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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 4, 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, New York  
(Address of principal  
executive office)

10019  
(Zip Code)

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

(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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On January 31, 2005, Cendant Corporation (“Cendant”) completed the distribution of its mortgage, fleet management and appraisal businesses to its stockholders through the distribution to its stockholders (the “spin-off”) of all of the outstanding shares of common stock of its former subsidiary PHH Corporation. Cendant’s press release announcing the completion of the spin-off is included as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference. Reference is made to the Information Statement delivered to Cendant stockholders in connection with the spin-off, which is incorporated herein by reference as Exhibit 99.2 to this Current Report on Form 8-K (the “Information Statement”), for a description of the spin-off. The information in this Current Report on Form 8-K is being filed in connection with the completion of the spin-off.

### **Item 1.01 Entry into a Material Definitive Agreement.**

In connection with the spin-off, certain subsidiaries of Cendant entered into arrangements with PHH Corporation (“PHH”) and certain of its mortgage subsidiaries for the purpose of forming a venture intended to originate mortgage loans for customers of Cendant’s residential real estate and relocation businesses. A description of these arrangements is set forth in the section of the Information Statement entitled “Intercompany Arrangements — Cendant-PHH Mortgage Venture” and is incorporated herein by reference.

Copies of the venture operating agreement and the strategic relationship agreement are included as exhibits to this Current Report on Form 8-K and are incorporated herein by reference.

In connection with the spin-off, Cendant and PHH entered into a Separation Agreement on January 31, 2005. A description of this agreement is set forth in the section of the Information Statement entitled “Intercompany Arrangements — Separation Agreement” and is incorporated herein by reference. A copy of this agreement is included as an exhibit to this Current Report on Form 8-K and is incorporated herein by reference.

In connection with the spin-off, Cendant, PHH and certain of PHH’s affiliates also entered into a Tax Sharing Agreement on January 31, 2005. A description of this agreement is set forth in the section of the Information Statement entitled “Intercompany Arrangements — Tax Sharing Agreement” and is incorporated herein by reference. A copy of this agreement is included as an exhibit to this Current Report on Form 8-K and is incorporated herein by reference.

A description of the material relationships between Cendant and its subsidiaries and PHH and its subsidiaries is set forth in the section of the Information Statement entitled “Intercompany Arrangements” and is incorporated herein by reference.

### **Item 2.01 Completion of Acquisition Or Disposition of Assets.**

On January 31, 2005, Cendant completed the distribution of its mortgage, fleet management and appraisal businesses to its stockholders through the distribution to its stockholders of all of the outstanding shares of common stock of PHH. One (1) share of PHH common stock was distributed for every twenty (20) shares of Cendant common stock outstanding as of the close of business on January 19, 2005, the record date for the spin-off. Cendant distributed to its stockholders approximately 52.7 million shares of PHH common stock in the spin-off. Immediately prior to the spin-off, PHH distributed to Cendant the stock of all of the companies engaged in Cendant’s corporate relocation and fuel card businesses, which businesses will remain with Cendant.

### **Item 2.06 Material Impairments.**

As previously disclosed, the Company expects to record a non-cash impairment charge in connection with the spin-off of PHH to reflect any difference between PHH’s carrying value and PHH’s market value. The Company anticipates that such non-cash charge will be in the range of \$535 million to \$590 million after tax, or \$0.50 to \$0.55 per diluted share (based upon

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currently available information). Approximately one-third of this charge will be allocated to continuing operations and approximately two-thirds to discontinued operations, reflecting the relative values of the mortgage and fleet businesses, respectively, and the fact that mortgage will not be accounted for as a discontinued operations. The Company does not anticipate recording a tax benefit associated with this charge.

### **Item 9.01 Financial Statements and Exhibits.**

#### (b) Pro Forma Financial Information

The information set forth in the Unaudited Pro Forma Financial Information is included as Exhibit 99.3 to this Current Report on Form 8-K and is incorporated herein by reference.

#### (c) Exhibits

Exhibit Number	Description
10.1	Amended and Restated Limited Liability Company Operating Agreement, dated as of January 31, 2005, of PHH Home Loans, LLC, by and between PHH Broker Partner Corporation and Cendant Real Estate Services Venture Partner, Inc.
10.2	Strategic Relationship Agreement, dated as of January 31, 2005, by and among Cendant Real Estate Services Group, LLC, Cendant Real Estate Services Venture Partner, Inc., PHH Corporation, PHH Mortgage Corporation, PHH Broker Partner Corporation and PHH Home Loans, LLC.*
10.3	Separation Agreement, dated as of January 31, 2005, by and between Cendant Corporation and PHH Corporation.
10.4	Tax Sharing Agreement, dated as of January 31, 2005, by and among Cendant Corporation, PHH Corporation and certain affiliates of PHH Corporation named therein.*
99.1	Press release dated January 31, 2005 announcing completion of the spin-off.
99.2	Information Statement delivered to Cendant Corporation stockholders, incorporated by reference to Exhibit 99.2 to Cendant Corporation's Current Report on Form 8-K filed January 19, 2005.
99.3	Unaudited Pro Forma Financial Information.

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\* Confidential treatment has been requested for certain portions of this Exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, which portions have been omitted and filed separately with the Securities and Exchange Commission.

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SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, 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

Name: Eric J. Bock

Title: Executive Vice President, Law and  
Corporate Secretary

Dated: February 4, 2005

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**CENDANT CORPORATION**  
**CURRENT REPORT ON FORM 8-K**  
**Report Dated February 4, 2005 (January 31, 2005)**

**EXHIBIT INDEX**

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\* Confidential treatment has been requested for certain portions of this Exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, which portions have been omitted and filed separately with the Securities and Exchange Commission.

**AMENDED AND RESTATED  
LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
PHH HOME LOANS, LLC  
January 31, 2005**

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This AMENDED AND RESTATED LIMITED LIABILITY COMPANY OPERATING AGREEMENT, dated as of January 31, 2005 (this "Agreement"), of PHH Home Loans, LLC (the "Company"), a Delaware limited liability company, is by and between PHH Broker Partner Corporation, a Maryland corporation (the "PHH Member"), and Cendant Real Estate Services Venture Partner, Inc., a Delaware corporation (the "Cendant Member") and each Person (as hereinafter defined) subsequently admitted as a member of the Company (individually, a "Member" and, collectively, the "Members").

WITNESSETH:

WHEREAS, the PHH Member and the Cendant Member entered into a Limited Liability Company Operating Agreement, effective as of November 3, 2004 (the "Initial Operating Agreement") and formed the Company pursuant to and in accordance with the Limited Liability Company Act of the State of Delaware (the "Act") by filing the Certificate of Formation of the Company (the "Certificate of Formation") in accordance with the Act;

WHEREAS, the Members desire to amend and restate the Initial Operating Agreement;

WHEREAS, the Members intend that hereafter the principal purpose of the Company shall be to originate and sell mortgage loans sourced through Cendant's owned residential real estate brokerage and corporate relocations businesses and from all U.S.-based employees of Cendant and its Subsidiaries, in accordance with the terms and provisions of this Agreement;

WHEREAS, this Agreement sets forth, among other things, the agreement among the Members as to the governance of the affairs of the Company and the conduct of its business; and

WHEREAS, concurrently with the execution of this Agreement, Cendant Real Estate, PHH, the Cendant Member, PMC, the PHH Member and the Company have entered into a Strategic Relationship Agreement (as amended from time to time, the "SRA") which sets forth certain matters related to the business relationship among the parties thereto during the term of this Agreement.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree as follows:

ARTICLE I  
Definitions

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Section 1.1 Definitions. As used in this Agreement, the following terms shall each have the meaning set forth in this Article (unless the context otherwise requires).

“Adjusted Capital Account” means, with respect to any Member, the balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Period, after: (i) crediting to such Capital Account any amounts that such Member is obligated to restore pursuant to Treasury Regulation Section 1.704-1(b)(2)(i)(c) (or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5)) and (ii) debiting to such Capital Account the items described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

“Affiliate” means, when used with reference to a specific Person, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specific Person. For the avoidance of doubt, neither the Company nor any of the Brand Franchisees, as defined in the SRA, shall be deemed to be an Affiliate of Cendant or any of Cendant’s Affiliates for any purpose hereunder or under any of the other Transaction Documents.

“Agreement” means this Agreement, including the Schedules and Exhibits hereto, as originally executed and as subsequently amended from time to time in accordance with the provisions hereof.

“Assignment” shall mean a document, sufficient under the laws of the jurisdiction where the related Mortgaged Property is located, to reflect all transfers of the applicable Mortgage Instrument and the Mortgage Note.

“Bankruptcy” means, with respect to any Person, the happening of any one or more of the following events: (a) such Person (or, in the case of any Person which is a partnership, any general partner thereof): (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudged bankrupt or insolvent, or there has been entered against such Person (or general partner) an order for relief, in any bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking in respect of such Person (or general partner) any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person (or such general partner) in any proceeding of a nature described above; or (vi) seeks, consents or acquiesces in the appointment of a trustee, receiver or liquidator of such Person (or such general partner) or of all or any substantial part of such Person’s (or such general partner’s) properties; or (b) 120 days after the commencement of any proceeding against any such Person (or such general partner) seeking reorganization, arrangement, composition, readjustment,

liquidation, dissolution or similar relief under any statute, law or regulation, if such proceeding has not been dismissed, or within 90 days after the appointment without such Person's (or such general partner's) consent or acquiescence of a trustee, receiver or liquidator of the Person (or such general partner) or of all or any substantial part of such Person's (or such general partner's) properties, if such appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, if such appointment is not vacated.

"Beneficial Owner" shall, with respect to any Person, be determined as set forth in Rule 13d-3 of the General Rules and Regulations of the Securities Exchange Act of 1934, as in effect on the date hereof.

"Business Day" means any day other than a Saturday, Sunday or a holiday on which commercial banks in the State of New York are closed.

"Cendant" means Cendant Corporation, a Delaware corporation.

"Capital Contribution" means, with respect to any Member, the amount of cash and the initial Gross Asset Value of any asset (other than cash) contributed to the capital of the Company pursuant to Article IV hereof.

"Cendant Mobility Office" means any office comprising part of Cendant's corporate relocation business, including, without limitation, any office of Cendant Mobility Services Corporation ("Cendant Mobility") or any of its Subsidiaries, whether owned as of the date hereof or acquired or opened hereafter by Cendant Mobility or one of its Subsidiaries.

"Cendant Owned Real Estate Office" means any residential real estate brokerage office owned as of the date hereof or acquired or opened hereafter by Cendant Real Estate or one of its Subsidiaries, including NRT Incorporated.

"Cendant Real Estate" means Cendant Real Estate Services Group, LLC, a Delaware limited liability company.

"Change of Control" means, with respect to any Person, the occurrence of any event set forth in one of the following paragraphs:

- (a) any "person" or "group" (as such terms are used in Section 13(d)(3) of the Exchange Act) is or becomes the Beneficial Owner, directly or indirectly, of securities of such Person representing greater than one-third of the combined voting power of such Person's outstanding securities;

- (b) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of such Person (together with any new directors whose election or appointment by such Board or whose nomination for election by the stockholders of such Person was approved by a vote of not less than a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute at least two-thirds of the Board of Directors of such Person;
- (c) there is consummated a merger, consolidation or similar transaction (including a recapitalization) of such Person with any other Person, other than a merger or consolidation immediately following which the stockholders of such Person immediately prior thereto own in the aggregate not less than two-thirds of the combined voting power of the entity surviving such merger, consolidation or similar transaction or the Controlling Person thereof; or
- (d) there is consummated a sale or disposition by such Person of all or a substantial portion of such Person's assets to another Person, other than a sale or disposition immediately following which the stockholders of such Person immediately prior thereto own in the aggregate not less than two-thirds of the combined voting power of such other Person or the Controlling Person thereof.

"Closing Date" means January 31, 2005.

"Code" means the Internal Revenue Code of 1986.

"Company Minimum Gain" means "partnership minimum gain" as set forth in Treasury Regulation Sections 1.704-2(b)(2) and 1.704-2(d).

"Company Property or Properties" means all interests, properties, whether real or personal, and rights of any type owned or held by the Company, whether owned or held by the Company at the date of its formation or thereafter acquired.

"Company Regulatory Event" means a situation in which (i) the Company becomes subject to any Regulatory Order, or any Governmental Entity initiates a Proceeding with respect to the Company, and (ii) such Regulatory Order or Proceeding prevents or materially impairs the Company's ability to originate loans for any period of time in a manner that adversely affects the value of one or more of the quarterly distributions to be paid by the Company pursuant to Section 5.6 of this Agreement; provided, however, that Company Regulatory Event shall not include (1) any order,

directive or interpretation or change in law, rule or regulation, in any such case that is applicable generally to companies engaged in the mortgage lending business such that the Company is unable to cure the resulting circumstances described in (ii) above, or (2) any Regulatory Order or Proceeding that results solely from acts or omissions on the part of the Cendant Entities or their Affiliates.

“Contributed Property” means property or other consideration (other than cash) contributed to the Company in exchange for Interests.

“Contribution Agreement” means the Contribution Agreement to be entered into by and among the Cendant Member, the Company and the PHH Member pursuant to Section 2.11 hereof.

“Control” shall mean, with regard to any Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative with the foregoing.

“Controlling Person” means a Person who controls another Person.

“Customer” means any individual who contacts the Company, whether in person or by mail, phone, via the Internet (including by electronic mail), or otherwise, or who is so contacted by the Company, about the possibility of obtaining a Mortgage Loan through the Company, or who otherwise obtains a Mortgage Loan from or through the Company.

“Depreciation” means, for each Fiscal Period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such Fiscal Period; provided, however, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Period, Depreciation shall be an amount that bears the same ratio to such Gross Asset Value which the asset had when its value was last adjusted, as the federal income tax depreciation, amortization or other cost recovery deduction with respect to such asset for such Fiscal Period bears to the adjusted tax basis which the asset had when its value was last adjusted; and provided, further, that if the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Period is zero, then, subject to Section 6.3(a)(xiv), Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

“Distributable Net Income” shall mean, for each Fiscal Quarter, an amount equal to the net income of the Company and its Subsidiaries, on a consolidated basis, determined in accordance with GAAP, less any amounts retained by the Company as

shall be necessary to meet the Minimum Capital Requirements (which requirements shall be approved by the Board pursuant to Section 6.3).

“Fair Market Value” means the fair market value of an asset, as determined by the Managing Member using any reasonable method of valuation, except as otherwise provided herein; provided, however, that such fair market value shall be approved by the Board as provided in Section 6.3(a) (xvii).

“FHA” means the Federal Housing Administration of HUD or any successor thereto.

“Fiscal Period” means the period (i) commencing (w) at the beginning of each Fiscal Quarter, (x) the date of any acquisition of Interests by any new or existing Member in exchange for a Capital Contribution, or (y) on each date following the effective date of any distribution to a Member of any property as consideration for an Interest in the Company, and (ii) ending on the date immediately preceding the first day of the next Fiscal Period; provided, that the last Fiscal Period shall end on the date on which all assets of the Company are distributed to the Members pursuant to Section 9.4 hereof.

“Fiscal Quarter” means (i) the period commencing on the date of this Agreement and ending on March 31, 2005, or (ii) any subsequent three (3) month period commencing on January 1, April 1, July 1 and October 1 and ending on March 31, June 30, September 30 and December 31, respectively; provided, that the last Fiscal Quarter shall end on the date on which all assets of the Company are distributed to the Members pursuant to Section 9.4 hereof.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Entity” means any court, agency or commission or other governmental or regulatory authority.

“Gross Asset Value” means, with respect to any asset, such asset’s adjusted basis for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the Fair Market Value of such asset;

(ii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective Fair Market Values, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital

Contribution, (b) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an interest in the Company and (c) the liquidation of the Company, within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(g); provided, however, that, with approval of the Board pursuant to Section 6.3(a)(xiv) hereof, adjustments pursuant to clause (ii)(a) or (ii)(b) of this definition shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the Fair Market Value of such asset on the date of such distribution, unreduced by any liability secured by such asset; and

(iv) the Gross Asset Value of Company assets will be increased or decreased to reflect any adjustment to the adjusted basis of such assets under Sections 734(b) or 743(b) of the Code, but only to the extent that the adjustment is taken into account in determining Capital Accounts under Treasury Regulation Section 1.704-1(b)(2)(iv)(m) and paragraph (f) of the definition of Net Income and Net Loss or Section 5.2(f), provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (iv) to the extent the Managing Member determines that an adjustment pursuant to paragraph (ii) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iv) and the Board authorizes such paragraph (ii) adjustment pursuant to Section 6.3(a)(xiv) hereof.

If the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraph (i), paragraph (ii) or paragraph (iv) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Loss.

“HUD” means the United States Department of Housing and Urban Development or any successor thereto.

“Interest” means (i) a Member’s share of Net Income (and items of income and gain) and Net Loss (and items of loss and deduction) of the Company and a Member’s right to receive distributions from the Company in accordance with the provisions of this Agreement and the Act and (ii) such Member’s other rights and privileges as herein provided, including, without limitation, voting privileges.

“Insolvency” means, when used with respect to any Person, such Person is unable to pay its debts and obligations as they become due, or has incurred debts beyond its ability to pay such debts as they mature.

“Investor Commitments” means any agreement, contract or arrangement pursuant to which any Person purchases or agrees to purchase Mortgage Loans from the Company or any Subsidiary of the Company.

“Lease” means the Bishop’s Gate Sublease, substantially in the form of Exhibit A hereto, to be entered into between the Company and PMC on the Contribution Date, pursuant to which the Company will lease space from PMC at 3000 Leadenhall Road, Mt. Laurel, NJ 08054.

“License Agreement” means the Trademark License Agreement, dated as of the date of this Agreement, between PMC and TM Acquisition Corp., Coldwell Banker Real Estate Corporation and ERA Franchise Systems, Inc., pursuant to which PMC has been granted a license to use the Cendant Real Estate Franchisee Brands (as defined in the SRA) in connection with its business, on the terms set forth therein.

“Loan Funding Facility” means a credit or loan agreement or other funding arrangement, approved by the Board pursuant to Section 6.3 hereof, pursuant to which the Company and/or its Subsidiaries borrows money for the purpose of funding Mortgage Loan originations.

“Losses” means any and all losses, damages, disbursements, suits, claims, liabilities, obligations, judgments, fines, penalties, charges, amounts paid in settlement, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses), and shall specifically include, but only for purposes of Section 12.4 hereof, any indirect, special, incidental or consequential damages (including lost profits and lost cash distributions).

“Management Services Agreement” means the Management Services Agreement, substantially in the form attached hereto as Exhibit B, to be entered into by the Company and PMC in accordance with Section 2.11 of this Agreement.

“Managing Member” means the PHH Member, or such other Member as may replace the PHH Member as Managing Member pursuant to Section 8.2 or 8.4 hereof.

“Master Sublease Agreement” means the Master Shared Office Space Agreement, substantially in the form attached hereto as Exhibit C, to be entered into between the Company and NRT on the Contribution Date, pursuant to which the



Company will sublease from NRT office space utilized by field personnel of the Company who are co-located in a Cendant Owned Real Estate Office.

“Member” means, at any time, a Person admitted as a member of the Company pursuant to Section 3.2 hereof and listed on Schedule I hereto. If a Member Transfers its Interest or any portion thereof to a Person who is not a Member, reference in this Agreement to a “Member” or such Member’s Capital Account in connection with such Transferred Interest or portion thereof shall be deemed to be a reference to the record holder of such Transferred Interest or portion thereof for the purpose of calculating the economic interest and Capital Account balances and adjustments represented by such Transferred Interest or portion thereof until such record holder of such Transferred Interest or portion thereof is admitted as a Member.

“Member Nonrecourse Debt” means “partner nonrecourse debt” as set forth in Treasury Regulation Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” means an amount with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulation Section 1.704-2(i)(3).

“Member Nonrecourse Deductions” means “partner nonrecourse deductions” as set forth in Treasury Regulation Section 1.704-2(i)(2), and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Fiscal Period shall be determined in accordance with the rules of Treasury Regulation Section 1.704-2(i)(2).

“Mobility Interim MSA” means the Marketing Agreement, by and between Cendant Mobility and PMC, dated as of January 31, 2005.

“Mortgage Instrument” means any deed of trust, security deed, mortgage, or other instrument which constitutes a first lien or second lien on the Mortgaged Property securing payment by a mortgagor of a Mortgage Note.

“Mortgage Loan” means a mortgage loan (including a home equity line of credit) evidenced by one or more promissory notes and secured by a mortgage or deed of trust on one or more residential real estate properties.

“Mortgage Loan Disclosure” shall mean any disclosure, notice or other document or statement that, pursuant to applicable law, must be provided to a Customer by or on behalf of the Company in connection with the origination, closing and funding of a Mortgage Loan or an application for a Mortgage Loan.

“Mortgage Loan Documents” means the Mortgage Instruments, Mortgage Notes and Assignments.

“Mortgage Loan Sale Agreement” means a Mortgage Loan Sale Agreement to be entered into by and between the Company and PMC in accordance with Section 2.11 hereof.

“Mortgage Note” means the mortgage note, deed of trust note, security deed note or other form of promissory note executed by a mortgagor and secured by a Mortgage Instrument evidencing the indebtedness of the mortgagor under a Mortgage Loan.

“Mortgaged Property” means the interest in real property pledged to secure a Mortgage Note, as evidenced by one or more Mortgage Instruments.

“MSA” means the Marketing Services Agreement, dated as of the date of this Agreement, by and between PMC and certain Subsidiaries of Cendant Real Estate.

“Net Income” and “Net Loss” shall mean, for each Fiscal Period, an amount equal to the Company’s items of taxable income or loss for such Fiscal Period, determined in accordance with Section 703 of the Code (for this purpose all items of income, gain, loss and deduction required to be separately stated pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) any income that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Loss shall be added to taxable income or loss;

(b) any expenditures of the Company described in Section 705(a)(2)(B) or that are treated as Section 705(a)(2)(B) expenditures pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Loss, shall be subtracted from such taxable income or loss;

(c) in the event that the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Net Income or Net Loss;

(d) gain or loss resulting from the disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) in lieu of the depreciation, amortization, and other costs recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation with respect to each asset of the Company for such Fiscal Period computed in accordance with the definition of Depreciation;

(f) to the extent an adjustment to the adjusted basis of any Company asset pursuant to Section 734(b) or 743(b) of the Code is required pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in complete liquidation of a Member's Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account in computing Net Income or Net Loss; and

(g) notwithstanding any other provision of this definition, any items specially allocated pursuant to Section 5.2 shall not be considered in determining Net Income or Net Loss.

“New Member” means any Person not listed on Schedule I as of the date hereof who has been admitted as a Member to the Company pursuant to Section 3.2 hereof.

