies of all notices and other communications provided for hereunder shall be delivered to the Issuer at its address for notices set forth in the Transfer and Servicing Agreement. All notices and communications provided for hereunder shall be effective when received.

**Section 11.3** Cumulative Remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Section 11.4** Binding Effect; Assignability; Survival of Provisions. This Agreement shall be binding upon, and inure to the benefit of, ARSC and the Seller and their respective successors and assigns. The Seller may not assign any of its rights hereunder or any interest herein without the prior written consent of ARSC and its assignees. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms and shall remain in full force and effect until terminated pursuant hereto. Such termination shall not occur prior to the Final Payout Date. The rights and remedies with respect to any breach of any representation and warranty made by the Seller pursuant to Article VI and the indemnification and payment provisions of Article X and Section 11.6 and the provisions of Section 11.14, Section 11.16 and Section 11.17 shall be continuing and shall survive any termination of this Agreement.

**Section 11.5** Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

**Section 11.6** Costs, Expenses and Taxes. In addition to the obligations of the Seller under Article X, the Seller agrees to pay on demand:

(a) all reasonable costs and expenses incurred by ARSC and its assignees in connection with the negotiation, preparation, execution and delivery of, the administration (including periodic auditing), the preservation of any rights under, or the enforcement of, or any breach of, this Agreement (including any amendment, supplement or modification hereto), including without limitation (i) the reasonable fees, expenses and disbursements of counsel to any such Persons incurred in connection with any of the foregoing or in advising such Persons as to their respective rights and remedies under this Agreement and (ii) all reasonable out-of-pocket expenses (including reasonable fees and expenses of independent accountants) incurred in connection with any review of the Seller's books and records either prior to the execution and delivery hereof or pursuant to Section 7.1(h), and

(b) all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement or any amendment, supplement or modification thereto, and agrees to indemnify each CMF Indemnified Party against any liabilities with respect to, or resulting from, any delay in paying or omission to pay such taxes and fees.

**Section 11.7** Submission to Jurisdiction. EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN



THE CITY OF NEW YORK, NEW YORK, OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND HEREBY (a) IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (b) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING; AND (c) IRREVOCABLY APPOINTS CT CORPORATION SYSTEM (THE "PROCESS AGENT"), WITH AN OFFICE ON THE DATE HEREOF AT 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011, UNITED STATES OF AMERICA, AS ITS AGENT TO RECEIVE ON BEHALF OF IT AND ITS PROPERTY SERVICE OF COPIES OF THE SUMMONS AND COMPLAINT AND ANY OTHER PROCESS THAT MAY BE SERVED IN ANY SUCH ACTION OR PROCEEDING. SUCH SERVICE MAY BE MADE BY MAILING OR DELIVERING A COPY OF SUCH PROCESS IN CARE OF THE PROCESS AGENT AT THE PROCESS AGENT'S ABOVE ADDRESS, AND EACH PARTY HERETO HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS THE PROCESS AGENT TO ACCEPT SUCH SERVICE ON ITS BEHALF. EACH PARTY HERETO AGREES TO ENTER INTO ANY AGREEMENT RELATING TO SUCH APPOINTMENT THAT THE PROCESS AGENT MAY CUSTOMARILY REQUIRE AND TO PAY THE PROCESS AGENT'S CUSTOMARY FEES UPON DEMAND. AS AN ALTERNATIVE METHOD OF SERVICE, EACH PARTY HERETO ALSO IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PARTY AT ITS ADDRESS SPECIFIED PURSUANT TO SECTION 11.2. NOTHING IN THIS SECTION 11.7 SHALL AFFECT THE RIGHT OF EITHER PARTY HERETO TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF EITHER PARTY HERETO TO BRING ANY ACTION OR PROCEEDING AGAINST THE OTHER PARTY HERETO OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.

**Section 11.8**                      [Waiver of Jury Trial](#). EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR RELATING TO THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), ACTIONS OF EITHER OF THE PARTIES HERETO OR ANY OTHER RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**Section 11.9**                      [Integration](#). This Agreement contains a final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof, superseding all prior oral or written understandings.

**Section 11.10**                      [Captions and Cross References](#). The various captions (including without limitation the table of contents) in this Agreement are provided solely for convenience of reference and shall not affect the meaning or interpretation of any provision of this Agreement.

**Section 11.11**                    [Execution in Counterparts](#). This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

**Section 11.12**                    [Acknowledgment and Consent](#).

(a)     The Seller acknowledges that, from time to time prior to the Termination Date, ARSC intends to sell all of ARSC's right, title and interest in, to and under the ARSC Purchased Assets, this Agreement and all of the other Transaction Documents pursuant to the Transfer and Servicing Agreement and that the interests of ARSC hereunder will be further assigned pursuant to the Indenture. The Seller acknowledges and agrees to each such sale by ARSC and consents to the sale and assignment by ARSC of all or any portion of its right, title and interest in, to and under the ARSC Purchased Assets, this Agreement and the other Transaction Documents and all of ARSC's rights, remedies, powers and privileges and all claims of ARSC against the Seller under or with respect to this Agreement and the other Transaction Documents (whether arising pursuant to the terms of this Agreement or otherwise available at law or in equity), including without limitation (whether or not an Unmatured Servicer Default or a Servicer Default has occurred and is continuing) (i) the right of ARSC at any time to enforce this Agreement against the Seller and the obligations of the Seller hereunder and (ii) the right at any time to give or withhold any and all consents, requests, notices, directions, approvals, demands, extensions or waivers under or with respect to this Agreement, any other Transaction Document or the obligations in respect of the Seller thereunder, all of which rights, remedies, powers, privileges and claims may be exercised and/or enforced by ARSC's successors and assigns to the same extent as ARSC may do. Each of the parties hereto acknowledges and agrees that ARSC's successors and assigns are third party beneficiaries of this Agreement, including without limitation the rights of ARSC arising hereunder, and may rely on the Seller's representations and warranties made herein as if made directly to them. The Seller hereby acknowledges and agrees that, except with respect to its rights under Section 4.3, it has no claim to or interest in any of the Lockbox Accounts.

(b)     The Seller hereby agrees to execute all agreements, instruments and documents and to take all other actions that ARSC or its assignees determines are necessary or appropriate to evidence its consent described in Section 11.12(a). The Seller hereby acknowledges and agrees that ARSC in all of its capacities may assign to ARSC's successors and assigns such powers of attorney and other rights and interests granted by the Seller to ARSC hereunder and agrees to cooperate fully with the Indenture Trustee in the exercise of such rights.

**Section 11.13**                    [No Partnership or Joint Venture](#). Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture.

**Section 11.14**                    [No Proceedings](#). (a) The Seller hereby agrees that it will not institute against ARSC or join any other Person in instituting against ARSC any Insolvency Proceeding so long as the Final Payout Date shall not have occurred or there shall not have elapsed one year plus one day since the Final Payout Date. The foregoing shall not limit the right of the Seller to file any claim in or otherwise take any action with respect to any Insolvency

Proceeding that was instituted against ARSC or its successors by any Person other than the Seller.

(b) ARSC hereby agrees that it will not institute against the Seller or join any other Person in instituting against the Seller any Insolvency Proceeding so long as the Final Payout Date shall not have occurred or there shall not have elapsed one year plus one day since the Final Payout Date. The foregoing shall not limit the right of ARSC to file any claim in or otherwise take any action with respect to any Insolvency Proceeding that was instituted against the Seller or its successors by any Person other than ARSC.

**Section 11.15** **Severability of Provisions.** If any one or more of the covenants, agreements, provisions or terms of this Agreement are for any reason whatsoever held invalid, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Agreement and shall in no way affect the validity or enforceability of the other provisions of this Agreement.

**Section 11.16** **Recourse to the Seller.** Except to the extent expressly provided otherwise in the Transaction Documents, the obligations of the Seller under the Transaction Documents to which it is a party are solely the obligations of the Seller, and no recourse shall be had for payment of any fee payable by or other obligation of or claim against the Seller that arises out of any Transaction Document to which the Seller is a party against any director, officer or employee of the Seller. The provisions of this Section 11.16 shall survive the termination of this Agreement.

**Section 11.17** **Recourse to ARSC.** Except to the extent expressly provided otherwise in the Transaction Documents, the obligations of ARSC under the Transaction Documents to which it is a party are solely the obligations of ARSC, and no recourse shall be had for payment of any fee payable by or other obligation of or claim against ARSC that arises out of any Transaction Document to which ARSC is a party against any director, officer or employee of ARSC. The provisions of this Section 11.17 shall survive the termination of this Agreement.

**Section 11.18** **Confidentiality.** ARSC agrees to maintain the confidentiality of any information regarding CMSC, the Seller, Cendant Corporation and PHH obtained in accordance with the terms of this Agreement that is not publicly available; provided, however, that ARSC may reveal such information (a) as necessary or appropriate in connection with the administration or enforcement of this Agreement or its funding of Purchases under this Agreement or (b) as required by law, government regulation, court proceeding or subpoena. Notwithstanding anything herein to the contrary, none of CMSC, the Seller, Cendant Corporation nor PHH shall have any obligation to disclose to ARSC or its assignees any personal and confidential information relating to a Transferred Employee.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

CENDANT MOBILITY FINANCIAL CORPORATION

By: /s/ Dennis O'Gara \_\_\_\_\_

Name: Dennis O'Gara

Title: SVP, CFO

APPLE RIDGE SERVICES CORPORATION

By: /s/ Eric J. Barnes \_\_\_\_\_

Name: Eric J. Barnes

Title: VP, Controller

[Signature Page to Receivables Purchase Agreement]

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APPENDIX A

DEFINITIONS

A. Defined Terms. Capitalized terms used in this Agreement but not defined herein shall have the meanings assigned to them in the Purchase Agreement. As used in this Agreement, the following terms have the following meanings (such meanings to be equally applicable to the singular and plural forms thereof):

“ARSC” shall mean Apple Ridge Services Corporation, a Delaware corporation.

“ARSC Purchase Price” shall have the meaning set forth in Section 3.1(b).

“ARSC Purchase Termination Event” shall have the meaning set forth in Section 9.1.

“ARSC Purchased Assets” shall have the meaning set forth in Section 2.1(a).

“ARSC Subordinated Loan” shall have the meaning set forth in Section 4.2.

“ARSC Subordinated Note” shall mean the ARSC Subordinated Note dated the Closing Date, made by ARSC and payable to the order of CMSC substantially in the form of Exhibit 4.2, as such note may be amended, supplemented, otherwise modified or replaced from time to time.

“ARSC Subordinated Note Cap” shall have the meaning set forth in Section 4.2.

“ARSC Termination Date” shall mean the date specified by the Indenture Trustee following the occurrence of an ARSC Purchase Termination Event; provided, however, that if an Event of Bankruptcy has occurred with respect to either the Seller or ARSC, the ARSC Termination Date shall be deemed to have occurred automatically without any such notice.

“CMF Collections” shall mean all funds that are received on account of or otherwise in connection with any CMF Pool Asset, including without limitation all funds received (a) from or on behalf of any Obligor in payment of or otherwise in respect of any CMF Receivable included in the CMF Pool Assets (including without limitation funds received in respect of Advance Payments to the extent necessary to reduce the Aggregate Employer Balance of Receivables with respect to that Employer to zero), (b) from or on behalf of any Ultimate Buyer in respect of CMF Home Sale Proceeds, (c) from any other Person to the extent such funds were applied, or should have been applied, pursuant to any Contract to repay or discharge any CMF Receivable or CMF Related Asset included in the CMF Pool Assets (including without limitation insurance payments that any Transaction Party applies in the ordinary course of its business to amounts owed in respect of such CMF Pool Assets), (d) from the Seller in respect of Seller Adjustments with respect to the ARSC Purchased Assets under this Agreement or any other obligation of the Seller hereunder, (e) from the Originator in respect of Originator Adjustments with respect to the ARSC Purchased Assets under Section 4.3(c) of the Purchase Agreement, (f) from the Servicer in respect of Servicer Dilution Adjustments with respect to the ARSC Purchased Assets under Section 3.10(a) of the Transfer and Servicing Agreement and (g)

from PHH in respect of any payments made by PHH as guarantor of the obligations of the Originator or the Servicer under the PHH Guarantee.

“CMF Home” shall mean any Home subject to a CMF Home Purchase Contract.

“CMF Home Purchase Contract” shall mean any Home Purchase Contract that was executed, and pursuant to which CMF purchases a Home, on or after the Closing Date, and that relates to a Receivable included in the ARSC Purchased Assets.

“CMF Home Sale Contract” shall mean any Home Sale Contract with respect to a CMF Home.

“CMF Home Sale Proceeds” shall mean any Home Sale Proceeds arising under a CMF Home Sale Contract.

“CMF Indemnified Losses” shall have the meaning set forth in Section 10.1.

“CMF Indemnified Party” shall have the meaning set forth in Section 10.1.

“CMF Noncomplying Asset” shall have the meaning set forth in Section 4.3(a).

“CMF Noncomplying Asset Adjustment” shall have the meaning set forth in Section 4.3(a).

“CMF Pool Asset” shall mean, collectively, all of the following assets and interests in property, whether now existing or hereafter arising and wheresoever located:

- (a) all CMF Receivables, all CMF Related Assets, all CMF Collections and all proceeds of the foregoing;
- (b) the PHH Guarantee;
- (c) all rights to payment due or to become due from the Seller under the Transaction Documents and all other rights and interests of ARSC under this Agreement and the other Transaction Documents;
- (d) all Lockboxes and Lockbox Accounts and all funds on deposit therein and certificates and instruments, if any, from time to time evidencing such accounts and funds on deposit therein, all investments made with such funds, all claims thereunder or in connection therewith and all interest, dividends, monies, instruments, securities and other property from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing; and
- (e) all moneys due or to become due and all amounts received or receivable with respect to any of the foregoing and all proceeds of, and earnings on the foregoing.

“CMF Purchased Assets” shall have the meaning set forth in Section 2.1(a).

“CMF Receivable” shall have the meaning set forth in Section 2.1(a).

**“CMF Records”** shall mean all Records maintained by the Seller with respect to the CMF Receivables and CMF Related Assets.

**“CMF Related Assets”** shall have the meaning set forth in Section 2.1(a).

**“CMF Related Property”** shall have the meaning set forth in Section 2.1(a).

**“Collection Account”** shall have the meaning provided in the Transfer and Servicing Agreement.

**“Daily Seller Report”** shall have the meaning set forth in Section 3.1.

**“Eligible Receivable”** shall mean any Eligible Receivable as defined in the Purchase Agreement that has been (or will be at the time such Receivable becomes included in the ARSC Purchased Assets) validly transferred to ARSC by CMF under and in accordance with this Agreement.

**“Final Payout Date”** shall mean the **earlier** of the date after the satisfaction and discharge of the Indenture pursuant to Article IV thereof on which either (i) all of the Notes have been paid in full or (ii) the Unpaid Balance of all outstanding Pool Receivables has been reduced to zero; **provided** that for purposes of this definition of Final Payout Date, the Unpaid Balance of a Defaulted Receivable shall be deemed to be outstanding until all Homes related thereto have been sold and such Receivable has been written off as uncollectible.

**“Independent Director”** shall mean an individual who is an Independent Director as defined in the Certificate of Incorporation of ARSC as in effect on the date of this Agreement.

**“Material Adverse Effect”** shall mean, with respect to any event or circumstance, a material adverse effect on (a) the business, financial condition, operations or assets of the Seller, (b) the ability of the Seller to perform its obligations under any Transaction Document or all or any substantial portion of the Contracts, (c) the validity or enforceability of, or collectibility of, amounts payable by the Seller under any Transaction Document, (d) the status, existence, perfection or priority of the interest of ARSC (and its assigns) in the ARSC Purchased Assets, taken as a whole, in each case free and clear of any Lien (other than Permitted Liens) or (e) the validity, enforceability or collectibility of all or any substantial portion of the ARSC Purchased Assets.

**“Permitted Exception”** shall mean that, with respect to any representation, warranty or covenant with respect to the interest of ARSC and its assignees in the ARSC Purchased Assets or any Servicer Default, that (i) prior to recordation (A) pursuant to Section 8.3 of this Agreement and/or Section 2.01(d)(i) of the Transfer and Servicing Agreement or (B) upon the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee, and no recordation in real estate records of any mortgage or any conveyance pursuant to the related Home Purchase Contract or Home Sale Contract in favor of any Transaction Party, the Issuer or any of ARSC’s assignees and assigns pursuant to the Transfer and Servicing Agreement will be made except as otherwise permitted under Section 2.01(d)(i) of the Transfer and Servicing Agreement and (ii) no delivery of any Home Purchase Contract, Home Deed or Equity Loan Note to any custodian will be required.

**“Pool Collections”** shall mean, collectively and without duplication, the CMSC Collections and the CMF Collections; provided, however, that any proceeds of Receivables that gave rise to CMF Noncomplying Asset Adjustments that have been paid as provided in Section 4.3 hereof or CMSC Noncomplying Asset Adjustments that have been paid as provided in Section 4.3 of the Purchase Agreement and any Related Property with respect to such Receivable shall not constitute Pool Collections and shall be promptly returned to CMF as provided in Section 4.3 hereof.

**“Pool Receivables”** shall mean, collectively, the CMSC Receivables and the CMF Receivables.

**“Purchase”** shall mean each purchase of Receivables, Related Assets and other ARSC Purchased Assets by ARSC from the Seller hereunder.

**“Purchase Agreement”** shall mean the Purchase Agreement dated as of the date hereof by and between CMSC and the Seller.

**“Seller”** shall mean Cendant Mobility Financial Corporation.

**“Seller Adjustment”** shall have the meaning set forth in Section 4.3(c).

**“Seller Assets”** shall have the meaning provided in Section 2.1(a).

**“Seller Dilution Adjustment”** shall have the meaning set forth in Section 4.3(b).

**“Seller Person”** means the Seller and each of its Subsidiaries and Affiliates other than CMSC, ARSC and the Issuer.

**“Seller Purchased Assets”** shall have the meaning provided in Section 2.1(a).

**“Seller Receivables”** shall have the meaning provided in Section 2.1(a).

**“Seller Related Assets”** shall have the meaning provided in Section 2.1(a).

**“Seller Related Property”** shall have the meaning provided in Section 2.1(a).

**“Transaction Documents”** means, collectively, this Agreement, the Purchase Agreement, the Transfer and Servicing Agreement, the PHH Guarantee, the ARSC Subordinated Note, the Lockbox Agreements and all agreements, instruments, certificates, reports and documents (other than any of the Contracts) executed and delivered or to be executed and delivered by ARSC under or in connection with any of the foregoing, as any of the foregoing may be amended, supplemented, restated or otherwise modified from time to time.

**“Transaction Party”** means ARSC, CMSC, the Seller, the Issuer or the Servicer (so long as the Servicer is CMSC or an Affiliate thereof).

**B. Other Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP or with United States generally accepted regulatory



principles, as applicable. To the extent that the definitions of accounting terms in this Agreement are inconsistent with the meanings of such terms under GAAP or regulatory accounting principles, the definitions contained in this Agreement shall control. All terms used in Article 9 of the UCC in the State of New York and not specifically defined herein are used herein as defined in such Article 9.

C. **Agreements, Representations and Warranties.** The agreements, representations and warranties of ARSC and Cendant Mobility Financial Corporation in this Agreement in each of their respective capacities as buyer, Seller and originator shall be deemed to be the agreements, representations and warranties of ARSC and Cendant Mobility Financial Corporation solely in each such capacity for so long as ARSC and Cendant Mobility Financial Corporation act in each such capacity under this Agreement, **provided** that nothing in this paragraph shall be deemed to limit the survival of such agreements, representations and warranties.

D. **Computation of Time Periods.** Unless otherwise stated in this Agreement with respect to computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words “to” and “until” means “to but excluding”.

E. **Reference.** The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and references to “**Section**”, “**subsection**”, “**Appendix**”, “**Schedule**” and “**Exhibit**” in this Agreement are references to Sections, subsections, Appendices, Schedules and Exhibits in or to this Agreement unless otherwise specified in this Agreement.

**SCHEDULE 2.1**

**to**

**RECEIVABLES PURCHASE AGREEMENT**

**Dated as of April 25, 2000**

**List of CMF Home Purchase Contracts**

**Sent directly to Apple Ridge Services Corporation.**

**SCHEDULE 6.1(n)**

**to**

**RECEIVABLES PURCHASE AGREEMENT**

**Dated as of April 25, 2000**

**Principal Place of Business  
and Chief Executive Office of the Seller**

**Cendant Mobility Financial Corporation  
40 Apple Ridge Road  
Suite 6000  
Danbury, Connecticut 06810**

**List of Offices Where  
the Seller Keeps CMF Records**

**Cendant Mobility Services Corporation  
40 Apple Ridge Road  
Danbury, CT 06810**

**Cendant Mobility Services Corporation  
8081 Royal Ridge Parkway  
Suite 200  
Irving, TX 75063**

**Cendant Mobility Services Corporation  
27271 Las Ramblas  
Mission Viejo, CA 92691**

**Cendant Mobility Services Corporation  
2221 Camden Court  
Oakbrook, IL 60523**

**Cendant Mobility Services Corporation  
401 Lennon Lane  
Suite 200  
Walnut Creek, CA 94598**

SCHEDULE 6.1(q)  
to  
RECEIVABLES PURCHASE AGREEMENT  
Dated as of April 25, 2000

List of Legal Names for Cendant Mobility Financial Corporation

Mobility Financial Corporation

**SCHEDULE 11.2**  
**to**  
**RECEIVABLES PURCHASE AGREEMENT**  
**Dated as of April 25, 2000**

**Notice Addresses**

**Cendant Mobility Financial Corporation**  
40 Apple Ridge Road  
Suite 6000  
Danbury, CT 06810  
Fax: (203) 205-3054

**Apple Ridge Services Corporation**  
40 Apple Ridge Road  
Suite 5000  
Danbury, CT 06810  
Fax: (203) 205-3056

EXHIBIT 2.1

to

RECEIVABLES PURCHASE AGREEMENT

Dated as of April 25, 2000

FORM OF NOTICE OF ADDITIONAL  
CMF HOME PURCHASE CONTRACTS

[DATE]

Apple Ridge Services Corporation  
40 Apple Ridge Road  
Suite 5000  
Danbury, CT 06810

Re: Additional CMF Home Purchase Contracts

Dear Sir or Madam:

Reference is made to the Receivables Purchase Agreement, dated as of April 25, 2000 (the "Receivables Purchase Agreement"), between Cendant Mobility Financial Corporation and Apple Ridge Services Corporation. Capitalized terms used herein and not defined herein shall have the meanings assigned to them in the Receivables Purchase Agreement.

Pursuant to Section 2.1 of the Receivables Purchase Agreement, we are required to deliver a notice to you on the last of day of each month setting forth the new Home Purchase Contracts which were executed during such month. Attached hereto is a list of CMF Home Purchase Contracts that were executed during [Month/Year]. Pursuant to Section 2.1 of the Receivables Purchase Agreement, Schedule 2.1 to the Receivables Purchase Agreement is hereby amended to include the Home Purchase Contracts attached hereto.

Very truly yours,

CENDANT MOBILITY FINANCIAL CORPORATION

By: \_\_\_\_\_

Name:

Title:

EXHIBIT 4.2  
to  
RECEIVABLES PURCHASE AGREEMENT  
Dated as of April 25, 2000

FORM OF ARSC SUBORDINATED NOTE

April 25, 2000

1. **Note.** FOR VALUE RECEIVED, the undersigned, APPLE RIDGE SERVICES CORPORATION, a Delaware corporation ("ARSC"), hereby unconditionally promises to pay to the order of CENDANT MOBILITY SERVICES CORPORATION, a Delaware corporation ("CMSC"), in lawful money of the United States of America and in immediately available funds, on the day following the Final Payout Date, the aggregate unpaid principal sum outstanding of all "ARSC Subordinated Loans" made from time to time by CMSC to ARSC pursuant to and in accordance with the terms of that certain Receivables Purchase Agreement dated as of April 25, 2000, between the Seller and ARSC (as amended, restated, supplemented, or otherwise modified from time to time, the "Receivables Purchase Agreement"). Reference to Sections 4.2 and 5.2 of the Receivables Purchase Agreement is hereby made for a statement of the terms and conditions under which the loans evidenced hereby have been and will be made. All capitalized terms used herein that are not otherwise specifically defined herein shall have the meanings given to such terms in the Receivables Purchase Agreement. No advance shall be made hereunder on any date if the aggregate principal amount outstanding hereunder on such date, after giving effect to such advance, plus the aggregate amount then outstanding under the Notes, would exceed an amount equal to five times the net worth of ARSC. Proceeds of any loan hereunder shall be used solely for the purposes of paying the Purchase Price of the ARSC Purchased Assets.

2. **Agreement to Make Advances.** Subject to the limitations set forth herein and the following limitations set forth in Section 5.2 of the Receivables Purchase Agreement: (a) this ARSC Subordinated Note has been duly executed and delivered by ARSC and is in full force and effect, (b) no Event of Bankruptcy has occurred and is continuing with respect to ARSC and (c) after giving effect to the ARSC Subordinated Loan, the aggregate outstanding principal amount of this ARSC Subordinated Note does not exceed the ARSC Subordinated Note Cap, CMSC irrevocably agrees to make each ARSC Subordinated Loan requested by ARSC on or prior to the Termination Date for the sole purpose of purchasing ARSC Purchased Assets under the Receivables Purchase Agreement.

3. **Interest.** ARSC further promises to pay interest on the outstanding unpaid principal amount hereof from the date hereof until payment in full hereof at a rate equal to LIBOR plus 2.25%; provided, however, that if ARSC defaults in the payment of any principal hereof, ARSC promises to pay, on demand, interest at the Prime Rate plus 2.00% per annum on any such unpaid amounts, accrued with respect to each Interest Period from the date such payment is due to the date of actual payment. LIBOR shall be determined on each LIBOR

Determination Date on the basis of the rate for deposits in United States dollars for a one-month period which appears on Telerate Page 3750 as of 11:00 a.m., London time, on such date. If such rate does not appear on Telerate Page 3750, the rate for that LIBOR Determination Date shall be determined on the basis of the rates quoted by the four major banks in the London interbank market selected by the Paying Agent to the Paying Agent as the rates at which deposits in United States dollars are offered by such banks in the London interbank market at approximately 11:00 a.m., London time, on that day to prime banks in the London interbank market for a one-month period. Notwithstanding the foregoing, interest shall accrue at a rate equal to 8.46% per annum during the first Interest Period. Interest shall be payable on the Distribution Date in each month in arrears. The outstanding principal of any loan made under this ARSC Subordinated Note shall be due and payable on the day after the Final Payout Date, and may be repaid or prepaid at any time without premium or penalty.

LIBOR Determination Date means the second London Business Day prior to the commencement of the second and each subsequent Interest Period. A London Business Day is any Business Day on which dealings in deposits in U.S. dollars are transacted in the London interbank market and banking institutions in London are not authorized or obligated by law or regulation to close. An Interest Period is the period beginning on and including the Distribution Date immediately preceding such Distribution Date and ending on and excluding such Distribution Date; provided that the first Interest Period shall begin on and include April 25, 2000 and end on and exclude June 15, 2000. A Distribution Date means June 15, 2000 and the fifteenth day of each calendar month thereafter, or if such fifteenth day is not a Business Day, the next succeeding Business Day.

4. Principal Payments. CMSC is authorized and directed by ARSC to enter in its books and records the date and amount of each loan made by it that is evidenced by this ARSC Subordinated Note and the amount of each payment of principal made by ARSC and, absent manifest error, such entries shall constitute prima facie evidence of the accuracy of the information so entered; provided that neither the failure of CMSC to make any such entry or any error therein shall expand, limit or affect the obligations of ARSC hereunder.

5. Subordination. The indebtedness evidenced by this ARSC Subordinated Note is subordinated to the prior payment in full of all of ARSC's recourse obligations under the Transfer and Servicing Agreement. The subordination provisions contained herein are for the direct benefit of, and may be enforced by, ARSC's successors and assigns and/or any of their respective assignees (collectively, the "Senior Claimants") under the Transfer and Servicing Agreement. Until the date after the Final Payout Date on which all advances outstanding under the Transfer and Servicing Agreement have been repaid in full and all other obligations of ARSC thereunder (all such obligations, collectively, the "Senior Claims") have been indefeasibly paid and satisfied in full, CMSC shall not demand, accelerate, sue for, take, receive or accept from ARSC, directly or indirectly, in cash or other property or by set-off or any other manner (including without limitation from or by way of collateral) any payment or security of all or any of the indebtedness under this ARSC Subordinated Note or exercise any remedies or take any action or proceeding to enforce the same; provided, however, that (i) CMSC hereby agrees that it will not institute against ARSC any Insolvency Proceeding unless and until a period of one year and one day has elapsed after the Final Payout Date and (ii) nothing in this paragraph shall



restrict ARSC from paying, or CMSC from requesting, any payments under this ARSC Subordinated Note so long as ARSC is not required under the Transfer and Servicing Agreement to set aside the funds used for such payments for the benefit of, or otherwise pay over to, any of the Senior Claimants; and provided, further, that the making of such payment would not otherwise violate the terms and provisions of the Transfer and Servicing Agreement. Should any payment, distribution or security or proceeds thereof be received by CMSC in violation of the immediately preceding sentence, CMSC agrees that such payment shall be segregated, received and held in trust for the benefit of, and deemed to be the property of, and shall be immediately paid over and delivered to the Indenture Trustee for the benefit of the Senior Claimants.

6. Bankruptcy; Insolvency. Upon the occurrence of any Insolvency Proceeding involving ARSC as debtor, then and in any such event the Senior Claimants shall receive payment in full of all amounts due under the Transfer and Servicing Agreement (whether or not any or all of such amount is an allowable claim in any such proceeding) before CMSC is entitled to receive payment on account of this ARSC Subordinated Note and, to that end, any payment or distribution of assets of ARSC of any kind or character, whether in cash, securities or other property in any applicable Insolvency Proceeding which would otherwise be payable to, or deliverable upon or with respect to, any or all indebtedness under this ARSC Subordinated Note, is hereby assigned to and shall be paid or delivered by the Person making such payment or delivery (whether a trustee in bankruptcy, a receiver, custodian or liquidating trustee or otherwise) pursuant to the Transfer and Servicing Agreement for application to, or as collateral for the payment of, the Senior Claim until such Senior Claim shall have been paid in full and satisfied.

7. GOVERNING LAW. THIS ARSC SUBORDINATED NOTE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS AND DECISIONS OF THE STATE OF NEW YORK. WHEREVER POSSIBLE EACH PROVISION OF THIS ARSC SUBORDINATED NOTE SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER APPLICABLE LAW, BUT IF ANY PROVISION OF THIS ARSC SUBORDINATED NOTE SHALL BE PROHIBITED BY OR INVALID UNDER APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS ARSC SUBORDINATED NOTE.

8. Waivers. All parties hereto, whether as makers, endorsers, or otherwise, severally waive presentment for payment, demand, protest and notice of dishonor. CMSC additionally expressly waives all notice of the acceptance by any Senior Claimant of the subordination and other provisions of this ARSC Subordinated Note and expressly waives reliance by any Senior Claimant upon the subordination and other provisions herein provided.

9. Assignment. Prior to the satisfaction and discharge of the Indenture pursuant to Article IV thereof, this ARSC Subordinated Note may not be assigned, pledged or otherwise transferred to any party other than Originator except in accordance with the Transfer and Servicing Agreement.

APPLE RIDGE SERVICES CORPORATION

By: \_\_\_\_\_

Name:

Title:

**Acknowledged and agreed:**

CENDANT MOBILITY SERVICES CORPORATION

By: \_\_\_\_\_

Name:

Title:



**TRANSFER AND SERVICING AGREEMENT**

**Dated as of April 25, 2000**

**by and between**

**APPLE RIDGE SERVICES CORPORATION  
as transferor,**

**CENDANT MOBILITY SERVICES CORPORATION  
as originator and servicer,**

**CENDANT MOBILITY FINANCIAL CORPORATION  
as originator,**

**APPLE RIDGE FUNDING LLC  
as transferee**

**and**

**BANK ONE, NATIONAL ASSOCIATION  
as Indenture Trustee**

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ARTICLE I  
DEFINITIONS

Section 1.01	Definitions	1
Section 1.02	Other Definitional Provisions	9

ARTICLE II  
SALE AND PURCHASE OF ASSETS

Section 2.01	Sale and Purchase	10
Section 2.02	Representations and Warranties of the Transferor	12
Section 2.03	Representations and Warranties of the Issuer	16
Section 2.04	No Assumption of Obligations Relating to Transferred Assets; Excess Home Sale Proceeds	17
Section 2.05	Affirmative Covenants of the Transferor	17
Section 2.06	Negative Covenants of the Transferor	20

ARTICLE III  
ADMINISTRATION AND SERVICING OF RECEIVABLES

Section 3.01	Acceptance of Appointment and Other Matters Relating to the Servicer	22
Section 3.02	Duties of the Servicer and the Issuer	22
Section 3.03	Servicing Compensation	25
Section 3.04	Representations and Warranties of the Servicer	25
Section 3.05	Affirmative Covenants of Servicer	28
Section 3.06	Negative Covenants of Servicer	30
Section 3.07	Records of the Servicer and Reports to be Prepared by the Servicer	31
Section 3.08	Annual Certificate of Servicer	32
Section 3.09	Annual Servicing Report of Independent Public Accountants; Copies of Reports Available	32

Section 3.10	Adjustments; Modifications	33
Section 3.11	Escrow Agents	34
Section 3.12	Servicer Advances	34
Section 3.13	Calculations	34
Section 3.14	Application of Collections	34

ARTICLE IV  
ACCOUNTS AND POOL COLLECTIONS

Section 4.01	Establishment of Collection Account	36
Section 4.02	Pool Collections and Allocations	36
Section 4.03	Withdrawals from the Collection Account	37

ARTICLE V  
SECURITY INTEREST

Section 5.01	Security Interest	38
Section 5.02	Enforcement of Rights	38

ARTICLE VI  
OTHER MATTERS RELATING TO THE TRANSFEROR

Section 6.01	Liability of the Transferor	39
Section 6.02	Indemnification by the Transferor	39

ARTICLE VII  
OTHER MATTERS RELATING TO THE SERVICER

Section 7.01	Liability of the Servicer	41
Section 7.02	Merger or Consolidation of, or Assumption of the Obligations of, the Servicer	41
Section 7.03	Limitation on Liability of the Servicer and Others	41

Section 7.04	Indemnification by the Servicer	42
Section 7.05	Resignation of the Servicer	42
Section 7.06	Access to Certain Documentation and Information Regarding the Receivables	43
ARTICLE VIII TERMINATION		
Section 8.01	Transfer Termination Events	44
Section 8.02	Transfer Termination	45
ARTICLE IX SERVICER DEFAULTS		
Section 9.01	Servicer Defaults	46
Section 9.02	Performance by Issuer	48
Section 9.03	Indenture Trustee To Act; Appointment of Successor	48
Section 9.04	Notification to Holders	50
Section 9.05	Marketing Expenses Account	50
ARTICLE X TERMINATION		
Section 10.01	Termination	52
ARTICLE XI MISCELLANEOUS PROVISIONS		
Section 11.01	Amendment	53
Section 11.02	Governing Law	53
Section 11.03	Notices; Payments	53
Section 11.04	Severability of Provisions	54

Section 11.05	Further Assurances	54
Section 11.06	Nonpetition Covenant	54
Section 11.07	No Waiver; Cumulative Remedies	54
Section 11.08	Counterparts	54
Section 11.09	Third-Party Beneficiaries	55
Section 11.10	Merger and Integration	55
Section 11.11	Headings	55
Section 11.12	Confidentiality	55
Section 11.13	Costs, Expenses and Taxes	55
Section 11.14	Submission to Jurisdiction	55
Section 11.15	Waiver of Jury Trial	56
Section 11.16	Acknowledgment and Consent	57
Section 11.17	No Partnership or Joint Venture	57



**SCHEDULES**

SCHEDULE 2.02(m)	Principal Place of Business and Chief Executive Office of the Transferor and List of Offices Where the Servicer Keeps Records Related to the Transferred Assets
SCHEDULE 2.02(o)	List of Legal Names
SCHEDULE 3.04(l)	List of Lockbox Banks

**EXHIBIT**

EXHIBIT A	Form of Annual Servicer's Certificate
EXHIBIT B	Forms of Lockbox Agreements
EXHIBIT C	List of Servicing Officers

THIS TRANSFER AND SERVICING AGREEMENT (this "Agreement") dated as of April 25, 2000 is made by and between APPLE RIDGE SERVICES CORPORATION, a Delaware corporation, as transferor, CENDANT MOBILITY SERVICES CORPORATION, a Delaware corporation, as originator and servicer ("CMSC" or the "Servicer"), CENDANT MOBILITY FINANCIAL CORPORATION, a Delaware corporation, as originator ("CMF"), APPLE RIDGE FUNDING LLC, a Delaware limited liability company (the "Issuer"), as transferee, and BANK ONE, NATIONAL ASSOCIATION, as Indenture Trustee.

In consideration of the mutual agreements herein contained, each party agrees as follows for the benefit of the other parties, the Indenture Trustee and the holders of any Notes issued by the Issuer from time to time under the Indenture to the extent provided herein:

## ARTICLE I DEFINITIONS

### Section 1.01

**Definitions.** Capitalized terms used in this Agreement but not defined herein shall have the meanings assigned to them in the Receivables Purchase Agreement or Purchase Agreement, as applicable. Whenever used in this Agreement, the following words and phrases shall have the following meanings, and the definitions of such terms are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

"**Agreement**" shall mean this Transfer and Servicing Agreement and all amendments hereof and supplements hereto.

"**ARF Purchase Price**" shall have the meaning set forth in Section 2.01(i).

"**ARSC Indemnified Losses**" shall have the meaning set forth in Section 6.02.

"**ARSC Indemnified Party**" shall have the meaning set forth in Section 6.02.

"**Asset Deficiency**" shall have the meaning set forth in the Indenture.

"**Cash Equivalents**" shall mean (i) investments in commercial paper maturing in not more than 270 days from the date of issuance which at the time of acquisition is rated at least A-1 or the equivalent thereof by Standard & Poor's or P-1 or the equivalent thereof by Moody's, (ii) investments in direct obligations or obligations that are guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having a maturity of not more than three years from the date of acquisition, (iii) investments in certificates of deposit maturing not more than one year from the date of origin issued by a bank or trust company organized or licensed under the laws of the United States or any state or territory thereof having capital, surplus and undivided profits aggregating at least \$500,000,000 and rated A or better by Standard & Poor's or A2 or better by Moody's, (iv) money market mutual funds having assets in excess of \$2,000,000,000, (v) investments in asset-backed or mortgage-backed securities, including investments in collateralized, adjustable rate mortgage securities and those mortgage-backed securities that are rated at least AA by Standard & Poor's or Aa by Moody's or are of comparable quality at the

time of investment and (vi) banker's acceptances maturing not more than one year from the date of origin issued by a bank or trust company organized or licensed under the laws of the United States or any state or territory thereof and having capital, surplus and undivided profits aggregating at least \$500,000,000, and rated A or better by Standard & Poor's or A2 or better by Moody's.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Collection Account" shall have the meaning provided in Section 4.01.

"Consolidated Net Income" shall mean, for any period for which such amount is being determined, the net income (or loss) of PHH and its Consolidated Subsidiaries during such period determined on a consolidated basis for such period taken as a single accounting period in accordance with GAAP, provided that there shall be excluded (i) income (or loss) of any Person (other than a Consolidated Subsidiary) in which PHH or any of its Consolidated Subsidiaries has an equity investment or comparable interest, except to the extent of the amount of dividends or other distributions actually paid to PHH or its Consolidated Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Consolidated Subsidiary or is merged into or consolidated with PHH or any of its Consolidated Subsidiaries or the Person's assets are acquired by PHH or any of its Consolidated Subsidiaries, (iii) the income of any Consolidated Subsidiary to the extent that the declaration or payment of dividends or similar distributions by the Consolidated Subsidiary of the income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Consolidated Subsidiary, (iv) any extraordinary after-tax gains and (v) any extraordinary pretax losses but only to the extent attributable to a write-down of financing costs relating to any existing and future indebtedness.