“Nonrecourse Deductions” has the meaning set forth in Treasury Regulation Section 1.704-2(b)(1), and the amount of the Nonrecourse Deductions for a Fiscal Period shall be determined in accordance with Treasury Regulation Section 1.704-2(c).

“Nonrecourse Liability” means a liability (or that portion of a liability) with respect to which no Member bears the economic risk of loss as determined under Treasury Regulation Section 1.704-2(b)(3).

“NRT Interim MSA” means the Marketing Agreement, by and between NRT Incorporated and PMC, dated as of January 31, 2005.

“Origination Channels” has the meaning assigned to such term in the SRA.

“Person” means any individual, general partnership, limited partnership, corporation, limited liability company, joint venture, trust, business trust, governmental agency, cooperative, association, or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such person, as the context may require.

“PHH” means PHH Corporation, a Maryland corporation.

“PHH Regulatory Event” means a situation in which (i) PMC or any of its Affiliates (other than the Company) becomes subject to any Regulatory Order, or any Governmental Entity initiates a Proceeding with respect to PMC or any of its Affiliates (other than the Company), and (ii) such Regulatory Order or Proceeding prevents or materially impairs the Company’s ability to originate loans for any period of time in a manner that adversely affects the value of one or more quarterly distributions to be paid by the Company pursuant to Section 5.6 of this Agreement; provided, however, that PHH Regulatory Event shall not include (1) any order, directive or interpretation or change in law, rule or regulation, in any such case that is applicable generally to companies engaged in the mortgage lending business such that PMC or such Affiliate or the Company is unable to cure the resulting circumstances described in (ii) above, or (2) any Regulatory Order or Proceeding that results solely from acts or omissions on the part of Cendant or its Affiliates.

“PMC” means PHH Mortgage Corporation, a New Jersey corporation.

“PHH Change of Control” means a Change of Control of PHH, or the Managing Member or any other Affiliate of PHH that beneficially owns, directly or indirectly, any Interest of the Company.

“Proceeding” means any legal, administrative, arbitral or other proceeding, claim, action or governmental or regulatory investigation of any nature.

“Regulatory Order” means any injunction, order, judgment, decree, memorandum of understanding, consent decree, directive or regulatory restriction, or any change in or interpretation of any law, rule or regulation, imposed by a Governmental Entity.

“RESPA” means the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*, and the Department of Housing and Urban Development’s implementing regulation, Regulation X, 24 C.F.R. § 3500 *et seq.*

“Securities Act” means the Securities Act of 1933.

“Small Corps” means, collectively, the companies listed in Exhibit D.

“State Agency” means any agency or other Governmental Entity of any of the fifty states of the United States or of the District of Columbia, in each case having authority to regulate the mortgage-related activities of the Company or any of its Subsidiaries or to determine the investment requirements with regard to mortgage loan originations performed by the Company or any of its Subsidiaries.

“Subsidiary” means, when used with respect to any party, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, which is consolidated with such party for financial reporting purposes under GAAP, and, when used with respect to the Company, shall include, without limitation, those Small Corps that will become Subsidiaries of the Company following the completion of the Subsequent Capital Contributions in accordance with Section 2.11 hereof.

“Transaction Documents” means, collectively, this Agreement, the SRA, the MSA, the NRT Interim MSA, the Mobility Interim MSA, the License Agreement, the Venture License Agreement, the Management Services Agreement, the Lease Agreement, the Master Sublease Agreement, the Contribution Agreement and the Mortgage Loan Sale Agreement.

“Transfer” means any change in the record or beneficial ownership of an Interest, whether made voluntarily or involuntarily by operation of law.

“Treasury Regulations” means the regulations promulgated by the U.S. Treasury Department pursuant to the Code.

“Venture License Agreement” means the Trademark License Agreement, by and among TM Acquisition Corp., Coldwell Banker Real Estate Corporation, ERA Franchise Systems, Inc. and the Company, dated as of January 31, 2005.

Section 1.2 Interpretation. Each definition in this Agreement includes the singular and the plural, and reference to the neuter gender includes the masculine and feminine where appropriate. References to any statute or Treasury Regulations means such statute or regulations as amended at the time and include any successor legislation or regulations. The headings to the Articles and Sections are for convenience of reference and shall not affect the meaning or interpretation of this Agreement. Except as otherwise stated, reference to Articles, Exhibits, Sections and Schedules mean the Articles, Exhibits, Sections and Schedules of this Agreement. The Exhibits and Schedules are hereby incorporated by reference into and shall be deemed a part of this Agreement.

ARTICLE II  
General Provisions

Section 2.1 Form. The Members hereby agree to operate the Company as a limited liability company pursuant to the provisions of the Act and upon the terms and conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Members and the administration and termination of the Company shall be governed by the Act.

Section 2.2 Company Name. The name of the Company is "PHH Home Loans, LLC" or such other name or names as may be selected by a unanimous vote of the Members from time to time, and its business shall be carried on in such name and in the other names listed on Schedule 2.2 hereto, with such variations and changes thereto as the Members shall deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

Section 2.3 Registered Office; Registered Agent. The Company shall maintain a registered office in the State of Delaware at 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle, and the name of the Company's registered agent in the State of Delaware is, Corporation Service Company.

Section 2.4 Place of Business. The business address of the Company is 3000 Leadenhall Road, Mt. Laurel, New Jersey 08054, or such other place as the Members shall designate by unanimous vote.

Section 2.5 Purpose; Nature of Business Permitted; Powers.

(a) The Company is formed for the purposes of (1) originating Mortgage Loans that are sourced through any Cendant Owned Real Estate Office and fulfilled through any of the Origination Channels, (2) originating Mortgage Loans that are sourced through any Cendant Mobility Office and fulfilled through any of the Origination Channels, (3) originating Mortgage Loans for U.S.-based employees of Cendant and its Subsidiaries and fulfilled through any of the Origination Channels, (4) originating Mortgage Loans sourced by any loan officer of the Company, either through any Cendant Owned Real Estate Office or through any Cendant Mobility Office, (5) selling all Mortgage Loans originated by the Company on a servicing-released basis on terms consistent with the provisions of Section 6.1(b) below, and (6) any other purpose agreed to unanimously by the Members in writing. For the avoidance of doubt, the purposes for which the Company is formed shall not include, and without the prior unanimous written consent of all Members the Company shall not engage in, (i) originating, purchasing or otherwise acquiring and holding Mortgage Loans for investment purposes, or (ii) servicing Mortgage Loans or retaining servicing rights with respect to any Mortgage Loans originated and sold by the Company.

(b) Subject to the other provisions of this Agreement, the Company shall possess and may exercise all of the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, but only in so far as such powers and privileges are necessary to the conduct, promotion or attainment of the business purposes of the Company specified in Section 2.5(a) hereof, including, without limitation, the power:

(i) to acquire, hold, manage, own, sell, transfer, convey, assign, exchange, license, pledge or otherwise dispose of the Company's interest in assets or any property held by the Company, including, without limitation, interests in technology, intellectual property rights and other proprietary processes, products or services;

(ii) to establish, have, maintain or close one or more offices within or without the State of Delaware and in connection therewith to rent or acquire office space and to engage personnel;

(iii) to open, maintain and close bank and brokerage accounts, including the power to draw checks or other orders for the payment of moneys, and to invest such funds as are temporarily not otherwise required for Company purposes;

(iv) to bring and defend actions and proceedings at law or in equity or before any Governmental Entity, including any State Agency;

(v) to hire consultants, custodians, attorneys, accountants and such other agents, officers and employees of the Company as it may deem necessary or advisable, and to authorize each such agent and employee to act for and on behalf of the Company;

(vi) to enter into, perform and carry out contracts and agreements of every kind necessary or incidental to the accomplishment of the Company's business purposes, and to take or omit to take such other action in connection with the business of the Company as may be necessary or desirable to further the business purposes of the Company;

(vii) to obtain and hold any and all permits, licenses, consents, authorizations and approvals as the Managing Member may from time to time deem necessary or appropriate for the conduct of the business of the Company and its Subsidiaries, including, without limitation, any such licenses and authorizations as may be required pursuant to the rules and regulations of any State Agency; and

(viii) to carry on any other activities necessary or incidental to any of the foregoing.

Section 2.6 Business Transactions of a Member with the Company. In accordance with Section 18-107 of the Act and subject to the requirements of Section 6.1(e) and Section 6.3 hereof, a Member may lend money to, borrow money from, act as surety, guarantor or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with, the Company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a Person who is not a Member.

Section 2.7 No State-Law Partnership. No provisions of this Agreement shall be deemed or construed to constitute the Company a partnership (including, without limitation, a limited partnership), or any Member a partner of a partnership or a partner with any other Member, for any purpose other than, in each case, federal and state income tax purposes.

Section 2.8 Authorized Representatives. The “Authorized Representatives” of each Member shall be those Persons appointed from time to time as Advisors by such Member in accordance with Section 6.2 hereof. The written statements and representations of an Authorized Representative on behalf of a Member shall be the only authorized statements and representations of such Member with respect to the matters specifically covered by this Agreement. The term “approved by” or “consented to by” or “consent of” or “satisfactory to” with respect to a Member means a decision or action which has been consented to in writing by an Authorized Representative of such Member.

Section 2.9 Term. The existence of the Company commenced on the date of the filing of the Certificate of Formation in the Office of the Secretary of State of the State of Delaware, and shall continue until January 31, 2055, unless earlier dissolved pursuant to the provisions of Article IX hereof. Upon the occurrence of an Event of Dissolution, all FHA-insured loans held by the Company shall be transferred to an approved mortgagee or lender prior to dissolution of the Company.

Section 2.10 D/B/As, Fictitious Names, Licenses and Regulatory Approvals.

(a) The Company and its Subsidiaries shall make all d/b/a, fictitious name and similar filings as are listed on Schedule 2.10(a) hereto and shall obtain all licenses and regulatory approvals in each of the fifty (50) states and in the District of Columbia as shall be necessary to conduct its loan origination, loan sales and related operations as contemplated by this Agreement and the other Transaction Documents in all such jurisdictions. The Cendant Member shall be responsible for



making all such d/b/a, fictitious name and similar filings, and the PHH Member shall be responsible for obtaining all such licenses and regulatory approvals. On the fifteenth (15<sup>th</sup>) of February, 2005 and on the first (1<sup>st</sup>) and fifteenth (15<sup>th</sup>) of each month thereafter, the PHH Member shall provide to the Cendant Member a detailed report on the status of all licenses and regulatory approvals necessary to operate the Company and its Subsidiaries.

(b) Not more than forty-five (45) days after the PHH Member receives all of the requisite d/b/a, fictitious name and other similar approvals for filings made by the Cendant Member in accordance with Section 2.10(a) above in any state, the PHH Member shall cause the Company to file with the appropriate regulatory authorities in such state all applications for the requisite licenses and regulatory approvals with respect to the business to be conducted by the Company and any of its Subsidiaries in such state; provided, however, that for purposes of counting the forty-five day period herein, no such approvals shall be deemed received by the PHH Member prior to February 15, 2005. The PHH Member shall pay to the Cendant Member a cash payment of \$50,000 per month with respect to each state for which the Company shall not have met such forty-five (45) day deadline, with such payment being due and payable on the day of such deadline and again every thirty (30) days thereafter until such filing has been made.

(c) The PHH Member shall cause the Company to diligently pursue and use its reasonable best efforts to obtain all such licenses and regulatory approvals described above not later than July 31, 2005. Without limiting the foregoing, the PHH Member shall comply in a timely manner with all requests for information received from any State Agency (provided that the PHH Member shall not be responsible for any failure or refusal by Cendant to provide any information so requested) and shall cause representatives of the Company to meet in person with the requisite regulatory authorities in any state where such authorities have so requested or where receipt of approval from such authorities has been delayed and the Cendant Member so reasonably requests.

#### Section 2.11 Subsequent Capital Contributions.

(a) At any time after the Company shall have obtained all requisite licenses and approvals and made all other filings necessary to enable it to operate its business both (1) in not less than 25 states and (2) in each of those states listed on Schedule 2.11(a) hereto or any subset thereof approved by the Cendant Member in writing, the Cendant Member shall have the right to deliver to the PHH Member a written notice (the "Contribution Notice") containing the Cendant Member's election to cause the Subsequent Capital Contributions (as defined below) to occur. The Parties shall consummate the transactions constituting the Subsequent Capital Contributions on the date specified by the Cendant Member in the Contribution Notice, which date (the

“Contribution Date”) shall be no earlier than the seventh (7<sup>th</sup>) day following the date of delivery of such notice to the PHH Member. On the Contribution Date, the Parties shall take the following actions:

(i) the PHH Member shall contribute, or cause to be contributed, to the Company, (A) substantially all of the assets constituting the businesses of each of the companies constituting the Small Corps (with the form of the transaction in which such transfer shall occur being determined pursuant to subparagraph (b) below), and (B) those separately identifiable assets that comprise part of PMC’s “phone-in, move-in” origination channel and that will be utilized by the Company and its employees in the operation of its loan origination business (as identified and scheduled by the Parties in accordance with subparagraph (b) below) (the “PIMI Contributed Assets”);

(ii) the Cendant Member shall contribute, or cause to be contributed, to the Company (A) the right to use those tradenames and marks specified in the Venture License Agreement, on a royalty-free basis and otherwise on the terms set forth in such agreement, and (B) an amount of cash determined in accordance with subparagraph (b) below;

(iii) the parties shall execute the Contribution Agreement, the Management Services Agreement, the Mortgage Loan Sale Agreement, the Lease and the Master Sublease Agreement;

(iv) the PHH Member shall cause the Company to offer employment to (A) such employees of PMC as shall be reasonably necessary to enable the Company to perform its obligations pursuant to the terms of the SRA, and (B) all of the employees of the Small Corps (other than those Small Corps that will become Subsidiaries of the Company upon being contributed to the Company); and

(v) the PHH Member shall cause the Company to sponsor and maintain its own employee benefit plans (including, but not limited to welfare benefit plans and tax-qualified pension and retirement plans) for the benefit of the employees of the Company and its Subsidiaries.

The actions contemplated by subparagraphs (i) through (v) above are referred to herein as the “Subsequent Capital Contributions.”

(b) As soon as practicable after the date of this Agreement, in preparation for the Subsequent Capital Contributions, the Parties shall cooperate in good faith to do each of the following as promptly as practicable following the date hereof and

in any event within such time as shall be necessary to enable the Subsequent Capital Contributions to occur by mid-year 2005:

(i) Determine the form of the transaction (merger, asset transfer, transfer of equity interests or other) pursuant to which the businesses of the Small Corps will be contributed to the Company (including, among other things, determining the consents and approvals and d/b/a and other filings, qualifications and notices required to be obtained or made in connection with such transaction and the expected timing thereof), it being understood that the final determination regarding the form of such transaction shall be made by the Cendant Member in its sole discretion, and that the Parties will work together with a view toward structuring the contributions so that the loans originated by the Small Corps whose businesses will be combined directly with the Company's (rather than becoming Subsidiaries of the Company) will constitute not less than 15% of all loans originated directly by the Company;

(ii) Obtain all such consents and approvals and make all such d/b/a and other filings, qualifications and notices as shall be necessary to complete the contribution of the businesses of the Small Corps to the Company pursuant to the form of transaction determined in accordance with subparagraph (b)(i) above;

(iii) Prepare detailed and complete schedules identifying all of the PIMI Contributed Assets, all of the employees of PMC and its Subsidiaries who will be offered employment with the Company on the Contribution Date, and, if the form of transaction determined pursuant to subparagraph (i) above contemplates one or more asset transfer transactions, all of the assets, contracts and other rights constituting the businesses of the applicable Small Corps to be contributed to the Company pursuant to such transactions;

(iv) Obtain valuations (which in the case of subclauses (A) and (C) below shall be performed by an unaffiliated third party selected by the Cendant Member) for (A) the businesses of the Small Corps to be contributed to the Company pursuant to Section 2.11(a)(i)(A) above, (B) the PIMI Contributed Assets to be contributed to the Company pursuant to Section 2.11(a)(i)(B) above, and (C) the Venture Trademark License to be contributed to the Company pursuant to Section 2.11(a)(ii)(A) (it being understood that the amount of cash to be contributed to the Company by the Cendant Member pursuant to Section 2.11(a)(ii)(B) shall equal the difference between the total of the amounts determined pursuant to subclauses (A) and (B) above and the amount determined pursuant to subclause (C) above), and finalize Schedule II to this Agreement to reflect the updated Gross Asset Values for such assets based upon such valuations;

(v) Prepare all agreements, instruments and other documents necessary or appropriate to effect the transactions constituting the Subsequent Capital Contributions (including without limitation a Contribution Agreement), which agreements shall include provisions for, among other things, (A) customary representations from the PHH Member with respect to the assets to be contributed by it to the Company, the consents and approvals necessary to effect such contributions, compliance with law and other regulatory matters with respect to the businesses of the Small Corps and employee matters with respect to the period prior to the Contribution Date, and (B) indemnification of the Company by the PHH Member with respect to Losses arising out of or resulting from any matter, circumstance or event occurring prior to the Contribution Date with respect to or affecting the business, assets or employees of the Small Corps contributed by or on behalf of the PHH Member; and

(vi) Prepare a Mortgage Loan Sale Agreement having terms consistent with Section 6.1(b) of this Agreement.

(c) Prior to making the Subsequent Capital Contributions contemplated by subparagraph (a) above, if the form of transaction involves any of the companies comprising the Small Corps being merged into the Company or being contributed to the Company and becoming a Subsidiary of the Company as a result thereof, the PHH Member shall (i) settle and eliminate all intercompany accounts receivable, accounts payable or other arrangements and obligations between PHH or any of its Subsidiaries, on the one hand, and each such company, on the other, (ii) cause all of the ownership interests in Landover Mortgage LLC held by any such company to be distributed by such company to PMC, and (iii) in the case of any such company that will become a Subsidiary of the Company following the contribution, convert such company to a limited liability company pursuant to a transaction acceptable in form and substance to tax counsel for the Cendant Member prior to the Contribution Date.

(d) The PHH Member and its Affiliates (other than the Company and any of the Small Corps (or any successor thereto) that is merged into the Company or contributed as a Subsidiary of the Company) shall bear and pay all costs and expenses (including Taxes) associated with the contribution of the businesses of the Small Corps contemplated by Section 2.11(a) hereof, all of the transactions contemplated by Section 2.11(c) hereof, and obtaining the consents and approvals required in connection with the contribution of the Small Corps contemplated by Section 2.11(b)(ii) above. Each Member shall bear and pay its own costs in connection with the other transactions contemplated by this Section 2.11.

ARTICLE III  
Members

Section 3.1 Members. The Company shall consist of the Members executing this Agreement and any New Members admitted to the Company by the Members in accordance with terms hereof. The Members of the Company, together with the Common Interest Percentages and addresses of such Members, are listed on Schedule I of this Agreement. As of the date hereof, there are no other Members of the Company and no other Person has any right to take part in the ownership or share in the profits of the Company. The Managing Member shall have the authority, without the consent of the Members, but subject to the limitations contained in Article VI hereof and otherwise in accordance with the terms of this Agreement, to amend Schedule I in connection with any Transfer or other change in ownership of Interests permitted hereunder and to reflect (a) the admission of any New Member, (b) the removal, expulsion, retirement or death of any Member, in each case, in accordance with the terms of this Agreement and (c) any change in the Interests of any Member effected in accordance with the terms of this Agreement (including Section 4.3 or 10.1 hereof). No Person shall be deemed to be a Member unless such Person has executed and delivered to the Company a copy of this Agreement. Each New Member shall be deemed to have a fully executed copy of this Agreement if such Member is delivered a copy of this Agreement which (a) has been executed by such Member and (b) is countersigned on the same page by an authorized officer of the Company.

Section 3.2 Admission of New Members. New Members of the Company may only be added if the addition of any such proposed New Member is approved, prior to such admission, by the unanimous consent of all Members and if such proposed New Member executes this Agreement and makes the representations and warranties set forth in Section 3.3 hereof. Notwithstanding the foregoing, a Person that (a) is an Affiliate of a Member and to whom such Member has Transferred all or any portion of its Interest in accordance with Section 10.1 hereof or (b) is a transferee of all or a portion of the Cendant Member's Interest as permitted by Section 10.1 hereof shall be admitted as a New Member without the consent of the other Members, provided that such New Member executes this Agreement and makes the representations and warranties set forth in Section 3.3 hereof.

Section 3.3 Representations. Each Member hereby represents and warrants to the Company as follows:

(a) Such Member is a corporation, limited liability company, partnership or business trust duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Such Member has full right, power and authority to execute and deliver this Agreement and to perform each of its obligations hereunder.

(b) All necessary action, corporate or otherwise, on the part of such Member necessary to authorize the execution and delivery by such Member

of this Agreement and the performance by such Member of its obligations hereunder has been taken, and no further action on the part of such Member is necessary for such authorization. This Agreement has been duly authorized, executed and delivered by such Member and (assuming due authorization, execution and delivery by the other Members), constitutes a legal, valid and binding obligation of such Member enforceable against such Member in accordance with its terms.

(c) Except as otherwise set forth in or contemplated by this Agreement with respect to the Company, no consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority or any other Person (other than such as have been obtained or made by such Member) is required to be made or obtained by such Member in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement.

(d) Neither the execution and delivery of this Agreement by such Member nor the consummation by such Member of the transactions contemplated hereby, nor compliance by such Member with any of the terms or provisions hereof, will (i) conflict with or result in a breach of any provision of the certificate of incorporation, by-laws or similar governing documents of such Member or (ii) assuming the consents, permits, authorizations, approvals, filings and registrations previously disclosed in writing by such Member to the other Members are obtained or made (x) violate any statute, code, ordinance, rule, regulation, judgment, order, write, decree or injunction applicable to such Member or any of its properties or assets or (y) violate, conflict with, result in a breach of any provisions of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of, accelerate the performance required by, or result in a right of termination or acceleration or the creation of any encumbrance upon any of the properties or assets of such Member under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which such Member is a party, or by which its properties or assets may be bound or affected, except, in the case of clause (ii), for such violations, conflicts, breaches or defaults which, either individually or in the aggregate, would not prevent or materially hinder or delay such Member's ability to consummate the transactions contemplated hereby or perform its obligations hereunder.

Section 3.4 No Liability of Members. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Member shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member.

Section 3.5 Company Property. No real or other property of the Company shall be deemed to be owned by any Member individually but shall be owned by and title shall be vested solely in the Company. The Interests of the Members in the Company shall constitute personal property.

Section 3.6 Confidentiality.