"Consolidated Net Worth" shall mean, at any date of determination, all amounts that would be included on a balance sheet of PHH and its Consolidated Subsidiaries under stockholders' equity as of such date in accordance with GAAP.

"Consolidated Subsidiaries" shall mean all subsidiaries of PHH that are required to be consolidated with PHH for financial reporting purposes in accordance with GAAP.

"Distribution Date" shall mean, with respect to any Series, the date specified in the applicable Supplement for payments to holders of the Notes of that Series.

"Dollars," "\$" or "U.S. \$" shall mean United States dollars.

"Eligible Account" shall mean an account that is (i) maintained with a depository institution whose short-term debt obligations at the time of any deposit therein are rated in the highest short-term debt rating categories by Moody's and Standard & Poor's, (ii) one or more accounts maintained with a depository institution, which accounts are fully insured by the FDIC, with a minimum long-term unsecured debt rating of "A3" by Moody's and "BBB+" by Standard & Poor's, (iii) a segregated trust account maintained with the corporate trust office of the Indenture Trustee or an Af affiliate of the Indenture Trustee, in either case in its fiduciary capacity

or (iv) an account otherwise acceptable to each Rating Agency as evidenced by the delivery of a rating letter by each Rating Agency on the Closing Date.

**“Eligible Investments”** shall mean the following instruments, investment property, or other property, other than securities issued by or obligations of CMSC or any of its Affiliates:

- (a) direct obligations of, or obligations fully guaranteed as to timely payment by, the United States of America;
- (b) demand deposits, time deposits or certificates of deposit (having original maturities of no more than 365 days) of depository institutions or trust companies incorporated under the laws of the United States of America or any state thereof, including the District of Columbia (or domestic branches of foreign banks) and subject to supervision and examination by federal or state banking or depository institution authorities, **provided** that, at the time of the Issuer’s investment or contractual commitment to invest therein, the short-term debt rating of such depository institution or trust company shall be A-1+ by Standard & Poor’s and P-1 by Moody’s;
- (c) commercial paper (having original or remaining maturities of no more than 30 days) having, at the time of the Issuer’s investment or contractual commitment to invest therein, a short-term debt rating of A-1+ by Standard & Poor’s and P-1 by Moody’s;
- (d) demand deposits, time deposits and certificates of deposit that are fully insured by the FDIC having, at the time of the Issuer’s investment therein, a short-term debt rating of A-1+ by Standard & Poor’s and P-1 by Moody’s;
- (e) bankers’ acceptances (having original maturities of no more than 365 days) issued by any depository institution or trust company referred to in clause (b) above;
- (f) money market funds having, at the time of the Issuer’s investment therein, a rating of AAAM or AAAM-G by Standard & Poor’s or Aaa by Moody’s (including funds for which the Indenture Trustee or any of its Affiliates is investment manager or advisor);
- (g) time deposits and eurodollar deposits (having maturities not later than the succeeding Distribution Date) other than as referred to in clause (d) above, with a Person the commercial paper of which has a credit rating of at least A-1+ by Standard & Poor’s and P-1 by Moody’s; or
- (h) any other investment of a type or rating that satisfies the Rating Agency Condition.

**“Eligible Receivables”** shall have the meaning provided in the Receivables Purchase Agreement.

**“Eligible Servicer”** shall mean CMSC or, if CMSC is not acting as Servicer, an entity that, at the time of its appointment as Servicer, (a) is servicing a portfolio of relocation services accounts and is acceptable to the Indenture Trustee, each Series Enhancer and the Rating Agencies, (b) is legally qualified and has the capacity to service the Receivables, (c) in

the determination of the Majority Investors, has demonstrated the ability to service professionally and competently a portfolio of similar accounts in accordance with high standards of skill and care, (d) is qualified to use the software that is then being used to service the Receivables or obtains the right to use or has its own software that is adequate to perform its duties under this Agreement and (e) has a net worth of at least \$ 25,000,000 as of the end of its most recent fiscal quarter (or such lesser net worth as may be approved by the Majority Investors).

“FDIC” shall mean the Federal Deposit Insurance Corporation or any successor.

“Final Stated Maturity Date” shall have the meaning set forth in the Indenture.

“Home Purchase Price” shall mean, with respect to any Home, the appraised or other value set forth in the related Home Purchase Contract as the purchase price for such Home.

“Indebtedness” shall mean, with respect to any Person, in the aggregate, without duplication, (i) all indebtedness, obligations and other liabilities of such Person that are, at the date as of which Indebtedness is to be determined, includable as liabilities in a balance sheet of such Person, other than (x) accounts payable and accrued expenses and (y) current and deferred income taxes and other similar liabilities, (ii) the maximum aggregate amount of all liabilities of such Person or under any Guaranty, indemnity or similar undertaking given or assumed of or in respect of, the indebtedness, obligations or other liabilities, assets, revenues, income or dividends of any Person other than such Person and (iii) all other obligations or liabilities of such Person with respect to the discharge of the obligations of any Person other than itself. For purposes of the Transaction Documents, the Indebtedness of any Person includes the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer.

“Indenture” shall mean the master indenture dated as of April 25, 2000, by and between the Issuer, the Indenture Trustee and The Bank of New York, as Paying Agent, Authentication Agent and Transfer Agent and Registrar.

“Indenture Trustee” shall mean Bank One, National Association, acting in its capacity as Indenture Trustee under the Indenture.

“Investment Company Act” shall mean the Investment Company Act of 1940, as amended.

“Lockbox” shall mean any post office box to which the Obligors remit Pool Collections.

“Lockbox Account” shall mean each lockbox account and associated demand deposit account established pursuant to the Lockbox Agreement and such other lockbox accounts and associated demand deposit accounts that the Servicer may establish from time to time pursuant to a Lockbox Agreement.

“Lockbox Agreement” shall mean each lockbox agreement attached as Exhibit B and any other lockbox agreement pursuant to which the Servicer establishes a Lockbox Account in the name of the Indenture Trustee.

**“Lockbox Bank”** shall mean any institution at which a Lockbox or Lockbox Account is maintained.

**“Majority Investors”** shall have the meaning set forth in the Indenture.

**“Marketing Expenses Account”** shall mean the account established pursuant to Section 9.05.

**“Material Adverse Effect”** shall mean, with respect to any Person and any event or circumstance, a material adverse effect on (a) the business, financial condition, operations or assets of such Person, (b) the ability of such Person to perform its obligations under any Transaction Document to which it is a party or, if applicable, all or any substantial portion of the Contracts, (c) the validity or enforceability of, or collectibility of, amounts payable by such Person under any Transaction Document to which it is a party, (d) the status, existence, perfection or priority of the interest of the Issuer and its assignees in the Transferred Assets, taken as a whole, in each case free and clear of any Lien (other than a Permitted Lien) or (e) the validity, enforceability or collectibility of all or any substantial portion of the Transferred Assets.

**“Moody’s”** shall mean Moody’s Investors Service or its successor.

**“Nonrecoverable Advance”** shall mean any Servicer Advance previously made in respect of a Home the Receivable arising from which has become a Defaulted Receivable.

**“Note”** shall have the meaning provided in the Indenture.

**“Officer’s Certificate”** shall mean, unless otherwise specified in this Agreement, a certificate delivered as provided herein, signed:

- (a) by the President, any Vice President or the chief financial officer of the Transferor or the Servicer, as the case may be, or
- (b) by the President, any Vice President or the financial controller of any Successor Servicer

(or by an officer holding an office with equivalent or more senior responsibilities or, in the case of the Servicer or Successor Servicer, a Servicing Officer, and, in the case of the Transferor, any executive of the Transferor designated in writing by a Vice President or more senior officer of the Transferor for this purpose).

**“Opinion of Counsel”** shall mean a written opinion of counsel, who may be counsel for, or an employee of, the Person providing the opinion and who shall be reasonably acceptable to the Issuer and the Indenture Trustee.

**“Outstanding”** shall have the meaning set forth in the Indenture.

**“Outstanding Amount”** shall have the meaning set forth in the Indenture.

**“PHH Indebtedness”** shall mean (i) all indebtedness, obligations and other liabilities of PHH and its Consolidated Subsidiaries that are, at the date as of which PHH Indebtedness is to be determined, includable as liabilities in a consolidated balance sheet of PHH and its Consolidated Subsidiaries, other than (x) accounts payable and accrued expenses, (y) advances from clients obtained in the ordinary course of the relocation management services business of PHH and its Consolidated Subsidiaries and (z) current and deferred income taxes and other similar liabilities, **plus** (ii) without duplicating any items included in PHH Indebtedness pursuant to the foregoing clause (i), the maximum aggregate amount of all liabilities of PHH or any of its Consolidated Subsidiaries under any guaranty, indemnity or similar undertaking given or assumed of, or in respect of, the indebtedness, obligations or other liabilities, assets, revenues, income or dividends of any person other than PHH or one of its Consolidated Subsidiaries and (iii) all other obligations or liabilities of PHH or any of its Consolidated Subsidiaries in relation to the discharge of the obligations of any Person other than PHH or one of its Consolidated Subsidiaries.

**“Possession Date”** shall have, with respect to any Home, the meaning provided in the related Home Purchase Contract.

**“Purchase”** shall mean each purchase of Receivables, Related Assets and other ARSC Purchased Assets by the Issuer from ARSC hereunder.

**“Purchase Agreement”** shall mean the purchase agreement dated as of April 25, 2000, between CMSC and CMF, as amended from time to time.

**“Rating Agency”** shall mean, with respect to any outstanding Series, each rating agency, if any, specified in the applicable Supplement, selected by the Issuer to rate the Notes of such Series.

**“Rating Agency Condition”** shall mean, with respect to any action, that each Rating Agency shall have notified the Transferor, the Servicer, the Indenture Trustee and the Issuer in writing that such action will not result in a reduction, qualification or withdrawal of the then existing rating of any outstanding Series with respect to which it is a Rating Agency (or, in the case of any Series covered by a financial insurance policy or surety bond, the reduction, qualification or withdrawal of the then existing rating of such Series without giving effect to such insurance policy or surety bond, with such notice also addressed to the issuer of the applicable insurance policy or surety bond) or, with respect to any outstanding Series not rated by any Rating Agency, the required consent specified in the Supplement for such Series.

**“Receivables Activity Report”** shall have the meaning provided in Section 3.07(c).

**“Receivables Purchase Agreement”** shall mean the receivables purchase agreement dated as of April 25, 2000, between CMF and the Transferor, as amended from time to time.

**“Required Marketing Expenses Account Amount”** shall mean, on any Distribution Date, an amount equal to:

(i) zero, if the average number of days the Homes relating to outstanding Pool Receivables have been owned by CMSC and CMF (excluding any such Homes relating to Self-Funding Obligors) as of the close of business on the last Business Day of the immediately preceding Monthly Period was 150 days or less;

(ii) 2.5% of the aggregate Home Purchase Price for all Homes owned by CMSC and CMF (excluding any Homes relating to Self-Funding Obligors) as of the close of business on the last Business Day of the immediately preceding Monthly Period, if the average number of days such Homes have been owned by CMSC and CMF as of the close of business on the last day of the immediately preceding Monthly Period was greater than 150 days but less than or equal to 160 days;

(iii) 3.0% of the aggregate Home Purchase Price for all Homes owned by CMSC and CMF (excluding any Homes relating to Self-Funding Obligors) as of the close of business on the last Business Day of the immediately preceding Monthly Period, if the average number of days such Homes have been owned by CMSC and CMF as of the close of business on the last day of the immediately preceding Monthly Period was greater than 160 days but less than or equal to 170 days;

(iv) 4.0% of the aggregate Home Purchase Price for all Homes owned by CMSC and CMF (excluding any Homes relating to Self-Funding Obligors) as of the close of business on the last Business Day of the immediately preceding Monthly Period, if the average number of days such Homes have been owned by CMSC and CMF as of the close of business on the last day of the immediately preceding Monthly Period was greater than 170 days but less than or equal to 180 days; and

(v) 5.0% of the aggregate Home Purchase Price for all Homes owned by CMSC and CMF (excluding any Homes relating to Self-Funding Obligors) as of the close of business on the last Business Day of the immediately preceding Monthly Period, if the average number of days such Homes have been owned by CMSC and CMF as of the close of business on the last day of the immediately preceding Monthly Period was greater than 180 days.

“Series Account” shall mean any account or accounts established pursuant to the Supplement for any Series of Notes.

“Service Transfer” shall have the meaning specified in Section 9.01.

“Servicer” shall mean CMSC, in its capacity as the Servicer under this Agreement, and any successor thereto in such capacity appointed pursuant to Article IX of this Agreement.

“Servicer Advance” shall mean any out-of-pocket payments made by the Servicer with respect to a CMF Home, including but not limited to maintenance, repairs, utilities, insurance, taxes, assessments, Mortgage Payoffs, Mortgage Payments, Other Reimbursable Expenses, homeowners or association dues and other costs of ownership.



**“Servicer Default”** shall have the meaning set forth in Section 9.01.

**“Servicer Dilution Adjustment”** shall have the meaning set forth in Section 3.10(a).

**“Servicing Fee”** shall have the meaning specified in Section 3.03.

**“Servicing Officer”** shall mean any officer of the Servicer or an attorney-in-fact of the Servicer who in either case is involved in, or responsible for, the administration and servicing of the Receivables and whose name appears on a list of servicing officers furnished to the Issuer and the Indenture Trustee by the Servicer, as such list may from time to time be amended. The initial list of Servicing Officers is set forth in Exhibit C.

**“Standard & Poor’s”** shall mean Standard & Poor’s Ratings Services or its successor.

**“Sub-Servicer”** shall have the meaning set forth in Section 3.01(b).

**“Successor Servicer”** shall have the meaning provided in Section 9.03(a).

**“Supplement”** shall mean, with respect to any Series, a supplement to the Indenture, executed and delivered in connection with the original issuance of the Notes of such Series, including all amendments thereof and supplements thereto.

**“Termination Notice”** shall have the meaning set forth in Section 9.01.

**“Transfer Termination Date”** shall mean the date specified by the Indenture Trustee at the direction of the Majority Investors following the occurrence of a Transfer Termination Event; provided, however, that if an Event of Bankruptcy has occurred with respect to either ARSC or the Issuer, the Transfer Termination Date shall be deemed to have occurred automatically without any such notice.

**“Transfer Termination Event”** shall have the meaning set forth in Section 8.01.

**“Transferor”** shall mean Apple Ridge Services Corporation, a wholly owned special purpose subsidiary of CMF incorporated in the State of Delaware, or its successor under this Agreement.

**“Transferred Assets”** shall have the meaning set forth in Section 2.01(a).

**“Unmatured Servicer Default”** shall mean any event that, with the giving of notice or lapse of time, or both, would become a Servicer Default.

- (a) All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein.
- (b) Other Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP or with United States generally accepted regulatory accounting principles, as applicable. To the extent that the definitions of accounting terms in this Agreement are inconsistent with the meanings of such terms under GAAP or regulatory accounting principles, the definitions contained in this Agreement shall control. All terms used in Article 9 of the UCC in the State of New York and not specifically defined herein are used herein as defined in such Article 9.
- (c) Agreements, Representations and Warranties. The agreements, representations and warranties of ARSC and CMSC in this Agreement in each of their respective capacities as Transferor and Servicer shall be deemed to be the agreements, representations and warranties of ARSC and CMSC solely in each such capacity for so long as ARSC and CMSC act in each such capacity under this Agreement, provided that nothing in this paragraph shall be deemed to limit the survival of such agreements, representations and warranties.
- (d) Computation of Time Periods. Unless otherwise stated in this Agreement with respect to computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and each of the words “to” and “until” means “to but excluding”.
- (e) References to Amounts. Unless otherwise specified, references to any amount as on deposit or outstanding on any particular date shall mean such amount at the close of business on such day.
- (f) Reference. The word “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and references to “Section”, “subsection”, “Appendix”, “Schedule” and “Exhibit” in this Agreement are references to Sections, subsections, Appendices, Schedules and Exhibits in or to this Agreement unless otherwise specified in this Agreement.

[END OF ARTICLE I]

**ARTICLE II**  
**SALE AND PURCHASE OF ASSETS**

**Section 2.01**

**Sale and Purchase.**

(a) **Agreement.** Upon the terms hereof, the Issuer agrees to buy, and the Transferor agrees to sell, all of the Transferor's right, title and interest in and to the following:

(i) all Pool Receivables and other ARSC Purchased Assets owned by the Transferor on the Closing Date or thereafter purchased, or any other Receivables purchased under the Receivables Purchase Agreement, and all rights of the Transferor under the Receivables Purchase Agreement with respect to the ARSC Purchased Assets;

(ii) all Pool Collections; and

(iii) all proceeds of and earnings on the foregoing.

The Pool Receivables and all other property described in the foregoing sentence are sometimes collectively referred to herein as the "Transferred Assets."

(b) **Treatment of Certain Receivables and Related Property.** It is expressly understood that each Pool Receivable sold to the Issuer hereunder, together with all other Transferred Assets then existing or thereafter created and arising with respect thereto, will thereafter be the property of the Issuer (or its assignees), without the necessity of any further purchase or other action by the Issuer (other than satisfaction of the conditions set forth herein).

(c) **No Recourse.** Except as specifically provided in this Agreement, the sale and purchase of the Transferred Assets under this Agreement shall be without recourse. CMSC acknowledges that its representations, warranties, covenants and indemnities as originator pursuant to the terms of the Purchase Agreement have been assigned to the Issuer hereunder, and CMF acknowledges that its representations, warranties, covenants and indemnities as originator pursuant to the terms of the Receivables Purchase Agreement have been assigned to the Issuer hereunder.

(d) **Financing Statements.** In connection with the transfer described above, the Transferor agrees, at the expense of the Transferor:

(i) to record and file financing statements (and continuation statements when applicable) with respect to the Transferred Assets conveyed by the Transferor meeting the requirements of applicable law in such manner and in such jurisdictions as are necessary to perfect and maintain the perfection of the transfer and assignment of its interest in the Transferred Assets to the Issuer, and to deliver a file stamped copy of each such financing statement or other evidence of such filing to the Issuer and the Indenture Trustee as soon as practicable after the Closing Date. Notwithstanding the other provisions of this Section 2.01(d), the Transferor shall not, and shall not cause the Servicer to, record any Home Deeds or any documents evidencing the conveyance of Home Purchase Contracts

in the applicable real estate records; provided, however, that the Transferor (or the Servicer on its behalf) may record Home Deeds and/or Home Purchase Contracts in such manner and in the names of CMSC (but only with respect to CMSC Homes) or CMF, as applicable, or such transferees and in such capacities as the Issuer may require (w) upon request by the relevant Obligor to record such Home Deeds and/or Home Purchase Contracts, (x) upon or after the lapse of one year from the Possession Date under the related Home Purchase Contract, (y) upon the bankruptcy or insolvency of the relevant Obligor or (z) otherwise as required or as deemed advisable in the judgment of the Servicer in the best interests of the Issuer and its assignees; and

(ii) to promptly execute and deliver (or cause the Servicer or the related Sub-Servicer to execute and deliver) all further instruments and documents, and take all further action, that the Indenture Trustee may reasonably request in order to perfect, protect or more fully evidence the conveyances hereunder, or to enable the Indenture Trustee to exercise or enforce any of its rights under the Indenture.

The Servicer shall record and file financing statements, cause Home Deeds and Home Purchase Contracts to be recorded and deliver other instruments and documents pursuant to this Section 2.01(d) at the direction of the Transferor.

(e) True Sales. The Transferor and the Issuer intend the transfers of Transferred Assets hereunder to be true sales by the Transferor to the Issuer that are absolute and irrevocable and to provide the Issuer with the full benefits of ownership of the Transferred Assets, and neither the Transferor nor the Issuer intends the transactions contemplated hereunder to be, or for any purpose to be characterized as, loans from the Issuer to the Transferor, secured by the Transferred Assets.

(f) Marking of Records. In connection with the transfer described herein, (i) the Transferor agrees to indicate clearly and unambiguously in its computer files, books and records on or prior to the Closing Date that the Pool Receivables and other Transferred Assets have been conveyed to the Issuer pursuant to this Agreement by so marking such computer files, books and records, and (ii) the Servicer agrees to indicate clearly and unambiguously in its computer files, books and records on or prior to the Closing Date that the Pool Receivables and other Transferred Assets have been conveyed to the Issuer pursuant to this Agreement by so marking such computer files, books and records, including the master data processing records evidencing the Transferred Assets.

(g) Adjustments. The Transferor shall pay to the Issuer in cash, on the date of receipt by the Transferor, any payment received by the Transferor in respect of Originator Adjustments made by CMSC to CMF pursuant to the Purchase Agreement or Seller Adjustments made by CMF to the Transferor pursuant to the Receivables Purchase Agreement. The Transferor shall instruct CMSC and CMF to deposit all payments in respect of Originator Adjustments and Seller Adjustments directly in the Collection Account.

(h) **Purchases.** On the Closing Date, the Issuer shall purchase all of the Transferor's right, title and interest in and to all Pool Receivables existing at the close of business on the immediately preceding Business Day, together with all other Transferred Assets related thereto. On each Business Day thereafter, until the Transfer Termination Date, the Issuer shall purchase all of the Transferor's right, title and interest in and to all Pool Receivables existing as of the close of business on the immediately preceding Business Day and all Transferred Assets related thereto that were not previously purchased by the Issuer hereunder. Notwithstanding the foregoing, if an Insolvency Proceeding is pending with respect to either the Transferor or the Issuer prior to the Transfer Termination Date, the Transfer shall not sell, and the Issuer shall not buy, any Transferred Assets hereunder unless and until such Insolvency Proceeding is dismissed or otherwise terminated.

(i) **Payment of ARF Purchase Price.** With respect to the Purchase of any Transferred Assets by the Issuer from the Transferor pursuant to this Article II, the Issuer shall pay to the Transferor an agreed purchase price (the "ARF Purchase Price" ); The ARF Purchase Price paid by the Issuer on the Closing Date and on each subsequent Business Day on which any Transferred Assets are purchased by the Issuer shall be paid (i) by paying such amount in cash or (ii) by means of capital contributed by the Transferor to the Issuer in the form of a contribution of the Transferred Assets. To the extent funds are released to it from the Collection Account, the Issuer agrees that it will use such released funds to the extent necessary to pay the ARF Purchase Price.

**Section 2.02** **Representations and Warranties of the Transferor.** The Transferor hereby makes the representations and warranties set forth in this Section 2.02, in each case as of the date hereof, as of the Closing Date, as of the date of each transfer by the Transferor of the Transferred Assets hereunder and as of any other date specified in such representation or warranty.

(a) **Organization and Good Standing.** The Transferor is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has full power and authority to own its properties and to conduct its business as such properties are presently owned and such business is presently conducted. The Transferor had at all relevant times, and now has, all necessary power, authority and legal right to own and sell the Transferred Assets.

(b) **Due Qualification.** The Transferor is duly qualified to do business, is in good standing as a foreign corporation, and has obtained all necessary licenses and approvals in all jurisdictions in which the ownership or lease of property or the conduct of its business requires such qualification, licenses or approvals and in which the failure so to qualify or to obtain such licenses and approvals or to preserve and maintain such qualification, licenses or approvals could reasonably be expected to give rise to a Material Adverse Effect with respect to the Transferor.

(c) **Power and Authority: Due Authorization.** The Transferor (i) has all necessary corporate power and authority (A) to execute and deliver this Agreement and the other Transaction Documents to which it is a party, (B) to perform its obligations under this Agreement and the other Transaction Documents to which it is a party and (C) to sell and assign

the Transferred Assets on the terms and subject to the conditions herein and therein provided and (ii) has duly authorized by all necessary corporate action such sale and assignment and the execution, delivery and performance of, and the consummation of the transactions provided for in, this Agreement and the other Transaction Documents to which it is a party.

(d) **Valid Sale; Binding Obligations.** This Agreement constitutes either a valid sale, transfer, set-over and conveyance, or the grant of a first perfected security interest, to the Issuer of all of the Transferor's right, title and interest in, to and under the Transferred Assets, which is perfected and of first priority (subject to Permitted Liens and Permitted Exceptions) under the UCC and other applicable law, enforceable against creditors of, and purchasers from, the Transferor, free and clear of any Lien (other than Permitted Liens); and this Agreement constitutes, and each other Transaction Document to which the Transferor is a party when duly executed and delivered will constitute, a legal, valid and binding obligation of the Transferor, enforceable against the Transferor in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) **No Conflict or Violation.** The execution, delivery and performance of, and the consummation of the transactions contemplated by, this Agreement and the other Transaction Documents to be signed by the Transferor, and the fulfillment of the terms hereof and thereof, will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a material default under (A) the certificate of incorporation or the by-laws of the Transferor or (B) any material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument to which the Transferor is a party or by which it or any of its properties is bound, (ii) result in the creation or imposition of any Lien on any of the Transferred Assets pursuant to the terms of any such material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument other than this Agreement and the other Transaction Documents or (iii) conflict with or violate any federal, state, local or foreign law or any decision, decree, order, rule or regulation applicable to the Transferor or of any federal, state, local or foreign regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Transferor, which conflict or violation described in this clause (iii), individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Transferor.

(f) **Litigation and Other Proceedings.** (i) There is no action, suit, proceeding or investigation pending, or to the best knowledge of the Transferor threatened, against the Transferor before any court, arbitrator, regulatory body, administrative agency or other tribunal or governmental instrumentality and (ii) the Transferor is not subject to any order, judgment, decree, injunction, stipulation or consent order of or with any court or other Government Authority that, in the case of either of the foregoing clauses (i) or (ii), (A) asserts the invalidity of this Agreement or any other Transaction Document, (B) seeks to prevent the sale of any Transferred Asset by the Transferor to the Issuer, the creation of a material amount of Pool Receivables or the consummation of any of the transactions contemplated by this Agreement or

any other Transaction Document, (C) seeks any determination or ruling that, in the reasonable judgment of the Transferor, would materially and adversely affect the performance by the Transferor of its obligations under this Agreement or any other Transaction Document to which it is a party or the validity or enforceability of this Agreement or any other Transaction Document to which it is a party or (D) individually or in the aggregate for all such actions, suits, proceedings and investigations could reasonably be expected to have a Material Adverse Effect with respect to the Transferor.

(g) Governmental Approvals. Except where the failure to obtain or make such authorization, consent, order, approval or action could not reasonably be expected to have a Material Adverse Effect with respect to the Transferor, (i) all authorizations, consents, orders and approvals of, or other actions by, any Governmental Authority that are required to be obtained by the Transferor in connection with the conveyance of the Transferred Assets or the due execution, delivery and performance by the Transferor of this Agreement or any other Transaction Document to which it is a party and the consummation of the transactions contemplated by this Agreement have been obtained or made and are in full force and effect and (ii) all filings with any Governmental Authority that are required to be obtained in connection with such conveyances and the execution and delivery by the Transferor of this Agreement have been made; provided, however, that prior to recordation pursuant to Section 2.01(d)(i) or upon the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee and no recordation in real estate records of the conveyance of the related Home Purchase Contract or Home Sale Contract shall be made except as otherwise required or permitted under Section 2.01(d)(i).

(h) Margin Regulations. The Transferor is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meanings of Regulations T, U and X of the Board of Governors of the Federal Reserve System). The Transferor has not taken and will not take any action to cause the use of proceeds of the sales hereunder to violate said Regulations T, U or X.

(i) Taxes. The Transferor has filed (or there have been filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to have been filed by it and has paid all taxes, assessments and governmental charges thereby shown to be owing by it, other than any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect with respect to the Transferor.

(j) Solvency. After giving effect to each conveyance of Transferred Assets hereunder, the Transferor is solvent and able to pay its debts as they come due, and has adequate capital to conduct its business as presently conducted.

(k) Quality of Title/Valid Transfers.

(i) Immediately before each transfer hereunder to the Issuer, each Transferred Asset to be sold to the Issuer shall be owned by the Transferor free and clear of any Lien (other than any Permitted Lien), and the Transferor shall have made all filings and shall have taken all other action under applicable law in each relevant jurisdiction in order to protect and perfect the ownership or security interest of the Issuer and its assignees in such Transferred Assets against all creditors of, and purchasers from, the Transferor (subject to Permitted Exceptions).

(ii) With respect to each Pool Receivable transferred hereunder on such date, the Issuer shall acquire a valid and (subject to Permitted Exceptions) perfected ownership or security interest in such Pool Receivable and any identifiable proceeds thereof, free and clear of any Lien (other than any Permitted Liens).

(iii) As of the date of transfer of a Transferred Asset to the Issuer, no effective financing statement or other instrument similar in effect that covers all or part of such Transferred Asset or any interest therein is on file in any recording office except such as may be filed (A) in favor of CMSC in accordance with the Pool Relocation Management Agreements, (B) in favor of CMF pursuant to the Purchase Agreement, (C) in favor of the Transferor pursuant to the Receivables Purchase Agreement, (D) in favor of the Issuer pursuant to this Agreement or otherwise filed by or at the direction of the Issuer, (E) in favor of the Indenture Trustee under the Indenture and (F) to evidence any Mortgage on a Home created by a Transferred Employee.

(l) Accuracy of Information. All written information furnished by the Transferor to the Issuer or its successors and assigns pursuant to or in connection with any Transaction Documents or any transaction contemplated herein or therein with respect to the Transferred Assets transferred hereunder on such date is true and correct in all material respects on such date.

(m) Offices. The principal place of business and chief executive office of the Transferor is located, and the offices where the Servicer keeps all Records related to the Transferred Assets (and all original documents relating thereto) are located at the addresses specified in Schedule 2.02(m), except that (i) Home Deeds and related documents necessary to close Home sale transactions, including powers of attorney, may be held by local attorneys or escrow agents acting on behalf of CMF (with respect to CMF Homes) or CMSC (with respect to CMSC Homes) in connection with the sale of Homes to Ultimate Buyers, so long as such local attorneys are notified of the interest of the Issuer, the Indenture Trustee and the holders of any Notes therein and (ii) Records relating to any Pool Relocation Management Agreement and the Transferred Assets arising thereunder or in connection therewith may be maintained at the offices of the related Employer.



(n) Investment Company Act. The Transferor is not, and is not controlled by, an “investment company” registered or required to be registered under the Investment Company Act.

(o) Legal Names. Except as otherwise set forth in Schedule 2.02(o), since January 1, 1995, the Transferor (i) has not been known by any legal name other than its corporate name as of the date hereof, (ii) has not been the subject of any merger or other corporate reorganization that resulted in a change of name, identity or corporate structure and (iii) has not used any trade names other than its actual corporate name.

(p) Compliance with Applicable Laws. The Transferor is in compliance with the requirements of all applicable laws, rules, regulations and orders of all governmental authorities (federal, state, local or foreign, including without limitation Environmental Laws), a violation of any of which, individually or in the aggregate for all such violations, is reasonably likely to have a Material Adverse Effect with respect to the Transferor.

(q) Business and Indebtedness of Transferor. The Transferor has no Indebtedness except as contemplated by Section 4.2 of the Receivables Purchase Agreement and under this Agreement. The Transferor has not engaged in any business other than the Purchase of Pool Receivables and other ARSC Purchased Assets under the Receivables Purchase Agreement and the transfer of Pool Receivables and other Transferred Assets under this Agreement.

The representations and warranties set forth in this Section 2.02 shall survive the transfers and assignments of the Pool Receivables and other Transferred Assets to the Issuer and the issuance of the Notes under the Indenture. Upon discovery by the Transferor, the Servicer or the Issuer of a breach of any of the representations and warranties set forth in this Section 2.02, the party discovering such breach shall give notice to the other parties within three Business Days following such discovery, provided that the failure to give notice within three Business Days shall not preclude subsequent notice.

**Section 2.03** Representations and Warranties of the Issuer. The Issuer hereby represents and warrants, on and as of the date hereof and on and as of the Closing Date, that (a) this Agreement has been duly authorized, executed and delivered by the Issuer and constitutes the Issuer’s valid, binding and legally enforceable obligation, except (i) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors’ rights general ly and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, (b) the execution, delivery and performance of this Agreement does not violate any federal, state, local or foreign law applicable to the Issuer or any agreement to which the Issuer is a party and (c) all of the membership interests of the Issuer are directly or indirectly owned by the Transferor, and all such membership interests are fully paid and nonassessable.

Section 2.04

No Assumption of Obligations Relating to Transferred Assets; Excess Home Sale Proceeds.

(a) The sales and Purchases of Transferred Assets do not constitute and are not intended to result in a creation or an assumption by the Issuer, the Indenture Trustee or any holder of the Notes of any obligation of CMSC, CMF, the Transferor or any other Person in connection with the Pool Receivables or the other Transferred Assets or under the related Contracts or any other agreement or instrument relating thereto, including without limitation any obligation to any Obligors or Transferred Employees. None of the Issuer, the Indenture Trustee or any holder of the Notes shall have any obligation or liability to any Obligor, Transferred Employee or other customer or client of CMSC (including without limitation any obligation to perform any of the obligations of CMSC or CMF under any Relocation Management Agreement, Home Purchase Contract, Related Property or any other agreement). Except as expressly provided in Section 3.05(j), no such obligation or liability is intended to be assumed by the Servicer or its successors and assigns.

(b) Notwithstanding Section 2.04(a), upon a reasonable showing by CMSC or CMF that any Home Sale Proceeds received by the Servicer must be returned to the related Obligor pursuant to the related Pool Relocation Management Agreement, the Servicer shall turn over to the applicable Obligor such Home Sale Proceeds. Each such payment pursuant to this Section 2.04(b) shall be made pursuant to Section 4.03.

Section 2.05

Affirmative Covenants of the Transferor. From the Closing Date until the termination of this Agreement in

accordance with Section 10.01, the Transferor hereby agrees that it will perform the covenants and agreements set forth in this Section 2.05.

(a) Compliance with Laws, Etc. The Transferor will comply in all material respects with all applicable laws, rules, regulations, judgments, decrees and orders (including without limitation those relating to the Pool Receivables and all Environmental Laws), in each case to the extent that the failure to comply, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Transferor.

(b) Preservation of Corporate Existence. The Transferor (i) will preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation and (ii) will qualify and remain qualified in good standing as a foreign corporation in each jurisdiction in which the failure to preserve and maintain such qualification as a foreign corporation could reasonably be expected to have a Material Adverse Effect with respect to the Transferor.

(c) Keeping of Records and Books of Account. The Transferor will maintain at all times accurate and complete books, records and accounts relating to the Transferred Assets and all Pool Collections thereon in which timely entries will be made. The Transferor's master data processing records will be marked to indicate the sales of all Transferred Assets hereunder.

(d) Location of Records and Offices. The Transferor will keep its principal place of business and chief executive office at the addresses specified in Schedule 2.02(m) or, upon not less than 30 days' prior written notice given by the Transferor to the Issuer, at such

other locations in jurisdictions in the United States of America where all action required by Section 2.01(d) has been taken and completed.

(e) Separate Corporate Existence of the Transferor. The Transferor hereby acknowledges that the parties to the Transaction Documents are entering into the transactions contemplated by the Transaction Documents in reliance on the Transferor's identity as a legal entity separate from CMSC and the other CMS Persons. From and after the date hereof until one year and one day after the Final Payout Date:

- (i) The Transferor will conduct its business in office space allocated to it and for which it pays an appropriate rent and overhead allocation;
- (ii) The Transferor will maintain corporate records and books of account separate from those of CMSC and each other CMS Person and telephone numbers and stationery that are separate and distinct from those of CMSC and each other CMS Person;
- (iii) The Transferor's assets will be maintained in a manner that facilitates their identification and segregation from those of CMSC and any other CMS Person;
- (iv) The Transferor will strictly observe corporate formalities in its dealings with the public and with CMSC and each other CMS Person, and funds or other assets of the Transferor will not be commingled with those of CMSC or any other CMS Person. The Transferor will at all times, in its dealings with the public and with CMSC and each other CMS Person, hold itself out and conduct itself as a legal entity separate and distinct from CMSC and each other CMS Person. The Transferor will not maintain joint bank accounts or other depository accounts to which CMSC or any other CMS Person (other than the Servicer) has independent access;
- (v) The duly elected board of directors of the Transferor and duly appointed officers of the Transferor will at all times have sole authority to control decisions and actions with respect to the daily business affairs of the Transferor;
- (vi) Not less than one member of the Transferor's board of directors will be an Independent Director. The Transferor will observe those provisions in its certificate of incorporation that provide that the Transferor's board of directors will not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Transferor unless the Independent Director and all other members of the Transferor's board of directors unanimously approve the taking of such action in writing prior to the taking of such action;
- (vii) The Transferor will compensate each of its employees, consultants and agents from its own funds for services provided to the Transferor; and

(viii) The Transferor will not hold itself out to be responsible for the debts of CMSC or any other CMS Person.

(ix) The Transferor will take all actions necessary on its part to be taken in order to ensure that the facts and assumptions relating to the Transferor set forth in the opinion of Orrick, Herrington & Sutcliffe LLP of even date herewith relating to substantive consolidation matters with respect to CMSC and the Transferor will be true and correct at all times.

(f) **Segregation of Collections.** To the extent that any funds other than Pool Collections are deposited into any of the Lockbox Accounts, the Transferor promptly will identify any such funds or will cause such funds to be so identified to the Servicer.

(g) **Computer Software, Hardware and Services.** The Transferor will provide the Issuer and its successors with such licenses, sublicenses and/or assignments of contracts as the Servicer, the Issuer or its successors require with respect to all services and computer hardware or software that relate to the servicing of the Pool Receivables or the other Transferred Assets; **provided, however,** that with respect to any computer software licensed from a third party, the Transferor will be required to provide such licenses, sublicenses and/or assignments of such software only to the extent that provision of the same would not violate the terms of any contracts of CMSC or the Transferor with such third party.

(h) **Environmental Claims.** The Transferor will use commercially reasonable efforts to promptly cure and have dismissed with prejudice to the satisfaction of the Issuer any actions and any proceedings relating to compliance with Environmental Laws relating to any Home, but only to the extent that the conditions that gave rise to such proceedings were in existence as of the date on which the Issuer acquired the related Pool Receivable.

(i) **Turnover of Collections.** If the Transferor or any of its agents or representatives at any time receives any cash, checks or other instruments constituting Pool Collections, such recipient will segregate and hold such payments in trust for, and in a manner acceptable to, the Servicer and will, promptly upon receipt (and in any event within one Business Day following receipt) remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to a Lockbox Account.

(j) **Maintenance of Property.** The Transferor will not sell, lease or otherwise transfer, directly or indirectly, all or substantially all of the property of the Transferor, other than any such sale, lease or transfer in the ordinary course of business and the transfer of the Transferred Assets as contemplated by the Transaction Documents.

(k) **Performance of Obligations.** The Transferor will timely and fully perform and comply with all provisions, covenants and other promises required to be observed by it under the Transaction Documents to which it is a party.

(l) **Filing of Tax Returns and Payment of Taxes and Other Liabilities.** The Transferor will file (or will cause to be filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to be filed by it and will pay all taxes, assessments and

governmental charges shown to be owing by it, except for any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that not have given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect with respect to the Transferor.