(a) Each Member agrees not to disclose, communicate, use to the detriment of the Company or for the benefit of any other Person, or misuse in any way, any confidential information or trade secrets of the Company or any Subsidiary or any other Member or its Affiliates, including personnel information, secret processes, know-how, customer lists, formulas or other technical data ("Confidential Information"), except as may be required by law; provided, however, that (i) this prohibition shall not apply to (x) any information which, through no improper action of such Member, is publicly available or generally known in the industry or (y) any information which is disclosed upon the approval of all of the Members and (ii) such information may be disclosed to the extent required by law, legal process or applicable stock exchange rule. Each Member acknowledges and agrees that any information or data such Member has acquired on any of these matters or items were received in confidence and as fiduciary of the Company.

(b) It is agreed between the parties that the Company would be irreparably damaged by reason of any violation of the provisions of this Section 3.6 and that any remedy at law for a breach of such provisions would be inadequate. Therefore, the Company shall be entitled to seek and obtain injunctive or other equitable relief (including, but not limited to, a temporary restraining order, a temporary injunction or a permanent injunction) against any Member, such Member's agents, assigns or successors for a breach or threatened breach of such provisions and without the necessity of proving actual monetary loss. It is expressly understood among the parties that this injunctive or other equitable relief shall not be the Company's exclusive remedy for any breach of this Section 3.6 and that the Company shall be entitled to seek any other relief or remedy that it may have by contract, statute, law or otherwise for any breach hereof, and it is agreed that the Company shall also be entitled to recover its attorneys' fees and expenses in any successful action or suit against any Member relating to any such breach. It is also expressly agreed that any Member shall have the right to enforce this Section 3.6 on behalf of the Company against the other Members.

(c) Notwithstanding the foregoing, the participation or involvement of any Member in the Company shall not confer upon the Company or otherwise entitle the Company or any other Member thereof to use or otherwise disclose in connection with the Company and its business and affairs the name of such Member without such Member's prior consent.

(d) Except as otherwise agreed by the Members, in the event of a PHH Change of Control or anticipated PHH Change of Control, the PHH Member shall implement reasonable internal access controls and other restrictions on the use and disclosure of Confidential Information to prevent any directors, officers, employees, agents, consultants or contractors of a third party from having access to such Confidential Information.

ARTICLE IV  
Capital Contributions

Section 4.1 Capital Structure. The capital structure of the Company shall consist of one class of Interests (“Common Interests”). Except as otherwise set forth herein, each of the Common Interests shall be identical.

Section 4.2 Capital Contributions.

(a) Each Member has contributed, as an initial capital contribution (“Initial Capital Contribution”) to the Company, the amount set forth opposite such Member’s name on Schedule I hereto, and hereby agrees to contribute, in accordance with the provisions of Section 2.11 of this Agreement, all of its right, title and interest (whether now held or hereafter acquired) in and to the assets described in Section 2.11(a) hereto having the estimated Gross Asset Values as are reflected on Schedule II hereto (with the final Gross Asset Values for such assets to be determined for purposes of this Agreement in accordance with Section 2.11).

(b) In exchange for the Initial Capital Contributions, each Member has received an Interest in the Company in proportion to the Interest percentage (“Common Interest Percentage”) set forth opposite the name of such Member on Schedule I hereto.

Section 4.3 Additional Provisions Concerning Capital Contributions.

(a) Capital Contributions. Other than as set forth in Section 4.2, no Member shall be permitted to make additional Capital Contributions to the Company except upon the prior written approval of all the other Members; provided, however, that notwithstanding anything to the contrary contained herein, in the event of an Additional Capital Determination (as defined below), then additional Capital Contributions shall be made by each Member in an amount equal to the product of (x) the Additional Capital Amount with respect to such Additional Capital Determination and (y) such Member’s Common Interest Percentage. An “Additional Capital Determination” shall mean a determination made by the Managing Member (which determination, if



made, shall be immediately notified in writing to the Board), and approved by the Board pursuant to Section 6.3, that the Company requires additional Capital Contributions from the Members to satisfy the Minimum Capital Requirements, as defined in Section 6.3(a)(xviii) herein. The “Additional Capital Amount” with respect to any Additional Capital Determination shall mean the aggregate additional Capital Contributions required from all Members in connection therewith, as approved by the Board pursuant to Section 6.3.

(b) Interest. Interest, if any, earned on funds contributed or held by the Company shall inure to the benefit of the Company; the Members shall not be entitled to receive interest or any other payments from the Company with respect to their Capital Contributions or Capital Accounts.

Section 4.4 Capital Accounts.

(a) In accordance with Treasury Regulation Section 1.704-1(b)(2)(iv), a capital account (a “Capital Account”) shall be established and maintained for each Member throughout the full term of the Company. A Member’s Capital Account (i) shall be increased by (A) the amount of cash and the Fair Market Value of property (other than cash) contributed by such Member and (B) such Member’s allocable share of the Company’s Net Income (and items of income and gain) for each Fiscal Period; and (ii) shall be decreased by (A) the amount of cash and the Fair Market Value of property (other than cash) distributed to such Member and (B) such Member’s allocable share of the Company’s Net Loss (and items of deduction and loss) for each Fiscal Period.

(b) In addition to the adjustments specified by Section 4.4(a), each Member’s Capital Account shall also be adjusted for any other increases or decreases that are made to Capital Accounts pursuant to Section 704(b) of the Code and Treasury Regulation Section 1.704-1(b)(2)(iv).

(c) In the event any Interest or portion thereof is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account or ratable portion thereof of the transferor to the extent such Capital Account relates to the Interest or portion thereof so transferred, except to the extent provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(m).

(d) It is the intention of the Members that Capital Accounts shall be maintained in accordance with Section 704(b) of the Code and with the Treasury Regulations promulgated thereunder so that the allocations of items of income, gain, loss, deduction and credit provided herein have substantial economic effect thereunder.

(e) Except as may be required by the provisions of the Act or to the extent of any withdrawal of capital in contravention of this Agreement or any

distribution in contravention of this Agreement, at no time during the term of the Company or upon dissolution and liquidation thereof shall a Member with a negative balance in his Capital Account have any obligation to the Company or the other Members to restore such negative balance, and such negative balance shall not be treated as an asset of the Company. Notwithstanding whether a Member has a positive or a negative balance in its Capital Account, a Member shall be obligated to restore to the Company the amount of any withdrawal of capital in contravention of this Agreement or any distribution in contravention of this Agreement.

Section 4.5 Return of Capital Contributions. Except as otherwise provided herein or in the Act, no Member shall have the right to withdraw, or receive any return of, all or any portion of such Member's Capital Contribution.

Section 4.6 Loans From Members. Loans by a Member to the Company shall not be considered Capital Contributions. If any Member shall advance funds to the Company in excess of the amounts contributed by such Member to the capital of the Company, the making of such advances shall not result in any increase in the amount of the Capital Account of such Member. The amounts of any such advances shall be a debt of the Company to such Member and shall be payable or collectible only out of the Company assets in accordance with the terms and conditions upon which such advances are made. The repayment of loans from a Member to the Company upon liquidation shall be subject to the order of priority set forth in Section 9.4 hereof. Notwithstanding anything to the contrary in this Agreement, any Loan by a Member to the Company shall be subject to the provisions of Section 6.1(e) and shall be on arm's-length market terms.

#### ARTICLE V Allocations and Distributions

Section 5.1 Allocations of Net Income and Net Loss. This Section 5.1 sets forth the rules for both the book allocations of Net Income (and items of income and gain) and Net Loss (and items of loss and deduction), to reflect the economic arrangements of the Members and, subject to Section 5.5, for the tax allocations for United States federal income tax purposes, pursuant to Section 704 of the Code and the Treasury Regulations promulgated thereunder.

(a) Except as otherwise provided in this Article V, Net Loss shall be allocated among the Members with respect to each Fiscal Period as of the end of such Fiscal Period pro rata based upon their respective Common Interest Percentages.

(b) Except as otherwise provided in this Article V, Net Income shall be allocated among the Members with respect to each Fiscal Period as of the end of such Fiscal Period pro rata based upon their respective Common Interest Percentages.

Section 5.2 Adjustments and Special Allocations.

The following special allocations shall be made in the following order and prior to any other allocations under this Agreement:

(a) Minimum Gain Chargeback. Notwithstanding any other provision of this Article V and except as otherwise provided in Treasury Regulation Section 1.704-2(f), if there is a net decrease in Company Minimum Gain during any Fiscal Period of the Company, each Member shall be specially allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, as determined under Treasury Regulation Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(f)(6) and (j)(2). This Section 5.2(a) is intended to comply with the minimum gain chargeback requirement in such Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Member Minimum Gain Chargeback. Notwithstanding any other provision of this Article V, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt, then, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation Section 1.704-2(i), shall be specially allocated items of Company income and gain for such Fiscal Period (and, if necessary, subsequent Fiscal Periods) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulation Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be allocated shall be determined in accordance with Treasury Regulation Sections 1.704-2(i)(4) and (j)(2). This Section 5.2(b) is intended to comply with the minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. Pursuant to Treasury Regulation Section 1.704-1(b)(2)(ii)(d), in the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially

allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, any Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this Section 5.2(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Section have been tentatively made as if this Section 5.2(c) were not in the Agreement. This Section 5.2(c) is intended to satisfy the provisions of Treasury Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistent therewith.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Period shall be allocated among the Members in accordance with their respective Common Interest Percentage.

(e) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Period of the Company or portion thereof shall be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable, in accordance with Treasury Regulation Section 1.704-2(i)(1).

(f) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset is required pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m) (2) or (4) to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such sections of the Treasury Regulations.

### Section 5.3 Net Loss Limitation.

Notwithstanding the provisions of Section 5.1(a), the Net Losses (or items of deduction or loss) allocated pursuant to Section 5.1(a) hereof shall not exceed the maximum amount of Net Losses (or items of deduction or loss) that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Period. In the event that some but not all Members would have Adjusted Capital Account Deficits as a consequence of the allocation of Net Losses (or items of deduction or loss) pursuant to Section 5.1 hereof, the limitation set forth in this Section 5.3 shall be applied on a Member by Member basis and Net Losses (or items of deduction or loss) not allocable to any Member as a result of such limitation shall be allocated to the other Members in accordance with the respective positive balances in such Members' Capital Accounts so as to allocate the maximum permissible Net Losses (or items of deduction or loss) to each Member under Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

Section 5.4 Other Allocation Rules.

(a) For purposes of determining the Net Income, Net Loss or other items allocable to any Fiscal Period, subject to approval by the Board pursuant to Section 6.3(a)(xiv) hereof, Net Income, Net Losses and such other items shall be determined on a daily, monthly or other basis as determined by the Managing Member using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder. Without limiting the generality of the foregoing, the Managing Member shall, subject to approval by the Board pursuant to Section 6.3(a)(xiv), allocate items of Net Income (and items of income or gain) and Net Loss (and items of deduction or loss) between a Member and any Person who has acquired an Interest in the Company from such Member (including as a result of the provisions of Article VIII) using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder.

(b) “Excess nonrecourse liabilities” of the Company, within the meaning of Treasury Regulation Section 1.752-3(a)(3), shall, subject to Section 6.3(a)(xiv) hereof, be allocated to the Members in any permissible method as determined by the Managing Member.

Section 5.5 Tax Allocations; Code Section 704(c).

(a) Except as otherwise provided for in this Agreement, each item of income, gain, loss, deduction and credit shall be allocated among the Members in the same manner for U.S. federal income tax purposes as the correlative item of book income, gain, loss, deduction and credit is allocated pursuant to Sections 5.1, 5.2, 5.3 and 5.4. In addition, in accordance with Code Section 704(c) and the Treasury Regulations thereunder, items of income, gain, loss, deduction and credit with respect to any property contributed to the capital of the Company shall, solely for U.S. federal income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted tax basis of such property at the time of contribution to the Company for U.S. federal income tax purposes and its initial Gross Asset Value at the time of contribution using the “traditional method” as set forth in Treasury Regulation Section 1.704-3(b).

(b) In the event the Gross Asset Value of any Company asset is adjusted in accordance with the definition of Gross Asset Value hereof, subsequent allocations of items of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted tax basis of such asset for U.S. federal income tax purposes and its adjusted Gross Asset Value in a manner consistent with the principles of Code Section 704(c) and the Treasury Regulations promulgated thereunder.

(c) Any elections or other decisions relating to such allocations shall, subject to Section 6.3(a)(xiv) hereof, be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section are solely for purposes of U.S. federal, state, and local income taxes and shall not affect, or in any way be taken into account in computing, any Members' Capital Account or share of Net Income (or items of income or gain) or Net Loss (or items of loss or deduction), other items, or distributions pursuant to any provision of this Agreement.

Section 5.6 Distributions.

Within thirty (30) days following the completion of each Fiscal Quarter, the Managing Member shall cause the Company to distribute to all Members an amount equal to the Distributable Net Income for such Fiscal Quarter pro rata based upon their respective Common Interest Percentages.

ARTICLE VI  
Management

Section 6.1 Managing Member.

(a) General. The PHH Member shall be the Managing Member of the Company, and shall manage the Company in accordance with this Agreement. The actions of the Managing Member taken in such capacity and in accordance with this Agreement shall bind the Company.

(b) Powers and Duties. Except for circumstances in which the approval of the Board is required by this Agreement pursuant to Section 6.3, the Managing Member shall have full, exclusive and complete discretion to manage the business and affairs of the Company in the ordinary course. Notwithstanding the foregoing, the Managing Member covenants and agrees to manage the business and affairs of the Company in accordance with the following terms and provisions:

(i) The Managing Member shall manage the business and affairs of the Company only in a manner consistent with and in furtherance of the purposes set forth in Section 2.5(a) of this Agreement. The Managing Member shall not cause or permit the Company or any of its Subsidiaries to engage in any business or activity other than that permitted to be conducted by the Company or any of its Subsidiaries pursuant to Section 2.5(a) of this Agreement, or take or fail to take any action that would prevent or preclude the Company from carrying on its business as contemplated in this Agreement.

(ii) The Managing Member shall cause the Company and its Subsidiaries to sell any and all Mortgage Loans it originates as promptly as practicable, but in no event earlier than three (3) Business Days following the closing and funding of such Mortgage Loan, and at no time shall the Managing Member cause or permit the Company or any of its Subsidiaries to hold any Mortgage Loans for investment purposes (it being the Members' intent that at least 15% of the total number of all loans originated by the Company be sold to unaffiliated Persons pursuant to Investor Commitments or other sale arrangements entered into on terms consistent with the provisions of Section 6.1(b)(iii) below).

(iii) In connection with any sales of Mortgage Loans by the Company or any Subsidiary of the Company, whether to the Managing Member or any of its Affiliates or to Persons that are not Affiliates of any Member, the Managing Member shall cause the Company or such Subsidiary to sell such Mortgage Loans only on arm's-length terms pursuant to industry-standard loan sale documentation and on industry-standard terms for best efforts execution inclusive for servicing released sales.

Such duties may be delegated by the Managing Member to such officers, agents or employees of the Company as the Managing Member may deem appropriate from time to time.

(c) Fiduciary Duties of Managing Member. The Managing Member, in the performance of its duties as such, shall owe to the Members duties of loyalty and due care of the type owed by the general partner of a limited partnership to its limited partners under the laws of the State of Delaware.

(d) Compliance with Transaction Documents. Without limiting the provisions of Section 6.1(b), the Managing Member shall cause the Company to operate its business at all times in a manner consistent with the SRA, this Agreement and all the other Transaction Documents.

(e) Transactions With Affiliates. Any transactions between the Company, on the one hand, and the Managing Member or any Affiliate thereof, on the other hand (any such transaction, a "Related Transaction"), including without limitation any arrangements for sale of Mortgage Loans (including the Mortgage Loan Sale Agreement), shall be approved by the Board in accordance with Section 6.3 prior to the time that the Company engages or agrees or commits to engage in any such Related Transaction. Notwithstanding the fact that the terms of a Related Transaction have been previously approved by the Board, the Managing Member shall not permit the Company to enter into a Related Transaction unless the transaction is entered into on an arm's length basis on terms no less favorable to the Company than the terms that the Company could obtain from an independent third party.

(f) Status of Managing Member. The Managing Member shall be the sole “manager” (as that term is used in the Act) of the Company. Neither the Advisors nor the officers of the Company, in such capacity, shall be “managers.” No Person who is not also a Member may be appointed or serve as the Managing Member.

(g) Reliance by Third Parties. Third parties dealing with the Company may rely conclusively upon any certificate of the Managing Member to the effect that it (or its designee) is acting on behalf of the Company. Subject to the provisions of this Agreement, the signature of an authorized officer of the Managing Member shall be sufficient to bind the Company in every manner to any agreement or on any document.

(h) HUD Manager. Notwithstanding any other provisions of this Agreement, however, for the purposes of complying with the regulations of the HUD only, a separate person shall be designated by the Managing Member (upon prior written consent of the Cendant Member) as the HUD-Manager, who will have as his/her principal activity the management of the Company as it relates to the origination of FHA-insured mortgages and shall have exclusive authority to deal with HUD/FHA on behalf of the Company (the “HUD-Manager”). If the HUD-Manager withdraws or is removed, a new HUD-Manager shall be designated by the Managing Member, and HUD shall be notified of the change. Upon admission of any new Member, such new Member shall be deemed to agree that the HUD-Manager shall have exclusive authority to deal with HUD/FHA on behalf of the Company.

#### Section 6.2 Board of Advisors.

(a) Establishment. There is hereby established a committee (the “Board”) comprised of natural persons (the “Advisors”), whose primary purpose shall be to provide a means for the Cendant Member to exercise its approval rights over certain actions of the Company, as set forth in Section 6.3 below.

(b) Number of Advisors. The authorized number of Advisors shall be five (5) and the Board shall be designated as set forth in paragraphs (c) and (d) below. No Member may appoint any Advisor except as expressly set forth in paragraphs (c) and (d) below.

(c) Appointment by the PHH Member. The PHH Member shall have the right to designate (and to remove and/or designate successive replacements for) three (3) Advisors (“PHH Advisors”). Each PHH Advisor shall have one (1) vote with respect to any matter to be voted on by the Board. The initial PHH Advisors shall be Donna Van Osten, Marshall Gayden and Robert Groody.



(d) Appointment by Cendant. The Cendant Member shall have the right to designate (and to remove and/or designate successive replacements for) two (2) Advisors ("Cendant Advisors"). Each Cendant Advisor shall have one (1) vote with respect to any matter to be voted on by the Board. The initial Cendant Advisors shall be Dave Weaving and Judy Reeves.

(e) Term of Office. Once designated, an Advisor shall continue in office until such Advisor's removal in accordance with this Agreement or such Advisor's earlier death or resignation. Any Advisor may resign at any time by giving written notice to that effect to the Board and the Managing Member. Any such resignation shall take effect at the time of the receipt of that notice or any later effective time specified in that notice, and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective.

(f) Meetings of the Board. The Board shall meet regularly at least once each Fiscal Quarter, at such time and at such place as the Board may designate. Special meetings of the Board shall be held on the call of any Advisor upon at least five (5) Business Days (if the meeting is to be held in person) or two (2) Business Days (if the meeting is held by telephone communications) notice to each of the other Advisors, or upon such shorter notice as may be approved by the Advisors (including at least one PHH Advisor and at least one Cendant Advisor), and such notice may be delivered personally or by telephone, electronic mail, facsimile transmission, United States mail or courier to each Advisor at his or her business or residence address, provided that notice shall be deemed given when actually delivered to the Advisor. Any Advisor may waive such notice as to himself or herself.

(g) Conduct of Meeting. Any meeting of the Advisors may be held in person or telephonically.

(h) Quorum. A majority of the Advisors which have been designated and who are then in office shall constitute a quorum of the Board for purposes of conducting business, provided that such quorum shall include at least one Cendant Advisor, and provided further that proper notice of such meeting was delivered pursuant to paragraph (f) above.

(i) Voting. The effectiveness of any vote, consent or other action of the Board in respect of any matter set forth in Section 6.3 shall require a majority vote of the entire Board (at least three Advisors voting in favor of such consent or other action), provided that such majority must include the affirmative vote of at least one Cendant Advisor. No Advisor shall be disqualified from voting on, or shall be required to recuse himself or herself from the consideration of or voting on, any matter by reason of such Advisor's or any related Person's interest in such matter (it being understood that in approving or disapproving any matter an Advisor may act to protect

the interests of such Advisor or related Person, as the Managing Member, a Member, or in any other capacity), so long as such Advisor discloses such interest to, or such interest is reasonably apparent to, the other Advisors. Only the Advisors in attendance at (or participating by telephone in) any meeting of the Board may vote on any matter as to which a vote is taken during such meeting, and no Advisor may vote by proxy, absentee ballot or any other means.

(j) Action Without Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all of the Advisors consent thereto in writing, and such writing is filed with the minutes of proceedings of the Board.