**Section 2.06** Negative Covenants of the Transferor. From the Closing Date until the termination of this Agreement in accordance with Section 10.01, the Transferor agrees that it will not:

- (a) Changes in Accounting Treatment and Reporting Practices. Change or permit any change in accounting principles or financial reporting practices applied to the Transferor, except in accordance with GAAP, if such change would have a Material Adverse Effect with respect to the Transferor.
- (b) Indebtedness. Create, incur or permit to exist any Indebtedness or other liabilities or give any guarantee or indemnity in respect of any Indebtedness, except for (i) liabilities created or incurred by the Transferor pursuant to the Transaction Documents to which it is a party or contemplated by such Transaction Documents and (ii) other reasonable and customary operating expenses;
- (c) Sales, Liens, Etc. Sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Lien (other than Permitted Liens) of anyone claiming by or through it on or with respect to, any Transferred Asset or any interest therein, any Lockbox or Lockbox Account, other than sales of Transferred Assets pursuant to this Agreement;
- (d) No Mergers, Etc. Consolidate with or merge with or into any other Person or convey, transfer or sell all or substantially all of its properties and assets to any Person;
- (e) Limitations on Agreements. Permit the validity or effectiveness of any Transaction Document to which it is a party or the rights and obligations created thereby or pursuant thereto to be amended, terminated, postponed or discharged, or permit any amendment to any Transaction Document to which it is a party without the consent of the Issuer and the Indenture Trustee, or permit any Person whose obligations form part of the Transferred Assets to be released from such obligations, except in accordance with the terms of such Transaction Document;
- (f) Change in Name. Change its corporate name or the name under or by which it does business or the jurisdiction in which it is incorporated unless the Transferor has given the Issuer and its successors at least 30 days' prior written notice thereof and unless, prior to any such change, the Transferor has taken and completed all action required by Section 2.01(d);
- (g) Charter Amendments. Amend any provision of its certificate of incorporation or by-laws unless (i) the Issuer shall have received not less than five Business Days' prior written notice thereof and (ii) the certificate of incorporation of the Transferor, as in

effect on the date hereof, provides that such amendment can be made without the vote of the Transferor's Independent Directors;

(h) Capital Expenditures. Make any expenditure (by long-term or operating lease or otherwise) for capital assets (either realty or personalty);

(i) No Other Business or Agreements. Engage in any business other than financing, purchasing, owning and selling and managing the Transferred Assets in the manner contemplated by this Agreement and the other Transaction Documents and all activities incidental thereto, or enter into or be a party to any agreement or instrument other than any Transaction Document or documents and agreements incidental thereto;

(j) Guarantees, Loans, Advances and other Liabilities. Except as contemplated by this Agreement or the other Transaction Documents, incur any Indebtedness or make any loan or advance or credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of, or own, purchase, repurchase or acquire (or agree contingently to do so) any stock, obligations, assets or securities of, or any other interest in, or make any capital contribution to, any other Person;

(k) Payment Instructions to Obligors. Give any payment instructions to Obligors except through the Servicer as contemplated by Section 3.05(f); or

(l) Extension or Amendment of Transferred Assets. Extend, amend or otherwise modify the terms of any Receivable included in the Transferred Assets, or amend, modify or waive any material term or condition related thereto, except in accordance with Section 3.10.

(m) Dividend Restrictions. Declare or pay any distributions on any of its common stock or make any purchase redemption or other acquisition of, any common stock if, after giving effect thereto, (i) the aggregate principal amount outstanding under the ARSC Subordinated Note would exceed five times the net worth of the Transferor or (ii) the net worth of the Transferor would be less than \$40,000,000.

[END OF ARTICLE II]

**ARTICLE III  
ADMINISTRATION AND SERVICING  
OF RECEIVABLES**

**Section 3.01**

**Acceptance of Appointment and Other Matters Relating to the Servicer.**

(a) The servicing, administration and collection of the Pool Receivables and the other Transferred Assets shall be conducted by the Person designated as the Servicer hereunder from time to time in accordance with this Section 3.01. Until the Indenture Trustee gives a Termination Notice to CMSC pursuant to Section 9.01, CMSC is hereby designated, and CMSC hereby agrees to act, as the Servicer under this Agreement and the other Transaction Documents with respect to the Pool Receivables and the other Transferred Assets, and each of CMSC, CME, the Transferor, and the Issuer consents to CMSC acting as the Servicer.

(b) In the ordinary course of business, the Servicer, with prior written notice to the Indenture Trustee, may at any time delegate part or all of its duties hereunder with respect to the Receivables and the other Transferred Assets to any Affiliates of PHH that agree to conduct such duties in accordance with the Credit and Collection Policy and this Agreement. Each such Subsidiary to whom any such duties are delegated in accordance with this Section 3.01(b) is referred to herein as a "Sub-Servicer." Notwithstanding any such delegation by the Servicer, the Servicer shall remain liable for the performance of all duties and obligations of the Servicer pursuant to the terms of this Agreement and the other Transaction Documents, and such delegation shall not relieve the Servicer of its liability and responsibility with respect to such duties. The fees and expenses of any such Sub-Servicers shall be as agreed between the Servicer and such Sub-Servicers from time to time, and none of the Issuer, the Indenture Trustee or the holders of any Notes issued by the Issuer under the Indenture shall have any responsibility therefor. Upon any termination of a Servicer pursuant to Section 9.01, all Sub-Servicers designated pursuant to this Section 3.01(b) by such Servicer also shall be automatically terminated.

(c) The designation of the Servicer (and each Sub-Servicer) under this Agreement (and, in the case of any Sub-Servicer, under the agreement or other document pursuant to which the Servicer makes a delegation of servicing duties to such Sub-Servicer) shall automatically cease and terminate on the Final Payout Date.

**Section 3.02**

**Duties of the Servicer and the Issuer.**

(a) Each of CMSC, CME, the Transferor, the Issuer and the Indenture Trustee hereby appoints the Servicer from time to time designated pursuant to Section 3.01(a) as Servicer hereunder to take all actions authorized below or elsewhere in this Agreement and to enforce its respective rights and interests in and under the Pool Receivables and the other Transferred Assets.

(b) As Servicer hereunder, the Servicer shall service and administer the Pool Receivables and the other Transferred Assets, shall collect and deposit into the Collection Account payments due under the Pool Receivables and shall charge-off as uncollectible Pool Receivables, all in accordance with its customary and usual servicing procedures and the Credit and Collection Policy. As Servicer hereunder, the Servicer shall have full power and authority, acting alone or through any party properly designated by it hereunder, to do any and all things it may deem necessary or appropriate in connection with such servicing and administration. CMSC, CMF, the Issuer, the Transferor and the Indenture Trustee shall furnish the Servicer with any documents necessary or appropriate to enable the Servicer to carry out its servicing and administrative duties hereunder. The Servicer shall exercise the same care and apply the same policies with respect to the collection, administration and servicing of the Pool Receivables and other Transferred Assets that it would exercise and apply if it owned such Pool Receivables and other Transferred Assets, all in substantial compliance with applicable law and in accordance with the Credit and Collection Policy. The Servicer shall take or cause to be taken all such actions as it deems necessary or appropriate to collect each Pool Receivable and other Transferred Asset (and shall cause each Sub-Servicer, if any, to take or cause to be taken all such actions as the Servicer deems necessary or appropriate to collect each Pool Receivable and other Transferred Asset for which such Sub-Servicer is responsible in its capacity as Sub-Servicer) from time to time, all in accordance with applicable law and in accordance with the Credit and Collection Policy.

(c) Without limiting the generality of the foregoing and subject to Section 3.02(e) and Section 9.01, each of CMSC, CMF, the Transferor, the Issuer and the Indenture Trustee hereby authorizes and empowers the Servicer or its designee as follows, except to the extent any such power and authority is revoked or limited by the Indenture Trustee on account of the occurrence of an Unmatured Servicer Default or a Servicer Default or otherwise pursuant to Section 9.01:

(i) to give instructions to the Indenture Trustee for withdrawals and payments from the Collection Account and to take any other action necessary or appropriate to service the Pledged Assets as set forth in the Indenture,

(ii) to enter into Home Sale Contracts and all related documents, instruments and agreements on behalf of CMSC (with respect to CMSC Homes) and on behalf of CMF (with respect to CMF Homes) and to take all necessary actions, including with respect to the maintenance and marketing of the related Homes, to carry out the terms of such Home Sale Contracts and related agreements; provided, however, that the Servicer shall not be a party to any Home Sale Contract or any other document, instrument, or agreement relating to the sale by CMF of a Home, unless it is expressly disclosed on the face of such document, instrument, or agreement that the Servicer is acting as Servicer for CMF,

(iii) to execute and deliver any and all instruments of satisfaction or cancellation, or of partial or full release or discharge, and all other comparable instruments, with respect to the Pool Receivables and the other Transferred Assets on the Issuer's behalf,



(iv) after the delinquency of any Pool Receivable or any default in connection with any other Transferred Asset and to the extent permitted under and in compliance with the Credit and Collection Policy and with all applicable laws, rules, regulations, judgments, orders and decrees of courts and other Governmental Authorities and all other tribunals, to commence or settle collection proceedings with respect to such Pool Receivable or other Transferred Asset and otherwise to enforce the rights and interests of the Issuer in, to and under such Pool Receivable or other Transferred Asset (as applicable), unless the Indenture Trustee otherwise revokes such authority in writing,

(v) to make all filings and take all other actions necessary for the Issuer to maintain a perfected security and/or ownership interest in the Pool Receivables (subject to Permitted Exceptions) have been taken or made,

(vi) to determine on each Business Day whether any funds in the Lockbox Accounts represent collections on CMSC Noncomplying Assets or CMF Noncomplying Assets and to promptly return such funds to CMSC or CME, as applicable, and

(vii) to determine on each day whether each CMF Receivable being conveyed to ARSC on such day is an Eligible Receivable and to identify on such day all CMF Receivables sold to ARSC on such date that are not Eligible Receivables.

provided, however, that:

(A) following the appointment of a Servicer other than CMSC, or when a Servicer Default has occurred and is continuing, the Indenture Trustee on behalf of the Issuer shall have the absolute and unlimited right to direct the Servicer to commence or settle any legal action to enforce collection of, or otherwise exercise rights with respect to, any Pool Receivable transferred to the Issuer or to foreclose upon or repossess or otherwise exercise rights with respect to, any other Transferred Assets transferred to the Issuer, and

(B) the Servicer shall not, under any circumstances, be entitled to make the Issuer or any assignee thereof a party to any litigation without the prior written consent of the Issuer or such assignee, as applicable.

(d) The Servicer shall pay out of its own funds, without reimbursement, all expenses incurred in connection with its servicing activities hereunder, including expenses related to enforcement of the Pool Receivables, fees and disbursements of its outside counsel and independent accountants and all other fees and expenses, including the costs of filing UCC continuation statements.

(e) In addition to its other obligations provided for hereunder, the Servicer shall hold and maintain all Records in trust, for the benefit of the Issuer, the Indenture Trustee and the holders of the Notes, which Records shall be held separate and apart from the other property of the Servicer and maintained in files marked to show that such Records have been pledged to the Indenture Trustee pursuant to the Indenture; provided, however, that the Servicer shall be entitled (i) to release any Equity Loan Notes that have been, or concurrent with such

release will be, repaid, satisfied or otherwise cancelled and (ii) to release any Home Purchase Contracts and Home Deeds for Homes with respect to which a Home Sale Contract has been executed in order to facilitate the prompt closing thereof, including without limitation by delivery of such documents to escrow agents (with a notice to such escrow agents of the interest of the Issuer and the Indenture Trustee therein).

**Section 3.03** Servicing Compensation. The Issuer hereby agrees to pay to the Servicer, as full compensation for its servicing activities hereunder and under the other Transaction Documents and as reimbursement for any expense incurred by it in connection therewith, a servicing fee (the “Servicing Fee”) with respect to each Monthly Period, payable in arrears on the related Distribution Date, in an amount equal to the product of 0.75% multiplied by the weighted average over such Monthly Period of the daily sums of the Aggregate Employer Balances for each Employer under the Pool Relocation Management Agreements, subject to adjustment at the direction of the Indenture Trustee (upon satisfaction of the Rating Agency Condition) to provide additional servicing compensation to any Successor Servicer if necessary to reflect then-current market rates for servicing of comparable receivables at any time that CMSC is replaced as Servicer hereunder. The share of the Servicing Fee allocable to the holders of the Notes issued from time to time by the Issuer under the Indenture with respect to any Monthly Period shall be set forth in the Indenture. The Servicing Fee shall be payable solely out of Pool Collections available for such purpose pursuant to, and subject to the priority of payments set forth in, the Indenture. Notwithstanding the preceding sentence, the portion of the Servicing Fee with respect to any Monthly Period not payable out of the Pool Collections allocated to the holders of the Notes shall be payable out of the Pool Collections allocable to the Issuer on the related Distribution Date as set forth in the Indenture or by the Issuer, and in no event shall the holders of the Notes be liable for the share of the Servicing Fee with respect to any Payment Period to be payable out of the Pool Collections allocable to the Issuer or by the Issuer. The Servicer shall pay the fees and expenses of, and agrees to indemnify the Indenture Trustee, the Paying Agent, the Authentication Agent and the Transfer Agent and Registrar out of the Servicing Fee in accordance with the terms of the Indenture.

**Section 3.04** Representations and Warranties of the Servicer. CMSC, as initial Servicer, hereby makes, and any Successor Servicer by its appointment hereunder shall make with respect to itself, on the Closing Date (and on the date of any such appointment), on the date of each issuance of Notes by the Issuer and on the date of any increases in Outstanding Amount of any Series of Notes, the following representations, warranties and covenants, on which the Issuer, the Transferor, CMSC and CMF shall be deemed to have relied:

(a) Organization and Good Standing. The Servicer is a corporation duly organized and validly existing in good standing under the laws of the State of its incorporation and has full power and authority to own its properties and to conduct its business as such properties are presently owned and such business is presently conducted.

(b) Due Qualification. The Servicer is duly qualified to do business, is in good standing as a foreign corporation, and has obtained all necessary licenses and approvals in all jurisdictions in which the ownership or lease of property or the conduct of its business requires such qualification, licenses or approvals and in which the failure so to qualify or to obtain such licenses and approvals or to preserve and maintain such qualification, licenses or

approvals could reasonably be expected to give rise to a Material Adverse Effect with respect to the Servicer.

(c) **Power and Authority; Due Authorization.** The Servicer (i) has all necessary corporate power and authority (A) to execute and deliver this Agreement and the other Transaction Documents to which it is a party and (B) to perform its obligations under this Agreement and the other Transaction Documents to which it is a party and (ii) has duly authorized by all necessary corporate action the execution, delivery and performance of, and the consummation of the transactions provided for in, this Agreement and the other Transaction Documents to which it is a party.

(d) **Binding Obligations.** This Agreement constitutes, and each other Transaction Document to which the Servicer is a party when duly executed and delivered will constitute, a legal, valid and binding obligation of the Servicer, enforceable against the Servicer in accordance with its terms, except (i) as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) as such enforceability may be limited by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) **No Conflict or Violation.** The execution, delivery and performance of, and the consummation of the transactions contemplated by, this Agreement and the other Transaction Documents to which the Servicer is a party, and the fulfillment of the terms hereof and thereof, will not (i) conflict with, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a material default under (A) the certificate of incorporation or the by-laws of the Servicer or (B) any material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument to which the Servicer is a party or by which it or any of its respective properties is bound, (ii) result in the creation or imposition of any Lien on any of the Transferred Assets pursuant to the terms of any such material indenture, loan agreement, mortgage, deed of trust or other material agreement or instrument, other than this Agreement and the other Transaction Documents to which the Servicer is a party or (iii) conflict with or violate any federal, state, local or foreign law or any decision, decree, order, rule or regulation applicable to the Servicer or of any federal, state, local or foreign regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Servicer, which conflict or violation described in this clause (iii), individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Servicer.

(f) **Litigation and Other Proceedings.** (i) There is no action, suit, proceeding or investigation pending, or to the best knowledge of the Servicer threatened, against the Servicer before any court, regulatory body, administrative agency or other tribunal or governmental instrumentality and (ii) the Servicer is not subject to any order, judgment, decree, injunction, stipulation or consent order of or with any court or other Governmental Authority that, in the case of either of the foregoing clauses (i) and (ii), (A) asserts the invalidity of this Agreement or any other Transaction Document to which the Servicer is a party, (B) seeks any determination or ruling that, in the reasonable judgment of the Servicer, would materially and adversely affect the

performance by the Servicer of its obligations under this Agreement or any other Transaction Document to which the Servicer is a party or the validity or enforceability of this Agreement or any other Transaction Document to which the Servicer is a party or (C) individually or in the aggregate for all such actions, suits, proceedings and investigations could reasonably be expected to have a Material Adverse Effect with respect to the Servicer.

(g) **Governmental Approvals.** Except where the failure to obtain or make such authorization, consent, order, approval or action could not reasonably be expected to have a Material Adverse Effect with respect to the Servicer, all authorizations, consents, orders and approvals of, or other actions by, any Governmental Authority that are required to be obtained by the Servicer in connection with the due execution, delivery and performance by the Servicer of this Agreement or any other Transaction Document to which it is a party and the consummation of the transactions contemplated by this Agreement have been obtained or made and are in full force and effect; provided, however, that prior to recordation pursuant to Section 2.01(d)(i) or upon the sale of a Home to an Ultimate Buyer, record title to such Home may remain in the name of the related Transferred Employee and no recordation in real estate records of the conveyance of the related Home Purchase Contract or Home Sale Contract shall be made except as otherwise required under Section 2.01(d)(i).

(h) **Taxes.** The Servicer has filed (or there have been filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to have been filed by it and has paid all taxes, assessments and governmental charges thereby shown to be owing by it, except for any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP have been set aside on its books and that have not given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, would not have a Material Adverse Effect with respect to the Servicer.

(i) **Accuracy of Information.** All written information furnished by the Servicer to CMSC, CMF or the Issuer pursuant to or in connection with any Transaction Document or any transaction contemplated herein or therein with respect to the Servicer is true and correct in all material respects on such date.

(j) **Offices.** The principal place of business and chief executive office of the Servicer is located at the address specified in Schedule 2.02(m).

(k) **Compliance with Applicable Laws.** The Servicer is in compliance with the requirements of all applicable laws, rules, regulations and orders of all Governmental Authorities (federal, state, local or foreign, including without limitation Environmental Laws), a violation of any of which, individually or in the aggregate for all such violations, is reasonably likely to have a Material Adverse Effect with respect to the Servicer.

(l) **Lockbox Banks.** The names and addresses of all Lockbox Banks, together with the account numbers of the Lockbox Accounts at such Lockbox Banks into which the Pool Collections are paid, are accurately set forth in Schedule 3.04(l). Each Lockbox and each

Lockbox Account is subject to a Lockbox Agreement duly executed and delivered by the parties thereto.

**Section 3.05** **Affirmative Covenants of Servicer.** As long as it is the Servicer hereunder, the Servicer hereby agrees that it will perform the covenants and agreements set forth in this Section 3.05.

(a) **Compliance with Laws, Etc.** The Servicer will comply in all material respects with all applicable laws, rules, regulations, judgments, decrees and orders (including without limitation those relating to the Pool Receivables, Home Purchase Contracts and Related Assets and all Environmental Laws), in each case to the extent that the failure to comply, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect with respect to the Servicer.

(b) **Preservation of Corporate Existence.** The Servicer (i) will preserve and maintain its corporate existence, rights, franchises and privileges in the jurisdiction of its incorporation, other than any change in corporate status by reason of a merger or consolidation permitted by Section 7.02 and (ii) will qualify and remain qualified in good standing as a foreign corporation in each jurisdiction in which the failure to preserve and maintain such qualification as a foreign corporation could reasonably be expected to have a Material Adverse Effect with respect to the Servicer.

(c) **Keeping of Records and Books of Account.** The Servicer will maintain and implement administrative and operating procedures (including without limitation an ability to recreate records evidencing the Transferred Assets in the event of the destruction of the originals thereof), and will keep and maintain all documents, books, records and other information that are necessary or advisable, in the reasonable determination of CMSC, CMF, the Transferor, the Issuer or the Indenture Trustee, for the collection of all amounts due under any or all Transfer red Assets. Upon the reasonable request of the Issuer or the Indenture Trustee made at any time after the occurrence and continuance of a Servicer Default, the Servicer will deliver copies of all Records in its possession or under its control to the Issuer or its designee. The Servicer will maintain at all times accurate and complete books, records and accounts relating to the Transferred Assets and all Pool Collections thereon in which timely entries will be made.

(d) **Location of Records and Offices.** The Servicer will keep its principal place of business and chief executive office at the address specified in Schedule 2.02(m) or, upon not less than 30 days' prior written notice given by the Servicer to the Transferor, the Issuer and the Indenture Trustee, at other locations in jurisdictions in the United States.

(e) **Separate Corporate Existence of the Transferor.** The Servicer hereby acknowledges that the parties to the Transaction Documents are entering into the transactions contemplated by the Transaction Documents in reliance upon the Transferor's identity as a legal entity separate from the Servicer. As long as it is the Servicer hereunder, the Servicer will take such actions as shall be required in order that:

(i) The Transferor's operating expenses will not be paid by the Servicer, except that certain organizational expenses of the Transferor and the Issuer and

expenses relating to creation and initial implementation of the Transaction Documents have been or will be paid by CMSC;

(ii) Any financial statements of the Servicer that are consolidated to include the Transferor will contain appropriate footnotes clearly stating that (A) all of the Transferor's assets are owned by the Transferor and (B) the Transferor is a separate corporate entity with its own separate creditors that will be entitled to be satisfied out of the Transferor's assets prior to any value in the Transferor becoming available to the Transferor's equity holders;

(iii) Any transaction between the Transferor and the Servicer will be fair and equitable to the Transferor; will be the type of transaction that would be entered into by a prudent Person in the position of the Transferor with the Servicer, and will be on terms that are at least as favorable as may be obtained from a Person that is not a CMS Person; and

(iv) The Servicer will not be, or will not hold itself out to be, responsible for the debts of the Transferor.

(f) Payment Instruction to Obligors. The Servicer will (i) instruct all Obligors to submit all payments on the Transferred Assets either (A) to one of the Lockboxes maintained at the Lockbox Banks for deposit in a Lockbox Account or (B) directly to one of the Lockbox Accounts and (ii) instruct all Persons receiving Home Sale Proceeds to deposit such Home Sale Proceeds in one of the Lockbox Accounts within two Business Days after such receipt, except to the extent a longer escrow period is required under applicable law, in which case such Home Sale Proceeds will be deposited into one of the Lockbox Accounts within one Business Day after the expiration of such period. The Servicer will direct all Obligors with respect to any receivables and related assets that are not included in the Transferred Assets to deposit all collections in respect of such receivables and related assets to an account that is not a Lockbox or Lockbox Account and will take such other steps as the Issuer reasonably may request to ensure that all collections on such receivables and related assets will be segregated from Pool Collections on Transferred Assets.

(g) Segregation of Collections. The Servicer will use reasonable efforts to minimize the deposit of any funds other than Pool Collections into any of the Lockbox Accounts and, to the extent that any such funds nevertheless are deposited into any of such Lockbox Accounts, will promptly identify any such funds.

(h) Computer Software, Hardware and Services. The Servicer will provide the Issuer with such licenses, sublicenses and/or assignments of contracts as the Issuer requires with regard to all services and computer hardware or software that relate to the servicing of the Pool Receivables or the other Transferred Assets; provided, however, that with respect to any computer software licensed from a third party, the Servicer will be required to provide such licenses, sublicenses and/or assignments of such software only to the extent that provision of the same would not violate the terms of any contracts of the Servicer with such third party.

(i) **Turnover of Collections.** If the Servicer or any of its agents or representatives at any time receives any cash, checks or other instruments constituting Pool Collections, such recipient will segregate and hold such payments in trust for, and in a manner acceptable to, the Issuer and will, promptly upon receipt (and in any event within one Business Day following receipt) remit all such cash, checks and instruments, duly endorsed or with duly executed instruments of transfer, to a Lockbox Account or the Collection Account.

(j) **Performance of Obligations.** The Servicer will, at its expense, market the CMSC Homes and CMF Homes and pay the related expenses of such marketing and of the sale of CMSC Homes and CMF Homes to Ultimate Buyers in accordance with the practices of CMSC in effect on the Closing Date (as such practices have been modified either (x) in the ordinary course of CMSC's business or (y) with the prior written consent of the Issuer).

(k) **Billing of Receivables.** The Servicer will bill all Receivables (i) in the case of Receivables with respect to a Home purchased under a Home Purchase Contract, within 60 days (on average) of the sale of the related Home to an Ultimate Buyer and (ii) in the case of all other Receivables, within 60 days (on average) after the Receivable arises.

(l) **Filing of Tax Returns and Payment of Taxes and Other Liabilities.** The Servicer will file (or will cause to be filed on its behalf as a member of a consolidated group) all tax returns and reports required by law to be filed by it and will pay all taxes, assessments and governmental charges shown to be owing by it, except for any such taxes, assessments or charges (i) that are being diligently contested in good faith by appropriate proceedings, for which adequate reserves in accordance with GAAP shall have been set aside on its books and that shall not have given rise to any Liens (other than Permitted Liens) or (ii) the amount of which, either singly or in the aggregate, shall not have a Material Adverse Effect with respect to the Servicer.

**Section 3.06** **Negative Covenants of Servicer.** As long as it is the Servicer hereunder, the Servicer hereby covenants that the Servicer shall not:

(a) **Changes in Accounting Treatment and Reporting Practices.** Change or permit any change in any accounting principles or financial reporting practices applied to the Servicer, except in accordance with GAAP, if such change would have a Material Adverse Effect with respect to the Servicer;

(b) **Change in Credit and Collection Policy.** (i) Make any material change in the Credit and Collection Policy or (ii) make any material change in the character of its business or engage in any business unrelated to such business as currently conducted that, in either case, individually or in the aggregate with all other such changes, would be reasonably likely to have a material adverse effect on the performance of the ARSC Purchased Assets;

(c) **Change in Name.** Change its corporate name or the name under or by which it does business unless the Servicer has given CMSC, CMF, the Transferor, the Issuer and the Issuer's successors and assigns at least 30 days' prior written notice thereof;

(d) **Change in Payment Instruction to Obligors.** Make any change in the instructions to Obligors or other Persons regarding payments to be made to it or payments to be made to any Lockbox Account, which payments relate to the Transferred Assets, unless the Servicer has given the Issuer and its successors and assigns prior written notice thereof, and then only in compliance with Section 3.05(f) or add or terminate any bank as a Lockbox Bank from those listed in Schedule 3.04(I) unless (i) the Indenture Trustee has received copies of a Lockbox Agreement with each new Lockbox Bank duly executed by the parties thereto and (ii) in the case of any termination, the Issuer or its successors and assigns have received evidence to their satisfaction that the Obligors that were making payments into a terminated Lockbox Account have been instructed in writing to make payments into another Lockbox Account then in use;

(e) **Home Deeds.** Record any Home Deeds except as permitted by Section 2.01(d)(i);

(f) **Establishment of Lockbox Accounts.** Enter into a Lockbox Agreement (other than as set forth in Exhibit B) without the prior written consent of the Issuer and the Indenture Trustee; or

(g) **Instructions to Indenture Trustee.** Instruct the Indenture Trustee to release any Collections to the Issuer pursuant to Section 8.07 of the Indenture on any day on which an Asset Deficiency exists.

**Section 3.07**

**Records of the Servicer and Reports to be Prepared by the Servicer.**

(a) The Servicer shall maintain at all times accurate and complete books, records and accounts relating to the Pool Receivables, the other Transferred Assets and the Pool Relocation Management Agreements and all Pool Collections thereon, in which timely entries shall be made. The Servicer shall maintain and implement administrative and operating procedures (including without limitation an ability to recreate Records evidencing Pool Receivables and the other Transferred Assets in the event of the destruction of the originals thereof), and shall keep and maintain all documents, books, records and other information that the Servicer deems reasonably necessary for the identification of Eligible Receivables and for the collection of all Pool Receivables and other Transferred Assets. Upon the reasonable request of the Indenture Trustee or the Issuer after the occurrence and continuance of an Unmatured Servicer Default or a Servicer Default or other termination under Section 9.01, the Servicer will deliver copies of all books and records maintained pursuant to this Section 3.07(a) to the Indenture Trustee.

(b) During regular business hours upon reasonable prior notice, the Servicer shall permit CMSC, CME, the Issuer, the Transferor, the Indenture Trustee (or such other Person whom the Indenture Trustee or the Issuer may designate from time to time), or their agents or representatives (including without limitation certified public accountants or other auditors), at the expense of the Servicer and to the extent reasonably necessary to protect the interests of the holders of the Notes, (i) to examine and make copies of and abstracts from, and to conduct accounting reviews of, all Records in the possession or under the control of the Servicer,



including without limitation the related Contracts, invoices and other documents related thereto, and (ii) to visit the offices and properties of the Servicer for the purpose of examining the materials described in clause (i) above, and to discuss matters relating to the Pool Receivables or the other Transferred Assets or the performance by the Servicer of its obligations under any Transaction Document to which it is a party with any Authorized Officer of the Servicer having knowledge of such matters and with its certified public accountants or other auditors. The Indenture Trustee may conduct, or cause its agents or representatives to conduct, reviews of the types described in this Section 3.07(b) whenever the Indenture Trustee reasonably deems any such review appropriate, and the Indenture Trustee shall conduct, or cause its agents or representatives to conduct, such a review if requested by the Issuer.

(c) No later than four Business Days prior to the Distribution Date with respect to any Outstanding Series, the Servicer shall prepare and deliver to CMSC, CMF, the Transferor, the Issuer, the Indenture Trustee, each Rating Agency and each Series Enhancer a report with respect to the Monthly Period then most recently ended and such Outstanding Series of Notes, substantially in the form provided in the related Supplement or in such other form as is reasonably acceptable to the Issuer (each such report, a "Receivables Activity Report"). Such Receivables Activity Report shall include (i) a certification that, to the best of the Servicer's knowledge, no Unmatured Servicer Default or Servicer Default has occurred and is continuing and (ii) a listing of all new Pool Relocation Management Agreements as identified pursuant to Section 2.1(a) of the Purchase Agreement.

**Section 3.08** [Annual Certificate of Servicer.](#) The Servicer shall deliver to CMSC, CMF, the Issuer, the Indenture Trustee, each Rating Agency and any Series Enhancer on or before April 30 of each calendar year, beginning with April 30, 2001, an Officer's Certificate substantially in the form of Exhibit A.

**Section 3.09** [Annual Servicing Report of Independent Public Accountants; Copies of Reports Available.](#) On or before April 30 of each calendar year, beginning with April 30, 2001, the Servicer shall cause a firm of nationally recognized independent public accountants (who also may render other services to the Servicer, the Issuer, CMSC, CMF or the Transferor) to furnish a report (addressed to the Issuer and any Series Enhancer) to CMSC, CMF, the Issuer, the Transferor, the Indenture Trustee and any Series Enhancer to the effect that they have applied certain procedures agreed upon with the Servicer and substantially in the form previously provided to the Rating Agencies and examined certain documents and records relating to the servicing of the Receivables and other Transferred Assets under this Agreement and that, on the basis of such agreed-upon procedures, nothing has come to the attention of such accountants that caused them to believe that the servicing (including the allocation of Pool Collections) has not been conducted in compliance with the terms and conditions as set forth in Articles III and IV of this Agreement, other than such exceptions as they believe to be immaterial and such other exceptions as shall be set forth in such statement. Such report shall set forth the agreed-upon procedures performed.

**Section 3.10** [Adjustments; Modifications.](#)

(a) If on any day the Unpaid Balance of any Pool Receivable is reduced by the Servicer as a result of any incorrect billings, allowances, chargebacks, credits or any other

reductions or cancellations, in each case that result from the acts or omissions of the Servicer, that are unrelated to the ability of the related Obligor to pay such Pool Receivable (each such reduction, a "Servicer Dilution Adjustment"), then the Servicer shall deposit the amount of such Servicer Dilution Adjustment in cash in the Collection Account and shall report such amount on the next Receivables Activity Report.

(b) So long as no Unmatured Servicer Default or Servicer Default shall have occurred and be continuing, the Servicer may adjust, and may permit each Sub-Servicer appointed by it pursuant to Section 3.01(b) to adjust, the outstanding unpaid balance of any Pool Receivable in accordance with the Credit and Collection Policy and the terms of this Agreement, provided that (i) such adjustment would not cause or result in an Eligible Receivable becoming ineligible and (ii) either the Servicer makes the related Servicer Dilution Adjustment payment pursuant to this Section 3.10 or CMSC or CMF makes the related Originator Adjustment payment pursuant to Section 4.3(b) of the Purchase Agreement or Section 4.3(b) of the Receivables Purchase Agreement, as applicable. The Servicer shall, or shall cause the applicable Sub-Servicer to, write off Pool Receivables from time to time in accordance with the terms of this Agreement and the terms of the Credit and Collection Policy, and such a write-off shall not give rise to any obligation to make a Servicer Dilution Adjustment. Notwithstanding the foregoing, the maturity date of an Equity Loan may be extended beyond the original due date in accordance with the Credit and Collection Policy, and such Equity Loan shall, notwithstanding clause (j) of the definition of Eligible Receivable, be an Eligible Receivable so long as (i) such extension was made for reasons unrelated to the creditworthiness of the Obligor, (ii) the extension period ends not later than (A) the time of sale or (B) the expiration of the offering period for the Homeowner's acceptance of an offer for sale or (C) the date that is 12 months prior to the Final Stated Maturity Date, whichever first occurs, and (iii) all other requirements for such Receivable to be an Eligible Receivable are satisfied.

(c) If (i) the Servicer makes a deposit into the Collection Account in respect of a Collection of a Pool Receivable and such Collection was received by the Servicer in the form of a check that is not honored for any reason or (ii) the Servicer makes an error with respect to the amount of any Collection and deposits an amount that is less than or more than the actual amount of such Collection, the Servicer shall appropriately adjust the amount subsequently deposited into the Collection Account to reflect such dishonored check or error. Any Pool Receivable in respect of which a dishonored check is received shall be deemed not to have been paid. Notwithstanding the first two sentences of this paragraph, adjustments made pursuant to this Section 3.10(c) shall not require any change in any report previously delivered pursuant to Section 3.07(c).

(d) The Servicer shall not extend, amend or otherwise modify the terms of any Pool Receivable, or amend, modify or waive any material term or condition related thereto, except as provided in this Section 3.10.

**Section 3.11.** Escrow Agents. The Servicer shall cause all Home Purchase Contracts and Home Deeds to be delivered to an escrow agent in the applicable jurisdiction, with a notice to such agent of the interests of the Issuer and Indenture Trustee therein.

**Section 3.12.**

**Servicer Advances.**

(a) In accordance with the Credit and Collection Policy, the Servicer shall make Servicer Advances in connection with the maintenance and marketing of Homes the Receivables relating to which are included in the Transferred Assets, but only to the extent that the Servicer has determined in its reasonable judgment that such advances will be recoverable out of Collections on the Receivable arising as a result of such Servicer Advance.

(b) All Servicer Advances, the Receivables arising from which have not been sold to CMF under the Purchase Agreement, shall be reimbursable in the first instance from Pool Collections relating to the Homes with respect to which such Servicer Advances were made (**provided** that Home Sale Proceeds will only be applied to reimburse Servicer Advances consistent with CMSC's practices as of the Closing Date) and, further, to the extent such Servicer Advance has been determined to be a Nonrecoverable Advance, as provided in Section 4.03 of this Agreement and Section 8.04(c)(i) of the Indenture. In consideration of the Issuer's obligation to reimburse the Servicer from Collections for Servicer Advances, the Receivables arising under the Pool Relocation Management Agreements in respect of such Servicer Advances which have not been sold to CMF under the Purchase Agreement shall be automatically conveyed by the Servicer to the Issuer and included in the Pool Receivables and the Transferred Assets.

**Section 3.13.**

**Calculations.** Without limiting the generality of the foregoing provisions of this Article III, the Servicer shall perform all calculations necessary in order to determine payments to be made to holders of Notes and deposits to be made to reserves and other Series Accounts in accordance with the Indenture and any Supplement. For the purposes of such calculations, on each Business Day the Servicer shall calculate the Aggregate Employer Balance for each Employer by determining the aggregate Unpaid Balance of the Pool Receivables due from such Employer and then reducing such amount (without duplication) by the amounts described in the definition of Aggregate Employer Balance, including the total amount of Advance Payments received from such Employer, regardless of whether such Advance Payment is related to a Pool Receivable.

**Section 3.14.**

**Application of Collections.** (a) In accordance with the Credit and Collection Policy, the Servicer shall apply all monies received by or on behalf of any Employer in accordance with the directions of such Employer. The Servicer shall contact the Employer if necessary to obtain such directions, or if such directions cannot be obtained, the Servicer shall apply Pool Collections of such Employer in the order that such Pool Receivables were originated, with the oldest Pool Receivable being paid first. The Servicer shall allocate any collections received under a single Billed Receivable that contains both Receivables included in the Transferred Assets and other amounts owed to CMSC first, to amounts owed in respect of Transferred Assets and then to other receivables.

(b) If at any time the Servicer shall determine that any amount on deposit in the Collection Account does not constitute Pool Collections or the proceeds thereof, the Servicer shall instruct the Indenture Trustee to withdraw such amounts from the Collection Account and to pay such amounts to the Person that the Servicer determines is the Person entitled thereto, as provided in Section 8.04 of the Indenture.

[END OF ARTICLE III]

**ARTICLE IV  
ACCOUNTS AND POOL COLLECTIONS**

**Section 4.01** **Establishment of Collection Account.** The Servicer, for the benefit of the Indenture Trustee and the holders of the Notes, shall establish and maintain an Eligible Account (including any subaccount thereof) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and the holders of the Notes (the "Collection Account").

The Collection Account shall be under the sole dominion and control of the Indenture Trustee for the benefit of the holders of the Notes. Except as expressly provided in this Agreement or the Indenture, the Servicer agrees that it shall have no right of setoff or banker's lien against, and no right to otherwise deduct from, any funds held in the Collection Account for any amount owed to it by the Issuer, CMSC, CME, the Indenture Trustee or any holder of the Notes. If the Collection Account at any time ceases to be an Eligible Account then, within 10 Business Days of the Issuer's or Servicer's knowledge thereof, the Issuer or the Servicer shall establish a new Collection Account meeting the conditions specified above, transfer any monies, documents, instruments, investment property, certificates of deposit and other property to such new Collection Account and from the date such new Collection Account is established, it shall be the Collection Account. Pursuant to the authority granted to the Servicer in Section 3.02, the Servicer shall have the power, revocable by the Indenture Trustee, to instruct the Indenture Trustee to make withdrawals and payments from the Collection Account for the purposes of carrying out the Servicer's duties hereunder.

At the written direction of the Servicer, funds on deposit in the Collection Account shall be invested in Eligible Investments selected by the Servicer. All such Eligible Investments shall be held by the Indenture Trustee for the benefit of the holders of the Notes. Investments of funds representing Pool Collections collected during any Monthly Period shall be invested in Eligible Investments that will mature so that such funds will be available no later than the close of business on the day preceding the monthly Distribution Date following such Monthly Period, in amounts sufficient to the extent of such funds to make the required distributions on such Distribution Date. On each Distribution Date, all interest and other investment earnings (net of losses and investment expenses) on funds on deposit in the Collection Account shall be paid to the Servicer as additional servicing compensation. The Servicer shall bear no responsibility or liability for any losses resulting from investment or reinvestment of any funds in accordance with this Section 4.01 or for the selection of Eligible Investments in accordance with the provisions of this Agreement.

**Section 4.02** **Pool Collections and Allocations.** The Servicer shall instruct the Indenture Trustee to apply all funds on deposit in the Collection Account as described in the Indenture and each Supplement. Except as otherwise provided below, the Servicer shall transfer all Pool Collections and other Transferred Assets consisting of cash or cash equivalents from the Lockbox Accounts into the Collection Account as promptly as possible after the date of receipt of such Pool Collections, but in no event later than the second Business Day following the date of receipt.

**Section 4.03**

**Withdrawals from the Collection Account.** On each day the Servicer shall determine the amounts payable to it as reimbursement of any Nonrecoverable Advances pursuant to Section 3.12(b) and the Servicer shall instruct the Indenture Trustee to pay such amounts over to the Servicer pursuant to Section 8.07 of the Indenture. The determination by the Servicer that it has made a Nonrecoverable Advance shall be evidenced by an Officer's Certificate of the Servicer delivered to the Indenture Trustee and the Issuer. The Indenture Trustee shall be entitled to conclusively rely on the Servicer's determination that a Servicer Advance is a Nonrecoverable Advance.