### Section 6.3 Actions Requiring Board Approval.

(a) It is hereby understood and agreed by the Members that (x) the Company shall not take, nor shall the Managing Member and/or any officer of the Company cause the Company to take, nor shall the Company authorize or permit any of its Subsidiaries to take, any of the following actions (in each case, the taking of which shall be hereinafter referred to as a "Major Action") without first obtaining approval thereof by the Board in accordance with Section 6.2, in each case:

(i) Accounting. (a) Except as otherwise may be mandated by GAAP, change any of the accounting principles or practices used by the Company or (b) change the independent auditors of the Company;

(ii) Acquisitions and Dispositions. Other than as specifically contemplated by this Agreement or any other Transaction Document or the then-current Annual Business Plan approved in accordance with Section 6.9 of this Agreement, (a)(1) purchase or acquire any assets or property (including real property or capital stock of a business) or (2) make any capital expenditures in excess of \$100,000, or (b) sell, option, convey, exchange, lease (as lessor), license or otherwise dispose of or transfer any portion of or any interest in any property of the Company, other than sales of Mortgage Loans made in accordance with Section 6.1(b)(iii);

(iii) Advisors. Employ accountants, legal counsel, investment bankers or other experts, other than those currently used by PHH or Cendant, to perform services for the Company;

(iv) Bankruptcy. Make, execute or deliver on behalf of the Company an assignment for the benefit of creditors; or cause the Company, or any part thereof or interest therein to be subject to the authority of any trustee, custodian or receiver or to be subject to any proceeding for bankruptcy,

insolvency, reorganization, arrangement, readjustment of debt, relief of debtors, dissolution or liquidation, or similar proceedings with respect to the Company;

(v) Distributions or Capital Returns. Declare, set aside, or pay any dividend or make any distribution of assets (whether in cash, securities, property, or any combination thereof), or return to a Member any amount of its Capital Contribution, except, in each case, as expressly provided herein;

(vi) Indebtedness. Obligate the Company, any Subsidiary of the Company or any Member as a surety, guarantor, or accommodation party to any obligation; incur any indebtedness for borrowed money (other than pursuant to the Loan Funding Facility and trade payables incurred in the ordinary course of business); or impose upon any Member any personal liability in respect of any indebtedness of the Company, except as and to the extent agreed in writing by such Member;

(vii) Issuances or Repurchases of Interests. (a) sell or issue, or enter into any agreement to sell or issue, to any Person any Interest in the Company or option or other right to acquire any Interest or any other equity interest or quasi equity interest in the Company; (b) repurchase any Interest or any other equity interest in the Company, in each case other than as specifically contemplated by this Agreement; or (c) admit any Person as a Member;

(viii) Joint Ventures. Enter into any joint venture, joint operating or similar arrangement;

(ix) Judgments. (1) Confess a judgment against the Company, or settle or adjust any claims against the Company, resulting in either (A) the payment or transfer of consideration of more than \$150,000 for a single judgment or claim or more than \$500,000 in the aggregate during any 12-month period, (B) any material or significant restriction on the ability of the Company to conduct its business as contemplated by this Agreement and the other Transaction Documents, or (C) that otherwise causes a significant change in the business operations of the Company; or (2) commence any legal action or proceeding involving the Company where the amount exceeds \$300,000;

(x) Liens or Encumbrances. Grant any lien or encumbrance on any property of the Company (other than the interest of any lessor in property leased by the Company as lessee under a capitalized lease or operating lease entered into in accordance with this Agreement), other than as specifically contemplated by this Agreement or the Loan Funding Facility;

(xi) Material Contracts. Enter into any new contract, or modify any existing contract, if such contract is a Transaction Document or is otherwise material to the business, results of operations or financial condition of the Company and its Subsidiaries taken as a whole;

(xii) Related Transactions. Enter into, modify or amend the terms of in any material manner, make any material waiver on behalf of the Company under, or terminate any Related Transaction, including any Transaction Document to which the Company, on the one hand, and PHH or any of its Subsidiaries (other than the Company), on the other, are parties;

(xiii) Mergers. Directly or indirectly, by operation of law or otherwise, merge with, consolidate with, acquire all or substantially all of the assets or capital stock of, or otherwise combine with, any Person, other than as specifically contemplated by this Agreement;

(xiv) Tax Matters. Take any action to the extent that this Agreement provides that such action is subject to the provisions of this Section 6.3(a)(xiv), make any election under the Code and other relevant tax laws as to the status of the Company, the treatment of items of income, gain, loss, deduction and expense, and as to all other relevant matters, including, without limitation, elections referred to in Section 754 of the Code, determine which items of cash outlay are to be capitalized or treated as current expenses, or select the method of accounting and bookkeeping procedures to be used by the Company;

(xv) Annual Business Plan. Approve each Annual Business Plan and any material changes thereto or deviations therefrom;

(xvi) Chief Executive Officer. Appointment of the president and/or chief executive officer of the Company;

(xvii) Fair Market Value. Make any determination of Fair Market Value required to be made under this Agreement;

(xviii) Minimum Capital Requirements. Make any final Additional Capital Determination or any determination regarding the respective Additional Capital Amounts required to be made by Members in connection therewith; or approve the amount of cash or cash equivalents that should be retained by the Company in order to meet minimum regulatory capital and reserve requirements imposed by any Governmental Entity, whether in connection with retaining the licenses and registrations necessary for the Company to originate Mortgage Loans or otherwise, or by any creditor of the

Company or any of its Subsidiaries, including any lender under the Loan Funding Facility (the “Minimum Capital Requirements”);

- (xix) Liquidating Trustee. The appointment of a Liquidating Trustee that is a Person other than the Managing Member; or
- (xx) Agree to do any of the foregoing.

The Managing Member shall cause the governing documents of each of the Company’s Subsidiaries to provide that such Subsidiary must obtain the approval of the Company, as outlined pursuant to this Section 6.3, prior to taking any action set forth in this Section 6.3.

Section 6.4 Company Resources. Except as specifically provided in this Agreement or any other Transaction Document, or with the prior approval of the Board, the Company shall not pay to or use for the benefit of any Member, funds, assets, credit or other resources of any kind or description of the Company. Funds of the Company shall be deposited only in the accounts of the Company in the Company’s name, shall not be commingled with funds of any Member, and shall be withdrawn only upon such signature or signatures as may be designated in writing from time to time by the Managing Member.

Section 6.5 Advisors Have No Managerial Authority.

- (a) Neither the Board nor the Advisors (individually or together with one or more other Advisors) shall have power to direct or participate in the management of the Company; provided, however, that nothing contained in this Section 6.5(a) shall adversely affect or impair the authority and obligations of the Board and the Advisors pursuant to Sections 6.2 and 6.3 hereof.
- (b) The Advisors (acting in their individual capacity as such) shall owe no fiduciary or other duties to the Company or any Member.
- (c) Unless expressly and duly authorized in writing to do so by the Managing Member and the Board, no other Member and no Advisor shall have any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose.

Section 6.6 Devotion of Time. The Advisors (in their capacity as Advisors) shall not be obligated to devote all of their time or business efforts to the affairs of the Company, and shall devote such time, effort, and skill as they deem appropriate for the execution of their duties and responsibilities under this Agreement.

Section 6.7 Officers. The initial executive officers of the Company shall be the individuals set forth in Schedule 6.7 hereto (the “Initial Officers”). Successors to the Initial Officers, and such other executive officers as may be necessary to conduct the business of the Company, shall be chosen by the Managing Member, subject to the approval of the Board if required pursuant to Section 6.3 hereof.

Section 6.8 Remuneration; Reimbursement. Neither the Managing Member nor any Advisor or officer shall be entitled to remuneration in its capacity as such.

Section 6.9 Approval of Annual Business Plan. Not less than seventy-five (75) days prior to the end of each fiscal year, the Managing Member shall submit to the Board the business plan of operations for the Company for the upcoming fiscal year, which shall contain detailed budget, planning, projection and profitability information (the “Annual Business Plan”). Each Annual Business Plan shall be subject to approval of the Board in accordance with Section 6.3.

Section 6.10 Reports.

(a) No later than the sixth (6<sup>th</sup>) Business Day following the end of each calendar month, the PHH Member shall, in its capacity as Managing Member on an outsourced basis, deliver to the Cendant Member:

(i) those surveys and reports listed and described in Schedule 6.10(a)(i) hereto to verify compliance with the covenant contained in Section 6.1(d); and

(ii) a copy of (a) the balance sheet of the Company as of the end of the month, (b) an income statement of the Company for such month, and (c) reports reflecting other financial and statistical information with respect to the Company, prepared substantially in the form of the report set forth in Schedule 6.10(a)(ii).

(b) No later than the tenth (10<sup>th</sup>) Business Day following the end of each calendar month, the PHH Member shall, in its capacity as Managing Member on an outsourced basis, deliver to the Cendant Member such forward-looking financial information about the Company and the Company’s operations as the Cendant Member may reasonably request (i.e., that is capable of being obtained, produced, or generated without undue effort by the Company and the Managing Member) from time to time (the “Monthly Forecasts”). The Managing Member shall (i) provide the Monthly Forecasts to the Cendant Member in the format requested by the Cendant Member and on a timely basis and (ii) make members of its management and the Company’s management reasonably available for discussion relating to such Monthly Forecasts. The Managing

Member acknowledges that the Cendant Member and any Affiliate thereof may use the Monthly Forecasts for the purpose of developing projections of the Company's future financial performance and may include such projections in reports and other documents filed with Governmental Entities, and as such, the Managing Member represents and warrants to Cendant that the Managing Member shall prepare the Monthly Forecasts in good faith and shall use its reasonable best efforts to ensure that the Monthly Forecasts provide the most accurate estimate of the Company's future results.

(c) No later than the tenth (10<sup>th</sup>) Business Day following the completion of each Fiscal Quarter, the PHH Member shall, in its capacity as Managing Member on an outsourced basis, deliver to the Cendant Member all statements, reports and other documents reasonably requested by the Cendant Member that may be necessary or appropriate for the Cendant Member or any Controlling Person thereof (including, without limitation, Cendant) to satisfy all its reporting requirements pursuant to the Securities Exchange Act of 1934.

(d) The Managing Member shall cause the Company to deliver to the Cendant Member the financial reports and other information described in Sections 11.5 and 11.6 hereof.

## ARTICLE VII Changes in Law; Financial Reporting

### Section 7.1 Compliance with Law; Changes in Law.

(a) The Members shall use commercially reasonable efforts to ensure that the Company's business and operations comply at all times with all applicable laws, including RESPA.

(b) In the event that, as a result of any change in law, rule or regulation or interpretation thereof after the date hereof, as set forth in a written document by a Governmental Entity of competent jurisdiction, (i) any term or provision of this Agreement or any of the other Transaction Documents, in the written opinion of nationally-recognized counsel of either party, is not compliant in any material respect with any applicable law, including RESPA, or (ii) the financial terms of this Agreement and the other Transaction Documents, taken as a whole, become materially inconsistent with the then-current market, the Members shall use commercially reasonable efforts to restructure the business and operations of the Company and amend the relevant provisions of this Agreement and the other Transaction Documents to the extent necessary to achieve as closely as possible the intention of the parties with respect to the economics of the relationships provided for in this Agreement and the other Transaction Documents in a manner that complies with such law, and, in the case of a change in law, rule or regulation described in (ii) above, the Cendant Member shall have the right, by

providing written notice to the PHH Member, to cause PMC and the PHH Member to enter into good faith discussions to renegotiate the economic terms provided for in this Agreement and the other Transaction Documents. In the event the Members fail to reach agreement regarding any such restructuring and renegotiation on terms that are reasonably satisfactory to the Cendant Member within thirty (30) days following the date on which written notice is provided by the Cendant Member, the existing financial terms shall remain in full force and effect; provided, however, that in such case the Cendant Member may elect to solicit from the PHH Member and from other Persons a request for proposals for the provision of mortgage services substantially similar to those provided for in this Agreement and the other Transaction Documents. In the event that any proposal received by the Cendant Member contains financial and other terms that, taken as a whole, are reasonably determined by the Cendant Member to be superior to those set forth in the PHH Member's proposal, and the Cendant Member notifies the PHH Member of its intent to accept such proposal, the PHH Member shall have thirty (30) days from the date of such notification to review and determine whether to accept all of the terms of such proposal, so long as such proposal complies with all applicable laws and regulations (it being understood that the Cendant Member shall have no obligation to accept any proposal at all). In the event that the PHH Member agrees to the terms of such proposal within such thirty (30) day period, such terms shall be incorporated into this Agreement and the other Transaction Documents effective as of a date not later than ten (10) days following such agreement. In the event the PHH Member fails to accept the terms of such proposal, then the Cendant Member, at its option, shall have the right to terminate its relationship as set forth in this Agreement by providing written notice (the "Special Termination Notice") to the PHH Member and through completion of the transaction contemplated by Section 8.4(b) (a "Special Termination Event"). In the event that the proposal submitted by the PHH Member is selected by the Cendant Member, the terms of such proposal shall be incorporated into this Agreement and the other Transaction Documents effective as of a date not later than 20 days following the Cendant Member's selection of such proposal.

(c) If any change in law, rule or regulation described in (b) above involves a change in RESPA that would permit Cendant or an Affiliate of Cendant to be paid directly for loan referrals to the Company, then in lieu of the provisions described in (b) above, the Members shall revise the structure and terms of this Agreement and the other Transaction Documents so that, in lieu of the distributions provided for in this Agreement, the Company shall pay a fee to the Cendant Member in respect of each Mortgage Loan referred to the Company by Cendant or an Affiliate of Cendant in an amount not less than, at Cendant's option, (i) 10 basis points over the average return to the Cendant Member with respect to its interest in the Company, computed as basis points per loan, over the immediately preceding six Quarterly Periods and (ii) the price the Cendant Member could obtain in the then-current market on substantially similar terms, based upon a survey of the market by Cendant and PMC with the highest and lowest bids being discounted.



Section 7.2 Consolidation.

(a) The PHH Member hereby represents and warrants to the Cendant Member that the Company will be consolidated on the books of PHH for financial reporting purposes, and that PHH has undertaken and completed prior to date hereof all analyses and investigations as shall be necessary and appropriate to support such position.

(b) The Members shall use commercially reasonable efforts to take all such actions as shall be necessary to ensure that the Company is consolidated on the books of PHH for financial reporting purposes. Without limiting the foregoing, in the event that, as a result of a change or interpretation in United States generally accepted accounting principles after the date hereof, the Company is required to be consolidated on the balance sheet of Cendant, the Members shall use commercially reasonable efforts to make such changes to the business relationship between the parties and to the provisions of this Agreement as are requested by the Cendant Member to mitigate the effects to Cendant of such change.

Section 7.3 Certain Actions.

The Managing Member shall (i) promptly notify the Cendant Member in writing of any claim or action, or any inquiry or investigation that could result in a claim or action, initiated by any Person (including any Governmental Entity) that, if adversely resolved, would result in a material or significant restriction on the ability of the Company to conduct its business as contemplated by this Agreement and the other Transaction Documents, or that would otherwise cause a significant change in the business operations of the Company, and (ii) keep the Cendant Member actively involved in the settlement or other resolution of any such claim, action, inquiry or investigation; provided, however, that such claim, action, inquiry or investigation shall not be settled or adjusted, and the Company shall not confess a judgment against it in connection therewith, without the approval of the Board pursuant to Section 6.3 hereof.

ARTICLE VIII  
Termination of Relationship

Section 8.1 Cendant Termination Events. For purposes of this Agreement, "Cendant Termination Event" means the occurrence of any of the following events:

(a) A PHH Regulatory Event occurs and is continuing for a period of six consecutive months or more; provided, however, that the PHH Member may elect to defer a termination pursuant to this Section 8.1(a) for up to six (6) additional one-month periods following the time that such termination event shall have first occurred if, no later than the second Business Day prior to the commencement of each such additional one-month period the PHH Member pays the Cendant Member in cash, by wire transfer of immediately available funds to an account designated in writing by the Cendant Member, one million dollars (\$1,000,000) (the “Regulatory Event Fee”);

(b) A Company Regulatory Event occurs and is continuing for a period of six consecutive months or more; provided, however, that the PHH Member may elect to defer a termination pursuant to this Section 8.1(b) for up to six (6) additional one-month periods following the time that such termination event shall have first occurred if, no later than the second Business Day prior to the commencement of each such additional one-month period the PHH Member pays the Cendant Member in cash, by wire transfer of immediately available funds to an account designated in writing by the Cendant Member, an amount equal to the Regulatory Event Fee;

(c) There is a material violation or breach by the PHH Member (acting in any capacity whatsoever, including as Managing Member) of any representation, warranty, covenant or other agreement contained in this Agreement or any other Transaction Document (a “PHH Material Breach”), which violation or breach is not cured by the PHH Member or the other relevant PHH party, in a manner reasonably satisfactory to the Cendant Member, within thirty (30) days after written notice relating to such PHH Material Breach has been delivered by the Cendant Member to the PHH Member;

(d) The Company fails to make a distribution for any Fiscal Quarter in accordance with the provisions of Section 5.6 hereof within ten (10) Business Days after the date on which the Cendant Member first provides notice to the Company of such failure; provided, however, that any payment of a distribution to the Cendant Member after the due date provided for under Section 5.6 shall include interest from the due date through the payment date at the prime rate;

(e) (i) The occurrence of a PHH Change of Control involving any entity on the Cendant List attached hereto as Schedule 8.1(e) or any other entity that directly or indirectly conducts or engages in any business covered by the non-competition provisions set forth in Article X of the SRA. The Cendant List shall contain up to ten companies and may be refreshed by the Cendant Member no more frequently than once every two years beginning from the date of this Agreement; provided, however, that if any Person on the Cendant List enters into a merger, consolidation or similar business combination transaction with another Person on the Cendant List, then Cendant may add another Person to the Cendant List to replace such Person within sixty (60) days after the

announcement of such transaction, and such addition shall not constitute a refreshing of the Cendant List as discussed above;

(f) The occurrence of any event or circumstance constituting Insolvency or Bankruptcy with respect to PHH or PMC (a “Bankruptcy Event”); or

(g) The occurrence of any act or omission by PHH or any of its Subsidiaries that causes or would reasonably be expected to cause material harm to the reputation of Cendant or any of its Subsidiaries.

Section 8.2 Effects of a Cendant Termination Event. Upon the occurrence of a Cendant Termination Event during the term of the Company, the Cendant Member shall have the right to either (i) cause PMC or the PHH Member to purchase (the “Cendant Put”) all of the Interests then held by the Cendant Member or any of its Affiliates or (ii) cause the PHH Member to sell (the “PHH Sale”) all of the Interests then held by the PHH Member or any of its Affiliates to a Person not affiliated with Cendant (any such Person, for purposes of this Section 8.2, the “Cendant Designated Buyer”).

(a) Cendant Put.

(i) The exercise price of the Cendant Put (the “Put Price”) shall be an amount equal to the sum of (A) the then-current Capital Account balance of the Cendant Member plus the then-current Capital Account balance of any other Affiliate of Cendant holding an Interest, in each case, as of the Put Date plus (B) the aggregate amount of all past due quarterly distributions to the Cendant Member and to any other Affiliate of Cendant and any unpaid distribution in respect of the most recently completed Fiscal Quarter pursuant to Section 5.6 hereof, in each case as of the Put Date, plus (C) liquidated damages in an amount equal to the Termination Payment (as defined below), calculated as of the Put Date, plus (D) an amount equal to 49.9% of the Net Income, if any, realized by the Company at any time after the end of the Fiscal Quarter most recently completed as of the Put Date attributable to Mortgage Loans in process at any time prior to the Put Date. In the event that the Cendant Member elects to exercise the Cendant Put, the Cendant Member shall provide written notice (the “Cendant Put Notice”) to the PHH Member. The Cendant Put Notice shall set forth the Cendant Member’s calculation of the Put Price and the basis for such calculation. Any disagreement regarding the Put Price or any other matter related to the exercise of the Cendant Put shall be resolved in accordance with the provisions of Section 13.6 hereof. In the event that the Cendant Member elects to exercise the Cendant Put, the PHH Member and the Cendant Member shall, and shall cause their respective Affiliates to, cooperate as fully as reasonably practicable with one another to consummate the Cendant Put transaction as soon as reasonably practicable following the receipt of the Cendant Put Notice by the

PHH Member. Concurrently with the consummation of the Cendant Put transaction, the PHH Member shall pay or cause to be paid the Put Price to the Cendant Member in cash by wire transfer of immediately available funds to an account or accounts designated in writing by the Cendant Member. The “Put Date” shall be the date on which the Cendant Put is consummated.

(ii) Upon the consummation of a Cendant Put, (A) all of the other Transaction Documents shall automatically terminate (except as otherwise provided in any such Transaction Document), (B) neither the Cendant Member nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or other arrangement with any third party mortgage operation, and (C) the PHH Member shall, and shall cause the Company to, cause all loan officers employed by PMC or any of its Subsidiaries (including the Company) that are located in any of Cendant’s Owned Real Estate Offices to vacate those offices promptly following the Cendant Member’s request.

(iii) “Termination Payment” means an amount equal to (A) the product of (x) two (2) and (y) the actual Net Income of the Company for the trailing twelve months (“LTM Net Income”), plus (B) all costs reasonably incurred by Cendant in unwinding its relationship with PHH pursuant to this Agreement and the other Transaction Documents and transitioning to a new mortgage venture partner; provided, however, that in the case of a Cendant Termination Event pursuant to a PHH Change in Control, in calculating the Termination Payment, the LTM Net Income shall instead be multiplied by the number of years (including fractions thereof) remaining until the tenth (10<sup>th</sup>) anniversary of the Closing Date; provided further, however, that if such PHH Change in Control termination occurs on or after the eighth (8<sup>th</sup>) anniversary of the Closing Date, the LTM Net Income shall be multiplied by two (2).

(b) PHH Sale.

(i) If the Cendant Member elects to cause the PHH Sale, it shall deliver written notice (the “PHH Sale Notice”) to the PHH Member. The Cendant Member shall provide written notice to the PHH Member of the identity of the Cendant Designated Buyer as promptly as reasonably practicable after delivery of the PHH Sale Notice.

(ii) The sale price (the “Sale Price”) of the Interests then held by the PHH Member and any of its Affiliates (the “PHH Interests”) to the Cendant Designated Buyer shall be an amount equal to the sum of (A) the fair value of the Interests of the PHH Member and any Affiliate thereof as of the date that the PHH Sale Notice is delivered, which value shall be determined by

multiplying the PHH Member's then-current proportionate membership interest by the Company's EBITDA for the trailing twelve months, multiplied by a then-current average market EBITDA multiple for mortgage banking companies, plus (B) the aggregate amount of all past due quarterly distributions to the PHH Member and any Affiliate thereof and any unpaid distribution in respect of the most recently completed Fiscal Quarter pursuant to Section 5.6 hereof, plus (C) an amount equal to 50.1% of the Net Income realized by the Company at any time after the end of the Fiscal Quarter most recently completed as of the Sale Date attributable to Mortgage Loans in process prior to the Sale Date. The PHH Sale Notice shall set forth the Cendant Member's calculation of the Sale Price and the basis for such calculation. Any disagreement regarding the Sale Price or any other matter related to the PHH Sale shall be resolved in accordance with the provisions of Section 13.6 hereof.

(iii) If the Cendant Member delivers a PHH Sale Notice, then promptly thereafter the Cendant Member and the PHH Member shall work together to effect the sale by the PHH Member and its Affiliates of the PHH Interests to the Cendant Designated Buyer, and the PHH Member shall use its reasonable best efforts to complete such sale as promptly as practicable thereafter. The PHH Member shall cooperate with and assist the Cendant Member and the Cendant Designated Buyer in obtaining all consents and approvals of, making all filings and registrations with and providing all notices to, such Governmental Entities or third parties as shall be necessary or advisable to consummate such sale. At the time agreed upon for the closing of the PHH Sale (the "Sale Date"), (i) the Cendant Designated Buyer shall pay to the PHH Member (and/or, as directed by the PHH Member, to any of its Affiliates) the Sale Price, by wire transfer of immediately available funds, in consideration for the PHH Interests, and (ii) the PHH Member shall pay to the Cendant Member liquidated damages in an amount equal to the Termination Payment as of the Sale Date.

(iv) Upon consummation of the PHH Sale, (A) the other Transaction Documents (except as otherwise provided in any such Transaction Document) shall automatically terminate, (B) neither Cendant nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or another arrangement with any third party mortgage operation, (C) the PHH Member shall cause all loan officers employed by PMC or any of its Subsidiaries that are located in any of Cendant's Owned Real Estate Offices to vacate those offices promptly following the Cendant Member's request, and (D) the Cendant Designated Buyer or an Affiliate thereof shall become a Member and the sole Managing Member of the Company. The PHH Member shall, and shall cause its Affiliates to, execute any agreement or document necessary to effectuate the provisions of this paragraph (iv).

Section 8.3 PHH Termination Event.