[END OF ARTICLE IV]

**ARTICLE V**  
**SECURITY INTEREST**

**Section 5.01** **Security Interest.** Without prejudice to the provisions of Section 2.01 providing for the absolute transfer of the Transferor's interest in the Pool Receivables and other Transferred Assets to the Issuer, the Transferor hereby assigns and grants to the Issuer a first priority security interest in the Transferor's right, title and interest, if any, in, to and under all of the following, whether now or hereafter existing: all Pool Receivables, all other Transferred Assets and all proceeds thereof.

**Section 5.02** **Enforcement of Rights.** The Transferor acknowledges that the Transferred Assets include all rights acquired by the Transferor under the Receivables Purchase Agreement. Accordingly, the Transferor agrees that the Issuer and its assigns (including without limitation the Indenture Trustee) shall have the sole right to enforce the Transferor's rights and remedies under the Receivables Purchase Agreement (including the rights and remedies of CMF under the Purchase Agreement and the PHH Guarantee).< /DIV>

[END OF ARTICLE V]





under the Indenture), all interest and penalties thereon or with respect thereto, and all out-of-pocket costs and expenses (including the reasonable fees and expenses of counsel in defending against the same) that arise by reason of the purchase or ownership of the Transferred Assets;

(g) any investigation, litigation or proceeding related to any use of the proceeds of any purchase made hereunder; and

(h) any investigation or defense of, or participation in, any legal proceeding relating to the execution, delivery, enforcement, performance or administration of the Transaction Documents or any other document related thereto (whether or not such ARSC Indemnified Party is a party thereto).

Notwithstanding anything to the contrary in this Agreement, any representations, warranties and covenants made by the Transferor in this Agreement or the other Transaction Documents that are qualified by or limited to events or circumstances that have, or are reasonably likely to have, given rise to a Material Adverse Effect (or words of like import) shall (solely for purposes of the indemnification obligations set forth in this Section 6.01) be deemed not to be so qualified or limited.

If for any reason the indemnification provided in this Section 6.02 is unavailable to an ARSC Indemnified Party or is insufficient to hold an ARSC Indemnified Party harmless, then the Transferor shall contribute to the amount paid by such ARSC Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect not only the relative benefits received by such ARSC Indemnified Party on the one hand, and the Transferor on the other hand, but also the relative fault (if any) of such ARSC Indemnified Party and the Transferor and any other relevant equitable considerations.

Notwithstanding the foregoing, no indemnification payments shall be payable by the Transferor pursuant to this Section 6.02 until all amounts owing by the Issuer under the Indenture have been paid in full and all amounts payable by the Transferor to CMSC under the ARSC Subordinated Note have been paid in full.

Notwithstanding the foregoing, and without prejudice to the rights that the Issuer may have pursuant to the other provisions of this Agreement or the provisions of any of the other Transaction Documents, in no event shall any ARSC Indemnified Party be indemnified for any ARSC Indemnified Losses (i) resulting from negligence or willful misconduct on the part of such ARSC Indemnified Party (or the negligence or willful misconduct on the part of any of such ARSC Indemnified Party's officers, directors, employees or agents) or (ii) to the extent the same includes ARSC Indemnified Losses in respect of Transferred Assets and reimbursement therefor that would constitute credit recourse to the Transferor, CMSC or CMF (without limiting any rights under the Purchase Agreement) for the amount of any Receivable or other Transferred Asset not paid by the related Obligor.

[END OF ARTICLE VI]



Indenture Trustee, the holders of the Notes or any other Person for any action taken or for refraining from the taking of any action in good faith in its capacity as Servicer pursuant to this Agreement; provided, however, that this provision shall not protect the Servicer or any such Person against any liability that otherwise would be imposed by reason of willful misfeasance, bad faith or gross negligence in the performance of duties or by reason of reckless disregard of obligations and duties hereunder. The Servicer and any director, officer, employee or agent of the Servicer may rely in good faith on any document of any kind prima facie properly executed and submitted by any Person (other than the Servicer) with respect to any matters arising hereunder. The Servicer shall not be under any obligation to appear in, prosecute or defend any legal action that is not incidental to its duties as Servicer in accordance with this Agreement and that in its reasonable judgment may involve it in any expense or liability. Subject to the terms of the Transaction Documents, the Servicer may, in its sole discretion, undertake any such legal action that it may deem necessary or desirable for the benefit of the holders of the Notes with respect to this Agreement and the rights and duties of the parties hereto and the interests of the holders of the Notes issued by the Issuer under the Indenture.

**Section 7.04** Indemnification by the Servicer. The Servicer shall indemnify and hold harmless each of CMSC, CMF, the Transferor, the Issuer, the Indenture Trustee and its directors, officers, employees and agents from and against any and all loss, liability, claim, expense, actions, suits, demands, damage or injury suffered or sustained by reason of (i) any representation or warranty made by the Servicer under any of the Transaction Documents, any Receivables Activity Report or any other information or report delivered by the Servicer with respect to the Servicer or the Transferred Assets having been untrue or incorrect in any material respect when made or deemed to have been made; or (ii) any acts or omissions of the Servicer pursuant to this Agreement (other than such as may arise from the negligence or willful misconduct of CMSC, CMF, the Transferor, the Issuer and the Indenture Trustee, respectively, and their respective directors, officers, employees and agents), including any judgment, award, settlement, reasonable attorneys' fees and other costs or expenses incurred in connection with the defense of any action, proceeding or claim, that in each case arises from or relates to a breach by the Servicer of its representations, warranties, covenants or agreements hereunder; or (iii) any reduction in the Unpaid Balance of any Pool Receivable as a result of any cash discount or any adjustment by the Servicer, including any such adjustment that gives rise to a Servicer Dilution Adjustment (but not including any write-off of any Receivable) or (iv) any failure of the Servicer to comply with any material applicable law, rule or regulation applicable to it and which relates to the servicing or administration of the Transferred Assets. Indemnification pursuant to this Section 7.04 shall not be payable from the Transferred Assets. The Servicer's obligations under this Section 7.04 shall survive the termination of this Agreement, the resignation or removal of the Indenture Trustee or the earlier removal or resignation of the Servicer.

**Section 7.05** Resignation of the Servicer. The Servicer shall not resign from the obligations and duties hereby imposed on it except (a) upon determination that (i) the performance of its duties hereunder is no longer permissible under applicable law and (ii) there is no reasonable action that the Servicer could take to make the performance of its duties hereunder permissible under applicable law or (b) upon the assumption, by an agreement supplemental hereto, executed and delivered to the Issuer and the Transferor, in form satisfactory to the Issuer and the Majority Investors, of the obligations and duties of the Servicer hereunder by (i) any of its Affiliates that is a direct or indirect wholly owned subsidiary of the Performance Guarantor,

subject to reaffirmation by the Performance Guarantor of the PHH Guarantee with respect to such Successor Servicer, or (ii) with the consent of the Majority Investors, by any other entity that qualifies as an Eligible Servicer. Any determination permitting the resignation of the Servicer shall be evidenced as to clause (a) above by an Opinion of Counsel to such effect delivered to the Issuer, the Indenture Trustee and the Transferor. No resignation shall become effective until a Successor Servicer shall have assumed the responsibilities and obligations of the Servicer in accordance with Section 9.02. If, as of the date of the determination that the Servicer may no longer act as Servicer under clause (a) above, the Issuer is unable to appoint a Successor Servicer, the Indenture Trustee shall serve as Successor Servicer. Notwithstanding the foregoing, if it is legally unable so to act, the Indenture Trustee shall petition a court of competent jurisdiction to appoint any Eligible Servicer as the Successor Servicer hereunder.

**Section 7.06**

**Access to Certain Documentation and Information Regarding the Receivables.**

In addition to the access rights provided under Section 3.07(b), the Servicer shall provide to the Issuer and the Indenture Trustee access to the documentation regarding the Lockbox Accounts and the Pool Receivables if the Issuer or the Indenture Trustee is required in connection with the enforcement of the rights of holders of the Notes or by applicable statutes or regulations to review such documentation, such access being afforded without charge but only (a) upon reasonable request (but in no event less than five Business Days), (b) during normal business hours, (c) subject to the Servicer's normal security and confidentiality procedures and (d) at reasonably accessible offices in the continental United States designated by the Servicer. Nothing in this Section 7.06 shall derogate from the obligation of CMSC, CME, the Transferor, the Issuer, the Indenture Trustee and the Servicer to observe any applicable law prohibiting disclosure of information regarding the Transferred Employees, and the failure of the Servicer to provide access as provided in this Section 7.06 as a result of such obligation shall not constitute a breach of this Section 7.06.

[END OF ARTICLE VII]

**ARTICLE VIII  
TERMINATION**

**Section 8.01**                    **Transfer Termination Events**. The following events shall be “Transfer Termination Events”:

- (a)                    The occurrence of an Event of Default or an Amortization Event with respect to all Series of Notes; or
- (b)                    Any representation or warranty made by the Transferor under any of the Transaction Documents shall prove to have been untrue or incorrect in any material respect when made or deemed to have been made, such failure could reasonably be expected to have a Material Adverse Effect with respect to the Transferor or the interest of the Issuer or its assigns in the Transferred Assets and such failure remains unremedied for 30 days; or
- (c)                    The Transferor shall fail to perform or observe, as and when required, (i) any term, covenant or agreement contained in this Agreement or any of the other Transaction Documents to which it is a party, and such failure shall remain unremedied for: in the case of a failure to maintain its separate corporate existence pursuant to Section 2.05(e), the covenant to segregate Pool Collections pursuant to Section 2.05(f), the covenant to provide records pursuant to Section 7.1(k), the covenant to file financing or continuation statements pursuant to Section 2.01(d) or the negative covenants of the Transferor set forth in Section 2.06, ten days, or (ii) any other term, covenant or agreement contained in this Agreement or any of the other Transaction Documents to which it is a party, which failure could reasonably be expected to have a Material Adverse Effect with respect to the Transferor or the interest of the Issuer or its assigns in the Transferred Assets, 30 days; or
- (d)                    An Event of Bankruptcy shall have occurred with respect to the Transferor; or
- (e)                    The Transferor’s representation and warranty in Section 2.02(k) shall not be true at any time with respect to a substantial portion of the Transferred Assets; or
- (f)                    Either (i) the Internal Revenue Service shall file notice of a Lien pursuant to Section 6323 of the Code with respect to any of the Transferred Assets and such Lien shall not have been released within five days or, if released, proved to the satisfaction of the Rating Agencies or (ii) the PBGC shall, or shall indicate its intention to, file notice of a Lien pursuant to Section 4068 of the Employee Retirement Income Security Act of 1974 with respect to any of the Transferred Assets; or
- (g)                    A CMF Purchase Termination Event or an ARSC Purchase Termination Event shall have occurred; or
- (h)                    This Agreement shall cease to be in full force and effect for any reason other than in accordance with its terms.

If a Transfer Termination Event occurs, the Transferor shall promptly give notice to the Issuer and the Indenture Trustee of such Transfer Termination Event.

**Section 8.02**

**Transfer Termination.** (a) On the Transfer Termination Date, the Transferor shall cease transferring Pool Receivables to the Issuer, provided that any right, title and interest of the Transferor in and to any CMF Designated Receivables arising from any Servicer Advances made thereafter, including any Related Property relating thereto and proceeds thereof, shall continue to be transferred. Notwithstanding any cessation of the transfer to the Issuer of additional Pool Receivables, Pool Receivables transferred to the Issuer prior to the Termination Date and Pool Collections in respect of such Pool Receivables and the related Finance Charges, whenever accrued in respect of such Pool Receivables, shall continue to be property of the Issuer available for pledge by the Issuer under the Indenture.

(b) Upon the occurrence of a Transfer Termination Event, the Issuer and its assignees shall have, in addition to all other rights and remedies under this Agreement or otherwise, all other rights and remedies provided under the UCC of each applicable jurisdiction and other applicable laws, which rights shall be cumulative. Without limiting the foregoing, the occurrence of a Transfer Termination Event shall not deny to the Issuer or its assignees any remedy in addition to termination of its obligation to make Purchases hereunder to which the Issuer or its assignees may be otherwise appropriately entitled, whether by statute or applicable law, at law or in equity.

[END OF ARTICLE VIII]

**ARTICLE IX  
SERVICER DEFAULTS**

**Section 9.01**

**Servicer Defaults.** If any one of the following events (a “Servicer Default”) shall occur and be continuing:

- (a) any failure on the part of the Servicer to deliver the Receivables Activity Reports required under Section 3.07(c), to make any payment, transfer or deposit, or to give instructions or to give notice to the Issuer or the Indenture Trustee to make such payment, transfer or deposit on or before the date occurring five Business Days after the date such payment, transfer or deposit or such instruction or notice is required to be made or given, as the case may be, under the terms of this Agreement;
- (b) (i) failure on the part of the Servicer duly to observe and perform its covenants to give payment instructions to Obligors pursuant to Section 3.05(f); to segregate Pool Collections pursuant to Section 3.05(g), to provide records pursuant to Section 3.07, to file financing or continuation statements provided to it pursuant to Section 3.02, or breach by the Servicer of any of its negative covenants set forth in Section 3.06, which failure or breach continues unremedied for ten calendar days, or (ii) failure on the part of the Servicer duly to observe or perform in any material respect any other covenants or agreements of the Servicer set forth in this Agreement, which failure has a Material Adverse Effect on the rights of the holders of any Series of Notes (determined without giving effect to any third-party credit enhancement) and continues unremedied for a period of 30 days, in each case, after the date on which written notice of such failure, requiring the same to be remedied, has been given to the Servicer by the Issuer, or to the Servicer and the Issuer on behalf of the Majority Investors, or the Servicer shall assign or delegate its duties under this Agreement except as permitted by Sections 3.01(b) and 7.02;
- (c) any representation, warranty or certification made by the Servicer in this Agreement or in any other Transaction Document or in any certificate delivered pursuant to this Agreement proves to have been incorrect in any material respect when made, which failure has a Material Adverse Effect on the rights of the holders of any Series of Notes (determined without giving effect to any third-party credit enhancement) and which failure continues unremedied for a period of 30 days after the date on which notice thereof, requiring the same to be remedied, has been given to the Servicer by the Issuer, or to the Servicer and the Issuer on behalf of the Majority Investors; or
- (d) an Event of Bankruptcy occurs with respect to the Servicer;

then, in the event of any such Servicer Default, so long as the Servicer Default shall not have been remedied the Indenture Trustee may, or at the direction of the Majority Investors, the Indenture Trustee shall, by written notice then given to the Servicer (and to the Indenture Trustee if given by the Majority Investors) (a “Termination Notice”), terminate all or any part of the rights and obligations of the Servicer as Servicer under this Agreement. Notwithstanding the foregoing, a delay in or failure of performance referred to in clause (a), (b) or (c) for a period of 10 Business Days after the applicable grace period shall not constitute a Servicer Default if such

delay or failure could not be prevented by the exercise of reasonable diligence by the Servicer and such delay or failure was caused by an act of God or the public enemy, acts of declared or undeclared war, public disorder, rebellion or sabotage, epidemics, landslides, lightning, fire, hurricanes, earthquakes, floods or similar causes not within the Servicer's control. The preceding sentence does not relieve the Servicer from using all commercially reasonable efforts to perform its obligations in a timely manner in accordance with the terms of this Agreement.

(e) The Indenture Trustee acting at the direction of the Majority Investors shall be entitled, by giving a Termination Notice to the Servicer, to terminate all or any part of the rights and obligations of CMSC as Servicer if:

(i) the Consolidated Net Worth of PHH on the last day of any fiscal quarter is less than the sum of (i) \$500,000,000 plus (ii) 50% of Consolidated Net Income, if positive, for each fiscal quarter after September 30, 1999; or

(ii) PHH Indebtedness less Cash Equivalents (owned by PHH or any of its Consolidated Subsidiaries and free of liens (other than liens securing Indebtedness)) exceeds six times Consolidated Net Worth; or

(iii) PHH fails to maintain a long-term unsecured debt rating of at least "BBB-" by Standard & Poor's and "Baa3" by Moody's provided that if PHH has no outstanding long-term unsecured debt, then a shadow rating of PHH may be used to determine compliance with the foregoing rating requirement.

After receipt by the Servicer of a Termination Notice, and on the date that a Successor Servicer is appointed by the Indenture Trustee pursuant to Section 9.03, all authority and power of the Servicer under this Agreement (or, in the case of a partial transfer, such authority and power and a proportional portion of the Servicing Fee as is described in the Termination Notice) shall pass to and be vested in the Successor Servicer (a "Service Transfer"); and the Indenture Trustee is hereby authorized and empowered, upon the failure of the Servicer to cooperate, to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, all documents and other instruments and to do and accomplish all other acts or things necessary or appropriate to effect the purposes of such Service Transfer. The Servicer agrees to cooperate with the Indenture Trustee and such Successor Servicer in effecting the termination of the responsibilities and rights of the Servicer to conduct servicing hereunder, including the transfer to such Successor Servicer of authority of the Servicer to service the Pool Receivables provided for under this Agreement, including (to the extent transferred) all authority over all Pool Collections that on the date of transfer are held by the Servicer for deposit, or which have been deposited by the Servicer in the Collection Account, or which thereafter are received with respect to the Receivables, and in assisting the Successor Servicer. The Servicer shall within 20 Business Days of such Termination Notice transfer its electronic records relating to the Pool Receivables to the Successor Servicer in such electronic form as the Successor Servicer may reasonably request and shall promptly transfer to the Successor Servicer all other records, correspondence and documents necessary for the continued servicing of the Receivables in the manner and at such times as the Successor Servicer shall reasonably request. To the extent that compliance with this Section 9.01 requires the Servicer to disclose to the Successor Servicer information of any kind that the Servicer deems to be confidential, the Successor Servicer shall



be required to enter into such customary licensing and confidentiality agreements as the Servicer deems reasonably necessary to protect its interests. The Servicer being terminated (or replaced in part) shall bear all costs of the appointment of a Successor Servicer hereunder, including but not limited to those of the Indenture Trustee reasonably allocable to specific employees and overhead, legal fees and expenses, accounting and financial consulting fees and expenses, and costs of amending the Transaction Documents, if necessary.

**Section 9.02** **Performance by Issuer.** If (i) the Transferor or the Servicer fails to perform any of its agreements or obligations under any Transaction Document to which it is a party and does not remedy such failure within the applicable cure period, if any, and (ii) the Issuer in good faith reasonably believes that the performance of such agreements and obligations is necessary or appropriate to protect the interests of the holders of the Notes issued by the Issuer under the Indenture, then the Issuer or its designee shall have the right to perform, or cause performance of, such agreement or obligation, and the reasonable expenses of the Issuer or its designee incurred in connection therewith shall be payable by the Servicer as provided in Section 7.04 (if the Servicer has failed to perform its obligations) or by the Transferor as provided in Section 6.04 (if the Transferor has failed to perform its obligations). If the Transferor or the Servicer fails to file at any time any financing statement or continuation statement or amendment thereto or assignment thereof that it is required to file pursuant to this Agreement or any of the other Transaction Documents to which it is a party, the Issuer or its assigns shall have the right to file, and the Transferor and the Servicer hereby authorize the Issuer or its assigns to file, at the expense of the Transferor, such financing or continuation statements and amendments thereto and assignments thereof with respect to all or any of the Receivables or the other Transfer red Assets now existing or hereafter arising in the name of the Transferor.

**Section 9.03**

**Indenture Trustee To Act; Appointment of Successor.**

(a) On and after the receipt by the Servicer of a Termination Notice pursuant to Section 9.01, the Servicer shall continue to perform all servicing functions under this Agreement until the date specified in the Termination Notice or otherwise specified by the Indenture Trustee or until a date mutually agreed upon by the Servicer and Indenture Trustee. The Issuer shall select, as promptly as possible after the giving of a Termination Notice, and the Indenture Trustee shall appoint, an Eligible Servicer as a successor servicer (the "Successor S ervicer"), and such Successor Servicer shall accept its appointment by a written assumption in a form acceptable to the Issuer. If a Successor Servicer has not been appointed or has not accepted its appointment at the time when the Servicer ceases to act as Servicer, the Indenture Trustee without further action automatically shall be appointed the Successor Servicer. Notwithstanding the foregoing, the Issuer shall, if the Indenture Trustee is legally unable so to act, petition at the expense of the Servicer a court of competent jurisdiction to appoint any established institution qualifying as an Eligible Servicer as the Successor Servicer hereunder.

(b) Upon its appointment, the Successor Servicer shall be the successor in all respects to the Servicer with respect to servicing functions under this Agreement and shall be subject to all the responsibilities, duties and liabilities relating thereto placed on the Servicer by the terms and provisions hereof, and all references in this Agreement to the Servicer shall be deemed to refer to the Successor Servicer. Notwithstanding the foregoing, or anything in this Section 9.03 to the contrary, the Successor Servicer shall have no responsibility or obligation

(i) for any representation or warranty of the predecessor Servicer or any other Successor Servicer hereunder or (ii) for any act or omission of either a predecessor or any other Successor Servicer. The Indenture Trustee may conduct any activity required of it as Servicer hereunder through an Affiliate or through an agent. Neither the Indenture Trustee nor any other Successor Servicer shall be deemed to be in default hereunder due to any act or omission of a predecessor Servicer, including but not limited to failure to timely deliver to the Indenture Trustee any instructions pursuant to Section 4.02, any funds required to be deposited with or transferred to the Indenture Trustee, or any breach of its duty to cooperate with a Service Transfer.

(c) All authority and power granted to the Servicer under this Agreement shall automatically cease and terminate upon termination of this Agreement pursuant to Section 10.01, and shall pass to and be vested in the Transferor, and the Transferor is hereby authorized and empowered to execute and deliver, on behalf of the Servicer, as attorney-in-fact or otherwise, all documents and other instruments, and to do and accomplish all other acts or things necessary or appropriate to effect the purposes of such transfer of servicing rights. The Servicer agrees to cooperate with the Transferor in effecting the termination of the responsibilities and rights of the Servicer to conduct servicing of the Receivables and the other Transferred Assets. The Servicer shall transfer its electronic records relating to the Receivables and the other Transferred Assets to the Transferor or its designee in such electronic form as it may reasonably request and shall transfer all other records, correspondence and documents to it in the manner and at such times as it shall reasonably request.

(d) Power of Attorney. The Transferor hereby irrevocably appoints the Issuer to act as the Transferor's attorney-in-fact, with full authority in the place and stead of the Transferor and in the name of the Transferor or otherwise, from time to time after the occurrence and during the continuance of an Unmatured Servicer Default or a Servicer Default or other termination of the Servicer under Section 9.01 or a Transfer Termination Event, to take at the direction of the Issuer any action and to execute any instrument or document that the Issuer may deem necessary to accomplish the purposes of this Agreement including without limitation:

(i) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Pool Receivable or any other Transferred Asset;

(ii) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (i) above;

(iii) to file any claims or take any action or institute any proceedings that the Issuer in its reasonable determination deems necessary or appropriate for the collection of any of the Pool Receivables or any other Transferred Asset or otherwise to enforce the rights of the Issuer and the holders of the Notes issued by the Issuer under the Indenture with respect to any of the Pool Receivables or any other Transferred Asset;

(iv) to perform affirmative obligations of the Transferor under any Transaction Document; and

- (v) to enforce the rights and remedies of the Transferor under any Transaction Document.

The Transferor hereby acknowledges, consents and agrees that the power of attorney granted pursuant to this Section 9.03(d) is irrevocable and coupled with an interest. The Transferor further agrees that the Issuer may delegate to the Indenture Trustee any of the above-referenced powers to the extent the Issuer, in its sole and absolute discretion, without liability, deems advisable and, upon such delegation, the Indenture Trustee shall, to the extent of any power so delegated, be entitled to exercise the powers herein granted to the Issuer.

**Section 9.04**

**Notification to Holders.** Within five Business Days after the Servicer becomes aware of any Servicer

Default, the Servicer shall give notice thereof to CMSC, CMF, the Transferor, the Issuer, the Indenture Trustee and any Series Enhancer. Upon any termination or appointment of a Successor Servicer pursuant to this Article IX, the Indenture Trustee shall give prompt notice thereof to the holders of the Notes, CMSC, CMF, the Transferor and the Issuer.

**Section 9.05**

**Marketing Expenses Account.** If (a) CMSC is the Servicer, (b) the long-term unsecured debt rating of PHH

falls below "BBB-" by Standard & Poor's or "Baa3" by Moody's and (c) the average number of days the Homes relating to outstanding Pool Receivables have been owned by CMSC and CMF is more than 150 days, the Servicer shall establish and fund an Eligible Account (the "Marketing Expenses Account") in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and, to the extent provided in Section 9.05(b), any Successor Servicer. Upon establishment of the Marketing Expenses Account, the Servicer shall maintain an amount equal to the Required Marketing Expenses Account Amount on deposit therein. On any Business Day after the Marketing Expenses Account has been established, if the amount on deposit in the Marketing Expenses Account is less than the Required Marketing Expenses Account Amount, the Servicer shall deposit into the Marketing Expenses Account an amount equal to the excess of the Required Marketing Expenses Account Amount over the amount on deposit in the Marketing Expenses Account. On each Distribution Date after the Marketing Expenses Account has been established, the Servicer shall be entitled to instruct the Indenture Trustee to withdraw from the Marketing Expenses Account an amount equal to the excess of the amount on deposit in the Marketing Expenses Account over the Required Marketing Expenses Account Amount. If so instructed, the Indenture Trustee shall withdraw such excess amount from the Marketing Expenses Account and shall pay such amount to or at the direction of the Servicer.

(b) The Indenture Trustee may withdraw funds from the Marketing Expenses Account (i) if CMSC is the Servicer, to pay for the cost of maintaining and marketing the Homes to the extent CMSC as Servicer has failed to pay such costs, (ii) to reimburse a Successor Servicer for the cost of maintaining and marketing the Homes, but only to the extent such costs were actually incurred, but not paid, by CMSC while acting as the Servicer, or to cover any costs of maintaining and marketing the Homes attributable to CMSC's breach of its duties as the Servicer prior to the appointment of such Successor Servicer or (iii) to cover the costs of transition of servicing from CMSC to such Successor Servicer. Funds on deposit in the

Marketing Expenses Account shall not be used to fund any payments to holders of Notes of any Series.

[END OF ARTICLE IX]

**ARTICLE X  
TERMINATION**

**Section 10.01**      **Termination.** This Agreement and the respective obligations and responsibilities of CMSC, CMF, the Transferor, the Servicer, the Issuer and the Indenture Trustee created hereby shall terminate, except with respect to the duties described in Section 6.03, Section 7.04 and Section 11.06, on the Final Payout Date.

[END OF ARTICLE X]

**ARTICLE XI  
MISCELLANEOUS PROVISIONS**

**Section 11.01**

**Amendment.**

(a) The provisions of this Agreement may be amended, modified or waived from time to time by the parties hereto, by a written instrument signed by each of them. Notwithstanding the preceding sentence, this Agreement shall be amended by the parties hereto at the direction of the Transferor without the consent of any of the holders of the Notes issued by the Issuer under the Indenture to add, modify or eliminate such provisions as may be necessary or advisable in order to enable all or a portion of the Transferred Assets (i) to qualify as, and to permit an election to be made to cause the Issuer to be treated as, a “financial asset securitization investment trust” as described in the provisions of Section 860L of the Code, and (ii) to avoid the imposition of state or local income or franchise taxes imposed on the Issuer’s property or its income, provided that (i) the Transferor delivers to the Issuer an Officer’s Certificate to the effect that the proposed amendments meet the requirements set forth in this Section 11.01(a) and (ii) such amendment does not affect the rights, duties or obligations of the Issuer hereunder.

(b) Promptly after the execution of any such amendment or consent, the Issuer shall furnish notification of the substance of such amendment to each Rating Agency.

**Section 11.02**

**Governing Law.** THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING § 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REFERENCE TO ITS CONFLICT OF LAW PRINCIPLES.

**Section 11.03**

**Notices; Payments.** All demands, notices, instructions, directions and communications under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered at, mailed by certified mail, return receipt requested, or sent by facsimile transmission (i) in the case of CMSC or CME, to the address provided in the Purchase Agreement or the Receivables Purchase Agreement, respectively, (ii) in the case of the Transferor, to 40 Apple Ridge Road, Suite 5000, Danbury, Connecticut 06810 (telecopier no. (203) 205-3056), with a copy to: John Borger, Esq. at 83 Wooster Heights Road, Danbury, Connecticut 06810 (telecopier no. (203) 837-3759), (iii) in the case of the Servicer, to 40 Apple Ridge Road, Danbury Connecticut 06810, Attention: Chief Financial Officer (telecopier no. (203) 205-8136), (iv) in the case of the Issuer, 40 Apple Ridge Road, Suite 4000, Danbury, Connecticut 06810, Attention: Chief Financial Officer (telecopier no. (203) 205-1335), (v) in the case of the Indenture Trustee 153 West 51<sup>st</sup> Street, New York, New York 10019 (telecopier no. (212) 373-1383) and (vi) to any other Person as specified in any Supplement; or, as to each party, at such other address or facsimile number as shall be designated by such party in a written notice to each other party.

**Section 11.04** Severability of Provisions. If any one or more of the covenants, agreements, provisions or terms of this Agreement shall for any reason whatsoever be held invalid, then such provisions shall be deemed severable from the remaining provisions of this Agreement and shall in no way affect the validity or enforceability of the remaining provisions or of the rights of the parties to the Transaction Documents.

**Section 11.05** Further Assurances. The parties hereto agree to do and perform, from time to time, any and all acts and to execute any and all further instruments required or reasonably requested by the Issuer or any other party hereto more fully to effect the purposes of this Agreement, including the execution of any financing statements or continuation statements relating to the Receivables and the other Transferred Assets for filing under the provisions of the UCC or other applicable law of any applicable jurisdiction.

**Section 11.06** Nonpetition Covenant. (a) Notwithstanding any prior termination of this Agreement, CMSC, CME, the Indenture Trustee, the Servicer, the Transferor and any assignee of the Issuer shall not, prior to the date that is one year and one day after the termination of this Agreement with respect to the Issuer, acquiesce, petition or otherwise invoke or cause the Issuer to invoke the process of any Governmental Authority for the purpose of commencing or sustaining a case against the Issuer under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Issuer or any substantial part of its property or ordering the winding-up or liquidation of the affairs of the Issuer.

(b) Notwithstanding any prior termination of this Agreement, CMSC, CME, the Servicer, the Indenture Trustee, the Issuer and any assignee of the Issuer shall not, prior to the date that is one year and one day after the termination of this Agreement with respect to the Transferor, acquiesce, petition or otherwise invoke or cause the Transferor to invoke the process of any Governmental Authority for the purpose of commencing or sustaining a case against the Transferor under any Federal or state bankruptcy, insolvency or similar law or appointing a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of the Transferor or any substantial part of its property or ordering the winding-up or liquidation of the affairs of the Transferor.

**Section 11.07** No Waiver; Cumulative Remedies. No failure to exercise, and no delay in exercising, any right, remedy, power or privilege on the part of any party under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege under this Agreement, preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges provided under this Agreement are cumulative and not exhaustive of any rights, remedies, powers and privileges provided by law.

**Section 11.08** Counterparts. This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

**Section 11.09** Third-Party Beneficiaries. This Agreement will inure to the benefit of and be binding upon the parties hereto, the holders of the Notes and their respective successors and permitted assigns. Except as otherwise expressly provided in this Agreement, no other Person will have any right or obligation hereunder.

**Section 11.10** Merger and Integration. Except as specifically stated otherwise herein, this Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement. This Agreement may not be modified, amended, waived or supplemented except as provided herein.

**Section 11.11** Headings. The headings herein are for purposes of reference only and shall not otherwise affect the meaning or interpretation of any provision hereof.

**Section 11.12** Confidentiality. The Issuer and the Transferor each agrees to maintain the confidentiality of any information regarding CMSC, Cendant Corporation and PHH obtained in accordance with the terms of this Agreement that is not publicly available; provided, however, that the Issuer or the Transferor may reveal such information (a) as necessary or appropriate in connection with the administration or enforcement of this Agreement or the Issuer's issuance of Notes under the Indenture or (b) as required by law, government regulation, court proceeding or subpoena. Notwithstanding anything herein to the contrary, none of CMSC, Cendant Corporation nor PHH shall have any obligation to disclose to the Issuer or its assignees and assigns any personal and confidential information relating to a Transferred Employee.

**Section 11.13** Costs, Expenses and Taxes. In addition to the obligations of the Transferor under Article VI, the Transferor agrees to pay on demand:

(a) all reasonable costs and expenses incurred by the Issuer and its assignees in connection with the negotiation, preparation, execution and delivery of, the administration (including periodic auditing), the preservation of any rights under, or the enforcement of, or any breach of, this Agreement (including any amendment, supplement or modification hereto), including without limitation (i) the reasonable fees, expenses and disbursements of counsel to any such Persons incurred in connection with any of the foregoing or in advising such Persons as to their respective rights and remedies under this Agreement and (ii) all reasonable out-of-pocket expenses (including reasonable fees and expenses of independent accountants) incurred in connection with any review of the Transferor's books and records prior to the execution and delivery hereof, and

(b) all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement or any amendment, supplement or modification thereto, and agrees to indemnify each ARSC Indemnified Party against any liabilities with respect to, or resulting from, any delay in paying or omission to pay such taxes and fees.

**Section 11.14** Submission to Jurisdiction. EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW



YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK, NEW YORK, OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND HEREBY (a) IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (b) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING; AND (c) IRREVOCABLY APPOINTS CT CORPORATION SYSTEM (THE "PROCESS AGENT"), WITH AN OFFICE ON THE DATE HEREOF AT 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011, UNITED STATES OF AMERICA, AS ITS AGENT TO RECEIVE ON BEHALF OF IT AND ITS PROPERTY SERVICE OF COPIES OF THE SUMMONS AND COMPLAINT AND ANY OTHER PROCESS THAT MAY BE SERVED IN ANY SUCH ACTION OR PROCEEDING. SUCH SERVICE MAY BE MADE BY MAILING OR DELIVERING A COPY OF SUCH PROCESS IN CARE OF THE PROCESS AGENT AT THE PROCESS AGENT'S ABOVE ADDRESS, AND EACH PARTY HERETO HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS THE PROCESS AGENT TO ACCEPT SUCH SERVICE ON ITS BEHALF. EACH PARTY HERETO AGREES TO ENTER INTO ANY AGREEMENT RELATING TO SUCH APPOINTMENT THAT THE PROCESS AGENT MAY CUSTOMARILY REQUIRE AND TO PAY THE PROCESS AGENT'S CUSTOMARY FEES UPON DEMAND. AS AN ALTERNATIVE METHOD OF SERVICE, EACH PARTY HERETO ALSO IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS TO SUCH PARTY AT ITS ADDRESS SPECIFIED PURSUANT TO SECTION 11.03. NOTHING IN THIS SECTION 11.14 SHALL AFFECT THE RIGHT OF EITHER PARTY HERETO TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR AFFECT THE RIGHT OF EITHER PARTY HERETO TO BRING ANY ACTION OR PROCEEDING AGAINST THE OTHER PARTY HERETO OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.

**Section 11.15** Waiver of Jury Trial. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR RELATING TO THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR THAT MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), ACTIONS OF EITHER OF THE PARTIES HERETO OR ANY OTHER RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

**Section 11.16**

**Acknowledgment and Consent.**

(a) The Transferor acknowledges that, from time to time prior to the Termination Date, the Issuer intends to pledge the Transferred Assets to the Indenture Trustee pursuant to the Indenture. The Transferor acknowledges and agrees to each such pledge by the Issuer and consents to the assignment by the Issuer of all or any portion of its right, title and interest in, to and under the Transferred Assets, this Agreement and the other Transaction Documents and all of the Issuer's rights, remedies, powers and privileges and all claims of the Issuer against the Transferor under or with respect to this Agreement and the other Transaction Documents (whether arising pursuant to the terms of this Agreement or otherwise available at law or in equity), including without limitation (whether or not an Unmatured Servicer Default or a Servicer Default has occurred and is continuing) (i) the right of the Issuer at any time to enforce this Agreement against the Transferor and the obligations of the Transferor hereunder and (ii) the right at any time to give or withhold any and all consents, requests, notices, directions, approvals, demands, extensions or waivers under or with respect to this Agreement, any other Transaction Document or the obligations in respect of the Transferor thereunder, all of which rights, remedies, powers, privileges and claims may be exercised and/or enforced by the Issuer's successors and assigns to the same extent as the Issuer may do.

**Section 11.17**

**No Partnership or Joint Venture.**

Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third Person to create the relationship of principal and agent or of partnership or of joint venture.

[END OF ARTICLE XI]

IN WITNESS WHEREOF, the Transferor, CMSC, CME, the Servicer, the Indenture Trustee and the Issuer have caused this Transfer and Servicing Agreement to be duly executed by their respective officers as of the day and year first above written.

APPLE RIDGE SERVICES CORPORATION,  
as Transferor,

by /s/ Dennis O'Gara  
Name: Dennis O'Gara  
Title: SVP, CFO

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CENDANT MOBILITY SERVICES CORPORATION,  
as originator and Servicer,

by /s/ Dennis O'Gara  
Name: Dennis O'Gara  
Title: SVP, CFO

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CENDANT MOBILITY FINANCIAL CORPORATION,  
as originator,

by /s/ Eric J. Barnes  
Name: Eric J. Barnes  
Title: VP, Controller

---

APPLE RIDGE FUNDING LLC,  
as transferee,

by /s/ Eric J. Barnes  
Name: Eric J. Barnes  
Title: VP, Controller

---

[Signature page to Transfer and Servicing Agreement]

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BANK ONE, NATIONAL ASSOCIATION,  
as Indenture Trustee,

by /s/ Steve M. Husbands

Name: Steve M. Husbands

Title: Assistant Vice President

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[Signature page to Transfer and Servicing Agreement]

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**SCHEDULE 2.02(m)**

**to**

**TRANSFER AND SERVICING AGREEMENT**

**Dated as of April 25, 2000**

**Principal Place of Business and  
Chief Executive Office of the Transferor**

**Apple Ridge Services Corporation  
40 Apple Ridge Road, Suite 4000  
Danbury, CT 06810  
Tel: (203) 205-1335**

**List of Offices Where  
the Servicer Keeps Records**

**Cendant Mobility Services Corporation  
40 Apple Ridge Road  
Danbury, CT 06810**

**Cendant Mobility Services Corporation  
8081 Royal Ridge Parkway  
Suite 200  
Irving, TX 75063**

**Cendant Mobility Services Corporation  
27271 Las Ramblas  
Mission Viejo, CA 92691**

**Cendant Mobility Services Corporation  
2221 Camden Court  
Oakbrook, IL 60523**

**Cendant Mobility Services Corporation  
401 Lennon Lane  
Suite 200  
Walnut Creek, CA 94598**

**SCHEDULE 2.02(o)**

**to**

**TRANSFER AND SERVICING AGREEMENT**

**Dated as of April 25, 2000**

**List of Legal Names**

**None.**

SCHEDULE 3.04(I)

to

TRANSFER AND SERVICING AGREEMENT

Dated as of April 25, 2000

List of Lockbox Banks

Bank One, National Association  
Attn.: Denise White  
200 South Wacker Drive  
Mailcode, IL1-0935  
Chicago, IL 60606

Demand Deposit Account Number and Associated Lockbox Numbers

DDA No.: 52-69938

Lockbox Nos.: 93358/73049

Mellon Bank, N.A.  
Document Control Manager  
Three Mellon Bank Center  
Room 3119  
Pittsburgh, PA 15259

Demand Deposit Account Number and Associated Lockbox Number

- |    |                   |                     |
|----|-------------------|---------------------|
| 1. | DDA No.: 005-7883 | Lockbox No.: 360956 |
| 2. | DDA No.: 144-6397 | Lockbox No.: 360287 |

EXHIBIT A

to

TRANSFER AND SERVICING AGREEMENT

Dated as of April 25, 2000

FORM OF ANNUAL SERVICER'S CERTIFICATE

(To be delivered on or before April 30 of  
each calendar year beginning with April 30, 2001  
pursuant to Section 3.09 of the Transfer and  
Servicing Agreement referred to below)

CENDANT MOBILITY SERVICES CORPORATION

The undersigned, a duly authorized representative of Cendant Mobility Services Corporation, as Servicer ("CMSC"), pursuant to the Transfer and Servicing Agreement dated as of April 25, 2000 (as amended and supplemented, the "Agreement"), by and between Apple Ridge Services Corporation as Transferor, CMSC as originator and Servicer, Cendant Mobility Financial Corporation as originator, Apple Ridge Funding, LLC as transferee, and Bank One, National Association, as Indenture Trustee does, hereby certify that:

1. CMSC is, as of the date hereof, the Servicer under the Agreement.
2. The undersigned is a Servicing Officer who is duly authorized pursuant to the Agreement to execute and deliver this Certificate to the Issuer.
3. A review of the activities of the Servicer during the year ended December 31, \_\_\_\_, and of its performance under the Agreement was conducted under my supervision.
4. Based on such review, the Servicer has, or has caused to be, to the best of my knowledge, performed its obligations under the Agreement in all material respects throughout such year and no default in the performance of such obligations has occurred or is continuing except as set forth in paragraph 5 below.
5. The following is a description of each default in the performance of the Servicer's obligations under the provisions of the Agreement known to me to have been made by the Servicer during the year ended December 31, \_\_\_\_ which sets forth in detail (i) the nature of each such default, (ii) the action taken by the Servicer, if any, to remedy each such default and (iii) the current status of each such default: [If applicable, insert "None. "]

Capitalized terms used in this Certificate have their respective meanings as set forth in the Agreement.