For purposes of this Agreement, a "PHH Termination Event" means the occurrence of any of the following events: (i) a material violation or breach by Cendant or any Subsidiary thereof of any material covenant, agreement or obligation set forth in this Agreement or any other Transaction Document, which violation or breach is not cured and is continuing within sixty (60) days following written notice to the Cendant Member; provided, however, that the PHH Member shall have no right pursuant to this Section 8.3 or otherwise to terminate this Agreement as a result of a breach by any Affiliate of Cendant of the covenant set forth in Section 3.13(b) of the SRA; or (ii) the Bankruptcy of Cendant.

(a) In the event that a PHH Termination Event shall have occurred, the PHH Member shall have the right to purchase (the "Purchase Right") all of the Interests then held by the Cendant Member and any of its Affiliates. The exercise price of the Purchase Right (the "Purchase Price") shall be an amount equal to the sum of (i) the fair value of the Interests then held by the Cendant Member and by any of its Affiliates as of the date that the Purchase Right is exercised, which value shall be determined by multiplying the Cendant Member's then-current proportionate membership interest by the Company's EBITDA for the trailing twelve months, multiplied by a then-current average market EBITDA multiple for mortgage banking companies, plus (ii) the aggregate amount of all past due quarterly distributions to the Cendant Member and any Affiliate thereof and any unpaid distribution in respect of the most recently completed Fiscal Quarter pursuant to Section 5.6 hereof, plus (iii) an amount equal to 49.9% of the Net Income realized by the Company at any time after the end of the Fiscal Quarter most recently completed as of the date of purchase attributable to Mortgage Loans in process at any time prior to completion of the Purchase Right transaction. The Purchase Right shall remain exercisable for a period of two (2) months following the occurrence of a PHH Termination Event. In the event that the PHH Member elects to exercise the Purchase Right, the PHH Member shall provide written notice (the "Purchase Notice") to the Cendant Member prior to the expiration of such two-month period. The Purchase Notice shall set forth the PHH Member's calculation of the Purchase Price and the basis for such calculation. Any disagreement regarding the Purchase Price or any other matter related to the exercise of the Purchase Right shall be resolved in accordance with the provisions of Section 13.6 hereof. In the event that the PHH Member elects to exercise the Purchase Right, the PHH Member and the Cendant Member shall, and shall cause their respective Affiliates to, cooperate as fully as reasonably practicable with one another to consummate the Purchase Right transaction; provided, however, that the Purchase Right transaction shall not be consummated earlier than the one-year anniversary of delivery of the Purchase Notice. Concurrently with the consummation of the Purchase Right transaction, the PHH Member shall pay or cause to be paid the Purchase Price to the Cendant Member in cash by wire transfer of immediately available funds to an account or accounts designated in writing by the Cendant Member.

(b) Upon consummation of the Purchase Right transaction, (i) all other Transaction Documents shall automatically terminate (except as otherwise provided in any such Transaction Document), (ii) neither the Cendant Member nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or another arrangement with any third party mortgage operation and (iii) the PHH Member shall, and shall cause the Company to, cause all loan officers employed by PMC or any of its Subsidiaries (including the Company) that are located in any of Cendant's Owned Real Estate Offices to vacate those offices promptly following the Cendant Member's request.

(c) The PHH Member's sole remedy hereunder or under any other Transaction Document with respect to a breach of the covenant set forth in Section 3.13(b) of the SRA shall be the right to receive from the Cendant Entities liquidated damages in an amount equal to the aggregate amount of all documented out-of-pocket costs actually incurred and paid by the PHH Member or any of its Affiliates to one or more third parties as a direct result of such breach.

Section 8.4 Two Year Termination, Special Termination Event and 25-Year Termination.

(a) Two-Year Termination. At any time after the eighth (8<sup>th</sup>) anniversary of the Closing Date, the Cendant Member may deliver to the PHH Member a written notice (the "Two-Year Termination Notice") requesting that the PHH Member either (i) purchase or cause to be purchased (the "Two Year Put") all of the Interests held by the Cendant Member or any of its Affiliates on a date no earlier than two years after such Two-Year Termination Notice is delivered to the PHH Member ("Two Year Put Date") or (ii) sell (the "Two Year PHH Sale") all of the Interests then held by the PHH Member and/or any of its Affiliates to a Person that is not affiliated with Cendant (any such Person, for purposes of this Section 8.4, the "Cendant Designated Buyer") on a date no earlier than two years after such Two-Year Termination Notice is delivered to the PHH Member ("Two Year Sale Date").

(i) Two Year Put.

(1) The exercise price of the Two Year Put (the "Two Year Put Price") shall be an amount equal to the sum of (A) the fair value of the Interests of the Cendant Member and any Affiliate thereof as of the Two Year Put Closing Date, which value shall be determined by multiplying the Cendant Member's then-current proportionate membership interest by the Company's EBITDA for the trailing twelve months, multiplied by a then-current average market EBITDA multiple for mortgage banking companies, plus (B) the aggregate amount of all past due quarterly distributions to the Cendant

Member and any Affiliate thereof and any unpaid distribution in respect of the most recently completed Fiscal Quarter pursuant to Section 5.6 hereof as of the Two Year Put Closing Date, plus (C) an amount equal to 49.9% of the Net Income realized by the Company at any time after the end of the Fiscal Quarter most recently completed as of the Two Year Put Closing Date attributable to Mortgage Loans in process at any time prior to the Two Year Put Closing Date. No later than sixty (60) days prior to the Two Year Put Date, the Cendant Member shall deliver to the PHH Member a written notice setting forth the Cendant Member's calculation of the Two Year Put Price and the basis for such calculation. Any disagreement regarding the Two Year Put Price or any other matter related to the exercise of the Two Year Put shall be resolved in accordance with the provisions of Section 13.6 hereof. In the event that the Cendant Member elects to exercise the Two Year Put, the PHH Member and the Cendant Member shall, and shall cause their respective Affiliates to, cooperate as fully as reasonably practicable with one another to consummate the Two Year Put transaction on the Two Year Put Date. Concurrently with the consummation of the Two Year Put transaction, the PHH Member shall pay or cause to be paid the Two Year Put Price to the Cendant Member in cash by wire transfer of immediately available funds to an account or accounts designated in writing by the Cendant Member. The "Two Year Put Closing Date" shall be the date on which the Two Year Cendant Put is consummated.

(2) On the Two Year Put Closing Date, (A) all other Transaction Documents shall automatically terminate (except as otherwise provided in any such Transaction Document), (B) neither Cendant nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or another arrangement with any third party mortgage operation, and (C) the PHH Member shall, and shall cause the Company to, cause all loan officers employed by PMC or any of its Subsidiaries (including the Company) that are located in any of Cendant's Owned Real Estate Offices to vacate those offices promptly following the Cendant Member's request.

(ii) Two Year PHH Sale.

(1) If the Cendant Member elects to cause the Two Year PHH Sale, it shall provide written notice to the PHH Member of the identity of the Cendant Designated Buyer no later than 180 days before the Two Year Sale Date.



(2) The sale price (the “Two Year Sale Price”) of the PHH Member’s Interest to the Cendant Designated Buyer shall be an amount equal to the sum of (A) the fair value of the PHH Member’s Interest, which value shall be determined by multiplying the PHH Member’s then-current proportionate membership interest by the Company’s EBITDA for the trailing twelve months, multiplied by a then-current average market EBITDA multiple for mortgage banking companies, plus (B) the aggregate amount of all past due quarterly distributions to the PHH Member and any Affiliate thereof and any unpaid distribution in respect of the most recently completed Fiscal Quarter pursuant to Section 5.6 hereof as of such date, plus (C) an amount equal to 50.1% of the Net Income realized by the Company at any time after the end of the Fiscal Quarter most recently completed on or after the Two Year Sale Date attributable to Mortgage Loans in process at any time prior to the Two Year Sale Date. No later than sixty (60) days prior to the Two Year Sale Date, the Cendant Member shall deliver to PMC or the PHH Member a notice that sets forth the Cendant Member’s calculation of the Two Year Sale Price and the basis for such calculation. Any disagreement regarding the Two Year Sale Price or any other matter related to the Two Year PHH Sale shall be resolved in accordance with the provisions of Section 13.6 hereof.

(3) The Cendant Member, PMC and the PHH Member shall work together to effect the sale by the PHH Member or its Affiliates of the PHH Interests to the Cendant Designated Buyer, and the PHH Member shall use its reasonable best efforts to complete such sale on the Two Year Sale Date. PMC and the PHH Member shall cooperate with and assist the Cendant Member and the Cendant Designated Buyer in obtaining all consents and approvals of, making all filings and registrations with and providing all notices to, such Governmental Entities or third parties as shall be necessary or advisable to consummate such sale. At the time agreed upon for the closing of the Two Year PHH Sale, the Cendant Designated Buyer shall pay to the PHH Member (or, as directed by the PHH Member, any of its Affiliates) the Two Year Sale Price, by wire transfer of immediately available funds, in consideration for the PHH Interests.

(4) Upon consummation of the Two Year PHH Sale, (A) the other Transaction Documents shall automatically terminate (other than as set forth in any such Transaction Document), (B) neither Cendant nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or another arrangement with any third party

mortgage operation, (C) the PHH Member shall, and shall cause the Company to, cause all loan officers employed by PMC or any of its Subsidiaries (including the Company) that are located in any of Cendant's Owned Real Estate Offices to vacate those offices promptly following the Cendant Member's request, and (D) the Cendant Designated Buyer or an Affiliate thereof shall become a Member and the sole Managing Member of the Company. The PHH Member shall, and shall cause its Affiliates, to execute any agreement or document necessary to effectuate the provisions of this paragraph (iv).

(b) **Special Termination Event.** Upon the occurrence of a Special Termination Event, the Members shall as promptly as practicable take all such actions necessary to consummate a transaction identical in all material respects to a Two Year Put (a "**Special Termination Put**"), except that (1) the purchase price shall be calculated as of the date the Special Termination Put is completed, and (2) such transaction shall be completed not later than ninety (90) days following the delivery by the Cendant Member of the Special Termination Notice pursuant to Section 7.1(b). On the date of completion of the Special Termination Put, (A) all other Transaction Documents shall automatically terminate (except as otherwise provided in any such Transaction Document), (B) neither Cendant nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or another arrangement with any third party mortgage operation, and (C) the PHH Member shall, and shall cause the Company to, cause all loan officers employed by PMC or any of its Subsidiaries (including the Company) that are located in any of Cendant's Owned Real Estate Offices to vacate those offices promptly following the Cendant Member's request.

(c) **PHH 25-Year Termination.** The PHH Member may terminate the relationship between the Parties to this Agreement, effective as of January 31, 2030, by delivering written notice thereof to the Cendant Member (a "**Non-Renewal Notice**"), which notice shall be delivered no earlier than January 31, 2027 and not later than January 31, 2028. Upon delivery of a Non-Renewal Notice, PMC and the PHH Member shall work together with the Cendant Member to consummate a transaction identical in all material respects to, at the election of the PHH Member, either the Two Year Put (a "**Non-Renewal Put**") or Two Year PHH Sale (a "**Non-Renewal PHH Sale**"), except that (1) the purchase price for such transaction shall be calculated as of the date of completion of such transaction, and (2) such transaction shall be completed no earlier than January 31, 2030. Upon consummation of the Non-Renewal Put or the Non-Renewal PHH Sale, (A) the other Transaction Documents shall automatically terminate (other than as set forth in any such Transaction Document), (B) neither Cendant nor any Affiliate thereof shall be subject to any restriction under this Agreement or any other Transaction Document to pursue a partnership, joint venture or another arrangement with any third party mortgage operation, (C) the PHH Member shall, and shall cause the

Company to, cause all loan officers employed by PMC or any of its Subsidiaries (including the Company) that are located in any of Cendant's Owned Real Estate Offices to vacate those offices promptly following the Cendant Member's request, and (D) in the case of a Non-Renewal PHH Sale, the Cendant Designated Buyer or an Affiliate thereof shall become a Member and the sole Managing Member of the Company. The PHH Member shall, and shall cause its Affiliates, to execute any agreement or document necessary to effectuate the provisions of this paragraph (c).

Section 8.5 Effect of Termination Events.

(a) Notwithstanding anything to the contrary set forth in this Agreement, upon the consummation of a Cendant Put, a Two Year Put, a Purchase Right, a Special Termination Event Put or a Non-Renewal Put, the Cendant Member and each of its Affiliates that is a Member shall cease to be a Member and to have any obligations pursuant to this Agreement.

(b) Notwithstanding anything to the contrary set forth in this Agreement, upon the consummation of a PHH Sale, a Two Year PHH Sale or a Non-Renewal PHH Sale, the PHH Member and each of its Affiliates that is a Member shall cease to be a Member and to have any obligations pursuant to this Agreement.

ARTICLE IX  
Dissolution and Winding Up

Section 9.1 Events Causing Dissolution.

(a) The Company shall be dissolved upon the first of the following events to occur (an "Event of Dissolution"):

- (i) The written consent all Members at any time to dissolve and wind up the affairs of the Company; or
- (ii) The entry of a decree of judicial dissolution under Section 18-802 of the Act.

No other event, including the retirement, insolvency, liquidation, dissolution, expulsion, bankruptcy, death, incapacity or adjudication of incompetence of a Member, shall cause the existence of the Company to terminate.

(b) Except as otherwise set forth in this Section 9.1, dissolution shall be effective on the effective date of the Event of Dissolution, but the Company shall not terminate until the assets thereof have been distributed in accordance with the

provisions of Section 9.4 hereof and all other provisions of the Act with respect to the dissolution of a limited liability company have been complied with. Notwithstanding the dissolution of the Company, prior to the termination of the Company, the business, assets and affairs of the Company shall continue to be governed by this Agreement.

Section 9.2 Winding Up. If the Company is dissolved pursuant to Section 9.1, the Company's affairs shall be wound up as soon as reasonably practicable in the manner set forth below.

(a) Upon the occurrence of an Event of Dissolution, sole and plenary authority to effectuate the liquidation of the Company shall be vested in the Managing Member or a Person designated by the Managing Member (subject to the approval of the Board pursuant to Section 6.3 hereof) to effectuate the liquidation of the Company or if the Managing Member elects not to effectuate such liquidation and fails to designate a liquidator, such Person as is selected by the Members (the Managing Member or any such liquidating trustee who assumes such responsibility being referred to herein as the "Liquidating Trustee"). The Liquidating Trustee shall proceed diligently to wind up the affairs of the Company, liquidate the assets of the Company in an orderly and businesslike manner consistent with obtaining the fair value thereof and distribute the assets of the Company in accordance with the provisions of Section 9.4 hereof. A reasonable amount of time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors so as to enable the Liquidating Trustee to minimize the losses attendant upon such liquidation. All FHA-insured loans held by the Company shall be transferred to an approved mortgagee or lender prior to dissolution of the Company. Prior to such distribution of the Company's assets, the Liquidating Trustee shall continue to exploit the rights, activities and properties of the Company consistent with the sale or liquidation thereof, exercising in connection therewith all of the power and authority of the Managing Member as herein set forth.

(b) In winding up the affairs of the Company, the Liquidator shall have full right and unlimited discretion, in the name of and for and on behalf of the Company to:

- (i) Prosecute and defend civil, criminal or administrative suits;
- (ii) Collect Company assets, including obligations owed to the Company;
- (iii) Settle and close the Company's business;
- (iv) Dispose of and convey all Company Property for cash, and in connection therewith to determine the time, manner and

terms of any

sale or sales of Company Property, having due regard for the activity and condition of the relevant market and general financial and economic conditions;

(v) Pay all reasonable selling costs and other expenses incurred in connection with the winding up out of the proceeds of the disposition of Company Property;

(vi) Discharge the Company's known liabilities and, if necessary, to set up, for a period not to exceed five (5) years after the date of dissolution, such cash reserves as the Liquidator may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company;

(vii) Distribute any remaining proceeds from the sale of Company Property to the Members;

(viii) Prepare, execute, acknowledge and file articles of dissolution under the Act and any other certificates, tax returns or instruments necessary or advisable under any applicable law to effect the winding up and termination of the Company;

(ix) Upon the distribution of the assets of the Company in accordance with the provisions of Section 9.4 hereof, the Liquidating Trustee shall cause the Company's accountants to make a full and proper accounting of the assets, liabilities and operations of the Company, as of and through the date on which such distribution occurs; and

(x) Exercise, without further authorization or consent of any of the parties hereto or their legal representatives or successors in interest, all of the powers conferred upon the Members under the terms of this Agreement to the extent necessary or desirable in the good faith judgment of the Liquidating Trustee to perform its duties and functions. The Liquidating Trustee (unless such Liquidating Trustee is the Managing Member or an Affiliate thereof) shall, while acting in such capacity on behalf of the Company, be entitled to the indemnification rights set forth in Section 12.1 hereof.

Section 9.3 Compensation of Liquidating Trustee. The Liquidating Trustee appointed as provided herein shall be entitled to receive such reasonable compensation for its services as shall be agreed upon by the Liquidating Trustee and the Managing Member.

Section 9.4 Distribution of Company Property and Proceeds of Sale Thereof.

(a) Upon completion of all desired sales of Company Property, and after payment of all selling costs and expenses, the Liquidating Trustee shall distribute the proceeds of such sales, and any Company Property that is to be distributed in kind, to the following groups in the following order of priority:

- (i) to satisfy Company liabilities to creditors, including Members who are creditors, to the extent otherwise permitted by law (other than for past due Company distributions), whether by payment or establishment of reserves;
- (ii) to satisfy Company obligations to Members and former Members to pay past due Company distributions;
- (iii) pro rata among the Members who have made Capital Contributions to the extent of their Capital Contributions; and
- (iv) to the Members pro rata in accordance with their positive Capital Account balances, taking into account all Capital Account adjustments for the Fiscal Period in which the liquidation occurs and any distributions to such Member pursuant to Section 9.4(a)(iii).

All distributions required under this Section 9.4 shall be made to the Members by the end of the taxable year in which the liquidation occurs or, if later, within 90 days after the date of such liquidation.

(b) The claims of each priority group specified above shall be satisfied in full before satisfying any claims of a lower priority group. If the assets available for disposition are insufficient to dispose of all of the claims of a priority group, the available assets shall be distributed in proportion to the amounts owed to each creditor or the respective Capital Account balances or Interests of each Member in such group.

Section 9.5 Company Termination. Upon compliance with the foregoing distribution plan, the Company shall cease to be such, and the Liquidating Trustee shall execute, acknowledge and cause to be filed with the Secretary of State of the State of Delaware articles of dissolution of the Company.

Section 9.6 Final Audit. Within a reasonable time following the completion of the liquidation, the Liquidating Trustee shall supply to each of the Members a statement that shall set forth the assets and the liabilities of the Company as of the date of complete liquidation and each Member's pro rata portion of distributions pursuant to Section 9.4.

ARTICLE X  
Transfers and Assignment of Interests

Section 10.1 Consent Required for Transfer.

(a) No Member shall be entitled to directly or indirectly sell, assign, Transfer or otherwise dispose of all or any portion of his Interest, involuntarily or voluntarily, without the written consent of all the other Members, which consent may be given or withheld in each such other Member's sole and absolute discretion; provided, however, that notwithstanding the foregoing any Member may sell, assign, Transfer or otherwise dispose of all or any portion of such Member's Interest to an Affiliate of such Member without the written consent of the other Members; provided further, however, that the Cendant Member may at its election Transfer a portion of its Interest to any Person that acquires or otherwise succeeds to a portion of the business of Cendant Real Estate, and shall transfer (i) its entire Interest to any Person that acquires or otherwise succeeds to substantially all of the business of Cendant Real Estate, or (ii) an appropriate portion of its Interest to any Person that acquires or otherwise succeeds to substantially all of the business of NRT, in each case, whether by merger, asset sale, stock sale, or otherwise (it being understood that in the case of any transfer of a portion of the Cendant Member's Interest contemplated by this second proviso, the percentage represented by the portion of the Interest so transferred shall be determined based upon the percentage of the Company's revenue for the then-current trailing twelve months represented by the portion of the business of Cendant Real Estate so transferred in the transaction).

(b) It shall be a condition to any Transfer of all or a portion of the Cendant Member's Interest permitted by Section 10.1(a) that any Person acquiring such Interest or portion thereof shall agree in writing to be bound by this Agreement and all of the other Transaction Documents with respect to the portion of the business of Cendant Real Estate acquired by such Person, to the same extent that Cendant Real Estate and the Cendant Member were so bound prior to such transfer (other than as set forth in any such other Transaction Document). In the event of consummation of any such Transfer in accordance with Section 10.1(a), the Managing Member shall amend Schedule I to reflect such Transfer.

(c) It shall be a condition to any Transfer by a Member which may be permitted under Section 10.1(a) that the transferee assume by written agreement all of the obligations of the transferor under this Agreement with respect to such transferred Interests and make the representations in Section 3.3 hereof. Any attempted or purported Transfer in violation of this Article X shall be null and void ab initio.

Section 10.2 Withdrawal. No Member may withdraw from the Company without the prior written consent of all Members, which consent may be given or withheld for any reason.

ARTICLE XI  
Fiscal Matters; Books and Records

Section 11.1 Bank Accounts; Investments. Capital Contributions, revenues and any other Company funds shall be deposited by the Company in a bank account established in the name of the Company, or shall be invested by the Company, at the direction of the Managing Member, in time deposits, short-term governmental obligations, commercial paper or other short-term money market instruments in furtherance of the purposes of the Company. No other funds shall be deposited into Company bank accounts or commingled with Company investments. Funds deposited in the Company's bank accounts may be withdrawn only to be invested in time deposits, short-term governmental obligations, commercial paper or other short-term money market instruments in furtherance of the Company's purposes, to pay Company debts or obligations or to be distributed to the Members pursuant to this Agreement.

Section 11.2 Records Required by Act; Right of Inspection.

(a) During the term of the Company's existence and for a period of four (4) years thereafter, there shall be maintained in the Company's principal office specified pursuant to Section 2.4 all records required to be kept pursuant to Section 18-305(a) of the Act, including, without limitation, a current list of the names, addresses and Common Interest Percentage held by each of the Members (including the dates on which each of the Members became a Member), copies of federal, state and local information or income tax returns for each of the Company's tax years, copies of this Agreement and the Certificate of Formation, including all amendments or restatements, and correct and complete books and records of account of the Company for all periods of operations.

(b) Each of the Company and the Managing Member shall, at their sole cost and expense, make available, or cause to be made available, to the Cendant Member or any person designated by the Cendant Member, in a timely manner, all documents or materials in the possession of, or available to, the Company or the Managing Member that the Cendant Member may reasonably request for any business purpose (including, without limitation, any such documents and materials the Cendant Member may request to verify the accuracy of the calculation of Distributable Net Income for any Fiscal Quarter). In furtherance of the foregoing, each of the Company and the Managing Member shall, at its sole cost and expense, make available, or cause to be made available, during normal business hours and with reasonable advance notice, to



the Cendant Member or any Person designated by the Cendant Member, resources, including, but not limited to, access to employees, sufficient to respond adequately to any issue or concern raised by the Cendant Member.