IN WITNESS WHEREOF, the undersigned has duly executed this Certificate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CENDANT MOBILITY SERVICES CORPORATION,  
as Servicer,

By \_\_\_\_\_  
Name:  
Title:

**EXHIBIT B**

**to**

**TRANSFER AND SERVICING AGREEMENT**

**Dated as of April 25, 2000**

**FORMS OF LOCKBOX AGREEMENTS**

EXHIBIT C

SERVICING OFFICERS

Eric Barnes

Duncan Cocroft

Mark E. Johnson

Dennis O'Gara

John Peterson



## PERFORMANCE GUARANTY

This Performance Guaranty (this "Guaranty"), dated as of April 25, 2000, is executed by PHH Corporation, a Maryland corporation (the "Performance Guarantor") in favor of Cendant Mobility Financial Corporation, a Delaware corporation ("CMF"), and Apple Ridge Funding LLC, a Delaware limited liability company, as Issuer (the "Issuer") under the Master Indenture dated as of April 25, 2000 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture") between the Issuer, Bank One, N.A., a national banking association, as indenture trustee and The Bank of New York, as paying agent. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings ascribed to them in the Indenture or that certain Purchase Agreement dated as of April 25, 2000 (as amended, restated, supplemented or otherwise modified from time to time, the "Purchase Agreement") between CMF and Cendant Mobility Services Corporation, a Delaware corporation ("CMSC").

WHEREAS, CMSC is a wholly-owned Subsidiary of the Performance Guarantor and the Performance Guarantor is expected to receive substantial direct and indirect benefits from the transactions contemplated in the Purchase Agreement, the Receivables Purchase Agreement, the Transfer and Servicing Agreement and the Indenture;

WHEREAS, as an inducement for (i) CMF to enter into the Purchase Agreement and to make purchases thereunder and (ii) the Issuer to enter into the Transfer and Servicing Agreement and to acquire the ARSC Purchased Assets thereunder, the Performance Guarantor has agreed to guaranty the due and punctual payment and performance of CMSC's obligations, whether as Originator under the Purchase Agreement or as Servicer under the Transfer and Servicing Agreement;

NOW, THEREFORE, the Performance Guarantor hereby agrees with CMF and the Issuer as follows:

§1. Definitions.

As used herein:

"Obligations" means, collectively, all covenants, agreements, terms, conditions and other obligations to be performed and observed by CMSC (whether in its capacity as Originator under the Purchase Agreement or as Servicer under the Transfer and Servicing Agreement) under the Purchase Agreement or the Transfer and Servicing Agreement (including CMSC's obligation to fund the Marketing Expenses Account as and when required under the Transfer and Servicing Agreement), and shall include without limitation the due and punctual payment when due of all sums that are or may become owing by CMSC under the Purchase Agreement or the Transfer and Servicing Agreement, whether in respect of fees, expenses (including counsel fees), indemnified amounts, amounts required to be paid by CMSC pursuant to Section 4.3 of the Purchase Agreement or Section 3.10 of the Transfer and Servicing Agreement, advances required to be made pursuant to Section 3.12 of the Transfer and Servicing

Agreement or otherwise, including without limitation any such fees, expenses and other amounts that accrue after the commencement of any Insolvency Proceeding with respect to CMSC (in each case whether or not allowed as a claim in such Insolvency Proceeding).

§2. **Guaranty of Obligations.** The Performance Guarantor hereby guarantees to CMF and the Issuer (each, a “Guarantied Party”), the full and punctual payment and performance by CMSC of all of the Obligations. This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance of all of the Obligations and is in no way conditioned upon any requirement that any Guarantied Party first attempt to collect any amounts owing by CMSC to such Guarantied Party from CMSC or resort to any collateral security, any balance of any deposit account or credit on the books of any Guarantied Party in favor of CMSC or any other Person or other means of obtaining payment. Should CMSC default in the payment or performance of any of the Obligations, any Guarantied Party may cause the immediate performance by the Performance Guarantor of the Obligations and cause any payment Obligations to become forthwith due and payable to such Guarantied Party, without demand or notice of any nature (other than as expressly provided herein or in the Transaction Documents), all of which are expressly waived by the Performance Guarantor.

§3. **Performance Guarantor’s Further Agreements to Pay.** The Performance Guarantor further agrees, as the principal obligor and not as a guarantor only, to pay to each Guarantied Party, forthwith upon demand in funds immediately available to such Guarantied Party, all reasonable costs and expenses (including court costs and legal expenses) incurred or expended by such Guarantied Party in connection with the Obligations, this Guaranty and the enforcement thereof, together with interest on amounts recoverable under this Guaranty from the time when such amounts become due until payment, at a rate of interest (computed for the actual number of days elapsed based on a 360 day year) equal to the rate or interest most recently published in The Wall Street Journal as the “Prime Rate” plus 2%. Changes in the rate payable hereunder shall be effective on each date on which a change in the “Prime Rate” is published.

§4. **Waivers by Performance Guarantor; Freedom to Act.** The Performance Guarantor waives notice of acceptance of this Guaranty, notice of any action taken or omitted by any Guarantied Party in reliance on this Guaranty, and any requirement that any Guarantied Party be diligent or prompt in making demands under this Guaranty, giving notice of any Purchase Termination Event or Servicer Default (so long as CMSC is the Servicer) or asserting any other rights of any Guarantied Party under this Guaranty. The Performance Guarantor also irrevocably waives all defenses that at any time may be available in respect of the Obligations by virtue of any statute of limitations, valuation, stay, moratorium law or other similar law now or thereafter in effect. Each Guarantied Party shall be at liberty, without giving notice to or obtaining the consent of the Performance Guarantor, to deal with CMSC and with each other party who now is or after the date hereof becomes liable in any manner for any of the Obligations, in such manner as such Guarantied Party in its sole discretion deems fit, and to this end the Performance Guarantor agrees that the validity and enforceability of this Guaranty, including without limitation the provisions of Section 7 hereof, shall not be impaired or affected by any of the following: (a) an amendment or modification of, or supplement to, any Transaction Document, including without limitation any extension, modification or renewal of, or indulgence with respect to, or substitution for, the Obligations or any part thereof at any time; (b) any waiver, consent, extension, granting of time, forbearance, indulgence or other action or inaction under or in respect of any Transaction Document or any Obligation (including without

limitation with respect to any Purchase Termination Event or Servicer Default (so long as CMSC is the Servicer)) or any right, power or remedy with respect thereto; (c) any Insolvency Proceeding with respect to CMSC or any other Person; (d) any exercise or non-exercise of any right, power or remedy with respect to the Obligations or any part thereof or any Transaction Document, or any collateral securing the Obligations or any part thereof; (e) any law, regulation or order of any jurisdiction affecting any term of any Obligation or rights of CMSC with respect thereto; (f) any release, surrender, compromise, settlement, waiver, subordination or modification, with or without consideration, of any other obligation of any person or entity with respect to the Obligations or any part thereof; (g) any invalidity or any unenforceability of, or any misrepresentation (other than by CMF or the Issuer), irregularity or other defect in, any Transaction Document or any Obligation; (h) the existence of any claim, setoff or other rights that the Performance Guarantor may have at any time against CMSC in connection herewith or any unrelated transaction; (i) any failure of the part of CMSC to perform or comply with any term of the Purchase Agreement, the Transfer and Servicing Agreement or any other Transaction Document; or (j) any other circumstance that might otherwise constitute a defense (other than payment and performance) available to, or a discharge of, a guarantor or CMSC, all whether or not the Performance Guarantor shall have had notice or knowledge of any event or circumstance referred to in the foregoing clauses (a) through (j) of this Section 4.

§5 . Unenforceability of Obligations Against CMSC. Notwithstanding (a) any change of ownership of CMSC or any Insolvency Proceeding with respect to CMSC or any other change in the legal status of CMSC; (b) the change in or the imposition of any law, decree, regulation or other governmental act that does or might impair, delay or in any way affect the validity, enforceability or the payment when due of the Obligations; (c) the failure of CMSC or the Performance Guarantor to maintain in full force, validity or effect or to obtain or renew when required all governmental and other approvals, licenses or consents required in connection with the Obligations or this Guaranty, or to take any other action required in connection with the performance of all obligations pursuant to the Obligations or this Guaranty; or (d) if any of the moneys included in the Obligations have become irrecoverable from CMSC for any other reason other than final payment in full of the payment Obligations in accordance with their terms, this Guaranty shall nevertheless be binding on the Performance Guarantor. This Guaranty shall be in addition to any other guaranty or other security for the Obligations, and it shall not be rendered unenforceable by the invalidity of any such other guaranty or security. In the event of acceleration of the time for payment of any of the Obligations, such amounts then due and owing under the terms of the Purchase Agreement or the Transfer and Servicing Agreement in connection with the Obligations shall be immediately due and payable by the Performance Guarantor.

§6 . Representations and Warranties. The Performance Guarantor represents and warrants that:

(a) Organization and Good Standing. The Performance Guarantor is a corporation duly organized and validly existing in good standing under the laws of the State of Maryland and has full power and authority to own its properties and to conduct its business as such properties are presently owned and such business is presently conducted.

(b) Due Qualification. The Performance Guarantor is duly qualified to do

business and is in good standing as a foreign corporation, and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business requires such qualification, licenses or approvals and where the failure so to qualify to obtain such licenses and approvals or to preserve and maintain such qualification, licenses or approvals could reasonably be expected to give rise to a material adverse effect with respect to the Performance Guarantor.

(c) **Power and Authority; Due Authorization.** The Performance Guarantor has (i) all necessary corporate power and authority to execute and deliver this Guaranty and to perform all its obligations hereunder and (ii) duly authorized by all necessary corporate action the execution, delivery and performance of this Guaranty.

(d) **Binding Obligations.** This Guaranty constitutes the legal, valid and binding obligation of the Performance Guarantor, enforceable against the Performance Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors rights generally and by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) **No Conflict or Violation.** The execution, delivery and performance of this Guaranty, and the fulfillment of the terms hereof, will not (i) conflict with, violate, result in any breach of any of the terms and provisions of, or constitute (with or without notice or lapse of time or both) a default under, (A) the certificate of incorporation or the bylaws of the Performance Guarantor or (B) any indenture, loan agreement, mortgage, deed of trust, or other material agreement or instrument to which the Performance Guarantor is a party or by which it or any of its properties is bound or (ii) conflict with or violate any federal, state, local or foreign law or any decision, decree, order, rule or regulation applicable to the Performance Guarantor or any of its properties of any court or of any federal, state, local or foreign regulatory body, administrative agency or other governmental instrumentality having jurisdiction over the Performance Guarantor or any of its properties, which conflict or violation described in this clause (ii), individually or in the aggregate, could reasonably be expected to have a material adverse effect on the ability of the Performance Guarantor to perform its obligations under this Guaranty or the validity or enforceability of this Guaranty.

§7 **Subordination.** The payment of any amounts due with respect to any indebtedness of CMSC now or hereafter owed to the Performance Guarantor is hereby subordinated to the prior payment in full of all the Obligations. The Performance Guarantor agrees that, after the occurrence and during the continuation of a CMSC Purchase Termination Event or a Servicer Default or an Unmatured Servicer Default (so long as CMSC is the Servicer), the Performance Guarantor will not demand, sue for or otherwise attempt to collect any such indebtedness of CMSC to it until all of the Obligations shall have been paid and performed in full. If, notwithstanding the foregoing sentence, the Performance Guarantor shall collect, enforce or receive any amounts in respect of such indebtedness while any Obligations are still unperformed or outstanding, such amounts shall be collected, enforced and received by the Performance Guarantor as trustee for the Guaranteed Parties and be paid over to the Indenture Trustee on account of the Obligations without affecting in any manner the liability of the Performance Guarantor under the other provisions of this Guaranty. The provisions of this



Section 7 shall be supplemental to and not in derogation of any rights and remedies which any Guarantied Party may at any time and from time to time have with respect to the Performance Guarantor.

§8 . Performance Guarantor's Acknowledgment and Agreements.

(a) The Performance Guarantor hereby acknowledges that the Guarantied Parties are entering into the transactions contemplated by the Transaction Documents in reliance upon the identity of ARSC, the Issuer and CMF, as a legal entity separate from CMSC and the other CMS Persons. Therefore, from and after the date hereof until one year and one day after the Final Payout Date, the Performance Guarantor will, and will cause each of its Subsidiaries and Affiliates (other than CMF, ARSC and ARF) to, take such actions as shall be required in order that the covenants set forth in Section 7.1(e) of the Purchase Agreement are complied with at all times. ARF shall at all times be a wholly-owned subsidiary of PHH.

(b) The Performance Guarantor will make available to CMSC and its subsidiaries and any successor Servicer appointed pursuant to the Transfer and Servicing Agreement (each, a "Requesting Person") all computer equipment services requested or required by a Requesting Person in order to perform such Requesting Person's duties and exercise its rights under the Transaction Documents so long as such Requesting Person pays the Performance Guarantor a reasonable fee per annum for the equipment services provided; provided, however, that with respect to any computer software licensed from a third party, the Performance Guarantor will be required to make such licenses, sublicenses and/or assignments of such software available only to the extent that provision of the same would not violate the terms of any contracts of CMSC or the Performance Guarantor or any Affiliate thereof with such third party.

(c) The Performance Guarantor agrees that, if at any time ARF ceases to be a wholly-owned subsidiary of Cendant, then, in such event, the Performance Guarantor shall cause to be executed a tax sharing agreement between the Issuer and the ultimate parent of the Issuer, in form and substance satisfactory to the Majority Investors.

§9. Termination of Guaranty. The Performance Guarantor's obligations hereunder shall continue in full force and effect until the date that is one year and one day after the Final Payout Date, provided that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time payment or other satisfaction of any of the Obligations is rescinded or must otherwise be restored or returned in connection with any Insolvency Proceeding with respect to CMSC or any other Person, or otherwise, as though such payment had not been made or other satisfaction occurred, whether or not any Guarantied Party is in possession of this Guaranty. No invalidity, irregularity or unenforceability by reason of the Bankruptcy Code or any insolvency or other similar law, or any law or order of any government or agency thereof purporting to reduce, amend or otherwise affect the Obligations shall impair, affect, be a defense to or claim against the obligations of the Performance Guarantor under this Guaranty.

§10. Effect of Bankruptcy. This Guaranty shall survive the occurrence of any Insolvency Proceeding with respect to CMSC or any other Person. No automatic stay under the Bankruptcy Code or other federal, state or other applicable bankruptcy, insolvency or

reorganization statutes to which CMSC is subject shall postpone the obligations of the Performance Guarantor under this Guaranty.

§11. Successors and Assigns. This Guaranty shall be binding upon the Performance Guarantor and its successors and assigns, and shall inure to the benefit of and be enforceable by CMF, ARSC, the Issuer, the Indenture Trustee and their respective successors, transferees and assigns. The Performance Guarantor hereby acknowledges that this Guaranty will be assigned by the Issuer to the Indenture Trustee. The Performance Guarantor may not assign or transfer any of its obligations hereunder without the prior written consent of CMF, the Issuer and the Indenture Trustee, acting at the direction of the Majority Investors. Without limiting the generality of the foregoing sentence, each Guarantied Party may, to the extent permitted by the Transaction Documents, assign or otherwise transfer all or any portion of its rights and obligations under the Transaction Documents, or sell participations in any interest therein, to any other entity or other Person, and such other entity or other Person shall thereupon become vested, to the extent set forth in the agreement evidencing such assignment, transfer or participation, with all the rights in respect thereof granted to such Guarantied Party herein.

§12. Amendments and Waivers. No amendment or waiver of any provision of this Guaranty nor consent to any departure by the Performance Guarantor therefrom shall be effective unless the same shall be in writing and signed by CMF, the Issuer and the Indenture Trustee, acting at the direction of the Majority Investors. No failure on the part of any Guarantied Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

§13. Notices. All notices and other communications called for hereunder shall be made in writing and, unless otherwise specifically provided herein, shall be deemed to have been duly made or given when delivered by hand or mailed first class, postage prepaid, or, in the case of telegraphic, telexed or telexed notice, when transmitted, answer back received, addressed as follows: (i) if to the Performance Guarantor, Six Sylvan Way, Parsippany, New Jersey 07054, Attention: Treasurer, (ii) if to CMF, at its address for notices set forth in the Purchase Agreement, (iii) if to the Issuer, to its address for notices set forth in the Indenture and (iv) if to the Indenture Trustee, to its address for notices set forth in the Indenture.

§14. GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

§15. SUBMISSION TO JURISDICTION. EACH PARTY HERETO HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY NEW YORK STATE OR FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK, NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER TRANSACTION DOCUMENT, AND HEREBY (a) IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE

HEARD AND DETERMINED IN SUCH NEW YORK STATE OR FEDERAL COURT; (b) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING; AND (c) IN THE CASE OF THE PERFORMANCE GUARANTOR, IRREVOCABLY APPOINTS CT CORPORATION SYSTEM (THE "PROCESS AGENT"), WITH AN OFFICE ON THE DATE HEREOF AT 111 EIGHTH AVENUE, NEW YORK, NEW YORK 10011, UNITED STATES OF AMERICA, AS ITS AGENT TO RECEIVE ON BEHALF OF IT AND ITS PROPERTY SERVICE OF COPIES OF THE SUMMONS AND COMPLAINT AND ANY OTHER PROCESS WHICH MAY BE SERVED IN ANY SUCH ACTION OR PROCEEDING. SUCH SERVICE MAY BE MADE BY MAILING OR DELIVERING A COPY OF SUCH PROCESS TO THE PERFORMANCE GUARANTOR IN CARE OF THE PROCESS AGENT AT THE PROCESS AGENT'S ABOVE ADDRESS, AND THE PERFORMANCE GUARANTOR HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS THE PROCESS AGENT TO ACCEPT SUCH SERVICE ON ITS BEHALF. THE PERFORMANCE GUARANTOR AGREES TO ENTER INTO ANY AGREEMENT RELATING TO SUCH APPOINTMENT WHICH THE PROCESS AGENT MAY CUSTOMARILY REQUIRE, AND TO PAY THE PROCESS AGENT'S CUSTOMARY FEES UPON DEMAND. AS AN ALTERNATIVE METHOD OF SERVICE, THE PERFORMANCE GUARANTOR ALSO IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OF SUCH PROCESS TO THE PERFORMANCE GUARANTOR AT ITS ADDRESS SPECIFIED HEREIN. NOTHING IN THIS SECTION 16 SHALL AFFECT THE RIGHT OF EITHER PARTY HERETO TO SERVE LEGAL PROCESS IN ANY OTHER PERMITTED BY LAW OR AFFECT THE RIGHT OF EITHER PARTY HERETO TO BRING ANY ACTION OR PROCEEDING AGAINST THE OTHER PARTY HERETO OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION.

§16. WAIVER OF JURY TRIAL. EACH PARTY HERETO WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR RELATING TO THIS GUARANTY, ANY OTHER TRANSACTION DOCUMENT, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), ACTIONS OF EITHER OF THE PARTIES HERETO OR ANY OTHER RELATIONSHIP EXISTING IN CONNECTION WITH THIS GUARANTY OR ANY OTHER TRANSACTION DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

§17. Miscellaneous. This Guaranty constitutes the entire agreement of the Performance Guarantor with respect to the matters set forth herein. No failure on the part of any Guarantied Party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies herein provided are cumulative and not exclusive of any remedies provided by law or any other agreement, and this Guaranty shall be in addition to any other guaranty of or collateral security for any of the Obligations. The provisions of this Guaranty are severable, and in any action or

proceeding involving any state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of the Performance Guarantor hereunder would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of the Performance Guaranty, the amount of such liability shall, without any further action by the Performance Guarantor, CMF or the Issuer be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding. The invalidity or unenforceability of any one or more sections of this Guaranty shall not affect the validity or enforceability of its remaining provisions. Captions are for ease of reference only and shall not affect the meaning of the relevant provisions. The meanings of all defined terms used in this Guaranty shall be equally applicable to the singular and plural forms of the terms defined.

IN WITNESS WHEREOF, the Performance Guarantor has caused this Guaranty to be executed and delivered as of the date first above written.

PHH CORPORATION

By: /s/ John M. Peterson  
Name: John M. Peterson  
Title: Assistant Treasurer

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Acknowledged and Accepted as of this 25<sup>th</sup> day of April, 2000

CENDANT MOBILITY FINANCIAL CORPORATION

By: /s/ John M. Peterson  
Name: John M. Peterson  
Title: Assistant Treasurer

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APPLE RIDGE FUNDING LLC, as Issuer

By: /s/ John M. Peterson  
Name: John M. Peterson  
Title: Assistant Treasurer

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Signature Page to Performance Guaranty

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## ASSIGNMENT AND ASSUMPTION

## AGREEMENT

## RELATING TO

PERFORMANCE GUARANTY  
(Apple Ridge)

This Assignment and Assumption Agreement (this "Assignment") is entered into with respect to that Performance Guaranty (the "Guaranty") dated as of April 25, 2000, given by PHH Corporation, a Maryland corporation ("PHH"), in favor of Cendant Mobility Financial Corporation, a Delaware corporation ("CMF") and Apple Ridge Funding LLC, a Delaware limited liability company, as Issuer (the "Issuer") under the Master Indenture dated as of April 25, 2000 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture") between the Issuer, JPMorgan Chase Bank, National Association, a national banking association (formerly Bank One, National Association), as indenture trustee under the Indenture (the "Indenture Trustee") and The Bank of New York, as paying agent, authentication agent and transfer agent and registrar.

This Assignment is between PHH and Cendant Corporation, a Delaware corporation ("Cendant") and is agreed and consented to and accepted by CMF, the Issuer and the Indenture Trustee at the direction of the MBIA Insurance Corporation, as Series Enhancer and deemed Holder of 100% of the Notes issued and outstanding under the Indenture. Unless otherwise defined herein, all capitalized terms used in this Assignment shall have the respective meanings ascribed to them in the Guaranty.

WHEREAS, CMF and the Issuer were at the time of execution of the Guaranty, wholly owned subsidiaries of PHH;

WHEREAS, at the time of execution of the Assignment or shortly thereafter CMF and the Issuer will cease to be wholly owned subsidiaries of PHH, but will remain as wholly owned subsidiaries of Cendant;

WHEREAS, Cendant is expected to receive substantial direct and indirect benefits from the transactions contemplated in the Purchase Agreement, the Receivables Purchase Agreement, the Transfer and Servicing Agreement and the Indenture;

WHEREAS, for good and valuable consideration, the sufficiency of which is hereby recognized, Cendant has agreed to assume all of the obligations of PHH under the Guaranty and upon such assumption, CMF, the Issuer and the Indenture Trustee, at the direction of the Series Enhancer, have agreed to release PHH from all of its obligations under the Guaranty.

NOW, THEREFORE,

1. Assignment. PHH hereby sells, assigns and transfers to Cendant and Cendant hereby accepts, purchases and acquires, all of PHH's right, title and interest in and to the Guaranty and all of PHH's rights, claims and causes of action, if any, related thereto, free and

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clear of all liens, pledges, claims, security interests, encumbrances, charges, restrictions, or limitations of any kind.

2. **Assumption.** Cendant hereby assumes and agrees to perform all of the liabilities and obligations of PHH under and with respect to the Guaranty, adopts and agrees to each provision of the Guaranty. Effective as of the date hereof, Cendant, by execution and delivery of this Assignment, shall become and hereby does become the Performance Guarantor in full and complete substitution for PHH and Cendant hereby agrees to be bound by all of the terms and conditions of the Guaranty.

3. **Release.** As a result of the assignment by PHH and the assumption by Cendant as provided in Sections 1 and 2 above, CMF, the Issuer and the Indenture Trustee at the direction of the Series Enhancer, hereby release PHH from the terms of the Guaranty and each agrees that PHH shall no longer be a party to the Guaranty and shall have no further obligation or liabilities thereunder.

4. **Conditions Precedent.** The effectiveness of this Assignment is subject to: (i) the execution of the Omnibus Amendment, Agreement and Consent, to be dated as of December 20, 2004 by Cendant Mobility Services Corporation, CMF, Apple Ridge Services Corporation, the Issuer, the Indenture Trustee, The Bank of New York, MBIA Insurance Corporation, Fairway Finance Company, LLC (as successor to Fairway Finance Corporation), Harris Nesbitt Corp. (f/k/a/ BMO Nesbitt Burns Corp.), Atlantic Asset Securitization Corp. and Calyon New York Branch and (ii) the receipt by Harris Nesbitt Corp. and Calyon New York Branch of opinions regarding certain corporate matters with respect to Cendant and the legal, valid and binding obligation of the Guaranty.

5. **Representations and Warranties.** On the date hereof and as of the date hereof, Cendant hereby makes each of the representations set forth in Section 6 of the Guaranty, except that with respect to subsection (a), Cendant hereby represents and warrants that it is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware rather than under the laws of Maryland, but Cendant otherwise makes the representations and warranties set forth in such subsection.</FONT>

6. **Notices.** Section 13 of the Guaranty shall provide that notices to be given to the Performance Guarantor, shall be given as provided in such Section 13 to Cendant Corporation, 1 Campus Drive, Parsippany, New Jersey 07054, Attention: Treasury, with a copy to the Legal Department.

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This Assignment entered into this 20th day of December 2004.

PHH CORPORATION

By: /s/ David B. Wyshner

Name: David B. Wyshner

Title: EVP, CEO and Treasurer

CENDANT CORPORATION

By: /s/ Ronald L. Nelson

Name: Ronald L. Nelson

Title: President and Chief Financial Officer

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION, as Indenture Trustee

By: /s/ Keith L. Richardson

Name: Keith Richardson

Title: President and Chief Financial Officer

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Agreed, consented to and accepted  
on this 20th day of December 2004 by:

CENDANT MOBILITY FINANCIAL CORPORATION

By: /s/ David B. Wyshner  
Name: David B. Wyshner  
Title: EVP and Treasurer

APPLE RIDGE FUNDING LLC, as Issuer

By: /s/ David B. Wyshner  
Name: David B. Wyshner  
Title: EVP and Treasurer

The undersigned hereby instructs the Indenture  
Trustee to agree, consent to and accept this Assignment:

MBIA INSURANCE CORPORATION

By: /s/ Andres P. Laterza  
Name: Andrew P. Laterza  
Title Vice President

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**OMNIBUS AMENDMENT,  
AGREEMENT AND CONSENT  
(Apple Ridge)**

THIS OMNIBUS Amendment, Agreement and Consent (this "Agreement") is entered into this 20th day of December 2004 for the purpose of recognizing and agreeing to the assignment by PHH Corporation ("PHH") of its rights and obligations under the Performance Guaranty described herein to Cendant Corporation ("Cendant") and Cendant's assumption of such rights and obligations and for the purpose of making amendments to the documents described in this Agreement related to such assignment.

WHEREAS this Agreement relates primarily to the Performance Guaranty dated as of April 25, 2000 (the "Performance Guaranty") originally given by PHH in favor of Cendant Mobility Financial Corporation, and Apple Ridge Funding LLC, as Issuer. As of the date hereof, PHH and Cendant have entered into a Assignment and Assumption Agreement (the "Assignment") pursuant to which PHH has assigned to Cendant all of PHH's rights and obligations and Cendant has accepted and assumed all of PHH's rights and obligations under the Performance Guaranty.

WHEREAS, this Agreement is among (i) Cendant Mobility Services Corporation, a Delaware corporation ("CMSC"), (ii) Cendant Mobility Financial Corporation, a Delaware Corporation ("CMF"), (iii) Apple Ridge Services Corporation, a Delaware corporation ("ARSC"), (iv) Apple Ridge Funding LLC, a limited liability company organized under the laws of the State of Delaware (the "Issuer"), (v) JPMorgan Chase Bank, National Association, a national banking association, as Indenture Trustee (the "Indenture Trustee"), (vi) The Bank of New York, a New York state banking corporation (the "Paying Agent"), as paying agent, authentication agent and transfer agent and registrar, (vii) MBIA Insurance Corporation, a stock insurance company organized under the laws of the State of New York ("MBIA"), as insurer and series enhancer, (viii) Fairway Finance Company, LLC (as successor to Fairway Finance Corporation), as purchaser of the Series 2000-2 Notes, (ix) Harris Nesbitt Corp. (f/k/a BMO Nesbitt Burns Corp.), as Administrative Agent for the purchaser of the Series 2000-2 Notes (the "Series 2000-2 Administrative Agent"), (x) Atlantic Asset Securitization Corp., as the Conduit Purchaser of the Series 2000-3 Notes, and (xi) Calyon New York Branch (formerly Credit Lyonnais New York Branch,) as Committed Purchaser and as the Administrative Agent with respect to the Series 2000-3 Notes (the "Series 2000-3 Administrative Agent"), which, by their signatures hereto, each of Fairway Finance Company, LLC and Atlantic Asset Securitization Corp. (in the aggregate constituting the Majority Investors) and MBIA Insurance Corporation hereby direct the Indenture Trustee to agree, consent to and accept this Agreement.

WHEREAS, this Agreement relates to the following documents:

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--Purchase Agreement dated as of April 25, 2000 (the "Purchase Agreement") by and between CMSC, as Originator and CME, as Buyer;

--Receivables Purchase Agreement dated as of April 25, 2000 (the "Receivables Purchase Agreement") by and between CME, as originator and seller and ARSC, as buyer;

--Transfer and Servicing Agreement dated as of April 25, 2000 (the "Transfer and Servicing Agreement") by and between ARSC, as transferor, CMSC, as originator and servicer, CME, as originator, the Issuer, as transferee and the Indenture Trustee;

--Master Indenture dated as of April 25, 2000 (the "Master Indenture") among the Issuer, the Indenture Trustee, the Paying Agent;

--Insurance Agreement dated as of April 25, 2000 (the "Series 2000-1 Insurance Agreement") among MBIA, as Insurer, CMSC, as an Originator and as Servicer, CME, as an Originator, ARSC, as transferor, the Issuer and the Indenture Trustee.

--Insurance Agreement dated as of June 2, 2000 (the "Series 2000-2 Insurance Agreement") among MBIA, as Insurer, CMSC, as an Originator and as Servicer, CME, as an Originator, ARSC, as transferor, the Issuer and the Indenture Trustee;

--Insurance Agreement dated as of August 2, 2000 (the "Series 2000-3 Insurance Agreement") among MBIA, as Insurer, CMSC, as an Originator and as Servicer, CME, as an Originator, ARSC, as transferor, the Issuer and the Indenture Trustee;

WHEREAS, the Purchase Agreement, Receivables Purchase Agreement, Transfer and Servicing Agreement, Master Indenture, Series 2000-1 Insurance Agreement, Series 2000-2 Insurance Agreement and Series 2000-3 Insurance Agreement are, in this Agreement, collectively the "Affected Documents;"

WHEREAS, terms used in this Agreement and not defined herein shall have the meanings assigned to such terms in the Purchase Agreement or, if not defined therein, in the Series 2000-1 Indenture Supplement, Series 2000-2 Indenture Supplement or the Series 2000-3 Indenture Supplement, as applicable.

WHEREAS, on the date hereof PHH, Cendant, CME, the Issuer, the Indenture Trustee and MBIA have entered into an Assignment and Assumption Agreement Relating to Performance Guaranty (the "Assignment") substantially in the form attached hereto as Exhibit A and pursuant to which PHH has assigned to Cendant and Cendant has assumed all of the rights and obligations of the Performance Guarantor contained in the Performance Guaranty;

NOW, THEREFORE, the parties hereto hereby recognize and agree:

1. Cendant has been substituted for PHH as Performance Guarantor and each reference in the Affected Documents to "Performance Guarantor" shall be and hereby is amended to mean Cendant. All references in the Affected Documents to "Performance Guarantor" shall on and after the date of this Agreement mean Cendant Corporation, a Delaware corporation and its successors and permitted assigns.

2. All references in the Affected Documents to the PHH Guaranty shall on and after the date of this Agreement mean the original PHH Guaranty dated as of April 25, 2000 together with the Assignment.

3. All references in the Affected Documents to copies of Form 8-Ks to be furnished by the Performance Guarantor to any party to the Affected Documents are hereby revised to be considered to be delivered to such parties when the Form 8-Ks are made available on the internet via publicly available Securities and Exchange Commission filings.

4. In the Transfer and Servicing Agreement, the following provisions are hereby deleted and shall from and after the date of this Agreement be of no further effect:

(a) In Section 1.01, the definitions of "Consolidated Net Income," "Consolidated Net Worth" and "Consolidated Subsidiaries" are hereby deleted.

(b) In Section 9.01, subsection (e) is hereby deleted and marked as "Reserved."

5. After revising and deleting the provisions set forth in paragraphs 3 and 4 above, all remaining references in the Affected Documents to PHH shall be deemed to be and it is agreed all such references shall be to Cendant.

6. As a result of the Assignment and the amendments provided in the foregoing provisions of this Agreement, the respective parties to each of the following documents acknowledges and agrees that Cendant has become and is, for purposes of such documents, the successor to PHH and the PHH Guaranty has the meaning assigned thereto in the Purchase Agreement as amended by this Agreement:

--Indenture Supplement dated as of April 25, 2000 (the "Series 2000-1 Indenture Supplement") among the Issuer, the Indenture Trustee and the Paying Agent and relating to the Issuer's Series 2000-1 Notes.

--Indenture Supplement dated as of June 2, 2000 (the "Series 2000-2 Indenture Supplement") among the Issuer, the Indenture Trustee and the Paying Agent and relating to the Issuer's Series 2000-2 Notes.

--Indenture Supplement dated as of August 2, 2000 (the "Series 2000-3 Indenture Supplement") among the Issuer, the Indenture Trustee and the Paying Agent and relating to the Issuer's Series 2000-3 Notes;

--Note Purchase Agreement dated as of June 2, 2000 among the Issuer, CMSC, as the Servicer, Fairway Finance Company, LLC (as successor to Fairway Finance Corporation), as the Purchaser, and Harris Nesbitt Corp. (f/k/a BMO Nesbitt Burns Corp.), as the Administrative Agent; and

--Note Purchase Agreement dated as of August 2, 2000 among the Issuer, CMSC, as the Servicer, Atlantic Asset Securitization Corp., as the Conduit Purchaser and Credit Lyonnais New York Branch, as Committed Purchaser and as the Administrative Agent.

7. The execution of this Agreement is subject to the receipt by the Series 2000-2 Administrative Agent and the Series 2000-3 Administrative Agent of opinions regarding certain corporate matters with respect to Cendant and the legal, valid and binding obligation of the Performance Guaranty.

8. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

9. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

CENDANT MOBILITY SERVICES CORPORATION

By: /s/ David B. Wyshner  
Name: David B. Wyshner  
Title: EVP and Treasurer

CENDANT MOBILITY FINANCIAL CORPORATION

By: /s/ David B. Wyshner  
Name: David B. Wyshner  
Title: EVP and Treasurer

APPLE RIDGE SERVICES  
CORPORATION

By: /s/ David B. Wyshner  
Name: David B. Wyshner  
Title: EVP and Treasurer

APPLE RIDGE FUNDING LLC,  
as Issuer

By: /s/ David B. Wyshner  
Name: David B. Wyshner  
Title: EVP and Treasurer

[Signature Page to Apple Ridge Omnibus Amendment]

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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Indenture Trustee

By: /s/ Keith Richardson

Name: Keith Richardson

Title: Attorney-in-Fact

THE BANK OF NEW YORK,  
as Paying Agent

By: /s/ Catherine L. Cerilles

Name: Catherine L. Cerilles

Title: Assistant Vice President

MBIA INSURANCE CORPORATION,  
as Insurer and Series Enhancer

By: /s/ Andrew P. Laterza

Name: Andrew P. Laterza

Title: Vice President

FAIRWAY FINANCE COMPANY, LLC (as successor to Fairway Finance  
Corporation), as Purchaser of the Series 2000-2 Notes

By: /s/ Jill A. Gordon

Name: Jill A. Gordon

Title: Vice President

[Signature Page to Apple Ridge Omnibus Amendment]

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HARRIS NESBITT CORP. (f/k/a BMO Nesbitt Burns Corp.), as Administrative Agent  
for the purchaser of the Series 2000-2 Notes

By: /s/ Brian T. Zaban

Name: Brian T. Zaban

Title: Vice President

ATLANTIC ASSET SECURITIZATION CORP., as the Conduit Purchaser of the Series  
2000-3 Notes

By: /s/ David C. Fink

Name: David C. Fink

Title: Managing Director

By: /s/ Sam Pilcer

Name: Sam Pilcer

Title: Managing Director

CALYON NEW YORK BRANCH (formerly Credit Lyonnais New York Branch), as  
Committed Purchaser and as the Administrative Agent with respect to the Series 2000-3  
Notes

By: /s/ David C. Fink

Name: David C. Fink

Title: Managing Director

By: /s/ Sam Pilcer

Name: Sam Pilcer

Title: Managing Director

[Signature Page to Apple Ridge Omnibus Amendment]

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**SECOND OMNIBUS AMENDMENT,  
AGREEMENT AND CONSENT  
(Apple Ridge)**

THIS SECOND OMNIBUS Amendment, Agreement and Consent (this "Agreement") is entered into this 31<sup>st</sup> day of January 2005 for the purpose of issuing a series of Secured Variable Funding Notes, Series 2005-1, and for the purpose of making amendments to the documents described in this Agreement related to such issuance.

WHEREAS, this Agreement is among (i) Cendant Mobility Services Corporation, a Delaware corporation ("CMSC"), (ii) Cendant Mobility Financial Corporation, a Delaware Corporation ("CMF"), (iii) Apple Ridge Services Corporation, a Delaware corporation ("ARSC"), (iv) Cendant Mobility Client-Backed Relocation Receivables Funding LLC, formerly known as Apple Ridge Funding LLC, a limited liability company organized under the laws of the State of Delaware (the "Issuer"), (v) JPMorgan Chase Bank, National Association, a national banking association, as Indenture Trustee (the "Indenture Trustee") and (vi) The Bank of New York, a New York state banking corporation (the "Paying Agent"), as paying agent, authentication agent and transfer agent and registrar.