Section 11.3 Books and Records of Account. The Company shall maintain books and records in such a manner as to enable the preparation of the Company's U.S. federal information tax return in compliance with Section 6031 of the Code, and such other records as may be required in connection with the preparation and filing of the Company's required U.S. federal, state and local income tax returns or other tax returns or reports of foreign jurisdictions, including, without limitation, the records reflecting the Capital Accounts and adjustments thereto specified in Article V hereof. Subject to Section 3.6, all such books and records shall at all times be made available at the principal office of the Company and shall be open to the reasonable inspection and examination by the Members or their duly authorized representatives during normal business hours. Notwithstanding the definition of "Members" herein, only Members admitted as such to the Company shall have the inspection rights provided in the preceding sentence.

Section 11.4 Expenses. The Company will be responsible for all expenses ("Company Expenses"), including, without limitation, (i) all reasonable accounting and legal expenses incurred in connection with Company operations, (ii) all reasonable costs incurred in connection with the preparation of or relating to reports made to the Members, (iii) all reasonable costs related to litigation involving the Company, directly or indirectly, including, without limitation, attorneys' fees incurred in connection therewith and (iv) all reasonable costs related to the Company's obligations set forth in Sections 11.10 and 12.1; provided, however, that any Company Expenses must be attributable solely to the operations of the Company, and that any expenses relating to, resulting from or in connection with any other Person, including without limitation any other Person who is an Affiliate of the Managing Member, shall not be Company Expenses.

Section 11.5 Tax Returns and Information. The Members intend for the Company to be treated as a partnership for tax purposes. The Company shall prepare or cause to be prepared all federal, state and local income and other tax returns that the Company is required to file. After the end of each fiscal year of the Company, the Company shall prepare and transmit to each Member a report (i.e., Schedule K-1) that shall include all necessary tax reporting information required by Members for preparation of their federal, state and local income or franchise tax returns, including the amount of income, gain, loss, deduction and credit allocated to each Member for such fiscal year.

Section 11.6 Delivery of Audited Financial Statements to Members. As to each fiscal year of the Company, the Company shall send to each Member a copy of (a) the balance sheet of the Company as of the end of the fiscal year, (b) an income

statement of the Company for such year, and (c) a statement showing the Net Income distributed by the Company to Members in respect of such year. Such financial statements shall be delivered sixty (60) days following the end of such fiscal year. The Company shall send to each Member all other reports or statements prepared by the Company's accountants promptly after receipt thereof.

Section 11.7 Audits. The fiscal year-end financial statements to be delivered pursuant to Section 11.6 shall be audited and prepared in accordance with GAAP. The audit shall be performed by an accounting firm selected pursuant to Section 6.3(a)(iii).

Section 11.8 Fiscal Year. The Company's fiscal year shall end on December 31 of each calendar year.

Section 11.9 Tax Elections. The Company shall, subject to approval of the Board pursuant to Section 6.3(a)(xiv) hereof, make the following elections on the appropriate tax returns:

(a) to adopt the calendar year as the Company's fiscal year, if permitted by the Code;

(b) to elect to amortize the organizational expenses of the Company ratably over a period of sixty (60) months as permitted by Section 709(b) of the Code; and

(c) any other election the Managing Member determines is in the best interests of the Members, including an election pursuant to Section 754 of the Code to adjust Company Properties upon a distribution of Company Property as described in Section 734 of the Code or a transfer of any Interests as described in Section 743 of the Code.

Neither the Company nor any Member may make an election for the Company to be (i) excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law or (ii) classified as a corporation for income tax purposes.

Section 11.10 Tax Matters Member. The PHH Member shall be designated as the "tax matters partner" (the "Tax Matters Member") of the Company pursuant to Section 6231(a)(7) of the Code or corresponding provisions of state or local law, to manage administrative tax proceedings conducted at the Company level by the Internal Revenue Service or the state or local taxing authority with respect to Company matters. The Tax Matters Member is, subject to Section 6.3(a)(xiv) directed and authorized to take whatever steps it, in its reasonable judgment, determines is necessary

or desirable to perfect such designation, including, without limitation, filing any forms or documents with the Internal Revenue Service or any state or local taxing authority and taking such other action as may from time to time be required under Treasury Regulations and corresponding provisions of state or local law. Expenses of administrative proceedings relating to the determination of Company items at the Company level undertaken by the Tax Matters Member shall be expenses of the Company. The Tax Matters Member shall inform each Member of the commencement of any audit of the Company by the Internal Revenue Service or any other taxing authority.

ARTICLE XII  
Indemnification and Insurance

Section 12.1 Indemnification and Advancement of Expenses.

(a) In General. The Company shall, to the maximum extent permitted by applicable law, indemnify and hold harmless all Advisors and officers of the Company ("Indemnified Parties"), to the fullest extent permitted by law, from and against any and all Losses, including, without limitation, Losses incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from any of the foregoing by or before any court or governmental, administrative or other regulatory agency, body or commission, whether pending or threatened, whether or not an Indemnified Party is or may be a party thereto, which arises out of, relates to or is in connection with this Agreement or the management or conduct of the business or affairs of the Company, except for any such Losses that are found, pursuant to a final and nonappealable judgment of a court of competent jurisdiction, to have resulted from the gross negligence, bad faith, fraud or willful misconduct of, or breach of this Agreement or knowing violation of law by, the Indemnified Party seeking indemnification. The termination of any proceeding by settlement shall not be deemed to create a presumption that the Indemnified Party involved in such settlement acted in a manner which constituted gross negligence, bad faith, fraud or willful misconduct or a knowing violation of law. All judgments against an Indemnified Party wherein such Indemnified Party is entitled to indemnification shall, to the extent available, be satisfied from Company assets. The provisions of this Section 12.1 shall survive any termination or expiration of this Agreement. Expenses incurred by an Indemnified Party in defense or settlement of any claim that may be subject to a right of indemnification hereunder may be advanced (and must be advanced to Advisors) by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the Indemnified Party to repay such amount if it shall ultimately be determined that the Indemnified Party is not entitled to be indemnified by the Company. The right of any Indemnified Party to the indemnification and advancement of expenses provided herein shall be cumulative of and in addition to any and all rights to which such Indemnified Party may otherwise be

entitled by contract or as a matter of law or equity and shall extend to such Indemnified Party's successors, assigns and legal representatives.

(b) Any indemnification under paragraph (a) of this Section 12.1 (unless ordered by a court of competent jurisdiction) shall be made by the Company only as authorized in the specific case upon a determination that indemnification of the Indemnified Party is proper in the circumstances because he or she has met the applicable standard of conduct set forth in paragraph (a) of this Section 12.1. Such determination shall be made (i) by a four-fifths vote of the Board, or (ii) if a four-fifths vote of the Board so directs, by independent legal counsel in a written opinion.

(c) For purposes of this Section 12.1, any reference to the "Company" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any Person who is or was a director or officer of such constituent entity, or is or was serving at the request of such constituent entity as a director, officer or manager of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 12.1 with respect to the resulting or surviving entity as he or she would have with respect to such constituent entity if its separate existence had continued.

(d) Notwithstanding anything in this Article XII to the contrary, the Company will not have the obligation of indemnifying any Person with respect to proceedings, claims or actions initiated or brought voluntarily by such Person and not by way of defense.

(e) Any indemnification or advancement of expenses provided by, or granted pursuant to, this Section 12.1 shall be considered retroactive to the date upon which the Certificate of Formation was filed with the State of Delaware.

Section 12.2 Insurance. The Company may purchase and maintain insurance or another arrangement on behalf of any Person who is or was an Advisor or officer identified in Section 12.1 against any liability asserted against such Person or incurred by such Person in such a capacity or arising out of the status of such a Person, whether or not the Company would have the power to indemnify such Person against that liability under Section 12.1 or otherwise.

Section 12.3 Limit on Liability of Members. The indemnification set forth in this Article XII shall in no event cause the Members to incur any personal liability beyond their total Capital Contributions, nor shall it result in any liability of the Members to any third party.

Section 12.4 Indemnification by Managing Member.

(a) The Managing Member shall indemnify and hold harmless the Company and all other Members and their respective Affiliates (“Other Indemnified Parties”), to the fullest extent permitted by law, from and against any and all Losses, including, without limitation, Losses incurred in investigating, preparing or defending any action, claim, suit, inquiry, proceeding, investigation or appeal taken from any of the foregoing by or before any court or governmental, administrative or other regulatory agency, body or commission, whether pending or threatened, whether or not an Other Indemnified Party is or may be a party thereto, arising out of or resulting from (i) the negligence, willful misconduct or violation of law or erroneous acts of or by the Managing Member or any of its officers or employees in connection with the management of the business and affairs of the Company, and (ii) any breach or violation by PMC or any of its Affiliates of any representation, warranty, covenant or other agreement contained in this Agreement or any other Transaction Document (including, without limitation, any indemnification payment made to an Advisor or officer under this Article XII hereof as a result of such breach or violation), it being understood that the Company shall retain all risk with respect to, and the Managing Member shall have no indemnification obligations hereunder with respect to, loan level origination defects not otherwise resulting from any of the circumstances described in clause (i) or (ii) of this Section 12.4(a). The provisions of this Section 12.4 shall survive any termination or expiration of this Agreement or any other Transaction Document. The right of any Other Indemnified Party to the indemnification and advancement of expenses provided herein shall be cumulative of and in addition to any and all rights to which such Other Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to such Other Indemnified Party’s successors, assigns and legal representatives.

(b) In the case of a PHH Regulatory Event, the PHH Member shall indemnify and hold harmless the Company from and against all Losses incurred by it arising out of or resulting from such PHH Regulatory Event, except, in any such case, to the extent that the Regulatory Order or Proceeding or Losses leading to such PHH Regulatory Event are caused solely by Cendant or any of its Affiliates or any of their respective directors, officers, advisors or employees.

(c) In the case of a Company Regulatory Event, the PHH Member shall indemnify and hold harmless the Company from and against all Losses incurred or sustained by it arising out of or resulting from such Company Regulatory

Event, except, in any case, to the extent that the Regulatory Order or Proceeding or Losses leading to such Company Regulatory Event are caused solely by Cendant or any of its Affiliates or any of their respective directors, officers, advisors or employees.

(d) In the event there is a breach or violation by PMC or its Affiliates (excluding the Company), on the one hand, or by Cendant or its Affiliates, on the other hand, of any representation, warranty, covenant or other agreement contained in this Agreement or any other Transaction Document, then the breaching Party shall give prompt written notice thereof to the other Party and each Advisor.

Section 12.5 No Additional Indemnification Rights.

Except as set forth herein, no Person (including, without limitation, any Member and any officer, director or agent of any Member) shall have indemnification rights against the Company.

ARTICLE XIII  
Miscellaneous Provisions

Section 13.1 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

Section 13.2 Entire Agreement. This Agreement and the other Transaction Documents constitute the entire agreement among the parties hereto and contains all of the agreements among such parties with respect to the subject matter hereof and thereof. This Agreement and the other Transaction Documents supersede any and all other agreements, either oral or written, between such parties with respect to the subject matter hereof and thereof.

Section 13.3 Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 13.4 Amendment. Except as expressly provided herein (including Section 10.1 hereof), this Agreement may be amended only by a written agreement executed by all the Members. Following such amendment, the Agreement, as

amended, shall be binding upon all Members. The Company shall notify the Secretary of HUD of any amendments to this Agreement which would affect the Company's action under any HUD/FHA administered mortgage insurance program.

Section 13.5 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and shall inure to the benefit of the parties, and their respective distributees, heirs, successors and assigns.

Section 13.6 Negotiation and Mediation.

(a) Negotiation. In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, or the transactions contemplated hereby (a "Dispute"), upon the written notice of any Member hereto, the Members shall attempt in good faith to negotiate a resolution of the Dispute. If the Members are unable for any reason to resolve a Dispute within 30 days after the receipt of such notice, the Dispute shall be submitted to mediation in accordance with Section 13.6(b) hereof.

(b) Mediation. Any Dispute not resolved pursuant to Section 13.6(a) hereof shall, at the request (the "Mediation Request") of any Member (the "Disputing Member"), be submitted to mediation in accordance with the then-prevailing Commercial Mediation Rules of the American Arbitration Association, as modified herein (the "Rules"). The mediation shall be held in New York, New York. The Members shall have twenty (20) days from receipt by a party of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the Members within twenty (20) days of receipt by a Member (or Members) of a Mediation Request, then any Member may request (on written notice to the other Member or Members), that the American Arbitration Association appoint a mediator in accordance with the Rules. All mediation pursuant to this Section 13.6(b) shall be confidential and shall be treated as compromise and settlement negotiations, and no oral or documentary representations made by the Members during such mediation shall be admissible for any purpose in any subsequent proceedings. No Member shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by another Member in the mediation proceedings or about the existence, contents or results of the mediation award without the prior written consent of such other Member except in the course of a judicial or regulatory proceeding or as may be required by law, rule or regulation or requested by a governmental authority or securities exchange. Before making any disclosure permitted by the preceding sentence, the Member intending to make such disclosure shall give the other Member a reasonable opportunity to protect its interests. If the Dispute has not been resolved within sixty (60) days of the appointment of a Mediator, or within ninety (90) days of delivery by a Disputing Member of notice in accordance with Section 13.10 (whichever occurs sooner) or within such longer period as the

Members may agree to in writing, then any Member may file an action on the Dispute in any court having jurisdiction in accordance with Section 13.7 herein.

Section 13.7 Governing Law. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE CHOICE OF LAWS RULES THEREOF, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE MEMBERS HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.** Any legal suit, action or proceeding against any of the Parties hereto arising out of or relating to this Agreement shall only be instituted in any federal or state court in New York, New York, pursuant to Section 5-1402 of the New York General Obligations Law, and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of any such court in any such suit, action or proceeding. The Parties hereby agree to venue in such courts and hereby waive, to the fullest extent permitted by law, any claim that any such action or proceeding was brought in an inconvenient forum. Each of the Parties hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Section 13.8 Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

Section 13.9 Effect of Waiver or Consent. No provision of this Agreement shall be deemed to have been waived unless such waiver is contained in a written notice given to the party claiming such waiver has occurred. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 13.10 Notices. To be effective, unless otherwise specified in this Agreement, all notices and demands, consents and other communications under this Agreement must be in writing and must be given (a) by depositing the same in the United States mail, postage prepaid, certified or registered, return receipt requested, (b) by delivering the same in person and receiving a signed receipt therefore, (c) by sending the same by a nationally recognized overnight delivery service or (d) by telecopy (promptly confirmed by telephone and followed by personal or nationally recognized overnight



delivery). For purposes of notices, demands, consents and other communications under this Agreement, the addresses of the Members (and their respective counsel, if applicable) shall be as follows:

If to the PHH Member, addressed to:

PHH Broker Partner Corporation  
3000 Leadenhall Road  
Mt. Laurel, NJ 08054  
Attn: William F. Brown

With a copy to:

PHH Mortgage Corporation  
3000 Leadenhall Road  
Mt. Laurel, NJ 08054  
Attn: William F. Brown

If to the Cendant Member, addressed to:

Cendant Real Estate Services Venture Partner, Inc.  
1 Campus Drive  
Parsippany, NJ 07054  
Attn: Eric Bock

With a copy to:

Cendant Corporation  
9 West 57<sup>th</sup> Street, 37<sup>th</sup> Floor  
New York, NY 10019  
Attn: Eric Bock

Notices, demands, consents and other communications mailed in accordance with the foregoing clause (a) shall be deemed to have been given, made and received three (3) Business Days following the date so mailed. Notices, demands, consents and other communications given in accordance with the foregoing clauses (b) and (d) shall be deemed to have been given, made and received when sent on a Business Day or, if not sent on a Business Day, then the next succeeding Business Day. Notices, demands, consents and other communications given in accordance with the foregoing clause (c) shall be deemed to have been given, made and received when delivered or

refused on a Business Day or, if not delivered or refused on a Business Day, then the next succeeding Business Day. Any Member or its assignee may designate a different address to which notices or demands shall thereafter be directed and such designation shall be made by written notice given in the manner hereinabove required, provided, that at all times each Member shall be required to maintain a notice address in the continental United States.

Section 13.11 No Consequential Damages.

In no event shall the Cendant Member or any of its Affiliates have any liability to the PHH Member or any of its Affiliates for any indirect, consequential, incidental, collateral, exemplary, punitive, enhanced, special or other similar damages of any kind or nature whatsoever, including, without limitation, lost profits to the PHH Member or any of its Affiliates from past, present or future business opportunities, loss of use or revenue, loss of savings or losses by reason of cost of capital, arising out of or in any manner relating to this Agreement or any other Transaction Document, the performance or breach thereof or the subject matter thereof, whether or not the Cendant Member or any of its Affiliates have been advised of, or otherwise might or should have anticipated, the possibility or likelihood of such damages. The limitations of liability set forth in this Section 13.11 shall apply regardless of the form of action in which a claim is brought, whether in contract, tort (including negligence of any kind, whether active or passive), warranty, strict liability or any other legal or equitable grounds, and shall survive failure of an exclusive remedy.

Section 13.12 Most Favored Nation.

If during the term of this Agreement PMC or any of its Affiliates enters into any agreement, arrangement or understanding with a third party whereby PMC or such Affiliate (or any other entity formed in connection with such agreement, arrangement or understanding) agrees to provide substantially the same Mortgage Loan origination services to such third party, and such agreement, arrangement or understanding contains pricing (other than the pricing of loans) or servicing terms or conditions that, taken as a whole, are more favorable to such third party than the comparable terms of this Agreement and the related Transaction Documents, taken as a whole, are to Cendant, then the Company shall offer such favorable terms and conditions to the Cendant Member with respect to Mortgage Loans originated by the Company pursuant to this Agreement and amend this Agreement and any other Transaction Documents, as applicable, to the extent necessary so that such terms and conditions are incorporated in a manner reasonably acceptable to the Cendant Member.

Section 13.13 Impossibility of Performance.

If during the term of this Agreement, without any change in applicable law, rule or regulation and through no fault or breach of any Party hereto, it shall have become impossible for the Parties to fulfill the objectives of the Company and to perform their obligations hereunder, then the Parties shall proceed with an orderly liquidation and dissolution of the Company in accordance with Article IX hereof.

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

CENDANT REAL ESTATE SERVICES  
VENTURE PARTNER, INC.

By: /s/ Eric J. Bock  
Name: Eric J. Bock  
Title: Executive Vice President and Secretary

PHH BROKER PARTNER  
CORPORATION

By: /s/ Terence W. Edwards  
Name: Terence W. Edwards  
Title: President

**STRATEGIC RELATIONSHIP AGREEMENT**

**BY AND AMONG**

**CENDANT REAL ESTATE SERVICES GROUP, LLC,**

**CENDANT REAL ESTATE SERVICES VENTURE PARTNER, INC.,**

**PHH CORPORATION,**

**CENDANT MORTGAGE CORPORATION,**

**PHH BROKER PARTNER CORPORATION,**

**AND**

**PHH HOME LOANS, LLC**

**January 31, 2005**

\*The term "Confidential" indicates material that has been omitted and for which confidential treatment has been requested. All such omitted material has been filed with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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This STRATEGIC RELATIONSHIP AGREEMENT, dated as of January 31, 2005 (this "Agreement"), is by and among Cendant Real Estate Services Group, LLC, a Delaware limited liability company ("Cendant Real Estate"), Cendant Real Estate Services Venture Partner, Inc., a Delaware corporation (the "Cendant Member"), PHH Corporation, a Maryland corporation ("PHH"), Cendant Mortgage Corporation, a New Jersey corporation (to be renamed "PHH Mortgage Corporation") ("PMC"), PHH Broker Partner Corporation, a Maryland corporation (the "PHH Member") and PHH Home Loans, LLC, a Delaware limited liability company (the "Company"). Each of Cendant Real Estate, the Cendant Member, PHH, PMC, the PHH Member and the Company is sometimes referred to herein as a "Party" and, collectively, as the "Parties."

W I T N E S S E T H:

WHEREAS, the PHH Member and the Cendant Member formed the Company on November 3, 2004, for the principal purpose of originating and selling mortgage loans sourced through Cendant's residential real estate brokerage and corporate relocations businesses and from employees of Cendant and its Subsidiaries, in accordance with the terms and provisions of this Agreement and the Operating Agreement; and

WHEREAS, this Agreement sets forth, among other things, certain matters related to the business relationship among the Parties.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms shall each have the meaning set forth in this Article (unless the context otherwise requires). All capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Operating Agreement.

"Additional Services" has the meaning set forth in Section 11.1(b).

"Affiliate" means, when used with reference to a specific Person, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specific Person. For the avoidance of doubt, neither the Company nor any of the "Brand Franchisees" shall be deemed to be an Affiliate of Cendant or any of Cendant's Affiliates.

"Agreement" has the meaning set forth in the preamble.

"Applicable Requirements" means, as of the time of reference, collectively, (A) with respect to the Mortgage Loans, all of the following: (i) all contractual

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obligations, including those contractual obligations contained in this Agreement, in any agreement with any investor or insurer or in the applicable Mortgage Loan; (ii) all applicable federal, state and local legal and regulatory requirements (including statutes, rules, administrative interpretations, regulations and ordinances), including all Mortgage Lending Laws; (iii) all other applicable requirements and guidelines of each investor, insurer, governmental agency, board, commission, instrumentality and other governmental body or office having jurisdiction; (iv) all other applicable judicial and administrative judgments, orders, stipulations, awards, writs and injunctions; and (v) the reasonable and customary mortgage origination practices of prudent mortgage lending institutions which make mortgage loans of the same type as the Mortgage Loans in the jurisdictions in which the related mortgaged properties are located; and (B) the Foreign Corrupt Practices Act of 1977, as amended.

“Brand Franchisee” means any residential real estate brokerage business that (i) operates under a Cendant Real Estate Franchisee Brand and (ii) is not owned by Cendant Real Estate or any of its Subsidiaries; provided, that the Parties acknowledge that the “Sotheby’s International Realty” brand may not be included in this definition for certain aspects of this Agreement.

“Cendant” means Cendant Corporation, a Delaware corporation.

“Cendant Competitor” has the meaning set forth in Section 10.1(c).

“Cendant Customer” means any customer of the Cendant Entities or any of their respective Subsidiaries; provided, however, that for purposes of this Agreement the term “Cendant Customer” shall not include any Brand Franchisee or any employee or independent sale associate thereof acting in such capacity.

“Cendant Employees” means, collectively, all U.S.-based employees of Cendant and its Subsidiaries.