WHEREAS, this Agreement relates to the following documents (each as previously amended by that certain Omnibus Amendment, Agreement and Consent dated as of December 20, 2004 entered into by the parties hereto):

--Purchase Agreement dated as of April 25, 2000 (the "Purchase Agreement") by and between CMSC, as Originator and CMF, as Buyer;

--Receivables Purchase Agreement dated as of April 25, 2000 (the "Receivables Purchase Agreement") by and between CMF, as originator and seller and ARSC, as buyer;

--Transfer and Servicing Agreement dated as of April 25, 2000 (the "Transfer and Servicing Agreement") by and between ARSC, as transferor, CMSC, as originator and servicer, CMF, as originator, the Issuer, as transferee and the Indenture Trustee;

--Master Indenture dated as of April 25, 2000 (the "Master Indenture") among the Issuer, the Indenture Trustee and the Paying Agent;

WHEREAS, the Purchase Agreement, Receivables Purchase Agreement, Transfer and Servicing Agreement and Master Indenture are, in this Agreement, collectively the "Affected Documents;"

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WHEREAS, terms used in this Agreement and not defined herein shall have the meanings assigned to such terms in the Purchase Agreement, and, if not defined therein, as defined in the Master Indenture.

NOW, THEREFORE, effective upon the Effective Date (as defined below), the parties hereto hereby recognize and agree:

1. The Purchase Agreement is hereby amended as follows:
  - 1.1 Appendix A is hereby amended to add thereto the following definitions in alphabetical order:
    - “**Aggregate Receivable Balance**” shall have the meaning set forth in the Indenture as in effect on January 31, 2005.
    - “**Cendant**” shall mean Cendant Corporation, a Delaware corporation, and any successors thereto.
    - “**Cendant Guarantee**” shall mean that certain performance guarantee dated as of the Closing Date, executed by PHH, as amended and modified by that certain Assignment and Assumption Agreement dated as of December 20, 2004 by and among Cendant, PHH and the Indenture Trustee.
    - “**CRESG**” shall mean Cendant Real Estate Services Group LLC, a Delaware limited liability company, and any successors thereto.
    - “**CRESG Guarantee**” shall mean that certain performance guarantee dated as of January 31, 2005, executed by CRESG in favor of the Buyer and the Issuer.
    - “**Performance Guarantee**” shall mean either the Cendant Guarantee or the CRESG Guarantee, as the context may require, and the term “**Performance Guarantees**” shall mean both the Cendant Guarantee and the CRESG Guarantee.
  - 1.2 The definition of “**CMSC Collections**” is hereby amended to delete therefrom the phrase “from PHH in respect of any payments made by PHH as guarantor of the obligations of CMSC under the PHH Guarantee” and substitute the following therefor: “from either Performance Guarantor in respect of any payments made by such Performance Guarantor as guarantor of the obligations of CMSC under the Performance Guarantee executed by it;”.
  - 1.3 The definition of “**Defaulted Receivable**” is hereby amended to delete from clause (c) thereof the phrase “more than 150 days after the invoice date thereof” and substitute therefor the phrase “more than 120 days after the due date thereof”.

- 1.4 The definition of "Eligible Contracts" is hereby amended to delete from clause (a) thereof the phrase "and all of the Receivables under such Contract that are subject to such restriction constitute rights to payment for services rendered not evidenced by an instrument or chattel paper" and substitute therefor the phrase "and such restriction is not effective under Section 9-406 or Section 9-408 of the UCC, as applicable."
- 1.5 The definition of "Eligible Receivable" is hereby amended to delete from clause (i) thereof the phrase "if such Receivable constitutes a right to payment for services rendered not evidenced by an instrument or chattel paper" and substitute therefor the phrase "if such restriction is not effective under Section 9-406 or Section 9-408 of the UCC, as applicable."
- 1.6 The definition of "Eligible Receivable" is hereby further amended to delete from clause (l) thereof the phrase "so long as such reduction is included in the determination of the Aggregate Employer Balance with respect to the related Obligor" and substitute therefor the phrase "so long as such reduction is either included in the determination of the Aggregate Employer Balance with respect to the related Obligor, or, in the case of any Advance Payment, subtracted in the determination of the Aggregate Receivable Balance".
- 1.7 The definition of "Performance Guarantor" is hereby deleted in its entirety and the following is substituted therefor:  
**"Performance Guarantor" shall mean either Cendant or CRESG, as the context may require, and the term "Performance Guarantors" shall mean both Cendant and CRESG.**
- 1.8 The definition of "PHH Guarantee" is hereby deleted in its entirety.
- 1.9 The definition of "Transaction Documents" is hereby amended to delete therefrom the phrase "the PHH Guarantee" and substitute therefor the phrase "the Performance Guarantees".
- 1.10 Section 3.1(a) is hereby amended to delete the text thereof in its entirety and to substitute therefor "Intentionally Omitted".
- 1.11 Section 3.1(b) is hereby amended to delete clause (ii) of the first sentence thereof and substitute the following therefor:  
**"(ii) thereafter the Buyer shall pay to the Originator, as provided in Section 4.1, a purchase price (each such purchase price, the "CMF Purchase Price") in an amount that the Originator and the Buyer mutually agree is the fair market value of such CMSC Purchased Assets."**
- 1.12 Section 4.1 is amended by deleting the second sentence thereof in its entirety and substituting the following therefor:

**"On each other Business Day in each Monthly Period, on the terms and subject to the conditions of this Agreement, the Buyer shall pay to the Originator in cash an amount mutually agreed upon by the Originator and the Buyer on account of the CMF Purchase Price for the CMSC Purchased Assets purchased by the Buyer during such Monthly Period. Within seven Business Days after the end of each Monthly Period, the Originator shall deliver to the Buyer an accounting with respect to all Purchases of CMSC Purchased Assets that were made during such Monthly Period and the aggregate CMF Purchase Price for all the CMSC Purchased Assets that were purchased by the Buyer during such Monthly Period. If the payments on account of the CMF Purchase Price for such Monthly Period exceed the aggregate CMF Purchase Price set forth in such report minus the aggregate Originator Adjustments for such Monthly Period calculated pursuant to Section 4.3(c), then the Originator shall promptly pay such excess to the Buyer in cash and if the payments on account of the CMF Purchase Price for such Monthly Period are less than the aggregate CMF Purchase Price set forth in such report minus the aggregate Originator Adjustments for such Monthly Period calculated pursuant to Section 4.3(c), then the Buyer shall promptly pay such deficiency to the Originator in cash."**

1.13 Section 4.3(c), is amended by deleting the first sentence thereof in its entirety and substituting the following therefor:

**"Within seven Business Days after the end of each Monthly Period, the Originator shall pay to the Buyer, in accordance with Section 4.4 and as provided in Section 4.1, an amount (an "Originator Adjustment") equal to the sum of (A) the aggregate Originator Dilution Adjustments, if any, owing on account of each day during such Monthly Period plus (B) the aggregate CMSC Noncomplying Asset Adjustments, if any, owing on account of each day during such Monthly Period."**

1.14 Section 7.2(a) (regarding delivery of financial statements) is hereby amended (x) to delete each reference therein to "the Performance Guarantor" and substitute therefor the phrase "Cendant" and (y) to add at the conclusion thereof the following: "and (iii) copies of the annual financial statements of CRESG on a consolidated basis for such fiscal year, setting forth in each case in comparative form the corresponding figures for the preceding fiscal year and certified by CRESG's controller or a vice-president responsible for the financial administration of CRESG (it being understood and agreed that such statements of earnings will be prepared in accordance with CRESG's customary management accounting practices as in effect on January 1, 2005 and need not be prepared in accordance with GAAP)."

1.15 Section 7.3(j) is hereby amended to delete therefrom the phrase "the Performance Guarantor or any Affiliate thereof" and substitute therefor the phrase "CRESG, Cendant or any Affiliate thereof".

- 1.16 Section 9.1(c) is hereby amended to delete clauses (ii) and (iii) thereof in their entirety and substitute therefor the following “(ii) either Performance Guarantor shall fail to make any required payment under its Performance Guarantee and such failure shall remain unremedied for one Business Day or (iii) either Performance Guarantor shall otherwise fail to perform under its Performance Guarantee”.
- 1.17 Section 9.1(d) is hereby amended to delete therefrom the phrase “the Performance Guarantor” and substitute therefor the phrase “either Performance Guarantor”.
- 1.18 Section 9.1(g) is hereby amended to delete therefrom the phrase “or the PHH Guarantee” and substitute therefor the phrase “or either of the Performance Guarantees”.
- 2 The Receivables Purchase Agreement is hereby amended as follows:
- 2.1 Section 2.1(a)(i) is hereby amended to delete therefrom the phrase “the PHH Guarantee” and substitute therefor the phrase “the Performance Guarantees”.
- 2.2 The definition of “CMF Collections” is hereby amended to delete clause (g) thereof in its entirety and substitute the following therefor: “from either Performance Guarantor in respect of any payments made by such Performance Guarantor as guarantor of the obligations of the Originator or the Servicer under the Performance Guarantee executed by it”.
- 2.3 The definition of “CMF Pool Asset” is hereby amended to delete from clause (b) thereof the phrase “the PHH Guarantee” and substitute therefor the phrase “the Performance Guarantees”.
- 2.4 The definition of “Transaction Documents” is hereby amended to delete therefrom the phrase “the PHH Guarantee” and substitute therefor the phrase “the Performance Guarantees”.
- 2.5 Section 3.1(a) is hereby amended to delete the text thereof in its entirety and to substitute therefor "Intentionally Omitted".
- 2.6 Section 3.1(b) is hereby amended to delete clause (ii) of the first sentence thereof and substitute the following therefor:
- "(ii) thereafter ARSC shall pay to the Seller, as provided in Section 4.1, a purchase price (each such purchase price, the "ARSC Purchase Price") in an amount that the Seller and ARSC mutually agree is the fair market value of such ARSC Purchased Assets."**
- 2.7 Section 4.1 is amended by deleting the second sentence thereof in its entirety and substituting the following therefor:

**"On each other Business Day in each Monthly Period, on the terms and subject to the conditions of this Agreement, ARSC shall pay to the Seller in cash an amount mutually agreed upon by the Seller and ARSC on account of the ARSC Purchase Price for the ARSC Purchased Assets purchased by ARSC during such Monthly Period. Within seven Business Days after the end of each Monthly Period, the Seller shall deliver to ARSC an accounting with respect to all Purchases of ARSC Purchased Assets that were made during such Monthly Period and the aggregate ARSC Purchase Price for all the ARSC Purchased Assets that were purchased by ARSC during such Monthly Period. If the payments on account of the ARSC Purchase Price for such Monthly Period exceed the aggregate ARSC Purchase Price set forth in such report minus the aggregate Originator Adjustments for such Monthly Period calculated pursuant to Section 4.3(c), then the Seller shall promptly pay such excess to ARSC in cash and if the payments on account of the ARSC Purchase Price for such Monthly Period are less than the aggregate ARSC Purchase Price set forth in such report minus the aggregate Originator Adjustments for such Monthly Period calculated pursuant to Section 4.3(c), then ARSC shall promptly pay such deficiency to the Seller in cash."**

2.8 Section 4.3(c), is amended by deleting the first sentence thereof in its entirety and substituting the following therefor:

**"Within seven Business Days after the end of each Monthly Period, the Seller shall pay to ARSC, in accordance with Section 4.4 and as provided in Section 4.1, an amount (an "Originator Adjustment") equal to the sum of (A) the aggregate Originator Dilution Adjustments, if any, owing on account of each day during such Monthly Period plus (B) the aggregate CMF Noncomplying Asset Adjustments, if any, owing on account of each day during such Monthly Period."**

2.9 Section 7.2(a) (regarding delivery of financial statements) is hereby amended (x) to delete each reference therein to "the Performance Guarantor" and substitute therefor the phrase "Cendant".

2.10 Section 9.1(c) is hereby amended to delete clauses (iii) and (iv) thereof in their entirety and substitute therefor the following "(iii) either Performance Guarantor shall fail to make any required payment under its Performance Guarantee and such failure shall remain unremedied for one Business Day or (iv) either Performance Guarantor shall otherwise fail to perform under its Performance Guarantee".

2.11 Section 9.1(d) is hereby amended to delete therefrom the phrase "the Performance Guarantor" and substitute therefor the phrase "either Performance Guarantor".

2.12 Section 9.1(g) is hereby amended to delete therefrom the phrase "or the PHH Guarantee" and substitute therefor the phrase "or either of the Performance Guarantees".



2.13 Section 11.18 is hereby amended (x) to delete therefrom the phrase “Cendant Corporation and PHH” and substitute therefor the phrase “Cendant, PHH and CRESG” and (y) to delete therefrom the phrase “Cendant Corporation nor PHH” and substitute therefor the phrase “Cendant, CRESG nor PHH”.

3 The Master Indenture is hereby amended as follows:

3.1 The Granting Clause is hereby amended to delete therefrom the phrase “the PHH Guarantee” and substitute therefor the phrase “the Performance Guarantees”.

3.2 The definition of “Aggregate Employer Balance” is hereby amended: (i) to delete from clause (a) thereof the phrase “including the amount of any Advance Payment made by such Employer with respect to such Receivables or any other obligations of such Employer” and substitute therefor the phrase “excluding the amount of any Advance Payment made by such Employer with respect to such Receivables or any other obligations of such Employer”; (ii) to delete the comma (“,”) immediately preceding clause (b) and substitute therefor the word “and”; (iii) to delete therefrom the phrase “and (c) in the case of all Receivables owed by such Employer, the Unpaid Balance of any Advance Billing Receivables of such Employer”; and (iv) to add the following new sentence at the conclusion thereof: “For the avoidance of doubt, the Aggregate Employer Balance with respect to any Employer shall include the aggregate Unpaid Balance of any Advance Billing Receivables of such Employer.”

3.3 The definition of “Aggregate Receivable Balance” is hereby amended to add at the conclusion thereof the following phrase: “minus the aggregate dollar amount of Advance Payments made by each such Employer minus the aggregate Unpaid Balance of any Advance Billing Receivables of such Employer plus the amount, if any, (such amount, the “Net Credit Balance”) by which (x) the sum of (i) the outstanding Advance Payments received by any Employer with respect to Receivables or any other obligations of such Employer and (ii) the Unpaid Balance of any Advance Billing Receivables of such Employer exceeds (y) the Aggregate Employer Balance with respect to such Employer.”

3.4 Obligor Limit: The definition of “Obligor Limit” is deleted in its entirety and the following is substituted therefor:

**“Obligor Limit” shall mean, as of any date of determination, (a) with respect to each Obligor having an unsecured long-term debt rating (or equivalent shadow rating) of “A+” or better from S&P and “A1” or better from Moody’s, 6% of the Aggregate Receivable Balance, (b) with respect to each Obligor having an unsecured long-term debt rating (or equivalent shadow rating) of less than “A+” but “BBB” or better from S&P and less than “A1” but “Baa2” or better from Moody’s, 4% of the Aggregate Receivable Balance, (c) having an unsecured long-term debt rating (or equivalent shadow rating) of “BBB-” from S&P or of “Baa3” from Moody’s, 2% of the Aggregate Receivable Balance and (d) not having an**

unsecured long-term debt rating (or equivalent) from S&P or Moody's or having an unsecured long-term debt rating (or equivalent shadow rating) of less than "BBB-" from S&P or of less than "Baa3" from Moody's, 1% of the Aggregate Receivable Balance; provided, that, for purposes of calculating the Obligor Limits, an Obligor which has a long-term debt rating from only one of S&P and Moody's will be treated as if it was rated by both agencies at one level below its actual rating; and provided, further that, to the extent set forth in any Supplement, the Noteholders of such Series may in their discretion approve any higher Obligor Limit for any Obligor under such terms and conditions which are acceptable to all Noteholders of such Series. For purposes of calculating the Obligor Limits, no Obligor shall be deemed to have a debt rating based solely on the rating of any Affiliate unless that Affiliate is contractually obligated on the related Receivable of such Obligor, in which event that Obligor and such Affiliate shall be treated as a single Obligor. If an Obligor's unsecured long-term debt rating (or equivalent shadow rating) results in two different Obligor Limits (because of differences in the long-term unsecured debt ratings assigned by each of the Rating Agencies), the Obligor Limit for such Obligor will be the lower of the two different Obligor Limits.

- 3.5 The definition of "Overconcentration Amount" is hereby amended (i) to delete from clause (a)(i)(B) thereof the number "15%" and substitute therefor "18.5%" and (ii) to delete from clause (a)(ii)(B) thereof the number "25%" and substitute therefor the number "27.5%".
- 3.6 The definition of "Transaction Documents" is hereby amended to delete therefrom the phrase "the PHH Guarantee" and substitute therefor the phrase "the Performance Guarantees".
- 3.7 Section 3.02(a) is hereby amended to delete therefrom the phrase "the audited financial statements of the Issuer at the end of such year, prepared by independent certified public accounts of nationally recognized standing" and substitute therefor the phrase "the financial statements of the Issuer at the end of such year, prepared in accordance with GAAP".
- 3.8 Section 3.06(e) is hereby amended to delete therefrom the phrase "or the Performance Guarantor of its obligations under the PHH Guarantee" and substitute therefor the phrase "or either Performance Guarantor of its obligations under the Performance Guarantee executed by it".
- 3.9 Section 8.04 is hereby amended to add a new Section (f), which shall read as follows:

**"(f) Notwithstanding the preceding provisions of this Section 8.04, so long as no Servicer Default or Event of Default shall have occurred and be continuing and no Amortization Period for any Series of Notes is then in effect, the Trustee shall not be required to make the allocations and**

determinations set forth in Section 8.04(c) on any date other than a Distribution Date and, so long as no Asset Deficiency exists or would result therefrom, the Trustee is authorized to release to the Issuer, without an accounting from the Servicer, all Pool Collections not required under the terms of any Supplement to be set aside for the benefit of the Noteholders on any other Deposit Date.”

4 The Transfer and Servicing Agreement is hereby amended as follows:

4.1 Section 1.01 is hereby amended to add the following definition in alphabetical order:

**“Reported EBITDA” shall mean the consolidated income of CSREG from continuing operations before non-program related depreciation and amortization, non-program related interest, amortization of pendings and listings, income taxes and minority interest, in each case in a manner consistent with such number as reported in Cendant’s consolidating financial statements filed by Cendant with the Securities and Exchange Commission under Form 10-K for the most recent fiscal year preceding such 10-K filing, and under Form 10-Q for the period from the beginning of the most recent fiscal year through the end of the fiscal quarter preceding such 10-Q filing.**

4.2 The definition of “Required Marketing Expenses Account Amount” is hereby amended (i) to delete therefrom each reference to “150 days” and substitute therefor “120 days”; (ii) to delete therefrom each reference to “160 days” and substitute therefor “130 days”; (iii) to delete therefrom each reference therein to “170 days” and substitute therefor “140 days” and (iv) to delete therefrom each reference therein to “180 days” and substitute therefor “150 days.”

4.3 Section 3.01(b) is hereby amended to delete therefrom the phrase “any Affiliates of PHH” and substitute therefor the phrase “any Affiliates of Cendant”.

4.4 Section 3.05 is hereby amended to add the following clause (m) at the conclusion thereof:

**(m) Notification of Series 2005-1 Asset Amount Deficiency or Amortization Event. The Servicer shall promptly notify the Issuer of any Asset Deficiency or Amortization Event (as each such term is defined in the Indenture) with respect to any Series of which the Servicer has actual knowledge.**

4.5 Section 3.06(g) is hereby amended to insert the word “Pool” before the word “Collections.”

4.6 Section 3.07(c) is hereby amended to delete from the first sentence thereof the phrase “No later than four Business Days prior to the Distribution Date” and substitute therefor the phrase “No later than two Business Days prior the Distribution Date”.

4.7 Section 3.10(c) is hereby amended to delete the first sentence thereof in its entirety and to substitute therefor the following:

**If (i) the Servicer makes a deposit into the Collection Account in respect of a collection of a Pool Receivable and such collection was received by the Servicer in the form of a check that is not honored for any reason or (ii) the Servicer makes an error with respect to the amount of any Pool Collection and deposits an amount that is less than or more than the actual amount of such Pool Collection, the Servicer shall appropriately adjust the amount subsequently deposited into the Collection Account to reflect such dishonored check or error.**

4.8 Section 3.12(a) is hereby amended to insert the word “Pool” before the word “Collections.”

4.9 Section 3.12(b) is hereby amended to delete therefrom the phrase “from Collections” and to substitute therefor the phrase “from Pool Collections.”

4.10 Section 5.02 is hereby amended to delete therefrom the phrase “the PHH Guarantee” and substitute therefor the phrase “the Performance Guarantees”.

4.11 Section 7.05 is hereby amended to delete therefrom the phrase “any of its Affiliates that is a direct or indirect wholly owned subsidiary of the Performance Guarantor, subject to reaffirmation by the Performance Guarantor of the PHH Guarantee with respect to such Successor Servicer” and substitute therefor the phrase “any of its Affiliates that is a direct or indirect wholly owned subsidiary of the Performance Guarantors, subject to reaffirmation by each Performance Guarantor of its Performance Guarantee with respect to such Successor Servicer”.

4.12 Section 9.01 is hereby amended to add the word “or” immediately at the end of clause (d) thereof and to add immediately thereafter the following sub-clauses (e) and (f):

**“(e) either of the Performance Guarantees shall cease to be in full force and effect for any reason other than in accordance with its terms;  
or**

**(f) as of the end of any fiscal quarter commencing with the fiscal quarter ended December 31, 2004, CRESG shall fail to have maintained a Reported EBITDA of at least \$750,000,000 calculated for the twelve-month period then ending;”**

4.13 Section 9.05 is hereby amended to delete the first sentence thereof in its entirety and substitute therefor the following: “If (a) CMSC is the Servicer and (b) the Average Days in Inventory is more than 120 days, the Servicer shall establish and fund an Eligible Account (the “**Marketing Expenses Account**”) in the name of the Indenture Trustee, bearing a designation clearly indicating that the funds and other property credited thereto are held for the benefit of the Indenture Trustee and, to the extent provided in Section 9.05(b), any Successor Servicer.”

4.14 Article IX is hereby amended to add at the conclusion thereof the following new Section 9.06:

**“Section 9.06. Lockbox Agreements. If a Servicer Default has occurred and is continuing, or to the extent set forth in any Supplement, upon the occurrence of an Amortization Event with respect to any Series of Notes, the Indenture Trustee, as assignee of the Transferor and the Issuer with respect to the Lockboxes, may give Termination Notices to the Lockbox Banks under the Lockbox Agreements in order to terminate the Servicer’s ability to instruct the Lockbox Banks as to the transfers of funds from the Lockbox Accounts and to instruct the Lockbox Banks to follow the directions of the Indenture Trustee as to all such transfers. In the event the Indenture Trustee gives such Termination Notices, all such transfers from the Lockbox Accounts must be made directly to the Collection Account or, to the extent otherwise permitted under the Indenture or an applicable Supplement, to such other accounts established under the Indenture and/or any Supplement for the benefit of the Noteholders.”**

4.15 Section 11.12 is hereby amended (x) to delete therefrom the phrase “Cendant Corporation and PHH” and substitute therefor the phrase “Cendant, PHH and CRESG” and (y) to delete therefrom the phrase “Cendant Corporation nor PHH” and substitute therefor the phrase “Cendant, CRESG nor PHH”.

5 Concurrently with the issuance of the Series 2005-1 Notes and the execution and delivery of this Agreement: (i) the Indenture Supplements and note purchase agreements related to the Series 2000-2 Notes and the Series 2000-3 Notes (collectively, the “Existing VFNs”) shall be, and hereby are, automatically terminated and of no further force and effect, except for such provisions therein which by their terms expressly survive such termination; (ii) all obligations of the holders of the Existing VFNs under such documents to fund any increases thereunder shall automatically terminate and no such future increases shall be funded; and (iii) the Series Enhancer shall be automatically released from any further liability under the Series Enhancement relating to the Existing VFNs.

6 Notwithstanding anything to the contrary in the Affected Documents or any Supplement or the foregoing amendments set forth in this Agreement, until such time as the amount on deposit in the Series 2000-1 Principal Subaccount is equal to the Series Outstanding Amount of the Series 2000-1 Notes, the following provisions (the “Override Provisions”) shall apply:

6.1 The principal amount advanced under the Series 2005-1 Notes shall not exceed \$400,000,000.

6.2 All amounts advanced under the Series 2005-1 Notes shall be funded into the “Series 2005-1 Pre-Funding Subaccount” (as defined in the Supplement for the Series 2005-1 Notes) which is under the control of the Indenture Trustee and the cumulative amounts of funds released to the Issuer from the Series 2005-1 Pre-Funding Account shall not exceed the cumulative dollar amount of funds set aside in the Principal Subaccount for the Series 2000-1

Notes (such account, the "Series 2000-1 Principal Subaccount") and/or subsequently released to pay principal on the Series 2000-1 Notes.

- 6.3 For purposes of determining if an Asset Deficiency exists with respect to Series 2005-1, the Required Asset Amounts for Series 2005-1 shall be calculated as if the Series Outstanding Amount for Series 2005-1 were equal to \$400,000,000 and the outstanding principal amount of the Series 2000-1 Notes were equal to zero.
- 6.4 For purposes of determining if an Asset Deficiency exists with respect to Series 2000-1, subject to the additional provisions set forth in Section 6.5 below, the Required Asset Amounts for Series 2000-1 shall be calculated as if the Series Outstanding Amount for Series 2000-1 were equal to \$400,000,000 and the outstanding principal amount of the Series 2005-1 Notes were equal to zero.
- 6.5 Each Receivables Activity Report delivered under the Transfer and Servicing Agreement shall include (i) a separate calculation of the Adjusted Aggregate Receivables Balance without giving effect to the modifications to the definitions of Overconcentration Amount and Obligor Limit set forth in part 3 of this Agreement (such separate calculation, the "Modified AARB") and (ii) a calculation of the Series 2000-1 Required Asset Amount computed in accordance with the Series 2000-1 Supplement and the Indenture as modified by this Agreement but using the Modified AARB in place of the Adjusted Aggregate Receivables Balance as redefined hereby. It shall constitute a Series 2000-1 Asset Amount Deficiency under the Series 2000-1 Supplement if, based on such separate calculation, the "Series 2000-1 Allocated Adjusted Aggregate Receivables Balance" (as calculated in accordance with the Series 2000-1 Supplement and the Indenture as modified hereby but using the Modified AARB in place of the Adjusted Aggregate Receivables Balance as redefined hereby) is less than the Series 2000-1 Required Asset Amount as of such date.
- 6.6 In the event of any inconsistency between any of the Override Provisions and the provisions of any Affected Document, any Supplement to the Indenture or any other Transaction Document, the Override Provisions shall control; provided, however, that at such time as the amount on deposit in the Series 2000-1 Principal Subaccount is equal to the Series Outstanding Amount of the Series 2000-1 Notes, the Override Provisions shall no longer be of any force and effect.
- 7 This Amendment shall become effective concurrently with the date of issuance of the Series 2005-1 Notes (the "Effective Date") upon satisfaction of the conditions precedent that, as of the time of such issuance: (x) the Series Outstanding Amounts under the Existing VFNs has been reduced to zero and (y) the Indenture Trustee shall have previously received (i) counterparts of the signature pages hereto executed by all parties hereto, (ii) the consent of the Majority Investors and each applicable Series Enhancer to the execution of this

Amendment, and (iii) the Reaffirmation by Cendant Corporation of that certain Performance Guaranty dated April 25, 2000, by PHH Corporation in favor of Cendant Mobility Financial Corporation, as modified by that certain Assignment and Assumption Agreement dated as of December 20, 2004, from PHH Corporation to Cendant Corporation. For the purposes of the signature pages hereto, the term "Investor" is synonymous with the term "Noteholder" as defined in the Master Indenture.

8 THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES.

9 This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

10 Upon the effectiveness of this Agreement: (i) all references in any Affected Document to "this Agreement", "hereof", "herein" or words of similar effect referring to such Affected Document shall be deemed to be references to such Affected Document as amended by this Amendment; (ii) each reference in any of the Affected Documents to any other Affected Document and each reference in any of the other Transaction Documents to any of the Affected Documents shall each mean and be a reference to such Affected Document as amended by this Agreement; and (iii) each reference in any Transaction Document to any of the terms or provisions of an Affected Document which are redefined or otherwise modified hereby shall mean and be a reference to such terms or provisions as redefined or otherwise modified by this Agreement; provided, that, notwithstanding the foregoing or any other provisions of this Agreement, the amendments contained in this Agreement shall not be effective to (x) modify on a retroactive basis any representations or warranties previously made under the Purchase Agreement, Receivables Purchase Agreement or Transfer and Servicing Agreement with respect to Receivables transferred or purported to have been transferred thereunder prior to the Effective Date, which representations and warranties shall continue to speak as of the dates such Receivables were transferred and based on the terms and provisions of the Affected Documents as in effect at such time or (y) otherwise modify the terms of any transfer or purported transfer of any Receivable transferred or purported to be transferred pursuant to the Purchase Agreement prior to the Effective Date.

11 This Agreement shall not be deemed, either expressly or impliedly, to waive, amend or supplement any provision of the Affected Documents other than as set forth herein, each of which Affected Document, as modified hereby, remains in full force and effect and is hereby reaffirmed, ratified and confirmed.

12 By its signature hereto each of the investors signing hereto as an Investor (constituting all of the Investors in Series 2005-1), and MBIA, as the sole Applicable Series Enhancer for all other Series, hereby direct the Indenture Trustee to agree, consent to and accept this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

CENDANT MOBILITY SERVICES CORPORATION

By:           /s/ Elizabeth R. Cohen          

Name: Elizabeth R. Cohen

Title: Vice President and Assistant Treasurer

CENDANT MOBILITY FINANCIAL CORPORATION

By:           /s/ Elizabeth R. Cohen          

Name: Elizabeth R. Cohen

Title: Vice President and Assistant Treasurer

APPLE RIDGE SERVICES CORPORATION

By:           /s/ Elizabeth R. Cohen          

Name: Elizabeth R. Cohen

Title: Vice President and Assistant Treasurer

CENDANT MOBILITY CLIENT-BACKED RELOCATION RECEIVABLES FUNDING LLC

By:           /s/ Elizabeth R. Cohen          

Name: Elizabeth R. Cohen

Title: Vice President and Assistant Treasurer

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JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, as Indenture Trustee

By:           /s/ Daniel C. Brown

Name: Daniel C. Brown, Jr.

Title: Vice President

THE BANK OF NEW YORK,  
as Paying Agent

By:           /s/ Catherine Murray

Name: Catherine Murray

Title: Assistant Treasurer

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The undersigned hereby consent to the execution  
of the above Amendment:

MBIA INSURANCE CORPORATION,  
as the Applicable Series Enhancer

By:           /s/ Andrew P. Laterza          

Name: Andrew P. Laterza

Title: Vice President

FAIRWAY FINANCE COMPANY, LLC (as successor to Fairway Finance Corporation), as an  
Investor

By:           /s/ Jill A. Gordon          

Name: Jill A. Gordon

Title: Vice President

HARRIS NESBITT CORP. (f/k/a BMO Nesbitt Burns Corp.), as an Investor

By:           /s/ Brian T. Zaban          

Name: Brian T. Zaban

Title: Vice President

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ATLANTIC ASSET SECURITIZATION CORP., as an Investor

By:           /s/ David C. Fink

Name: David C. Fink

Title: Managing Director

By:           /s/ Sam Pilcer

Name: Sam Pilcer

Title: Managing Director

CALYON NEW YORK BRANCH (formerly Credit Lyonnais New York Branch), as an Investor

By:           /s/ David C. Fink

Name: David C. Fink

Title: Managing Director

By:           /s/ Sam Pilcer

Name: Sam Pilcer

Title: Managing Director

VICTORY RECEIVABLES CORPORATION, as an Investor

By:           /s/ R. Douglas Donaldson

Name: R. Douglas Donaldson

Title: Treasurer

THE BANK OF TOKYO-MITSUBITSHI, LTD., New York Branch, as an Investor

By:           /s/ A. K. Reddy

Name: A. K. Reddy

Title: Vice President

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LIBERTY STREET FUNDING CORP., as an Investor

By: /s/ Bernard J. Angelo

Name: Bernard J. Angelo

Title: Vice President

THE BANK OF NOVA SCOTIA, as an Investor

By: /s/ J. Alan Edwards

Name: J. Alan Edwards

Title: Managing Director

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## REAFFIRMATION

The undersigned hereby acknowledges receipt of a copy of the foregoing Second Omnibus Amendment, Agreement and Consent dated as of January 31, 2005 among (i) Cendant Mobility Services Corporation, a Delaware corporation ("CMSC"), (ii) Cendant Mobility Financial Corporation, a Delaware Corporation ("CMF"), (iii) Apple Ridge Services Corporation, a Delaware corporation ("ARSC"), (iv) Cendant Mobility Client-Backed Relocation Receivables Funding LLC, formerly known as Apple Ridge Funding LLC, a limited liability company organized under the laws of the State of Delaware (the "Issuer"), (v) JPMorgan Chase Bank, National Association, a national banking association, as Indenture Trustee (the "Indenture Trustee") and (vi) The Bank of New York, a New York state banking corporation (the "Paying Agent"), as paying agent, authentication agent and transfer agent and registrar (the "Amendment") which amends the following documents:

- Purchase Agreement dated as of April 25, 2000 (the "Purchase Agreement") by and between CMSC, as Originator and CMF, as Buyer;
- Receivables Purchase Agreement dated as of April 25, 2000 (the "Receivables Purchase Agreement") by and between CMF, as originator and seller and ARSC, as buyer;
- Transfer and Servicing Agreement dated as of April 25, 2000 (the "Transfer and Servicing Agreement") by and between ARSC, as transferor; CMSC, as originator and servicer; CMF, as originator, the Issuer, as transferee and the Indenture Trustee; and
- Master Indenture dated as of April 25, 2000 (the "Master Indenture") among the Issuer, the Indenture Trustee and the Paying Agent.

Capitalized terms used in this Reaffirmation and not defined herein shall have the meanings given to them in the Amendment, or if not defined therein, the Purchase Agreement, or if not defined therein, the Master Indenture.

Without in any way establishing a course of dealing by the Indenture Trustee, any Series Enhancer, any Administrative Agent, any Noteholder or the undersigned, the undersigned reaffirms the terms and conditions of that certain Performance Guaranty dated April 25, 2000, by PHH Corporation in favor of CMF and the Issuer, as modified by that certain Assignment and Assumption Agreement dated as of December 20, 2004, from PHH Corporation to Cendant Corporation, and acknowledges and agrees that such Performance Guaranty remains in full force and effect and is hereby reaffirmed, ratified and confirmed.

Each reference to the Affected Documents contained in the above-referenced Performance Guaranty shall mean and be a reference to the Affected Documents as so modified by the Amendment and as the same may from time to time hereafter be amended, modified or restated.

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The undersigned covenants and agrees to furnish to the "Managing Agents" (as defined in the Note Purchase Agreement for Series 2005-1 (such agreement, the "Note Purchase Agreement") and to the Issuer (i) notice of the occurrence of any event which has had or would reasonably be expected to have a material adverse effect on its condition or operations, financial or otherwise, and (ii) those financial statements required by Sections 5.01(c)(i), (ii) and (iii) of the Note Purchase Agreement. As long as the undersigned is required or permitted to file reports under the Securities Exchange Act of 1934, as amended, a copy of its report on Form 10-K shall satisfy the requirements of Section 5.01(c)(ii) of the Note Purchase Agreement and a copy of its report on Form 10-Q shall satisfy the requirements of Section 5.01(c)(i) of the Note Purchase Agreement. Information required to be delivered pursuant to Sections 5.01(c)(i), (ii) and (iii) of the Note Purchase Agreement shall be deemed to have been delivered on the date on which it has been posted on (i) the website of the undersigned on the Internet at [www.cendant.com](http://www.cendant.com) or (ii) [sec.gov/edgar/searchedgar/webusers.htm](http://sec.gov/edgar/searchedgar/webusers.htm).

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IN WITNESS WHEREOF, the undersigned has caused this Reaffirmation to be executed by its duly authorized officer as of the date below.

Dated as of January 31, 2005

CENDANT CORPORATION

By: /s/ Ronald Nelson

Its: President and Chief Financial Officer

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**INDENTURE SUPPLEMENT**

**CENDANT MOBILITY CLIENT-BACKED  
RELOCATION RECEIVABLES FUNDING LLC  
(formerly known as Apple Ridge Funding LLC),**

**as Issuer,**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,**

**as Indenture Trustee,**

**and**

**THE BANK OF NEW YORK**

**as Paying Agent, Authentication Agent and**

**Transfer Agent and Registrar**

**SERIES 2005-1 INDENTURE SUPPLEMENT**

**Dated as of January 31, 2005**

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ARTICLE I CREATION OF THE SERIES 2005-1 NOTES

Section 1.01. Designation	1
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ARTICLE II DEFINITIONS

Section 2.01. Definitions.	2
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ARTICLE III SERVICING FEE; INCREASES AND REDUCTIONS  
IN THE SERIES OUTSTANDING AMOUNT

Section 3.01. Servicing Fee	12
Section 3.02. Increases and Reductions in the Series Outstanding Amount	13

ARTICLE IV RIGHTS OF SERIES 2005-1 NOTEHOLDERS AND  
ALLOCATION AND APPLICATION OF POOL COLLECTIONS

Section 4.01. Pool Collections and Allocations.	14
Section 4.02. Determination of Interest and Monthly Interest.	15
Section 4.03. Determination of Principal Distribution	16
Section 4.04. Application of Series 2005-1 Collections	16
Section 4.05. Distribution Account	17
Section 4.06. Series 2005-1 Principal Subaccount	18
Section 4.07. Investment Instructions	19
Section 4.08. Series 2005-1 Pre-Funding Subaccount.	19

ARTICLE V DELIVERY OF SERIES 2005-1 NOTES;  
DISTRIBUTIONS; REPORTS TO SERIES 2005-1 NOTEHOLDERS

Section 5.01. Delivery and Payment for the Series 2005-1 Notes; Denominations	20
Section 5.02. Registration; Registration of Transfer and Exchange; Transfer Restrictions.	20
Section 5.03. Definitive Notes	23
Section 5.04. Distributions	23
Section 5.05. Reports and Statements to Series 2005-1 Noteholders.	23

ARTICLE VI AMORTIZATION EVENTS

Section 6.01. Series 2005-1 Amortization Events	24
---	----

ARTICLE VII OPTIONAL REDEMPTION OF SERIES 2005-1  
NOTES

Section 7.01. Optional Redemption of Series 2005-1 Notes.	26
---	----

ARTICLE VIII MISCELLANEOUS PROVISIONS

Section 8.01. Ratification of Agreement	27
Section 8.02. Counterparts	27
Section 8.03. Governing Law	27

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EXHIBITS

EXHIBIT A	Form of Series 2005-1 Note
EXHIBIT B	Form of Monthly Payment Instructions and Notification to the Indenture Trustee and Paying Agent
EXHIBIT C	Form of Monthly Statement
EXHIBIT D	Form of Pre-Funding Account Withdrawal Instruction

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SERIES 2005-1 INDENTURE SUPPLEMENT, dated as of January 31, 2005 (as amended, modified, restated or supplemented from time to time, the "Indenture Supplement"), by and among CENDANT MOBILITY CLIENT-BACKED RELOCATION RECEIVABLES FUNDING LLC (formerly known as Apple Ridge Funding LLC), a limited liability company organized under the laws of the State of Delaware, as Issuer (together with its permitted successors and assigns, the "Issuer"), JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association, as Indenture Trustee (together with its permitted successors and assigns, the "Indenture Trustee"), and THE BANK OF NEW YORK, a New York state banking corporation, as paying agent, authentication agent and transfer agent and registrar (together with its permitted successors and assigns, "BNY").

Pursuant to Section 2.10 of the Master Indenture, dated as of April 25, 2000 (as amended, modified, restated or supplemented from time to time, the "Indenture" and together with the Indenture Supplement, the "Agreement"), by and among the Issuer, the Indenture Trustee and BNY, the Issuer may issue one or more Series of Notes the Principal Terms of which shall be set forth in an indenture supplement to the Indenture. In accordance with the terms of the Indenture, the Issuer hereby creates a Series of Notes and specifies the Principal Terms of such Series of Notes in this Indenture Supplement.

#### GRANTING CLAUSE

The Issuer hereby Grants to the Indenture Trustee, for the benefit of the Holders of the Series 2005-1 Notes, all of the Issuer's right, title and interest, whether now owned or hereafter acquired, in, to and under: (i) the Series 2005-1 Principal Subaccount, (ii) the Distribution Account (to the extent of Series 2005-1 Collections on deposit therein), (iii) the Series 2005-1 Pre-Funding Subaccount, (iv) all accounts, money, chattel paper, investment property, instruments, documents, deposit accounts, letters of credit, letter-of-credit rights, general intangibles, goods, oil, gas and other minerals consisting of, arising from, or relating to any of the foregoing and (v) all proceeds of the foregoing.

#### ARTICLE I CREATION OF THE SERIES 2005-1 NOTES

##### Section 1.01. Designation.

(a) There is hereby created a Series of Notes to be issued pursuant to the Indenture and this Indenture Supplement to be known as the "Cendant Mobility Client-Backed Relocation Receivables Funding LLC Secured Variable Funding Notes, Series 2005-1" or the "Series 2005-1 Notes."

(b) In the event that any term or provision contained herein shall conflict with or be inconsistent with any term or provision contained in the Indenture, the terms and provisions of this Indenture Supplement shall be controlling.

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ARTICLE II  
DEFINITIONS

Section 2.01. Definitions.

(a) Whenever used in this Indenture Supplement, the following words and phrases shall have the following meanings, and the definitions of such terms are applicable to the singular as well as the plural forms of such terms and the masculine as well as the feminine and neuter genders of such terms.

“Additional Interest” shall have the meaning set forth in Section 4.02(b).

“Administrative Agent” shall mean CALYON Corporate and Investment Bank, in its capacity as “Administrative Agent” and “Lead Arranger” for the Purchasers.

“Administrative Agent Fee Letter” means that certain fee letter dated as of the date hereof between the Issuer and the Administrative Agent.

“Alternate Base Rate” shall have the meaning set forth in the Note Purchase Agreement.

“Amortization Event” shall have the meaning set forth in Section 6.01.

“Amortization Period” shall mean the period commencing at the *earliest* to occur of (a) the close of business on the Commitment Termination Date, (b) the close of business on the Scheduled Amortization Date and (c) the close of business on the Business Day immediately preceding the day on which an Amortization Event has occurred, and ending on the date on which (x) the Series Outstanding Amount shall have been paid in full, together with all accrued interest thereon, and (y) all amounts owed to the Administrative Agent, the Managing Agents and the Purchasers under the Indenture Supplement and the Note Purchase Agreement shall have been paid in full.

“Applicable Stress Factor” shall mean, as of any date of determination, 2.25; *provided that* (i) if the Default Ratio for the Monthly Period preceding the first day of the Interest Period in which such date occurs exceeded 3.0%, or the Three Month Average Default Ratio for the Monthly Period preceding the first day of the Interest Period in which such date occurs exceeded 2.5%, then the Applicable Stress Factor used in the calculation of the Loss Reserve Ratio shall be 2.5, or (ii) if the Dilution Ratio for the Monthly Period preceding the first day of the Interest Period in which such date occurs exceeded 1.25%, or the Three Month Average Dilution Ratio for the Monthly Period preceding the first day of the Interest Period in which such date occurs exceeded 0.75%, then the Applicable Stress Factor used in the calculation of the Dilution Reserve Ratio shall be 2.5. The Applicable Stress Factor calculated as of any Distribution Date shall continue until (but not including) the next succeeding Distribution Date.

“Appraised Value Home” shall mean a Home purchased by an Originator if the owner of the Home is unsuccessful at contracting to sell the Home prior to the purchase of the

Home by the applicable Originator and as to which the purchase price is generally determined by the average of two or more independent appraisals.

“Average Days in Inventory” shall mean, for any Monthly Period, the average number of days the Homes have been owned by each Originator as of the close of business on the last day of such Monthly Period.

“Average Days Outstanding” shall mean, as of the end of any Monthly Period, the *sum* of:

(a) the *product* of (i) a fraction, the numerator of which is the aggregate Unpaid Balance of Unsold Home Receivables (net of Advance Payments relating thereto) as of the end of such Monthly Period and the denominator of which is the Aggregate Receivable Balance as of the end of such Monthly Period, *multiplied by* (ii) the Average Days in Inventory for such Monthly Period, *plus*

(b) the *product* of (i) a fraction, the numerator of which is the aggregate Unpaid Balance of Billed Receivables and Unbilled Receivables (net of Advance Payments relating thereto) as of the end of such Monthly Period, and the denominator of which is the Aggregate Receivable Balance as of the end of such Monthly Period, *multiplied by* (ii) the *sum* of (A) the average number of days as of the end of such Monthly Period it took to bill Unbilled Receivables once they became billable *plus* (B) the average number of days Billed Receivables have been outstanding as of the end of such Monthly Period.

For the purposes of the foregoing calculation, Unbilled Receivables are deemed to be billable (x) if the Receivable was previously an Unsold Home Receivable, upon the subsequent sale of the Home by the applicable Originator and (y) if such Receivable relates to services that are not related to Home sales, upon disbursement.

“Base Rate Tranche” shall have the meaning set forth in the Note Purchase Agreement.

“Change in Control” shall mean either that (x) the Issuer ceases to be a wholly-owned subsidiary of CMSC or (y) any of CMSC, CME, the Transferor, CRESG or the Issuer ceases to be a wholly-owned subsidiary of Cendant Corporation.

“Commercial Paper Notes” shall have the meaning set forth in the Note Purchase Agreement.

“Commitment Termination Date” shall have the meaning set forth in the Note Purchase Agreement.

“Committed Purchaser” shall have the meaning set forth in the Note Purchase Agreement.

“Conduit Purchaser” shall have the meaning set forth in the Note Purchase Agreement.

“CP Rate” shall have the meaning set forth in the Note Purchase Agreement.

“CP Tranche” shall have the meaning set forth in the Note Purchase Agreement.

“CRESG” shall have the meaning set forth in the Note Purchase Agreement.

“Decrease” shall have the meaning set forth in Section 3.02(b).

“Decrease Date” shall have the meaning set forth in Section 3.02(b).

“Default Ratio” shall mean, for any Monthly Period, the *quotient*, expressed as a percentage, of (a) the *sum* of (i) the aggregate Unpaid Balance of the Receivables that have become Defaulted Receivables in accordance with clause (a) or (c) of the definition of Defaulted Receivable during such Monthly Period *plus* (ii) the Aggregate Employer Balance of each Employer (reduced by any Advance Payments) whose Receivables have become Defaulted Receivables in accordance with clause (b) of the definition of Defaulted Receivables during such Monthly Period, *divided by* (b) the aggregate Unpaid Balance of the Billed Receivables generated during the fifth Monthly Period preceding such Monthly Period.

“Determination Date” shall mean, with respect to any Distribution Date, the second Business Day preceding such Distribution Date.

“Dilution Ratio” shall mean, for any Monthly Period, the *quotient*, expressed as a percentage, of (a) the aggregate amount of reductions to the Unpaid Balances of the Billed Receivables due to offsets, chargebacks, credits, adjustments, rebates and other Originator Dilution Adjustments, Seller Dilution Adjustments and Servicer Dilution Adjustments occurring during such Monthly Period *divided by* (b) the aggregate Unpaid Balance of the Billed Receivables generated during the fifth Monthly Period preceding such Monthly Period.

“Dilution Reserve Ratio” shall mean, as of any date of determination, the *product*, expressed as a percentage, of:

(a) the greater of:

(i) the *product* of (A) the Applicable Stress Factor *multiplied by* (B) the average of the Dilution Ratios for the three Monthly Periods preceding the first day of the Interest Period in which such date occurs, and

(ii) the highest Dilution Ratio for any Monthly Period over the twelve Monthly Periods preceding the first day of the Interest Period in which such date occurs, *multiplied by*

(b) a fraction, the numerator of which is the *sum* of:

(i) the aggregate Unpaid Balance of the Billed Receivables generated during the five Monthly Periods preceding the first day of the Interest Period in which such date occurs *plus*

(ii) the aggregate Unpaid Balance of the Unbilled Receivables as of the end of the Monthly Period preceding the first day of the Interest Period in which such date occurs,

and the denominator of which is the aggregate Unpaid Balance of the Billed Receivables as of the end of such Monthly Period, *multiplied by*

(c) a fraction, the numerator of which is equal to the *sum* of:

(i) the aggregate Unpaid Balance of the Billed Receivables as of the end of such Monthly Period *plus*

(ii) the aggregate Unpaid Balance of the Unbilled Receivables as of the end of such Monthly Period *plus*

(iii) the *greater* of (A) the *product* of 3.5 *multiplied by* the average of the Monthly Loss on Sale for such Monthly Period and the two immediately preceding Monthly Periods and (B) 10% of the aggregate Unpaid Balance of Unsold Home Receivables relating to Appraised Value Homes as of the end of such Monthly Period,

and the denominator of which is equal to the aggregate Unpaid Balance of Eligible Receivables as of the end of such Monthly Period *minus* the Aggregate Adjustment Amount on such date.

The Dilution Reserve Ratio calculated as of any Distribution Date shall continue until (but not including) the next succeeding Distribution Date.

“Distribution Date” shall mean, (i) during the Series 2000-1 Amortization Period, the fifteenth day of each calendar month, or if such fifteenth day is not a Business Day, the next succeeding Business Day, and (ii) thereafter, the sixteenth day of each calendar month, or if such sixteenth day is not a Business Day, the next succeeding Business Day.

“Eurodollar Rate” shall have the meaning set forth in the Note Purchase Agreement.

“Eurodollar Rate Margin” shall have the meaning set forth in the Fee Letter.

“Eurodollar Tranche” shall have the meaning set forth in the Note Purchase Agreement.

“Facility Fee” shall have the meaning set forth in the Fee Letter.

“Federal Funds Rate” shall have the meaning set forth in the Note Purchase Agreement.

“Fee Letter” shall mean that certain Fee Letter executed by and between the Issuer, the Managing Agents and the Administrative Agent in connection with the Note Purchase



Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

“**Final Stated Maturity Date**” shall mean the earlier of (a) the Distribution Date occurring in January, 2010 and (b) the Distribution Date occurring in the ninth Monthly Period following the Monthly Period in which the Amortization Period commenced.

“**Increase**” shall mean any funding by the Purchasers pursuant to the Note Purchase Agreement which increases the Series Outstanding Amount.

“**Increase Date**” shall mean the date on which any Increase is funded.

“**Initial Series Outstanding Amount**” shall mean, with respect to the Series 2005-1 Notes, \$50,000,000.

“**Interest Period**” shall mean, with respect to each Tranche:

- (a) initially the period commencing on the date such Tranche is funded and ending on and excluding the next succeeding Distribution Date; and
- (b) thereafter each period commencing on and including a Distribution Date and ending and excluding the succeeding Distribution Date.

“**Interest Shortfall**” shall have the meaning set forth in Section 4.02(b).

“**Liquidity Provider Agreement**” shall have the meaning set forth in the Note Purchase Agreement.

“**Liquidity Provider**” shall have the meaning set forth in the Note Purchase Agreement.

“**Loss Reserve Ratio**” shall mean, as of any date of determination, the *greatest* of:

- (a) the percentage equivalent of the *product* of:
  - (i) the Applicable Stress Factor *multiplied by*
  - (ii) the highest Three Month Average Default Ratio for any Monthly Period over the twelve Monthly Periods preceding the first day of the Interest Period in which such date occurs, *multiplied by*
  - (iii) a fraction, the numerator of which is the *sum* of (A) the aggregate Unpaid Balance of the Billed Receivables generated over the five Monthly Periods preceding the first day of the Interest Period in which such date occurs *plus* (B) the aggregate Unpaid Balance of the Unbilled Receivables as of the end of the Monthly Period preceding the first day of the Interest Period in which such date occurs, and the denominator of which is the aggregate Unpaid Balance of the Billed Receivables as of the end of such Monthly Period, *multiplied by*

(iv) a fraction, the numerator of which is equal to the *sum* of (A) the aggregate Unpaid Balance of Billed Receivables as of the end of the Monthly Period preceding the first day of the Interest Period in which such date occurs *plus* (B) the aggregate Unpaid Balance of Unbilled Receivables as of the end of such Monthly Period *plus* (C) the *greater* of (1) the *product* of 3.5 *multiplied* by the average of the Monthly Loss on Sale for such Monthly Period and the two immediately preceding Monthly Periods and (2) 10% of the aggregate Unpaid Balance of Unsold Home Receivables relating to Appraised Value Homes as of the end of such Monthly Period, and the denominator of which is equal to the aggregate Unpaid Balance of Eligible Receivables as of the end of such Monthly Period *minus* the Aggregate Adjustment Amount on such date;

(b) the *product* of (i) the Applicable Stress Factor *multiplied* by (ii) the highest Default Ratio for any Monthly Period over the three Monthly Periods preceding the first day of the Interest Period in which such date occurs; and

(c) 2.5%.

The Loss Reserve Ratio calculated as of any Distribution Date shall continue until (but not including) the next succeeding Distribution Date.

“Managing Agent” shall have the meaning set forth in the Note Purchase Agreement.

“Minimum Enhancement Percentage” shall mean, for any Distribution Date and continuing until (but not including) the next succeeding Distribution Date, (i) 8.0% so long as the Average Days Outstanding as of the end of the preceding Monthly Period is less than 100 days, (ii) 9.0% if the Average Days Outstanding as of the end of the preceding Monthly Period is greater than or equal to 100 days but less than 120 days and (iii) otherwise, 10.0%.

“Monthly Interest” shall have the meaning set forth in Section 4.02(b).

“Monthly Loss on Sale” shall equal, for any Monthly Period, for all Homes sold during such Monthly Period, the aggregate of the amounts, if any, by which the purchase price of each such Home paid by CMF or CMSC, as applicable, exceeded the sale price for such Home received by the Servicer (the amount of any such excess with respect to a Home being a “Loss”). The Monthly Loss on Sale for any Monthly Period shall be based on the gross Losses for such Monthly Period without regard to any gains on the sale of other Homes during such Monthly Period.

“Monthly Period” shall mean the period from and including the first day of a calendar month to and including the last day of such calendar month.

“Monthly Principal” shall have the meaning set forth in Section 4.03.

“Monthly Program Fees” shall mean for any Distribution Date the aggregate Facility Fee and Program Fee payable to the Managing Agents under Section 2.03(c) of the Note Purchase Agreement.

**“Monthly Servicing Fee”** shall have the meaning set forth in Section 3.01.

**“Net Credit Losses”** shall mean, for any Monthly Period, an amount equal to the excess, if any, of the estimated losses to be incurred in respect of all Receivables written off by the Servicer in accordance with the Credit and Collection Policy during such Monthly Period over an amount equal to all amounts recovered during such Monthly Period in respect of Receivables written off by the Servicer in accordance with the Credit and Collection Policy during prior Monthly Periods, which amounts exceed the amounts that the Servicer estimated would be recovered in respect of such Receivables. For the avoidance of doubt, “Net Credit Losses” includes the portion of any Receivable which has been written off as uncollectible by the Servicer net of any recoveries thereon.

**“Note Interest Rate”** shall mean, as of any date, the sum of the weighted average of the Series 2005-1 Tranche Rates.

**“Note Purchase Agreement”** shall mean that certain Note Purchase Agreement dated as of even date herewith (as the same may be amended, restated, supplemented or otherwise modified from time to time) among the Issuer, the Servicer, the Purchasers, the Managing Agents and the Administrative Agent.

**“Otherwise Released Collections”** shall have the meaning set forth in Section 4.01(d).

**“Outstanding Tranche Amount”** shall mean, with respect to any Tranche, the portion of the Series Outstanding Amount designated by a Managing Agent as allocable to such Tranche.

**“Pro Rata Share”** shall have the meaning set forth in the Note Purchase Agreement.

**“Program Fee”** shall have the meaning set forth in the Fee Letter.

**“Purchaser Group”** shall have the meaning set forth in the Note Purchase Agreement.

**“Purchasers”** shall have the meaning set forth in the Note Purchase Agreement.

**“QIB”** shall have the meaning set forth in Section 5.02(b).

**“Rating Agency”** shall mean each of Standard & Poor’s Ratings Services, Moody’s Investors Service and Fitch, Inc.

**“Rating Agency Condition”** as used in the Indenture with respect to this Indenture Supplement or the Series 2005-1 Notes shall mean, with respect to any action, that each of the Managing Agents shall have consented to such action.

**“Redemption Price”** shall mean, with respect to any Distribution Date, after giving effect to any deposits and distributions otherwise to be made on such Distribution Date,

the sum of (i) the Series Outstanding Amount on such Distribution Date plus (ii) Monthly Interest for such Distribution Date and any Monthly Interest previously due but not distributed to the Series 2005-1 Noteholders plus (iii) all Monthly Program Fees plus (iv) any other amounts owed to the Administrative Agent, the Managing Agents and the Purchasers pursuant to this Indenture Supplement or the Note Purchase Agreement.

“Required Amount” shall mean, for any Distribution Date, the sum of (a) the Monthly Interest for such Distribution Date plus (b) any Additional Interest previously accrued and not reimbursed, plus (c) the sum, without duplication, of (i) the Monthly Servicing Fee to be distributed on such Distribution Date plus (ii) any Monthly Servicing Fee previously accrued and not paid plus (iii) the Monthly Program Fees to be distributed on such Distribution Date plus (iv) any Monthly Program Fees previously accrued and not paid plus (v) any expenses and other amounts which are payable under Section 4.04(b)(iv), as notified to the Indenture Trustee, the Issuer and the Servicer by the relevant Managing Agent or the Administrative Agent no later than the Business Day preceding the related Determination Date.

“Required Managing Agents” shall have the meaning set forth in the Note Purchase Agreement.

“Required Overcollateralization Amount” shall mean, as of any date of determination, the amount by which the Series 2005-1 Required Enhancement Amount on such date exceeds the amount on deposit in the Series 2005-1 Principal Subaccount on such date.

“Revolving Period” shall mean the period beginning on the Series 2005-1 Closing Date and ending upon the commencement of the Amortization Period.

“Rule 144A” shall mean Rule 144A under the Securities Act.

“Scheduled Amortization Date” shall mean January 31, 2010.

“Securities Act” shall mean the Securities Act of 1933, as amended.

“Series Outstanding Amount” shall mean, as of any date of determination, an amount equal to (i) the Initial Series Outstanding Amount plus (ii) the aggregate amount of all Increases minus (iii) the aggregate amount of all Decreases minus (iv) without duplication, the aggregate amount of all Monthly Principal previously paid to the Series 2005-1 Noteholders.

“Series Percentage” shall mean, with respect to any date of determination, the percentage equivalent (which percentage shall never exceed 100%) of a fraction calculated as follows:

(a) during the Revolving Period, the numerator of the fraction will be the Series 2005-1 Required Asset Amount as of the close of business on the immediately preceding day, and the denominator of the fraction will be the greater of (i) the Adjusted Aggregate Receivable Balance as of the end of the prior Monthly Period (or, if a Servicer Default has occurred, as of the end of the immediately preceding day), and (ii) the sum of the numerators used to determine the Series Percentage for each Series of Notes (including the Series 2005-1 Notes) Outstanding at the close of business on the immediately preceding day; and

(b) during the Amortization Period, the numerator of the fraction will be the Series 2005-1 Required Asset Amount as of the close of business on the last day of the Revolving Period, and the denominator of the fraction will be the sum of the numerators used to determine the Series Percentage for each Series of Notes (including the Series 2005-1 Notes) Outstanding at the close of business on the immediately preceding day.

“Series 2000-1 Amortization Period” shall mean the period commencing on January 31, 2005 and ending on the date on which the Series 2000-1 Notes have been paid in full and all other amounts owed under the Series 2000-1 Supplement have been paid in full.

“Series 2000-1 Notes” shall mean the \$400,000,000 Notes, Series 2000-1, issued by the Issuer under the Indenture on April 25, 2000.

“Series 2000-1 Principal Subaccount” shall mean the “Series 2000-1 Principal Subaccount” established under the Series 2000-1 Supplement for the benefit of the holders of the Series 2000-1 Notes.

“Series 2000-1 Supplement” shall mean the Indenture Supplement dated as of April 25, 2000 and relating to the Series 2000-1 Notes.

“Series 2005-1” shall mean the Series of Notes the terms of which are specified in this Indenture Supplement.

“Series 2005-1 Allocated Adjusted Aggregate Receivable Balance” shall mean, as of any date of determination, the *lower* of (a) the Series 2005-1 Required Asset Amount as of such date and (b) the *product* of (i) the Adjusted Aggregate Receivable Balance as of the end of the prior Monthly Period *multiplied by* (ii) the percentage equivalent of a fraction, the numerator of which is the Series 2005-1 Required Asset Amount as of such date and the denominator of which is the sum of (x) the Series 2005-1 Required Asset Amount as of such date *plus* (y) the aggregate Required Asset Amount with respect to each other Series of Notes as of such date.

“Series 2005-1 Asset Amount Deficiency” shall occur, on any date of determination, if and to the extent the Series 2005-1 Allocated Adjusted Aggregate Receivable Balance as of such date is *less* than the Series 2005-1 Required Asset Amount as of such date; provided, that during the Series 2000-1 Amortization Period, a Series 2005-1 Asset Amount Deficiency shall be calculated as if (i) the “Series Outstanding Amount” for Series 2000-1 were equal to the outstanding principal amount of the Series 2000-1 Notes minus the sum of any amounts on deposit in the Series 2000-1 Principal Subaccount and (ii) the “Series Outstanding Amount” for Series 2005-1 were equal to the outstanding principal amount of the Series 2005-1 Notes minus the sum of any amounts on deposit in the Series 2005-1 Pre-Funding Subaccount.

“Series 2005-1 Closing Date” shall mean January 31, 2005.

“Series 2005-1 Collections” shall have the meaning set forth in Section 4.01(b).

“Series 2005-1 Note” shall mean each Note executed by the Issuer and authenticated by the Authentication Agent, substantially in the form of Exhibit A, and any replacement Note in exchange therefor.

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“Series 2005-1 Noteholder” shall mean each Person in whose name a Series 2005-1 Note is registered in the Note Register, which shall initially be each Managing Agent on behalf of the Purchasers in the related Purchaser Group.

“Series 2005-1 Pre-Funding Subaccount” shall have the meaning set forth in Section 4.08(a).

“Series 2005-1 Principal Subaccount” shall have the meaning set forth in Section 4.06(a).

“Series 2005-1 Required Asset Amount” shall mean, as of any date of determination, an amount equal to the *sum* of (a) the Series Outstanding Amount on such date *plus* (b) the Required Overcollateralization Amount on such date.

“Series 2005-1 Required Enhancement Amount” shall mean, as of any date of determination, an amount equal to the *greater* of (i) the Series Outstanding Amount on such date *multiplied by* the Minimum Enhancement Percentage on such date and (ii) an amount equal to the *product* of (A) the Series Outstanding Amount on such date *multiplied by* (B) the *quotient* of (1) the *sum* of (w) the Loss Reserve Ratio on such date *plus* (x) the Dilution Reserve Ratio on such date *plus* (y) the Yield Reserve Ratio on such date *plus* (z) the Servicing Reserve Ratio on such date *divided by* (2) one *minus* the *sum* of (w) the Loss Reserve Ratio on such date *plus* (x) the Dilution Reserve Ratio on such date *plus* (y) the Yield Reserve Ratio on such date *plus* (z) the Servicing Reserve Ratio on such date; *provided, however*, that after the declaration or occurrence of an Amortization Event, the Series 2005-1 Required Enhancement Amount shall equal the Series 2005-1 Required Enhancement Amount in effect on the date of the declaration or occurrence of such Amortization Event.

“Series 2005-1 Tranche Rate” shall mean, at any time during an Interest Period (i) with respect to any CP Tranche, the CP Rate, (ii) with respect to any Eurodollar Tranche, the *sum* of the Eurodollar Rate *plus* the Eurodollar Rate Margin, and (iii) with respect to any Base Rate Tranche, the Alternate Base Rate, as applicable, *provided, however*, that, if any principal or interest on the Series 2005-1 Notes is not paid in full when the same shall have become required to be paid, or if any Amortization Event has occurred and is continuing, then the Series 2005-1 Tranche Rate shall be the Alternate Base Rate *plus* two percent (2.0%) with respect to such deficiency or with respect to any interest accrued on the Series 2005-1 Notes after the occurrence of such Amortization Event.

“Servicing Fee” shall have the meaning set forth in the Transfer and Servicing Agreement.

“Servicing Fee Rate” shall mean 0.75% per annum.

“Servicing Reserve Ratio” shall mean, as of any date of determination, the *quotient*, expressed as a percentage, of (a) the *product* of (i) the Applicable Stress Factor *multiplied by* (ii) the Servicing Fee Rate *multiplied by* (iii) Average Days Outstanding as of the end of the Monthly Period preceding the first day of the Interest Period in which such date occurs, *divided by* (b) 360.

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“**Stated Amount**” shall mean \$550,000,000 as such amount may be reduced or increased from time to time pursuant to Section 3.02.

“**Three Month Average Default Ratio**” shall mean, for any Monthly Period, the average of the Default Ratios for that Monthly Period and each of the two immediately preceding Monthly Periods.

“**Three Month Average Dilution Ratio**” shall mean, for any Monthly Period, the average of the Dilution Ratios for that Monthly Period and each of the two immediately preceding Monthly Periods.

“**Tranche**” shall have the meaning set forth in the Note Purchase Agreement.

“**Transaction Documents**” shall mean the “Transaction Documents” as defined in the Indenture but shall also include the Note Purchase Agreement, the Fee Letter and the Series 2005-1 Notes.

“**Transfer Date**” shall mean the Business Day immediately preceding each Distribution Date and each Decrease Date.

“**Yield Reserve Ratio**” shall mean, as of any date of determination, the quotient expressed as a percentage, of (a) the *product* of (i) the *sum* of (A) the *product* of (1) 2.25 *multiplied* by (2) the one-month Eurodollar Rate as of the last Business Day of the immediately preceding Monthly Period plus (B) 0.75% *multiplied* by (ii) 2.25 *multiplied* by the Average Days Outstanding as of the end of the immediately preceding Monthly Period *divided* by (b) 360.

(b) Each capitalized term defined herein shall relate to the Series 2005-1 Notes and no other Series of Notes issued by the Issuer, unless the context otherwise requires. All capitalized terms used herein and not otherwise defined herein have the meanings ascribed to them in the Indenture, the Transfer and Servicing Agreement, the Receivables Purchase Agreement or the Purchase Agreement.

(c) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Indenture Supplement shall refer to this Indenture Supplement as a whole and not to any particular provision of this Indenture Supplement; references to any Article, subsection, Section or Exhibit are references to Articles, subsections, Sections and Exhibits in or to this Indenture Supplement unless otherwise specified; and the term “including” means “including without limitation.”

### ARTICLE III SERVICING FEE; INCREASES AND REDUCTIONS IN THE SERIES OUTSTANDING AMOUNT

Section 3.01. **Servicing Fee.** The Transfer and Servicing Agreement sets forth the full compensation that the Servicer is entitled to receive for its servicing activities. The share of the Servicing Fee allocable to the Series 2005-1 Noteholders with respect to any Distribution

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Date (the "Monthly Servicing Fee") shall be equal to the *product* of (a) the Servicing Fee Rate *multiplied by* (b) the weighted average over the related Monthly Period of the daily sums of the Aggregate Employer Balances for each Employer under the Pool Relocation Agreement *s multiplied by* (c) the average Series Percentage during such Monthly Period. The remainder of the Servicing Fee shall be paid by the noteholders of other Series (as provided in the Indenture Supplement related to such other Series) or the Issuer and in no event shall the Indenture Trustee or the Series 2005-1 Noteholders be liable for the share of the Servicing Fee to be paid by the Noteholders of such other Series or the Issuer. To the extent that the Monthly Servicing Fee is not paid in full pursuant to the preceding provisions of this Section 3.01 and Section 4.04, it shall be paid by the Issuer. The Monthly Servicing Fee shall be payable from Series 2005-1 Collections pursuant to, and subject to the priority of payments set forth in, Section 4.04.

**Section 3.02. Increases and Reductions in the Series Outstanding Amount.**

(a) At any time during the Revolving Period, so long as the Commitment Termination Date shall not have occurred, the Series Outstanding Amount may be increased from time to time by the funding of Increases subject to the terms and conditions set forth in the Note Purchase Agreement; provided, that, after giving effect thereto, the Series Outstanding Amount may not exceed the Stated Amount. Whenever the Issuer wishes to make an Increase, the Issuer shall give the Indenture Trustee, the Paying Agent and the Managing Agents prior written notice of such Increase not less than two (2) Business Days prior to the proposed Increase Date.

(b) In the event that the Issuer reduces the Series Outstanding Amount of the Series 2005-1 Notes in accordance with the Note Purchase Agreement (each such reduction, a "Decrease"), it shall give prompt written notice of such Decrease to the Managing Agents, the Indenture Trustee and the Paying Agent not less than three (3) Business Days prior to the effective date (each such date, a "Decrease Date") of such reduction. All accrued and unpaid interest on the amount of such Decrease, together with the principal amount of such Decrease, shall be due and owing as of the related Decrease Date.

(c) The Series 2005-1 Notes shall evidence the outstanding indebtedness owed from time to time by the Issuer thereunder. Each Managing Agent, on behalf of the Purchasers in the related Purchaser Group, shall be and is hereby authorized to record on the grid attached to its Series 2005-1 Note held by it on behalf of the Purchasers in the related Purchaser Group (or at its option, in its internal books and records) the date and amount of the initial funding of its Pro Rata Share of the Initial Series Outstanding Amount and the date and amount of each Increase, the amount of each repayment of the principal amount represented by such Series 2005-1 Note, the portions of its Series 2005-1 Note that are from time to time allocated to the CP Tranche, any Base Rate Tranche and any Eurodollar Tranche, and any reductions to the Stated Amount; provided, that failure to make any recordation on the grid or records or any error in recordation shall not adversely affect any Purchaser's rights with respect to its right to receive principal and interest under a Series 2005-1 Note.

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ARTICLE IV  
RIGHTS OF SERIES 2005-1 NOTEHOLDERS AND ALLOCATION AND APPLICATION OF POOL COLLECTIONS

Section 4.01. Pool Collections and Allocations.

(a) Allocation of Pool Collections. Funds on deposit in the Collection Account in accordance with Section 8.04 of the Indenture shall be allocated and distributed to Series 2005-1 as set forth in the Indenture and this Article IV.

(b) Allocation of Pool Collections to Series 2005-1. Prior to the close of business on each Transfer Date, the Servicer shall allocate to Series 2005-1 an amount (such amount, the “Series 2005-1 Collections”) equal to the *product* of (i) the amount of Pool Collections deposited in the Collection Account during the preceding Monthly Period (less any amounts permitted to be withdrawn pursuant to Sections 3.02(c)(vi), 3.12 and 3.14(b) of the Transfer and Servicing Agreement) *multiplied by* (ii) the Series Percentage for such Distribution Date.

(c) Allocation of Series 2005-1 Collections. Prior to the close of business on each Transfer Date, the Servicer shall direct the Indenture Trustee to allocate Series 2005-1 Collections in the amounts and according to the priority set forth below pursuant to Section 8.04 of the Indenture:

(i) From the Collection Account to the Distribution Account for distribution in accordance with Section 4.04(b), an amount equal to the Required Amount for the next succeeding Distribution Date and if the amount of the Series 2005-1 Collections then on deposit in the Distribution Account exceeds the Required Amount for such Distribution Date, such Series 2005-1 Collections shall be distributed therefrom in accordance with the remaining provisions of this Section 4.01(c);

(ii) During the Revolving Period, and during the Amortization Period after the Series 2005-1 Notes have been paid in full, to the Distribution Account for distribution to the Managing Agents on behalf of the holders of the Series 2005-1 Notes, an amount equal to any other amounts (other than principal and interest owed under the Series 2005-1 Notes) owed by the Issuer pursuant to the Note Purchase Agreement;

(iii) During the Revolving Period, (A) if any other Series of Notes is in its Amortization Period and the Indenture Supplement related to such amortizing Series of Notes requires the Issuer to transfer such remaining Series 2005-1 Collections to pay the principal of such other Series of Notes, all remaining Series 2005-1 Collections to the applicable Series Account with respect to such amortizing Series of Notes; provided, that if more than one other Series of Notes is amortizing and the related Indenture Supplement of each such amortizing Series of Notes requires the Issuer to transfer such remaining Series 2005-1 Collections to pay the principal of such other Series of Notes, pro rata to the applicable Series Account of each such other amortizing Series of Notes based on their respective Series Percentages; and (B) if no transfer of the remaining Series 2005-1 Collections is required pursuant to clause (A), all remaining Series 2005-1 Collections to

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the Issuer free and clear of the lien of the Indenture and without compliance with Section 12.01(b) of the Indenture; *provided, however*, with respect to clause (A) and (B), if (x) a Series 2005-1 Asset Amount Deficiency has occurred and is continuing, or (y) the application of funds to the payment of the principal of another Series of Notes or the release of funds to the Issuer would result in a Series 2005-1 Asset Amount Deficiency or would otherwise result in the occurrence of an event that, with the passage of time or the giving of notice or both, would become an Amortization Event, or (z) the Issuer has so directed by written notice given to the Indenture Trustee and the Managing Agents in connection with a Decrease or optional redemption of the Series 2005-1 Notes, all remaining Series 2005-1 Collections shall be transferred to the Series 2005-1 Principal Subaccount.

(iv) On any Decrease Date during the Revolving Period, (i) to the Series 2005-1 Principal Subaccount, the amount of the applicable Decrease and (ii) if such date is other than a Distribution Date, to the Distribution Account for distribution to the Managing Agents on behalf of the holders of the Series 2005-1 Notes, all (x) accrued and unpaid interest on the amount of such Decrease (which amount shall be due and owing as of such date) together with (y) if such Decrease Date is other than a Distribution Date, all funding losses, expenses and liabilities owed under Section 2.09 of the Note Purchase Agreement in connection with any such Decrease.

(v) During the Amortization Period, to the Series 2005-1 Principal Subaccount, the Series 2005-1 Collections on each Deposit Date; *provided, however*, that the aggregate amount deposited into the Series 2005-1 Principal Subaccount pursuant to this clause on any Deposit Date shall not exceed the Series Outstanding Amount on the immediately preceding Business Day.

(d) Prior to the close of business (i) on each Deposit Date when a Series 2005-1 Asset Amount Deficiency has occurred and (ii) on each Deposit Date during the Amortization Period, the Issuer shall deposit Pool Collections allocated to other Series in the Series 2005-1 Principal Subaccount to the extent those Pool Collections would otherwise have been released to the Issuer under the terms of the Indenture Supplement related to such Series ("Otherwise Released Collections"). If Series 2005-1 and any other Series are simultaneously in their respective Amortization Periods or otherwise simultaneously requiring such payments, such Otherwise Released Collections shall be allocated ratably between each such Series of Notes (including Series 2005-1) based on their respective Series Percentages.

Section 4.02. Determination of Interest and Monthly Interest.

(a) The amount of interest distributable from the Distribution Account with respect to the Series 2005-1 Notes on any Distribution Date shall be an amount equal to the sum of the Monthly Interest for such Distribution Date, plus any Interest Shortfall and any Additional Interest as determined under Section 4.02(b). The monthly interest for any Tranche shall be an amount equal to the *product* of (i) a fraction, the numerator of which is the actual number of days during the Interest Period then ending such Tranche was outstanding and the denominator of which is 360, *multiplied by* (ii) the Series 2005-1 Tranche Rate in effect with respect to the related Tranche and *multiplied by* (iii) the daily average Outstanding Tranche Amount of the

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related Tranche during the related Interest Period. The amount of interest allocable to the Tranches of any Purchaser Group and due to the Purchasers in the related Purchaser Group shall be determined by each Managing Agent and notified by each Managing Agent to the Administrative Agent, the Servicer, the Issuer, the Paying Agent and the Indenture Trustee in accordance with the procedures set forth in the Note Purchase Agreement.

(b) The “**Monthly Interest**” for any Distribution Date shall mean the sum of the aggregate unpaid amount, if any, of all unpaid interest determined for each Tranche under Section 4.02(a). On the Determination Date preceding each Distribution Date, the Servicer shall determine the *excess* (the “**Interest Shortfall**”), if any, of (x) the Monthly Interest for such Distribution Date *over* (y) the aggregate amount of funds allocated and available to pay such Monthly Interest on such Distribution Date. If the Interest Shortfall with respect to any Distribution Date is greater than zero, then on each subsequent Distribution Date until such Interest Shortfall is fully paid, an additional amount (“**Additional Interest**”) equal to the *product* of (A) a fraction, the numerator of which is the actual number of days in the related Interest Period and the denominator of which is 360, *multiplied by* (B) the applicable Series 2005-1 Tranche Rate *multiplied by* (C) such Interest Shortfall (or the portion thereof that has not been paid to the Series 2005-1 Noteholders from other funds) shall be payable as provided herein with respect to the Series 2005-1 Notes. Notwithstanding anything herein to the contrary, Additional Interest shall be payable or distributed only to the extent permitted by applicable law. From and after the calculation of any Interest Shortfall, Monthly Interest shall be calculated without duplication of any amounts included in the calculation of Additional Interest.

Section 4.03. Determination of Principal Distribution. On any Distribution Date and any Decrease Date for any Tranche (i) during the Revolving Period, if there are funds on deposit in the Series 2005-1 Principal Subaccount, and (ii) during the Amortization Period, the Trustee shall distribute from the Series 2005-1 Principal Subaccount, for application to reduce the Series Outstanding Amount, an amount of principal (the “**Monthly Principal**”), equal to the *lesser* of (a) the amount on deposit in the Series 2005-1 Principal Subaccount and (b) the Series Outstanding Amount. All Monthly Principal and all Decreases shall be paid to the Purchaser Groups ratably in accordance with their Pro Rata Shares as set forth in the Note Purchase Agreement.

Section 4.04. Application of Series 2005-1 Collections. On each Distribution Date and, if different, on each Decrease Date, as applicable, the Servicer shall instruct the Indenture Trustee in writing (such writing to be substantially in the form of Exhibit B unless otherwise agreed) to apply amounts on deposit in the Collection Account (and any subaccount thereof):

(a) On each Decrease Date (if such Decrease Date is not a Distribution Date), to withdraw from the amounts on deposit in the Distribution Account an amount equal to the amount of interest then due and owing on the Series 2005-1 Notes in accordance with Section 3.02(b), and to pay such interest to the Series 2005-1 Noteholders pursuant to Section 5.04.

(b) On each Distribution Date, to transfer amounts on deposit in the Distribution Account in the following order of priority:

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(i) An amount equal to the *sum* of (A) Monthly Interest, if any, for such Distribution Date *plus* (B) any Interest Shortfall previously accrued and not reimbursed *plus* (C) any Additional Interest previously accrued and not paid shall be paid to the Series 2005-1 Noteholders on such Distribution Date pursuant to Section 5.04;

(ii) An amount equal to the Monthly Program Fees for such Distribution Date shall be distributed to each Managing Agent (ratably in accordance with the amounts owing to each Purchaser Group);

(iii) An amount equal to the *sum* of (A) the Monthly Servicing Fee for such Distribution Date *plus* (B) any Monthly Servicing Fee previously accrued and not paid pursuant to this Section 4.04(b)(iii) shall be distributed to the Servicer;

(iv) An amount equal to any out-of-pocket costs and expenses of the Administrative Agent and the Managing Agents relating to enforcement against the Issuer shall be distributed to the Administrative Agent and the Managing Agents (ratably in accordance with the amounts owing to each such Person);

(v) If a Series 2005-1 Asset Amount Deficiency has occurred and is continuing an amount necessary to eliminate such Series 2005-1 Asset Amount Deficiency shall be distributed to the Series 2005-1 Principal Subaccount;

(vi) During the Amortization Period, to the Series 2005-1 Principal Subaccount, for application to reduce the Series Outstanding Amount; and

(vii) An amount equal to all increased costs, fees, expenses and other amounts payable to the Administrative Agent, the Managing Agents and the Purchasers pursuant to the Indenture Supplement and the Note Purchase Agreement shall be distributed to each such Person (ratably in accordance with the amounts owing to each such Person).