“Cendant Entities” means, collectively, Cendant Real Estate and the Cendant Member.

“Cendant Indemnitees” has the meaning set forth in Section 13.3(a).

“Cendant Indemnitor” has the meaning set forth in Section 13.3(b).

“Cendant Member” has the meaning set forth in the preamble.

“Cendant Mobility” means Cendant Mobility Services Corporation, a Delaware Corporation.

“Cendant Mobility Broker Network” means the network of real estate brokers who have executed agreements with Cendant Mobility to assist customers of Cendant Mobility clients in acquiring or disposing of a home.

“Cendant Mobility Office” means any office comprising part of Cendant’s corporate relocation business, including, without limitation, any office of Cendant Mobility or any of its Subsidiaries.

“Cendant Owned Real Estate Office” means any residential real estate brokerage office owned as of the date hereof or acquired or opened hereafter by Cendant Real Estate or one of its Subsidiaries, including, without limitation, NRT.

“Cendant Owned Real Estate Offices Tradenames” means, collectively, the real estate brand names or trade names owned or licensed as of the date hereof or acquired or licensed hereafter by Cendant Real Estate or one of its Subsidiaries under which the Cendant Owned Real Estate Offices operate, including those brand names and trade names listed in Exhibit A.

“Cendant Real Estate” has the meaning set forth in the preamble.

“Cendant Real Estate Franchisee Brands” means, collectively, the real estate brand names or trade names owned or licensed as of the date hereof or acquired or licensed hereafter by the franchisor Subsidiaries of Cendant Real Estate or one of its Subsidiaries, including those brand names and trade names listed in Exhibit B; provided, that the Parties acknowledge that the “Sotheby’s International Realty” brand may not be included in this definition for certain aspects of this Agreement.

“Cendant Real Estate Services Division” means (i) the residential and commercial real estate brokerage business owned and operated by NRT and its Subsidiaries; (ii) the relocation business owned and operated by Cendant Mobility and its Subsidiaries; and (iii) the Settlement Services business owned and operated by CSSG and its Subsidiaries (it being understood that for all purposes of this Agreement, the Cendant Real Estate Services Division shall not include Century 21 Real Estate LLC, Coldwell Banker Real Estate Corporation, ERA Franchise Systems, Inc. and Sotheby’s International Realty Affiliates, Inc.).

“Cendant Restricted Brands” means the “Sotheby’s International Realty” trade name and any other real estate brand name or trade name that may be licensed or acquired by Cendant or any of its Subsidiaries but which has not been licensed to PMC or an Affiliate thereof pursuant to either the License Agreement or a similar agreement between Cendant or an Affiliate thereof, on the one hand, and PMC or an Affiliate thereof, on the other hand.

“Cendant Websites” means (i) all Websites operated by, or on behalf of, any of the Cendant Owned Real Estate Offices or the Cendant Mobility Offices and (ii) all Cendant Owned Real Estate Offices Tradename Websites and Cendant Real Estate Franchisee Brand Websites operated by Cendant Real Estate, Cendant Mobility, or a Subsidiary thereof, in either case through which inquiries or applications for Mortgage Loans may be made. For the avoidance of doubt, the term “Cendant Websites” shall not include any Website operated by, or on behalf of, any Brand Franchisee.

“Company” has the meaning set forth in the preamble.

“Company Loan Officers” has the meaning set forth in Section 3.3(b)(i).

“Company Pricing” has the meaning set forth in Section 3.2(a).

“Competitor Data Point” has the meaning set forth in Section 3.15(a).

“Competitors” has the meaning set forth in Section 3.15(c)(ii).

“Content” means, with respect to any Person, all content which such Person has created or may hereafter create, has licensed or may hereafter license, or has acquired or may hereafter acquire, in any form and in any medium now known or hereafter developed, including: (a) art, audiovisual works, animations, cartoons, characters, choreography, compilations, collective works, computer software and programs, data, designs, emblems, films, film clips, graphics, images, illustrations, likenesses, literary works, logos, motion pictures, musical compositions, music videos, performances, photographs, pictorial works, songs, song lyrics, sound recordings, scripts, screenplays, templates, text, video recordings, copyrightable subject matter, works of authorship, trade secrets (including customer and vendor lists), and other proprietary rights; (b) all rights under copyright and moral rights associated with the foregoing; (c) all copyrightable derivative works, enhancements, improvements, modifications, updates, new releases or other revisions of the foregoing; (d) all publicity rights or privacy rights (or waivers or quitclaims thereof) of any person or entity, and (e) all rights corresponding to the foregoing throughout the world.

“CSSG” means Cendant Settlement Services Group LLC, a Delaware limited liability company.

“Cure Period” has the meaning set forth in Section 2.2(a).

“Customer” means any individual who contacts the Company, whether in person, by mail, phone, via the Internet (including by electronic mail), or otherwise, or who is so contacted by the Company, about the possibility of obtaining a Mortgage Loan through the Company, or who otherwise obtains a Mortgage Loan from or through the Company.

“Customer Fees and Charges” means, with respect to any Mortgage Loan, an amount equal to the sum of: (i) all reasonable charges or fees paid or incurred by the Mortgage Loan originator for taking the Mortgage Loan application, locking-in Mortgage Loan Pricing, surveys, title insurance premiums, appraisal fees, abstract and attorneys’ fees, recording or registration charges, escrow fees, document preparation fees, credit report charges, tax service fees and similar charges, and all other reasonable and customary third-party charges for settlement services contracted for and permitted by applicable law related to the origination of a Mortgage Loan; and (ii) all origination and discount points or other similar amounts described in the Mortgage Loan Pricing for such Mortgage Loan.

“Customer Information” means any personally identifiable information or records in any form (written, electronic, or otherwise) relating to a Customer, including a



Customer's name, address, telephone number, electronic mail address, loan number, loan payment history, delinquency status, insurance carrier or payment information, tax amount or payment information, the fact that the Customer has a relationship with the Company or the Cendant Entities or the Brand Franchisees or their respective Affiliates and any other personally identifiable information.

"Customer Payment" has the meaning set forth in Section 3.3(a)(i)(C).

"Customer Survey" has the meaning set forth in Section 3.16(a).

"Dispute" has the meaning set forth in Section 13.11(a).

"Disputing Party" has the meaning set forth in Section 13.11(b).

"Domain Name" means the unique name that identifies an Internet site.

"FHLMC" has the meaning set forth in Section 3.5.

"FNMA" has the meaning set forth in Section 3.5.

"Franchisee Customer" means any customer of a Brand Franchisee that contacts PMC or an Affiliate thereof, whether in person, by mail, phone, via the Internet (including by electronic mail), or otherwise, or who is so contacted by PMC or such Affiliate, about the possibility of obtaining a Mortgage Loan through PMC or an Affiliate thereof, or who otherwise obtains a Mortgage Loan from or through PMC or an Affiliate thereof.

"Franchisee Customer Survey" has the meaning set forth in Section 8.12.

"Franchisee Key Customer Question" has the meaning set forth in Section 8.12.

"Franchisee Key Referral Question" has the meaning set forth in Section 8.12.

"Franchisee Mortgage Content" has the meaning set forth in Section 8.2(a)(ii)(A).

"Franchisee Referral Survey" has the meaning set forth in Section 8.12.

"Franchisee Surveys" has the meaning set forth in Section 8.12.

"Franchisee Telephone Lines" has the meaning set forth in Section 8.2(a)(i)(A).

"Guarantee" has the meaning set forth in Section 13.1(a).

"Guarantee Amount" has the meaning set forth in Section 3.3(a)(i)(C).

“HMDA” has the meaning set forth in the definition of “Mortgage Lending Law.”

“Hyperlink” means an electronic link providing direct access from one distinctively marked place in a World Wide Web page to another place in the same or a different World Wide Web page.

“Information Security Program” means the Company’s information security program to (i) insure the security and confidentiality of Customer Information, (ii) protect against any anticipated threats or hazards to the security or integrity of the Customer Information and (iii) protect against unauthorized access to or use of the Customer Information that could result in substantial harm or inconvenience to any Customer.

“Interagency Guidelines” has the meaning set forth in Section 7.2(b).

“Internet” means the electronic communications network that connects computer networks and organizational computer facilities around the world.

“Internet Customer Payment” has the meaning set forth in Section 3.3(a)(ii)(D).

“Key Customer Question” has the meaning set forth in Section 3.16(a).

“Key Referral Question” has the meaning set forth in Section 3.16(a).

“Losses” has the meaning set forth in Section 13.3(a).

“Managing Member” means the PHH Member or such other member as may replace the PHH Member as managing member pursuant to the Operating Agreement.

“Mediation Request” has the meaning set forth in Section 13.11(b).

“Mortgage Content” has the meaning set forth in Section 3.3(a)(ii)(A).

“Mortgage Lending Law” means any federal, state or local constitution, statute, rule, regulation, order or similar legal or regulatory requirement applicable to: the communication with, and marketing directed toward Mortgage Loan customers; the application process for Mortgage Loans; the Pre-Approval Decision process; the processing of Mortgage Loan applications; the communication to the customer of a Mortgage Loan underwriting decision; the closing and funding of a Mortgage Loan; and the preparation, execution and delivery of Mortgage Loan Documents and Mortgage Loan Disclosures. Mortgage Lending Laws include, but are not limited to, the following: (i) the record keeping and reporting requirements of the Home Mortgage Disclosure Act (“HMDA”); (ii) the Real Estate Settlement Procedures Act and Regulation X (24 C.F.R. Part 3500); (iii) the Fair Housing Act; (iv) the Fair Credit Reporting Act; (v) the Flood Disaster Protection Act; (vi) the Truth-in-Lending Act and (Regulation Z); (vii) the

National Housing Act; (viii) the Servicemen's Readjustment Act; (ix) the Equal Credit Opportunity Act and (Regulation B); (x) any usury laws or regulations; and (xi) the Homeowner's Protection Act.

"Mortgage Loan" means a mortgage loan (including a home equity line of credit) evidenced by one or more promissory notes and secured by a mortgage or deed of trust on one or more residential real estate properties.

"Mortgage Loan Disclosure" shall mean any disclosure, notice or other document or statement that, according to a Mortgage Lending Law, must be provided to a customer by or on behalf of the Person originating the Mortgage Loan in connection with the origination, closing and funding of a Mortgage Loan or an application for a Mortgage Loan.

"Mortgage Loan Documents" means the Mortgage Instruments, Mortgage Notes and Assignments.

"Mortgage Loan Pricing" means the interest rates, discount points, loan origination fees, loan application fee, closing costs and other associated cost elements for a Mortgage Loan.

"Mortgage Loan Types" means the various types of Mortgage Loans offered by the Company from time to time.

"MSA" shall have the meaning set forth in the Operating Agreement.

"Non-Competitive" has the meaning set forth in Section 3.15(b).

"Nonperformance Jurisdiction" has the meaning set forth in Section 2.2(a).

"NRT" means NRT Incorporated, a Delaware corporation.

"Operating Agreement" means the Amended and Restated Limited Liability Company Operating Agreement of the Company, dated as of January 31, 2005, as it may be amended from time to time.

"Origination Channels" means the PIMI Origination Channel, Point of Sale Origination Channel and the Other Origination Channels, together with any improvements made thereto from time to time.

"Other Origination Channels" has the meaning set forth in Section 3.1.

"Party" or "Parties" has the meaning set forth in the preamble.

"PHH" has the meaning set forth in the preamble.

"PHH Affiliates" has the meaning set forth in Section 13.1(a).

"PHH Data Point" has the meaning set forth in Section 3.15(a).

“PHH Entities” means, collectively, PHH, PMC and the PHH Member.

“PHH Indemnitees” has the meaning set forth in Section 13.3(b).

“PHH Indemnitor” has the meaning set forth in Section 13.3(a).

“PHH Member” has the meaning set forth in the Preamble.

“PIMI Origination Channel” means the system of exclusive and dedicated toll-free telephone lines, Websites, World Wide Web pages, electronic mail addresses, or other means of remote electronic communication established from time to time to meet the Mortgage Loan needs of the Customers and Franchisee Customers.

“Pipeline Loans” has the meaning set forth in Section 12.2(c).

“PLS” has the meaning set forth in Section 6.3.

“PMC” has the meaning set forth in the preamble.

“PMC Mortgage Loan Types” means the various types of Mortgage Loans now or hereafter offered by PMC and its Affiliates.

“PMC Pricing” has the meaning set forth in Section 8.1.

“PMC Underwriting Guidelines” has the meaning set forth in Section 8.4.

“Point of Sale Origination Channel” means the system, including related software, hardware and other facilities (including Telephone Lines, Websites, World Wide Web pages, electronic mail addresses, or other means of communication) established from time to time to meet the Mortgage Loan needs of Customers through Company Loan Officers located in or near Cendant Owned Real Estate Offices and other field locations. The “Point of Sale Origination Channel” shall include the origination channel referred to as the “My Choice” origination channel whereby loan officers can take Mortgage Loan applications and submit them through the PIMI Origination Channel, or through processing systems used in the PIMI Origination Channel.

“Pre-Approval Decision” means the process by which (i) the Company or PMC, as the case may be, requests certain information from a Customer or Franchisee Customer, as the case may be, and, with such customer’s permission, obtains a credit report on such customer; (ii) the Company or PMC, as the case may be, analyzes the information provided by the Customer or Franchisee Customer, as the case may be, and the credit report and (iii) then advises the Customer or Franchisee Customer, as the case may be, whether or not it is likely that he or she will be approved for a Mortgage Loan and, if so, the maximum amount of such Mortgage Loan.

“Premier Agent Program” means a program sponsored by PMC whereby certain real estate agents whose real estate sales performances (based on buyer controlled sales, gross commission income and/or sales volume) reach a target level are invited (at

their option) to participate in a program in which PMC provides certain resources, including telephone services (800 numbers and priority handling), personalized marketing materials and post-closing customer gifts.

“Pricing Occurrence” has the meaning set forth in Section 3.15(a).

“Pricing Ratio” has the meaning set forth in Section 3.15(b).

“Privacy Requirements” has the meaning set forth in Section 7.2(b).

“Private Label Business Channel” means PHH’s and its Affiliates’ lending partners, the financial institutions, the depository institution Subsidiaries of the foregoing and the investment securities brokers/dealers utilizing a private label telemarketing program for first lien mortgage loans.

“Programs” has the meaning set forth in Section 3.15(c)(i).

“Purchase Price” has the meaning set forth in Section 9.1(a).

“Qualifying Target” has the meaning set forth in Section 9.1(a).

“Qualifying Target EBITDA Multiple” has the meaning set forth in Section 9.1(a)(i).

“Qualifying Target Mortgage Business” has the meaning set forth in Section 9.1(a).

“Rates” has the meaning set forth in Section 3.15(a).

“Referral Agent” has the meaning set forth in Section 3.16(a).

“Referral Survey” has the meaning set forth in Section 3.16(a).

“Rules” has the meaning set forth in Section 13.11(b).

“Settlement Services” means the provision of title, closing, escrow or search-related services for residential real estate transactions and all other mortgage-related transactions (including, without limitation, first mortgage loans, second mortgage loans, home equity lines of credit, other home equity loans and refinance transactions), including the issuance of title insurance policy (including title search procedures), property tax tracking service and closing escrow service; provided, however, that Settlement Services shall not include, by way of example, credit review services, appraisal review services or flood zone determinations for properties.

“Small Corp Notification” has the meaning set forth in Section 9.1(a).

“Small Corps” means, collectively, the companies listed in Exhibit C.

“SRA Termination Event” has the meaning set forth in Section 12.2(a).

“STARS” means Speedy Title and Appraisal Review Services LLC, a Delaware limited liability company.

“Survey Failure” has the meaning set forth in Section 3.16(b).

“Surveys” has the meaning set forth in Section 3.16(a).

“Telephone Lines” has the meaning set forth in Section 3.3(a)(i)(A).

“Termination Assistance Period” has the meaning set forth in Section 11.1(a).

“Termination Assistance Services” has the meaning set forth in Section 11.1(a).

“URL” means the address of a computer or a document on the Internet that consists of a communications protocol followed by a colon and two slashes (as http://), the identifier of a location of computer, or a path through a directory to a file.

“Venture Underwriting Guidelines” has the meaning set forth in Section 3.5.

“Website” means a group of World Wide Web pages containing Hyperlinks to each other.

“World Wide Web” means the part of the Internet designed to allow easier navigation through the use of graphical user interfaces and Hyperlinks between different URLs.

Section 1.2 Interpretation. Each definition in this Agreement includes the singular and the plural, and reference to the neuter gender includes the masculine and feminine where appropriate. References to any statute or Treasury Regulations means such statute or regulations as amended at the time and include any successor legislation or regulations. The word “including” or any variations thereof means “including, without limitation” and shall not be construed to limit any general statement that it follow to the specific or similar items or matters immediately following it. The headings to the Articles and Sections are for convenience of reference and shall not affect the meaning or interpretation of this Agreement. Except as otherwise stated, reference to Articles, Exhibits, Sections and Schedules mean the Articles, Exhibits, Sections and Schedules of this Agreement. The Exhibits and Schedules are hereby incorporated by reference into and shall be deemed a part of this Agreement.

## ARTICLE II

### EXCLUSIVITY; MARKETING

Section 2.1 Exclusivity; Marketing.

(a) The Cendant Entities hereby agree that, except as set forth below or elsewhere in this Agreement, the Cendant Real Estate Services Division shall exclusively recommend the Company as provider of Mortgage Loans to (a) the independent sales associates affiliated with a Cendant Entity or any Subsidiary thereof (provided that, for the avoidance of doubt, this clause (a) shall not include any independent sale associate of a Brand Franchisee acting in such capacity), (b) all Cendant Customers, and (c) all Cendant Employees. The Cendant Entities further agree that the Cendant Real Estate Services Division shall actively and exclusively promote the Company and its Mortgage Loan origination services to Cendant Customers and Cendant Employees; provided, however that:

(i) the Cendant Real Estate Services Division shall not be required, in any manner whatsoever, to condition doing business with a customer on such customer obtaining a Mortgage Loan from, having to contact, or having to agree to be contacted by, the Company; and

(ii) the Company and PMC acknowledge that neither Cendant nor any of its Affiliates have the right to co-brand with a Person that is not a Cendant Affiliate the “Sotheby’s International Realty” name and mark and that all marketing materials directed to the customers of the Sotheby’s brand will be branded as “PHH Home Loans.”

(b) For the avoidance of doubt, for purposes of this Section 2.1, the “Cendant Real Estate Services Division” shall not include Cendant’s and its Affiliates’ hospitality services business, including the business of selling vacation ownership and fractional ownership interests, or any successor business thereto.

Section 2.2 Termination of Exclusivity. Notwithstanding anything to the contrary contained in this Agreement:

(a) The Cendant Entities shall have the right to terminate the exclusivity provisions of Section 2.1, following notice and an opportunity to cure within the applicable Cure Period set forth below, (i) if the Company is prohibited by law, regulation, rule, order or other legal or regulatory restriction, or for any other reason, from performing its origination function in any jurisdiction (the “Nonperformance Jurisdiction”), but in such case exclusivity shall only be terminated with respect to the Nonperformance Jurisdiction; (ii) in the event there is a material violation or breach by PHH or any of its respective Affiliates (including the PHH Member acting in any capacity whatsoever, including as Managing Member) of any representation, warranty, covenant or other agreement contained in this Agreement or any other Transaction Document; or (iii) upon the occurrence of a “PHH Regulatory Event” or a “Company Regulatory Event,” as each are defined in the Operating Agreement. The “Cure Period” shall be (x) in the case of (ii) and (iii) above, thirty (30) calendar days after notice of such event has been provided by any of the Cendant Entities to the PHH Entities; provided,

however, that PHH shall have an additional thirty (30) day cure period (other than in respect of breaches resulting from payment defaults) if it is diligently pursuing a cure and the Cendant Member, in its reasonable judgment, believes that the event will be cured within such extension period, and (y) in the case of (i) above, ninety (90) calendar days after notice of such event has been provided by any of the Cendant Entities to the PHH Entities; provided, however, that PHH shall have an additional thirty (30) day cure period if it is diligently pursuing a cure and the Cendant Member, in its reasonable judgment, believes that the event will be cured within such extension.

(b) The exclusivity provisions of Section 2.1 shall not be applicable to any Cendant Owned Real Estate Office or Cendant Mobility Office acquired by Cendant Real Estate, Cendant Mobility or any of their respective Subsidiaries after the date hereof, which at the time of such acquisition is subject to an agreement, arrangement or understanding with respect to the origination of Mortgage Loans for customers of such office that would conflict with the provisions of this Agreement; provided, however, that nothing in this Section 2.2(b) shall affect any of the obligations of the Parties pursuant to Article IX hereof.

Section 2.3 Marketing. The Cendant Entities shall, and shall cause their Subsidiaries to, cooperate with and support the Company in the marketing of Mortgage Loans through the Origination Channels to Cendant Customers and Cendant Employees, and arrange for the Company to have reasonable access thereto. Cendant Real Estate shall make information provided by the Company related to the Origination Channels available to its and its Subsidiaries' employees, sales agents and sales associates and provide other information to its sales agents and sales associates with respect to such Origination Channels as Cendant Real Estate may deem appropriate in its sole discretion. Cendant Real Estate shall use its commercially reasonable best efforts to ensure that each Cendant Owned Real Estate Office and Cendant Mobility Office, and their respective office managers, agents and sales associates, to the fullest extent practicable, market the goods and services which are the subject of the Origination Channels, it being understood that such "commercially reasonable best efforts" shall not include taking actions against any sales associates which Cendant Real Estate reasonably believes will have any negative impact on its business.

Section 2.4 Variable Compensation. Without reimbursement by any PHH Entity or the Company, Cendant Real Estate may pay, or cause to be paid, to each NRT and/or Cendant Mobility office manager that is an employee of Cendant Real Estate or a Subsidiary thereof a variable component of annual compensation, which component may be based on either (i) the volume of Mortgage Loans originated by such manager's Cendant Owned Real Estate Office or Cendant Mobility Office, as the case may be, (ii) penetration rate of Mortgage Loans, or (iii) any other measure; provided, however, that Cendant shall have sole control over determining the form of such program and the right to modify or terminate any such program at any time, so long as such program is replaced with another program, policy or arrangement that, in Cendant's sole and exclusive discretion, is intended to incentivize NRT and/or Cendant Mobility office managers.



ARTICLE III

LOAN ORIGINATION

The Company shall, and the PHH Member shall cause the Company to, operate in accordance with the provisions of this Article III.

Section 3.1 Marketing. The Company shall market the PIMI Origination Channel, Point of Sale Origination Channel and any other origination channels that may be developed by the Company ("Other Origination Channels"), at its expense, to Cendant Customers and Cendant Employees, and shall secure, at its expense, such forms of insurance coverage and other protection from liability as is customary in the industry for similar originators of Mortgage Loans, including but not limited to insurance coverage and protections from liability for the acts or failures of its employees, officers, agents and other representatives.