(c) To transfer from the Series 2005-1 Principal Subaccount to the Series 2005-1 Noteholders, (i) on each Decrease Date, an amount equal to the amount of the relevant Decrease and (ii) on each Distribution Date when funds are on deposit in the Series 2005-1 Principal Subaccount, an amount equal to the Monthly Principal for such Distribution Date, in each case for payment to the Series 2005-1 Noteholders on such Decrease Date or Distribution Date, as applicable, pursuant to Section 5.04 (ratably in accordance with the amounts owing to each Series 2005-1 Noteholder).

Section 4.05. Distribution Account.

(a) All Series 2005-1 Collections which are distributed to the Distribution Account in accordance with the terms of this Indenture Supplement, together with all proceeds, earnings, income, revenue, dividends and distributions thereof, shall be held therein for the benefit of the Series 2005-1 Noteholders. The Indenture Trustee shall, in accordance with the Indenture, possess all right, title and interest in all monies, instruments, investment property and other property credited from time to time to the Distribution Account (and any subaccount thereof) and in all proceeds, earnings, income, revenue, dividends and distributions thereof. The

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Distribution Account shall be under the sole dominion and control of the Indenture Trustee for the benefit of the Noteholders. Pursuant to the authority granted to the Servicer in Article III of the Transfer and Servicing Agreement, the Servicer shall have the power, revocable by the Indenture Trustee, to instruct the Indenture Trustee to make withdrawals and payments from the Distribution Account for the purposes of making the payments required under Section 4.04.

(b) Series 2005-1 Collections which are on deposit in the Distribution Account shall be invested in accordance with Section 4.01 of the Transfer and Servicing Agreement and Section 6.13 of the Indenture. The Indenture Trustee shall bear no responsibility or liability for any losses resulting from investment or reinvestment of any funds in accordance with this Section 4.05(b) nor for the selection of Eligible Investments, except with respect to investments on which the institution acting as Indenture Trustee is an obligor.

Section 4.06. Series 2005-1 Principal Subaccount.

(a) The Issuer, for the benefit of the Series 2005-1 Noteholders, shall establish and maintain with the Indenture Trustee or its nominee in the name of the Indenture Trustee, the Series 2005-1 Principal Subaccount, which shall be a subaccount of the Collection Account (the "Series 2005-1 Principal Subaccount"). The Indenture Trustee shall possess all right, title and interest in all monies, instruments, investment property and other property credited from time to time to the Series 2005-1 Principal Sub account (and any subaccount thereof) and in all proceeds, earnings, income, revenue, dividends and distributions thereof for the benefit of the Series 2005-1 Noteholders. The Series 2005-1 Principal Subaccount shall be under the sole dominion and control of the Indenture Trustee for the benefit of the Series 2005-1 Noteholders. Pursuant to the authority granted to the Servicer in Article III of the Transfer and Servicing Agreement, the Servicer shall have the power, revocable by the Indenture Trustee, to instruct the Indenture Trustee to make withdrawals and payments from the Series 2005-1 Principal Subaccount for the purposes of making the payments required under Section 4.04.

(b) Funds on deposit in the Series 2005-1 Principal Subaccount shall be invested in accordance with Section 4.01 of the Transfer and Servicing Agreement and Section 6.13 of the Indenture. The Indenture Trustee shall bear no responsibility or liability for any losses resulting from investment or reinvestment of any funds in accordance with this Section 4.06(b) nor for the selection of Eligible Investments, except with respect to investments on which the institution acting as Indenture Trustee is an obligor.

(c) The Indenture Trustee shall withdraw and transfer funds on deposit in the Series 2005-1 Principal Subaccount on each Business Day during the Revolving Period to, or at the direction of, the Issuer if no Series 2005-1 Asset Amount Deficiency has occurred and is continuing and no event that with the passage of time or the giving of notice could become an Amortization Event, including a Series 2005-1 Asset Amount Deficiency, would result from such withdrawal. Any such transfer to the Issuer shall be made free and clear of the lien of the Indenture and without compliance with Section 12.01(b) of the Indenture. It is expressly understood that, during the Amortization Period, the Indenture Trustee shall not withdraw funds on deposit in the Series 2005-1 Principal Subaccount except to fund payments of Monthly Principal under Section 4.03 and, after the Series 2005-1 Notes have been paid in full, to fund any other payments owed under Section 4.01(c) in the order of priority set forth therein.

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Section 4.07. Investment Instructions. Any investment instructions required to be given to the Indenture Trustee pursuant to the terms hereof must be given to the Indenture Trustee no later than 11:00 a.m. (New York City time) on the date such investment is to be made. If the Indenture Trustee receives such investment instruction later than such time, the Indenture Trustee may, but shall have no obligation to, make such investment. If the Indenture Trustee is unable to make an investment required in an investment instruction received by the Indenture Trustee after 11:00 a.m. (New York City time) on such day, such investment shall be made by the Indenture Trustee on the next succeeding Business Day. In no event shall the Indenture Trustee be liable for any investment not made pursuant to investment instructions received after 11:00 a.m. (New York City time) on the day such investment is requested to be made.

Section 4.08. Series 2005-1 Pre-Funding Subaccount.

(a) The Issuer, for the benefit of the Series 2005-1 Noteholders, shall establish and maintain with the Indenture Trustee or its nominee in the name of the Indenture Trustee, the Series 2005-1 Pre-Funding Subaccount, which shall be a subaccount of the Collection Account (the "Series 2005-1 Pre-Funding Subaccount"). The Indenture Trustee shall possess all right, title and interest in all monies, instruments, investment property and other property credited from time to time to the Series 2005-1 Pre-Funding Subaccount (and any subaccount thereof) and in all proceeds, earnings, income, revenue, dividends and distributions thereof for the benefit of the Series 2005-1 Noteholders. The Series 2005-1 Pre-Funding Subaccount shall be under the sole dominion and control of the Indenture Trustee for the benefit of the Series 2005-1 Noteholders. Pursuant to the authority granted to the Servicer in Article III of the Transfer and Servicing Agreement, the Servicer shall have the power, revocable by the Indenture Trustee, to instruct the Indenture Trustee to make withdrawals and payments from the Series 2005-1 Pre-Funding Subaccount for the purposes of making the payments required under this Section 4.08. Any such instructions shall be in writing substantially in the form of Exhibit D.

(b) Funds on deposit in the Series 2005-1 Pre-Funding Subaccount shall be invested in accordance with Section 4.01 of the Transfer and Servicing Agreement and Section 6.13 of the Indenture. The Indenture Trustee shall bear no responsibility or liability for any losses resulting from investment or reinvestment of any funds in accordance with this Section 4.08(b), nor for the selection of Eligible Investments, except with respect to investments on which the institution acting as Indenture Trustee is an obligor.

(c) During the Series 2000-1 Amortization Period, the proceeds of all Increases made under the Note Purchase Agreement shall be deposited into the Series 2005-1 Pre-Funding Subaccount. Unless a Series 2005-1 Amortization Event has occurred and is continuing, the Indenture Trustee shall withdraw and transfer funds on deposit in the Series 2005-1 Pre-Funding Subaccount on each Business Day during the Series 2000-1 Amortization Period to, or at the direction of, the Issuer so long as no Series 2005-1 Asset Amount Deficiency has occurred and is continuing and no Series 2005-1 Asset Amount Deficiency would result from such withdrawal; provided, further that the amount of any such permitted withdrawal on any Business Day shall not exceed the dollar amount of Pool Collections which, since the last such withdrawal, were set aside in the Series 2000-1 Principal Subaccount in order to pay principal on the Series 2000-1 Notes (including without duplication any such funds which were subsequently

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distributed to pay principal on the Series 2000-1 Notes). Any such transfer to the Issuer shall be made free and clear of the lien of the Indenture and without compliance with Section 12.01(b) of the Indenture. It is expressly understood that, unless and until the date on which the amount on deposit in the Series 2000-1 Principal Subaccount is equal to the outstanding principal amount of the Series 2000-1 Notes (or, if earlier, the date on which the Series 2000-1 Amortization Period has ended), the Indenture Trustee shall not withdraw funds on deposit in the Series 2005-1 Pre-Funding Subaccount except as described above in this Section 4.08(c); provided, that if a Series 2005-1 Amortization Event has occurred prior to the end of the Series 2000-1 Amortization Period, then all amounts on deposit in the Series 2005-1 Pre-Funding Subaccount shall be transferred to the Series 2005-1 Principal Subaccount to be distributed to the Series 2005-1 Noteholders in accordance with the preceding sections of this Article IV.

ARTICLE V  
DELIVERY OF SERIES 2005-1 NOTES; DISTRIBUTIONS; REPORTS TO SERIES 2005-1 NOTEHOLDERS

Section 5.01. Delivery and Payment for the Series 2005-1 Notes; Denominations. The Issuer shall execute and the Authentication Agent shall authenticate the Series 2005-1 Notes in accordance with Section 2.03 of the Indenture. The Indenture Trustee shall deliver the Series 2005-1 Notes to or upon the order of the Issuer when so authenticated.

Section 5.02. Registration; Registration of Transfer and Exchange; Transfer Restrictions.

(a) The Series 2005-1 Notes have not been registered under the Securities Act or any state securities law. None of the Issuer, the Servicer, the Transfer Agent and Registrar or the Indenture Trustee is obligated to register the Series 2005-1 Notes under the Securities Act or any other securities or “Blue Sky” laws or to take any other action not otherwise required under the Agreement to permit the transfer of the Series 2005-1 Notes without registration.

(b) No transfer of any Series 2005-1 Note or any interest therein (including, without limitation, by pledge or hypothecation) shall be made except in compliance with the restrictions on transfer set forth in this Section 5.02 (including the applicable legend to be set forth on the face of such Series 2005-1 Note as provided in Exhibit A), in a transaction exempt from the registration requirements of the Securities Act and applicable state securities or “Blue Sky” laws (i) to a person who the transferor reasonably believes is a “qualified institutional buyer” within the meaning thereof in Rule 144A (a “QIB”) and (B) that is aware that the resale or other transfer is being made in reliance on Rule 144A.

(c) Each Purchaser and each Holder of the Series 2005-1 Notes, by its acceptance thereof, will be deemed to have acknowledged, represented to and agreed with the Issuer and, in the case of any transferee of any Purchaser, such Purchaser as follows:

(i) It understands that the Series 2005-1 Notes may be offered and may be resold by such Purchaser only to QIBs and subject to the restrictions of Rule 144A.

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(ii) It understands that the Series 2005-1 Notes have not been and will not be registered under the Securities Act or any state or other applicable securities law and that no Series 2005-1 Note, or any interest or participation therein, may be offered, sold, pledged or otherwise transferred unless registered pursuant to, or exempt from registration under, the Securities Act and any other applicable securities law.

(iii) It acknowledges that none of the Issuer, the Servicer, the Administrative Agent or any Purchaser or any person representing the Issuer, the Servicer, the Administrative Agent, any Managing Agent or any Purchaser has made any representation to it with respect to the Issuer (except, as to the Issuer, the representations by the Issuer in the Transaction Documents) or the offering or sale of any Series 2005-1 Note. It has had access to such financial and other information concerning the Issuer and the Series 2005-1 Notes as it has deemed necessary in connection with its decision to purchase the Series 2005-1 Notes.

(iv) It acknowledges that each Series 2005-1 Note will bear a legend to the following effect unless the Issuer determines otherwise, consistent with applicable law:

“THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAW. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, AGREES THAT THIS NOTE OR ANY INTEREST OR PARTICIPATION HEREIN, MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS AND ONLY (1) TO THE ISSUER OR (2) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT TO A PERSON THAT THE HOLDER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT (A “QIB”) PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF A QIB, WHOM THE HOLDER HAS INFORMED, IN EACH CASE, THAT THE REOFFER, RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT. EACH NOTE OWNER BY ACCEPTING A BENEFICIAL INTEREST IN THIS NOTE, IS DEEMED TO REPRESENT THAT IT IS EITHER A QIB PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF ANOTHER QIB.

PRIOR TO PURCHASING THIS NOTE, PURCHASERS SHOULD CONSULT COUNSEL WITH RESPECT TO THE AVAILABILITY AND CONDITIONS OF EXEMPTION FROM THE RESTRICTION ON RESALE OR TRANSFER. THE ISSUER HAS NOT AGREED TO REGISTER THE NOTE UNDER THE SECURITIES ACT, TO QUALIFY THE NOTES UNDER THE SECURITIES LAWS OF ANY STATE OR TO PROVIDE REGISTRATION RIGHTS TO ANY PURCHASER.

AS SET FORTH HEREIN, THE OUTSTANDING PRINCIPAL AMOUNT OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN ON THE FACE HEREOF.”

(v) If it is acquiring the Series 2005-1 Notes, or any interest or participation therein, as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to such account and that it

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has full power to make the acknowledgements, representations and agreements contained herein on behalf of each such account.

(vi) It (1) is a QIB, (2) is aware that the sale to it is being made in reliance on Rule 144A and if it is acquiring such Series 2005-1 Note or any interest or participation therein for the account of another QIB, such other QIB is aware that the sale is being made in reliance on Rule 144A and (3) is acquiring such Series 2005-1 Note or any interest or participation therein for its own account or for the account of a QIB.

(vii) It is purchasing such Series 2005-1 Note for its own account, or for one or more investor accounts for which it is acting as fiduciary or agent, in each case for investment, and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act, subject to any requirements of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control and subject to its or their ability to resell such Series 2005-1 Note, or any interest or participation therein, as described herein, in the Indenture and in the Note Purchase Agreement.

(viii) It agrees that if in the future it should offer, sell or otherwise transfer such Series 2005-1 Note or any interest or participation therein, it will do so only (A) to the Issuer (B) pursuant to Rule 144A to a person who it reasonably believes is a QIB in a transaction meeting the requirements of Rule 144A, purchasing for its own account or for the account of a QIB, whom it has informed that such offer, sale or other transfer is being made in reliance on Rule 144A.

(ix) It acknowledges that the Issuer, the Administrative Agent, the Purchasers and others will rely on the truth and accuracy of the foregoing acknowledgments, representations and agreements, and agrees that if any of the foregoing acknowledgments, representations and agreements deemed to have been made by it are no longer accurate, it shall promptly notify the Issuer.

(x) With respect to any foreign purchaser claiming an exemption from United States income or withholding tax, that it has delivered to the Paying Agent a true and complete Form W-8 BEN or Form W-8 ECI, indicating such exemption.

(xi) It acknowledges that transfers of such Series 2005-1 Note or any interest or participation therein shall otherwise be subject in all respects to the restrictions applicable thereto contained in the Agreement and the Note Purchase Agreement.

Any transfer, resale, pledge or other transfer of the Series 2005-1 Notes contrary to the restrictions set forth above and in the Indenture shall be deemed void *ab initio* by the Transfer Agent and Registrar.

(d) Notwithstanding anything to the contrary herein, so long as and provided that the relevant Liquidity Agreement contains a provision which requires such Liquidity Providers to acknowledge and agree with the provisions of Section 5.02(c) hereof, each Conduit Purchaser may at any time sell or grant, to one or more Liquidity Providers party to any Liquidity Agreement, participating interests or security interests in the Series 2005-1 Notes

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without notice to the Issuer or any other action to be taken on the part of such Conduit Purchaser, the related Liquidity Provider, the Administrative Agent or the applicable Managing Agent on behalf of such Conduit Purchaser.

(e) Notwithstanding anything to the contrary contained herein, the Series 2005-1 Notes and this Indenture Supplement may, with the prior written consent of the Required Managing Agents, be amended or supplemented to modify the restrictions on and procedures for resale and other transfers of the Series 2005-1 Notes to reflect any change in applicable law or regulation (or the interpretation thereof) or in practices relating to the resale or transfer of restricted securities generally. Each Noteholder shall by its acceptance of a Series 2005-1 Note have agreed to any such amendment or supplement.

Section 5.03. Definitive Notes. The Series 2005-1 Notes, upon original issuance, will be issued in definitive, fully registered form, authenticated and delivered in substantially the form attached hereto as Exhibit A. The Series 2005-1 Notes will constitute Definitive Notes within the meaning of the Indenture.

Section 5.04. Distributions.

(a) On each Decrease Date and each Distribution Date, the Paying Agent shall distribute to each Series 2005-1 Noteholder of record on the related Record Date such Series 2005-1 Noteholder's *pro rata* share of amounts on deposit in the Distribution Account as are payable to the Series 2005-1 Noteholders pursuant to Section 4.04.

(b) Distributions to the Series 2005-1 Noteholders hereunder shall be made (i) by wire transfer of immediately available funds and (ii) without presentation or surrender of any Series 2005-1 Note or the making of any notation thereon.

Section 5.05. Reports and Statements to Series 2005-1 Noteholders.

(a) On each Distribution Date, the Paying Agent shall forward to the Series 2005-1 Noteholders a statement substantially in the form of Exhibit C prepared by the Servicer and delivered to the Paying Agent. The Paying Agent shall have no liability for the Servicer's failure to provide such statement to it.

(b) On or before January 31 of each calendar year, beginning with calendar year 2006, the Paying Agent shall furnish or cause to be furnished to each Person who at any time during the preceding calendar year was a Series 2005-1 Noteholder, a statement prepared by the Servicer containing the information required to be contained in the statement to Series 2005-1 Noteholders, as set forth in paragraph (a) above, aggregated for such calendar year or the applicable portion thereof during which such Person was a Series 2005-1 Noteholder, together with such other information as is required to be provided by an issuer of indebtedness under the Code. Such obligation of the Paying Agent shall be deemed to have been satisfied to the extent that substantially comparable information shall be provided by the Paying Agent pursuant to any requirements of the Code as from time to time in effect.

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ARTICLE VI  
AMORTIZATION EVENTS

Section 6.01. Series 2005-1 Amortization Events. Upon the occurrence and continuance of any of the following events:

- (a) failure on the part of the Issuer to pay principal of and interest on the Series 2005-1 Notes in full on or before the Final Stated Maturity Date, or to pay Monthly Principal or the amount of any Decrease to the extent required under Section 4.03, or to pay accrued interest on the Series 2005-1 Notes in full on any Distribution Date, or to pay accrued Monthly Program Fees on any Distribution Date, and such failure remains unremedied for one Business Day; or
  - (b) failure on the part of the Issuer to maintain its separate existence as required by Section 3.07 of the Indenture or duly to perform or observe any covenant set forth in Section 3.03(a), (c), (d), (e), (f), (g), (h), (i) or (j) of the Indenture, which failure continues unremedied for a period of ten calendar days; or
  - (c) failure on the part of the Issuer duly to perform or observe any other covenants or agreements of the Issuer set forth in the Note Purchase Agreement, the Indenture or this Indenture Supplement, which failure continues unremedied for a period of 30 days, in each case, after the date on which written notice of such failure, requiring the same to be remedied, has been given to the Issuer by the Indenture Trustee, or to the Issuer and the Indenture Trustee by the Required Managing Agents; or
  - (d) any representation or warranty made by the Issuer in the Note Purchase Agreement, this Indenture Supplement or the Indenture proves to have been incorrect in any material respect when made, and continues to be incorrect in any material respect for a period of 30 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Issuer by the Indenture Trustee, or to the Issuer and the Indenture Trustee by the Required Managing Agents; or
  - (e) a Servicer Default; or
  - (f) a CMSC Purchase Termination Event under the Purchase Agreement, an ARSC Purchase Termination Event under the Receivables Purchase Agreement or a Transfer Termination Event under the Transfer and Servicing Agreement; or
  - (g) other than an Event of Default described in clause (v) below, an Event of Default with respect to the Series 2005-1 Notes; or
  - (h) a Series 2005-1 Asset Amount Deficiency, which Series 2005-1 Asset Amount Deficiency continues for any two consecutive Business Days after actual knowledge thereof by the Servicer or the Issuer or upon the next succeeding Distribution Date, whichever is earlier; or
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- (i) the amount on deposit in the Marketing Expenses Account is less than the Required Marketing Expenses Account Amount for any five consecutive Business Days after actual knowledge thereof by the Servicer or upon the next succeeding Distribution Date, whichever is earlier; or
  - (j) the Average Days in Inventory for Appraised Value Homes equals or exceeds one hundred fifty (150) days for any Monthly Period; or
  - (k) the average of the Average Days in Inventory for Appraised Value Homes for any Monthly Period and for the immediately preceding five Monthly Periods equals or exceeds one hundred twenty (120) days; or
  - (l) the Average Days in Inventory for Homes other than Appraised Value Homes equals or exceeds sixty (60) days for any Monthly Period; or
  - (m) the average of the Average Days in Inventory for Homes other than Appraised Value Homes for any Monthly Period and for the immediately preceding five Monthly Periods equals or exceeds forty (40) days; or
  - (n) the Default Ratio for any Monthly Period exceeds 5.0%, or the Three Month Average Default Ratio for any Monthly Period exceeds 4.0%; or
  - (o) the Dilution Ratio for any Monthly Period exceeds 1.5%, or the Three Month Average Dilution Ratio for any Monthly Period exceeds 1.0%; or
  - (p) Net Credit Losses for any Monthly Period exceed \$750,000 and for any twelve consecutive Monthly Periods exceed \$1,500,000; or
  - (q) the failure to vest and maintain in the Indenture Trustee a perfected first priority security interest in the Pledged Assets; or
  - (r) either (i) the Internal Revenue Service files notice of a lien pursuant to Section 6323 of the Internal Revenue Code with respect to any of the ARSC Purchased Assets, and such Lien has not been released within five days or, if released, proved to the satisfaction of the Rating Agencies, or (ii) the PBGC files, or indicates its intention to file a notice of a lien pursuant to Section 4068 of ERISA with respect to any of the Pledged Assets; or
  - (s) any of the Purchase Agreement, the Receivables Purchase Agreement, the Transfer and Servicing Agreement, the Note Purchase Agreement, the Performance Guarantees, the Indenture, this Indenture Supplement or any related documents cease, for any reason, to be in full force and effect, other than in accordance with its terms; or
  - (t) a failure on the part of CMSC, as the Servicer, to cooperate with the transfer of the servicing to a successor Servicer following the delivery of a Termination Notice pursuant to the Transfer and Servicing Agreement, which failure is determined by the Required Managing Agents to be material and continues unremedied for a period of ten calendar days after the date on which written notice of such failure, requiring the same to be remedied, has been
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given to the Issuer by the Indenture Trustee, or to the Issuer and the Indenture Trustee by the Required Managing Agents; or

- (u) an Event of Bankruptcy shall occur with respect to the Issuer, the Transferor, Cendant Corporation, CRESG, CMSC or CMF; or
- (v) an Event of Default arising from a determination that the Issuer is required to be registered under the Investment Company Act of 1940; or
- (w) a Change of Control shall have occurred;

then, (i) in the case of any event described in clauses (a) through (g), (i), (n) through (t), or (w), an “Amortization Event” will be deemed to have occurred only if, after the applicable grace period, if any, set forth in such clauses, either the Indenture Trustee (at the direction of the Required Managing Agents) or the Required Managing Agents, in each case by notice then given in writing to the Issuer and the Servicer (and to the Indenture Trustee if given by the Series 2005-1 Noteholder) declare that an Amortization Event has occurred as of the date of such notice, (ii) in the case of any event described in clauses (h), (j), (k), (l) and (m), an Amortization Event will occur at the close of business on the fifth Business Day following the actual knowledge of the Issuer or the Servicer of such event without any notice or other action on the part of the Indenture Trustee or the Series 2005-1 Noteholder unless prior to that time the Required Managing Agents by notice then given in writing to the Issuer, the Servicer and the Indenture Trustee declare that an Amortization Event will not result from the occurrence of such event and (iii) in the case of any event described in clauses (u) or (v), an Amortization Event shall occur immediately upon the occurrence of such event without any notice or other action on the part of the Indenture Trustee or the Series 2005-1 Noteholders.

In addition to the foregoing, if an Amortization Event has occurred, then, at the written direction of the Required Managing Agents, the Indenture Trustee, as assignee of the Transferor and the Issuer with respect to the Lockboxes, may give Termination Notices to the Lockbox Banks in accordance with Section 9.06 of the Transfer and Servicing Agreement.

#### ARTICLE VII OPTIONAL REDEMPTION OF SERIES 2005-1 NOTES

##### Section 7.01. Optional Redemption of Series 2005-1 Notes.

(a) On any Business Day, subject to the provisions of Section 7.01(b) below, the Issuer shall have the option to redeem the Series 2005-1 Notes, at a redemption price equal to (i) if such day is a Distribution Date, the Redemption Price for such Distribution Date or (ii) if such day is not a Distribution Date, the Redemption Price for the immediately succeeding Distribution Date.

(b) The Issuer shall give the Servicer, the Administrative Agent, the Managing Agents and the Indenture Trustee at least thirty (30) days (or such lesser number of days as may be agreed to by the Managing Agents and the Indenture Trustee at such time) prior

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written notice of the date on which the Issuer intends to exercise such optional redemption. Not later than 12:00 noon, New York City time, on such day the Issuer shall deposit into (a) the Series 2005-1 Principal Subaccount in immediately available funds the excess of the principal portion of the Redemption Price over the amount, if any, on deposit in the Series 2005-1 Principal Subaccount and (b) the Distribution Account in immediately available funds the excess of the remaining portions of the Redemption Price over the amount, if any, of the Monthly Interest, Monthly Program Fees and other amounts on deposit in the Distribution Account which are allocable to Series 2005-1 and available for the payment of such amounts. Such redemption option is subject to payment in full of the Redemption Price. Upon payment and distribution of the Redemption Price and the reduction in the Series Outstanding Amount to zero, the Series 2005-1 Notes shall be cancelled, the Series 2005-1 Noteholders shall have no further obligations to fund under the Note Purchase Agreement and the Series 2005-1 Noteholders shall have no further interest in the Pledged Assets. The Redemption Price shall be distributed as set forth in Section 4.04.

ARTICLE VIII  
MISCELLANEOUS PROVISIONS

Section 8.01. Ratification of Agreement. As supplemented by this Indenture Supplement, the Indenture is in all respects ratified and confirmed and the Indenture as so supplemented by this Indenture Supplement shall be read, taken and construed as one and the same instrument.

Section 8.02. Counterparts. This Indenture Supplement may be executed in two or more counterparts, and by different parties on separate counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 8.03. Governing Law. THIS INDENTURE SUPPLEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING §5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW, BUT OTHERWISE WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES.

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IN WITNESS WHEREOF, the undersigned have caused this Indenture Supplement to be duly executed and delivered by their respective duly authorized officers on the day and year first above written.

CENDANT MOBILITY CLIENT-BACKED  
RELOCATION RECEIVABLES FUNDING LLC,  
as Issuer

By: /s/ Elizabeth R. Cohen

Name: Elizabeth R. Cohen

Title: Vice President and Assistant Treasurer

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION,  
as Indenture Trustee

By: /s/ Daniel C. Brown

Name: Daniel C. Brown

Title: Vice President

THE BANK OF NEW YORK,  
as Paying Agent, Authentication Agent  
and Transfer Agent and Registrar

By: /s/ Catherine Murray

Name: Catherine Murray

Title: Assistant Treasurer

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## FORM OF VARIABLE FUNDING NOTE

THIS NOTE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAW. THE HOLDER HEREOF, BY PURCHASING THIS NOTE, AGREES THAT THIS NOTE OR ANY INTEREST OR PARTICIPATION HEREIN, MAY BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN COMPLIANCE WITH THE SECURITIES ACT AND OTHER APPLICABLE LAWS AND ONLY (1) TO THE ISSUER OR (2) PURSUANT TO RULE 144A UNDER THE SECURITIES ACT TO A PERSON THAT THE HOLDER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT (A "QIB") PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF A QIB, WHOM THE HOLDER HAS INFORMED, IN EACH CASE, THAT THE REOFFER, RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT. EACH NOTE OWNER BY ACCEPTING A BENEFICIAL INTEREST IN THIS NOTE, IS DEEMED TO REPRESENT THAT IT IS EITHER A QIB PURCHASING FOR ITS OWN ACCOUNT OR A QIB PURCHASING FOR THE ACCOUNT OF ANOTHER QIB.

PRIOR TO PURCHASING ANY INTEREST IN THE NOTE, PURCHASERS SHOULD CONSULT COUNSEL WITH RESPECT TO THE AVAILABILITY AND CONDITIONS OF EXEMPTION FROM THE RESTRICTION ON RESALE OR TRANSFER. THE ISSUER HAS NOT AGREED TO REGISTER THE NOTE UNDER THE SECURITIES ACT, TO QUALIFY THE NOTE UNDER THE SECURITIES LAWS OF ANY STATE OR TO PROVIDE REGISTRATION RIGHTS TO ANY PURCHASER.

AS SET FORTH HEREIN, THE OUTSTANDING PRINCIPAL AMOUNT OF THIS NOTE AT ANY TIME MAY BE LESS THAN THE AMOUNT SHOWN ON THE FACE HEREOF. THE SERIES OUTSTANDING AMOUNT WILL BE REDUCED FROM TIME TO TIME BY DISTRIBUTIONS ON THE SERIES 2005-1 NOTES ALLOCABLE TO PRINCIPAL. IN ADDITION, THE SERIES OUTSTANDING AMOUNT MAY BE INCREASED SUBJECT TO CERTAIN TERMS AND CONDITIONS SET FORTH IN THE INDENTURE SUPPLEMENT AND THE NOTE PURCHASE AGREEMENT. ACCORDINGLY, FOLLOWING THE INITIAL ISSUANCE OF THE NOTE, THE OUTSTANDING AMOUNT OF THIS NOTE MAY BE DIFFERENT FROM THE INITIAL OUTSTANDING AMOUNT SHOWN ON THE FACE HEREOF. ANYONE ACQUIRING THIS NOTE MAY ASCERTAIN THE CURRENT OUTSTANDING PRINCIPAL BALANCE OF THIS NOTE BY INQUIRY OF THE PAYING AGENT. ON THE DATE OF THE INITIAL ISSUANCE OF THE NOTE, THE PAYING AGENT IS THE BANK OF NEW YORK.

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THE HOLDER OF THIS NOTE BY ITS ACCEPTANCE HEREOF, AND EACH HOLDER OF A BENEFICIAL INTEREST IN THIS NOTE BY THE ACQUISITION OF A BENEFICIAL INTEREST THEREIN, COVENANTS AND AGREES THAT IT WILL NOT AT ANY TIME INSTITUTE AGAINST THE ISSUER, APPLE RIDGE SERVICES CORPORATION OR CENDANT MOBILITY FINANCIAL CORPORATION OR JOIN IN ANY INSTITUTION AGAINST THE ISSUER, APPLE RIDGE SERVICES CORPORATION OR CENDANT MOBILITY FINANCIAL CORPORATION OF ANY BANKRUPTCY PROCEEDINGS UNDER ANY UNITED STATES FEDERAL OR STATE BANKRUPTCY OR SIMILAR LAW IN CONNECTION WITH ANY OBLIGATIONS RELATING TO THE NOTE OR THE INDENTURE.

THE HOLDER OF THIS NOTE BY ACCEPTANCE OF THIS NOTE AND EACH HOLDER OF A BENEFICIAL INTEREST IN THIS NOTE, BY THE ACQUISITION OF A BENEFICIAL INTEREST THEREIN, AGREE TO TREAT THE NOTE AS INDEBTEDNESS OF THE ISSUER FOR APPLICABLE FEDERAL, STATE, AND LOCAL INCOME AND FRANCHISE TAX LAW AND FOR PURPOSES OF ANY OTHER TAX IMPOSED ON OR MEASURED BY INCOME.

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REGISTERED

No. R-[ ]

CENDANT MOBILITY CLIENT-BACKED RELOCATION RECEIVABLES FUNDING LLC

SECURED VARIABLE FUNDING NOTE, SERIES 2005-1

Cendant Mobility Client-Backed Relocation Receivables Funding LLC (formerly known as Apple Ridge Funding LLC), a Delaware limited liability company (herein referred to as the "Issuer"), for value received, hereby promises to pay to [ ], as a Managing Agent for the benefit of its Purchaser Group under the Note Purchase Agreement, or its assigns, subject to the following provisions, a principal sum of [ ] DOLLARS (\$[ ]), or such greater or lesser amount as determined in accordance with the Indenture, on the earlier of the Final Stated Maturity Date and the Redemption Date, if any. The Issuer will pay interest on the Note with respect to each Interest Period in accordance with Section 4.02 of the Indenture Supplement. Such principal of and interest on this Note shall be paid in the manner specified on the reverse hereof.

The principal of and interest on this Note are payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

Reference is made to the further provisions of this Note set forth on the reverse hereof, which shall have the same effect as though fully set forth on the face of this Note.

Unless the certificate of authentication hereon has been executed by the Authentication Agent whose name appears below by manual signature, this Note shall not be entitled to any benefit under the Indenture referred to on the reverse hereof, or be valid or obligatory for any purpose.

This Note is one of a Series of Notes , Series 2005-1, as more fully described on the reverse side hereof.

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**IN WITNESS WHEREOF, the Issuer has caused this instrument to be signed, manually or in facsimile, by its Authorized Officer.**

CENDANT MOBILITY CLIENT-BACKED RELOCATION RECEIVABLES FUNDING LLC,  
as Issuer

By: \_\_\_\_\_

Name:

Title:

Date: January [ ], 2005

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AUTHENTICATION AGENT'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes designated above and referred to in the within-mentioned Indenture.

BANK OF NEW YORK,  
not in its individual capacity but  
solely as Authentication Agent

By: \_\_\_\_\_

Name:

Title:

Date: January [ ], 2005

[REVERSE OF NOTE]

This duly authorized Note of the Issuer (herein called the "Note") is designated as one of its Secured Variable Funding Notes, Series 2005-1 (herein called the "Series 2005-1 Notes"), and is issued under a Master Indenture dated as of April 25, 2000 (such indenture, as amended, and as supplemented by the Series 2005-1 Indenture Supplement dated as of January [ ], 2005 among the parties to the Master Indenture (the "Indenture Supplement"), is herein called the "Indenture"), between the Issuer, JPMorgan Chase Bank, N.A. (successor by merger to Bank One, National Association), as indenture trustee (the "Indenture Trustee," which term includes any successor Indenture Trustee under the Indenture), and The Bank of New York, as paying agent, authentication agent and transfer agent and registrar. The respective rights and obligations of the Issuer, the Indenture Trustee and the Holder of the Note are set forth in the Indenture. This Note is subject to all terms of the Indenture. All terms used in the Note that are not defined herein shall have the meanings assigned to them in or pursuant to the Indenture, as supplemented or amended.

Payments of interest on and principal of this Note due and payable on any Distribution Date shall be made by wire transfer to the registered Holder of this Note (or one or more predecessor Notes) on the Note Register as of the close of business on each Record Date (the "Registered Holder"). Any reduction in the principal amount of this Note (or any one or more predecessor Notes) effected by any payments made on any Distribution Date shall be binding upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not noted hereon.

As provided in the Indenture, the Series 2005-1 Notes may be redeemed in whole, but not in part, on the Redemption Date, if any.

As provided in the Indenture and subject to certain limitations set forth therein, the transfer of this Note may be registered on the Note Register upon surrender of this Note for registration of transfer at the office or agency designated by the Issuer pursuant to the Indenture, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Transfer Agent and Registrar duly executed by, the Holder hereof or his attorney-in-fact duly authorized in writing, and such other documents as the Transfer Agent and Registrar may reasonably require, and thereupon one or more new Notes of the same Series of authorized denominations and in the same aggregate principal amount will be issued to the designated transferee or transferees. No service charge will be charged for any registration of transfer or exchange of this Note, but the Issuer or the Transfer Agent and Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such registration of transfer or exchange.

Each Noteholder by acceptance of this Note covenants and agrees that no recourse may be taken, directly or indirectly, with respect to the obligations of the Issuer or the Indenture Trustee on the Notes or under the Indenture or any certificate or other writing delivered in connection therewith, against (i) the Indenture Trustee in its individual capacity, (ii) any owner of a beneficial interest in the Issuer or (iii) any partner, owner, beneficiary, agent, officer,

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director or employee of the Indenture Trustee in its individual capacity, any holder of a beneficial interest in the Issuer or the Indenture Trustee or of any successor or assign of the Indenture Trustee in its individual capacity, except as any such Person may have expressly agreed and except that any such partner, owner or beneficiary shall be fully liable, to the extent provided by applicable law, for any unpaid consideration for stock, unpaid capital contribution or failure to pay any installment or call owing to such entity.

Prior to the due presentment for registration of transfer of this Note, the Issuer, the Indenture Trustee, the Paying Agent, the Authentication Agent, the Transfer Agent and Registrar and any agent of the foregoing shall treat the Person in whose name this Note (as of the day of determination or as of such other date as may be specified in the Indenture) is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Issuer, the Indenture Trustee, the Paying Agent, the Authentication Agent, the Transfer Agent and Registrar nor any such agent of the foregoing shall be affected by notice to the contrary.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuer and the rights of the Holders of the Series 2005-1 Notes and other notes issued under the Indenture at any time by the Issuer and the Indenture Trustee with the consent of the Majority Investors. The Indenture also contains provisions permitting the Holders of Series 2005-1 Notes representing specified percentages of the Series Outstanding Amount, on behalf of the Holder of this Note, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver shall be conclusive and binding upon the Holder of this Note and upon all future Holders of this Note and of any Note issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent or waiver is made upon this Note. The Indenture also permits, subject to the conditions set forth in the Indenture, the Indenture Trustee to amend or waive certain terms and conditions set forth in the Indenture without the consent of Holders of any notes issued thereunder or without the consent of holders of any Series of notes not affected thereby.

The term "Issuer" as used in this Note includes any successor to the Issuer under the Indenture.

The Notes are issuable only in registered form in denominations as provided in the Indenture, subject to certain limitations therein set forth.

This Note and the Indenture shall be governed by and construed in accordance with the laws of the State of New York, including Section 5-1401 of the New York General Obligations Law, but otherwise without regard to its conflict of law principles.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Issuer, which is absolute and unconditional, to pay the principal of and interest on this Note at the times, place, and rate, and in the coin or currency herein prescribed.

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Anything herein to the contrary notwithstanding, except as expressly provided in the Transaction Documents, neither the owner of a beneficial interest in the Issuer, nor any of its partners, beneficiaries, agents, officers, directors, employees or successors or assigns shall be personally liable for, nor shall recourse be had to any of them for, the payment of principal of or interest on, or performance of, or omission to perform, any of the covenants, obligations or indemnifications contained in this Note or the Indenture. The Holder of this Note by the acceptance hereof agrees that, except as expressly provided in the Transaction Documents, the Holder shall have no claim against any of the foregoing for any deficiency, loss or claim therefrom; provided, however, that nothing contained herein shall be taken to prevent recourse to, and enforcement against, the assets of the Issuer for any and all liabilities, obligations and undertakings contained in the Indenture or in this Note.

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ASSIGNMENT

Social Security or taxpayer I.D. or other identifying number of assignee

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FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

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(name and address of assignee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints attorney, to transfer said Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_ \*  
Signature Guaranteed:

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\* NOTE: The signature to this assignment must correspond with the name of the registered owner as it appears on the face of the within Note in every particular, without alteration, enlargement or any change whatsoever.

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