Section 3.2 Mortgage Loan Types.

(a) The Company shall offer to the Customers a variety of Mortgage Loan Types in order to permit Customers to select a Mortgage Loan Type best suited to their financial needs. The Company shall be responsible for developing the various Mortgage Loan Types and establishing the Mortgage Loan Pricing associated therewith (the "Company Pricing"); provided, however, that the Company shall offer to the Customers the full range of Mortgage Loan Types that are currently offered or may in the future be offered by PHH or any of its Affiliates to their customers.

(b) From time to time, the Cendant Entities may request that a Mortgage Loan Type not offered by the Company be made available to Customers pursuant to this Agreement and the Company shall, and the PHH Member shall cause the Company to, make such Mortgage Loan Type available to Customers. Upon such request, the Parties shall mutually agree upon the cost allocation of the set-up and processing functions to be implemented by the Company and the PHH Entities to accommodate the Cendant Entities' request. The Parties acknowledge that the typical start-up time necessary for any such product is 6 to 8 weeks from the time the Parties mutually agree to make such product available.

Section 3.3 Company Origination Channels.

(a) PIMI Origination Channel. The Company's PIMI Origination Channel shall be operated in accordance with the provisions of this Section 3.3(a).

(i) Telephone Lines.

(A) The Company shall provide to the Cendant Owned Real Estate Offices, Cendant Mobility Offices and participants in the Cendant Real Estate Services Division's Premier Agent Program, dedicated and exclusive toll-free telephone lines established and

operated at the expense of and by the Company ("Telephone Lines"), which the Company reasonably believes are adequate to meet the reasonably anticipated needs of the current and prospective Customers.

(B) Trained Company personnel shall answer Telephone Lines in the name of (i) the appropriate Cendant Owned Real Estate Offices Tradename, if such Telephone Line has been assigned to a Cendant Owned Real Estate Office; provided, however, that the Telephone Lines dedicated to a Cendant Owned Real Estate Office operating under a Cendant Restricted Brand shall be answered in the name of "PHH Home Loans," (ii) "PHH Home Loans," if such Telephone Line has been assigned to a Cendant Mobility Office, (iii) the appropriate Small Corps entity, if such Telephone Line has been assigned to the Point of Sale Origination Channel, or (iv) the appropriate Cendant Owned Real Estate Offices Tradename, if such Telephone Line has been assigned to the Premier Agent Program, as the case may be. Such personnel shall explain to the Customer, as appropriate: (a) the procedure to be followed in obtaining a Mortgage Loan; (b) the various Mortgage Loan Types available and their associated Mortgage Loan Pricing; and (c) their short- and long-term financial implications. Such personnel shall provide counsel and advice to the Customer as to the Mortgage Loan Types that might best serve the Customer's needs, including answering any questions the Customer might have regarding the process.

(C) The Company shall provide each Customer who utilizes the Telephone Lines with a same day Pre-Approval Decision and Guarantee. A "same day" Pre-Approval Decision and Guarantee means that the Company will provide the Customer with a Pre-Approval Decision during the same day the Customer provided the Company with the information requested from the Customer for purposes of making a Pre-Approval Decision for that Customer or, if the Company does not provide the Customer with such a Pre-Approval Decision, the Company will promptly pay the Customer the Guarantee Amount (a "Customer Payment"). The Cendant Entities and their respective Subsidiaries shall have the right to publicize and advertise to their customers the availability of such Pre-Approval Decisions and Guarantees in accordance with all Mortgage Lending Laws. For purposes of this Agreement, the "Guarantee Amount" shall mean an amount equal to the higher of (a) \$250 and (b) such other amount as may be offered by PMC or any Affiliate thereof to customers under a similar program (exclusive of client subsidized programs).

(D) The Company will provide to Customers for whom it has made a Pre-Approval Decision and which Customer is likely to be approved for a Mortgage Loan information tailored to the Customer's individual circumstances. Such information will be designed to enable the Customer to determine the nature of the

Mortgage Loan the Customer may qualify for if an appropriate property securing the Mortgage Loan is identified and all information submitted is verified.

(ii) Internet.

(A) The Company will take applications for Mortgage Loans via the Internet. In order to accomplish this, the Company will provide each operator of a Cendant Website with Hyperlinks to such Content as the Company reasonably believes is adequate to meet the reasonably anticipated needs of the current and prospective Customers (the "Mortgage Content"). The Cendant Entities shall, and shall cause their respective Subsidiaries to, embed such Hyperlinks prominently in a consumer oriented and contextually relevant position on each Cendant Website. The Parties will cooperate in structuring and embedding such Hyperlinks so that, by clicking on the Hyperlink at the Cendant Websites, the Customer will be immediately transferred to the Mortgage Content via the Internet. Except in the case of Cendant Restricted Brands, such Mortgage Content will be presented by the Company in such a way that it will appear as if it were on a World Wide Web page or series of World Wide Web Pages on the Cendant Website from which the Hyperlink originated to the extent it is consistent with Applicable Requirements to do so. The form and substance of such World Wide Web pages will be subject to the prior written consent of the Cendant Entities. In order to improve the graphical compatibility of the Cendant Websites and the Company's sites, the Company and the Cendant Entities will consult with each other when developing or modifying such World Wide Web pages, and also when considering the design of future releases of their respective Websites. The Company shall not permit the Mortgage Content accessed by Customers via Hyperlinks from the Cendant Websites contemplated by this Agreement to display any advertising, except in such instances where the Cendant Entities have provided their prior written consent to such advertising.

(B) The Mortgage Content will include information about the Mortgage Loans and Mortgage Loan Types, Mortgage Loan calculators, counseling regarding down payments and Mortgage Loan affordability, pre-qualification tools to be used by consumers and Mortgage Loan application modules. The Company will ensure that a Customer shall be able to complete and submit a Mortgage Loan application by means of the Mortgage Content without any other contact with the Company.

(C) Customers utilizing the Mortgage Content to initiate the Mortgage Loan process will be offered the option of communicating with a processing team or other persons contemplated in

Section 3.9 of this Agreement, either by electronic mail or by telephone, or by a combination of electronic mail and telephone.

(D) Each Customer initiating the origination process via the Internet shall receive a Pre-Approval Decision within 24 hours of the time such Customer either (i) submits a complete Mortgage Loan application via the Mortgage Content, or (ii) first speaks with a Company loan consultant by telephone after submitting certain information not constituting a complete Mortgage Loan application through the Mortgage Content, or the Company shall promptly pay the Customer the Guarantee Amount (the "Internet Customer Payment").

(b) Point of Sale Origination Channel.

(i) Cendant Real Estate shall have the right to request at any time that the Company designate a specific number of loan officers ("Company Loan Officers") to be located in and around any Cendant Owned Real Estate Office and other field locations identified by Cendant Real Estate, provided that the number of Company Loan Officers requested shall be commercially reasonable. The Company shall use reasonable best efforts to satisfy any such request within 90 days after it is first delivered in writing to the Company.

(ii) Company Loan Officers will be Company employees and will take loan applications from Customers in a face-to-face setting, unless Cendant Real Estate and the Company agree otherwise. Company Loan Officers will promptly transmit applications taken in a face-to-face setting to the Company via the Point of Sale Origination Channel, unless Cendant Real Estate and the Company agree otherwise. The Company shall provide dedicated Telephone Lines for Company Loan Officers that use the "My Choice" origination channel described in the definition of "Point of Sale Origination Channel."

(iii) The Company shall pay Cendant Real Estate a fee for the lease or sublease of the office space occupied by any Company Loan Officer in any Cendant Owned Real Estate Office, in each case as set forth in the Master Sublease Agreement, as defined in the Operating Agreement.

Section 3.4 Mortgage Loan Application Processing. For each Customer who applies for a Mortgage Loan through the origination channels described in Section 3.3, the Company shall arrange for the receipt by the Customer, as promptly as practicable under the circumstances, and in any event in accordance with applicable law, of (i) the Mortgage Loan application for the Customer to review and sign, accompanied by a request for appropriate Customer documents and (ii) all Mortgage Loan Disclosures. In addition, and to the extent required or permitted under the Venture Underwriting Guidelines, as applicable, the Company shall: (i) verify the Customer's credit history; (ii)

obtain an appraisal or other appropriate valuation of the real property that will secure the Customer's Mortgage Loan; (iii) cause to be conducted a review of or report on the status of the legal title to the real property prepared by either (A) CSSG, if the Company is permitted to make the service provider decision under Applicable Requirements, or (B) a qualified title company or other entity acceptable to the PHH Member and the Cendant Member, if the Company does not make the service provider decision; (iv) evaluate the Customer's employment history; (v) evaluate any information provided with respect to the Customer by a Cendant Entity or any of their respective Subsidiaries, (vi) perform such other underwriting functions as the Company deems appropriate, all in accordance with the Venture Underwriting Guidelines; and (vii) communicate a loan decision or counteroffer to the Customer in accordance with all applicable laws.

Section 3.5 Underwriting Guidelines. The Company shall develop appropriate underwriting guidelines for each Mortgage Loan Type (the "Venture Underwriting Guidelines"), which Venture Underwriting Guidelines shall be consistent with the underwriting guidelines followed by PHH and its Affiliates in connection with Mortgage Loans offered to their own customers for the same products in the same geographic area and at the same time. Unless the Venture Underwriting Guidelines specify otherwise for specific Mortgage Loan Types, all Mortgage Loans shall be underwritten in accordance with the standards of the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA") and other applicable federal agencies providing standards for the sale of loans in the secondary market for mortgage loans. The Company shall issue approval letters on those applications which generally satisfy the Venture Underwriting Guidelines.

Section 3.6 Degree of Care. The Company shall perform the origination, processing, underwriting, approval, closing, shipping, and other origination services on all Mortgage Loans in all material respects in accordance with all Mortgage Lending Laws and with no less degree of care than PMC or any of its Affiliates exercises in originating Mortgage Loans for its own account or the account of any third party with a similar regulatory profile, provided, that in no event shall the Company exercise a lesser degree of care than PMC exercised in originating Mortgage Loans prior to the Closing Date.

Section 3.7 Mortgage Loan Closing. The Company shall use its best efforts to complete the processing and closing of all Mortgage Loans originated pursuant to this Agreement in the time frame requested by the Customer at the time of submission of the Mortgage Loan application. The Company shall: (i) prepare all required Mortgage Loan closing documents in accordance with all applicable Mortgage Lending Laws; (ii) arrange for their execution by the Customer; (iii) provide the Customer with a copy of the Company's privacy policy in accordance with the Privacy Requirements; and (iv) arrange for the Mortgage Loan closing. All Mortgage Loans shall be closed in the name of the Company or the name under which the Company is doing business in the appropriate jurisdiction. On purchase money Mortgage Loans, the Company shall meet the closing date set by the Customer or the Company shall reduce the interest rate payable on that Customer's Mortgage Loan by one-eighth percent (1/8%) for the life of loan. For refinance loans, the Company shall use its best efforts (taking

into consideration factors such as periods of high volume loan refinance activity (as substantiated by the Refinance Application Index as promulgated by the Mortgage Bankers Association)) to perform its obligations hereunder to complete the processing and closing within sixty (60) days from the date of application.

Section 3.8 Company Personnel.

(a) The Company will provide, supervise and make available such personnel as are reasonably necessary to carry out the Company's obligations under this Agreement. Such personnel, including rate lock personnel, shall be available between the hours of 8:30 a.m. and 10:00 p.m. Eastern time, or such additional hours as may be required by operating conditions and requested by the Cendant Entities, on Business Days. Such personnel, excluding rate lock personnel, shall also be available, as needed, to process Mortgage Loans and contact Customers, between the hours of 10 a.m. and 7 p.m., Eastern time, or such additional hours as may be required by operating conditions and requested by the Cendant Entities, on Saturdays and Sundays, except in those instances where a Saturday falls on or near a national holiday and the Company provides reasonable advance notice to Cendant Real Estate in writing that its facilities will be closed on any such day.

(b) The Company shall at all times permit employees of Cendant Real Estate and its Subsidiaries access to the Company's offices (including offices where it conducts Mortgage Loan origination services) during the Company's working hours to observe the origination, processing and closing of the Mortgage Loans. The Company shall, at its expense, make available all customary, reasonable office space, facilities, and equipment for such employees. The salaries, travel, subsistence and other related expenses for such employees shall be borne by Cendant Real Estate.

Section 3.9 Processors. The Company shall cause each Customer who makes an application for a Mortgage Loan to be processed through any of the origination channels described in Section 3.3 to be served by a processing team or other persons employed by the Company and determined by the Company to be most efficient under the circumstances. The Company shall cause each such processing team or other persons to serve the Customer throughout the entire process of Mortgage Loan application, processing, underwriting and closing, and to use best efforts to meet the Customer's closing date.

Section 3.10 Access. At any time, upon the Cendant Member's request, the Company shall afford to the officers, employees, accountants, counsel and other representatives of any of the Cendant Entities, as well as any regulatory officials with regulatory authority over any of the Cendant Entities or their respective Affiliates, access to all its properties, books, contracts, commitments, records, officers, employees, accountants, counsel and other representatives. Furthermore, each of the Company, the PHH Member and PMC, at their sole cost and expense, shall make available, or cause to be made available, to the Cendant Member all information concerning the Company's business, properties and personnel as the Cendant Member may reasonably request.

Section 3.11 Maintenance of Licenses. The Company shall, at its own cost and expense, obtain and maintain any and all licenses and registrations, and cause each of its employees to obtain any and all licenses and registrations, that are necessary or desirable in the performance of the Mortgage Loan origination services to be provided by the Company pursuant to the terms of this Agreement.

Section 3.12 Record Keeping.

(a) The Company shall maintain at all times a system that tracks accurately and verifiably the number and dollar volume of Mortgage Loans originated by the Company and the Company's revenue and expense items including income and net profits.

(b) The Parties shall develop and maintain commercially reasonable, appropriate and cost-effective voice, data, facsimile and e-mail processes and systems to support communication between them. Each Party shall pay the costs it incurs in developing such communications.

Section 3.13 Legal and Regulatory Compliance.

(a) Actions taken or not taken by the Company, and all communications made by the Company, in each case when performing its obligations under this Agreement shall comply in all material respects with the requirements of all applicable Mortgage Lending Laws.

(b) Actions taken or not taken by any of the Cendant Entities, and all communications made by any of them, in each case when performing its obligations under this Agreement, shall comply in all material respects with the requirements of applicable Mortgage Lending Laws.

(c) The Company shall keep in full effect its existence, rights and franchises in the state of its incorporation except as permitted herein or in the Operating Agreement, and will obtain and preserve its qualifications to do business as a foreign entity in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans and/or to perform its duties under this Agreement.

(d) The Company shall not engage in activities in performing origination services hereunder that generally would be reasonably likely to be determined by the relevant regulatory agency to be prohibited as "predatory."

(e) Each of the Company and PMC shall promptly inform the Cendant Member in writing of any notices, inquiries or other communications, written or oral, received by the Company, or by PMC or the PHH Member, respectively, with respect to any material legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations or findings with respect to Mortgage Loans originated, closed and funded by the Company or any action or omission of the Company in connection therewith.

(f) Any fine, penalty, levy or restitution ordered by any such federal or state body that would give rise to indemnity by a PHH Entity pursuant to Section 13.3 of this Agreement shall be paid by PHH or, if a Cendant Entity or any Affiliate thereof shall have paid any such amount, PHH shall immediately reimburse the Cendant Member for such amount.

Section 3.14 Customer Fees and Charges.

(a) At the closing of any Mortgage Loan and at such other times as may be customary, the closing agent may collect from the Customer and forward to the Company the Customer Fees and Charges for such Mortgage Loan.

(b) The amount, payor and payee of any Customer Fees and Charges shall be described in the Mortgage Loan Disclosures in accordance with the Mortgage Lending Laws. The Company shall retain and distribute the Customer Fees and Charges to third parties, including settlement service providers, in accordance with applicable law, this Agreement and the arrangements governing such relationships. The Company covenants and agrees that the payment of Customer Fees and Charges to third parties shall be made in a timely manner and in accordance with payment terms governing such relationships.

Section 3.15 Pricing Standards.

(a) On Friday of each week, PMC shall cause its pricing department to conduct a survey of interest rates, inclusive of points and fees ("Rates"), in the relevant marketplaces for Wednesday of that week, offered by the Competitors for each of the Programs. Each Rate applicable for each Program of each Competitor shall be charted as a "Competitor Data Point." Also on Friday of each week, PMC shall chart the Rates offered to customers of the Private Label Business Channel for substantially similar Programs on Wednesday of that week (each, a "PHH Data Point") against the corresponding Competitor Data Points. Each instance in which the PHH Data Point reflects a higher Rate than the corresponding Competitor Data Point shall be deemed to be a "Pricing Occurrence." There will initially be eighty (80) Competitor Data Points and sixteen (16) PHH Data Points for each bi-monthly period (assuming eight-week bi-monthly periods). At the end of each bi-monthly period, PMC shall review the number of Pricing Occurrences for the previous period and shall deliver to the Cendant Member a written report detailing the Competitor Data Points, PHH Data Points and Pricing Occurrences for such bi-monthly period together with all other relevant market and other data for such bi-monthly period so as to enable the Cendant Member to review the competitiveness of the Company's pricing over such bi-monthly period.

(b) In the event the ratio (expressed as a percentage) obtained by dividing the total number of Pricing Occurrences by the total number of Competitor Data Points (the "Pricing Ratio") is \*CONFIDENTIAL.



(c) For purposes of this Agreement:

(i) “Programs” shall mean collectively, the programs listed in Schedule 3.15(c)(i) hereto; provided, however, that such list may be modified by the Cendant Entities from time to time in their sole discretion by giving written notice to PMC; provided further, however, that such list may not be so modified by the Cendant Entities more than twice in any twelve-month period; and

(ii) “Competitors” shall mean, collectively, the five (5) Persons listed in Schedule 3.15(c)(ii) hereto; provided, however, that such list may be modified by the Cendant Entities from time to time in their sole discretion by giving written notice to PMC; provided further, however, that such list may not be so modified by the Cendant Entities more than twice in any twelve-month period.

Section 3.16 Service Standards.

(a) With respect to all closed Mortgage Loans, the Company shall conduct a survey of the related Customer contemporaneously with the closing (the “Customer Survey”) and a survey of the Cendant Employee or independent sales associates affiliated with the Cendant Entity (the “Referral Agent”) that referred such Customer (the “Referral Survey”) and, together with the Customer Survey, the “Surveys”) for the purpose of assessing overall satisfaction levels relating to the Company’s performance as loan originator. The Company shall administer such Surveys and shall provide the results of the Surveys to the Cendant Member on a monthly basis. Schedule 3.16(a) hereto sets forth an example of the content of such Surveys; provided, however, that the Cendant Entities shall have the right to amend such Surveys from time to time in their sole discretion; provided further, however, that (i) the Referral Survey shall always contain the question “would you recommend a PHH Home Loan Mortgage Loan to another client?” (the “Key Referral Question”), and (iii) the Customer Survey shall always contain the question “Would you recommend [us] to a friend/another person?” (the “Key Customer Question”). The Cendant Entities shall (A) have the right to review and audit all Survey responses at any time, and (B) have the right, but not the obligation, to disseminate such Surveys once annually at its option.

(b) The Company shall maintain a \*CONFIDENTIAL or greater rate of customer satisfaction on Customer Surveys received during each calendar month as measured by the percentage of positive responses to the Key Customer Question and a \*CONFIDENTIAL or greater rate of satisfaction on Referral Surveys received during each calendar month as measured by the percentage of positive responses to the Key Referral Question (the failure of either or both Survey(s) to obtain such satisfaction level in a given month, a “Survey Failure”). The Parties hereby agree that failure to maintain either satisfaction level shall result in damage amounts to be payable by the Company upon demand in immediately available funds, in the manner set forth in Schedule 3.16(b) hereto.

\*The term “Confidential” indicates material that has been omitted and for which confidential treatment has been requested. All such omitted material has been filed with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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(c) Notwithstanding paragraph (b) above, during any calendar month during which PHH and its Subsidiaries experience a volume of loan refinance activity which exceeds an average level of \*CONFIDENTIAL for such month on the Refinance Application Index promulgated by the Mortgage Bankers Association, the satisfaction levels required for all purposes under paragraph (b) with respect to Surveys conducted for such month shall be \*CONFIDENTIAL for the Customers Surveys and \*CONFIDENTIAL for the Referral Surveys.

(d) A "PHH Material Breach," as defined in Section 8.1(c) of the Operating Agreement, shall be deemed to have occurred (it being understood and agreed that such breach is not curable) if the Company shall fail to maintain a satisfaction rate of at least \*CONFIDENTIAL for either of the Customer Surveys or the Referral Surveys for nine (9) consecutive months; provided, that if during any such month, refinance activity meets the level described in paragraph (c) above, the Company shall only be required to achieve an \*CONFIDENTIAL satisfaction rate for the Referral Surveys and the Customer Surveys for such month.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations. Each of the Cendant Entities hereby represents and warrants to the PHH Entities, and each of the PHH Entities and the Company hereby represents and warrants to the Cendant Entities, as of the date hereof and throughout the term of this Agreement, that:

(a) Such Party is a corporation, limited liability company, partnership or business trust duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization. Such Party has full right, power and authority to execute and deliver this Agreement and to perform each of its obligations hereunder.

(b) All necessary action, corporate or otherwise, on the part of such Party necessary to authorize the execution and delivery by such Party of this Agreement and the performance by such Party of its obligations hereunder has been taken, and no further action on the part of such Party is necessary for such authorization. This Agreement has been duly authorized, executed and delivered by such Party and (assuming due authorization, execution and delivery by the other Parties), constitutes a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms.

(c) No consent, approval or authorization of, or filing or registration with, any governmental or regulatory authority or any other Person (other than such as have been obtained or made by such Party) is required to be made or obtained by such Party in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement.

(d) Neither the execution and delivery of this Agreement by such Party nor the consummation by such Party of the transactions contemplated hereby, nor compliance by such Party with any of the terms or provisions hereof, will (i) conflict with or result in a breach of any provision of the certificate of incorporation, by-laws or similar governing documents of such Party or (ii) assuming the consents, permits, authorizations, approvals, filings and registrations previously disclosed in writing by such Party to the other Parties are obtained or made (x) violate any statute, code, ordinance, rule, regulation, judgment, order, write, decree or injunction applicable to such Party or any of its properties or assets or (y) violate, conflict with, result in a breach of any provisions of, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of, accelerate the performance required by, or result in a right of termination or acceleration or the creation of any encumbrance upon any of the properties or assets of such Party under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which such Party is a party, or by which its properties or assets may be bound or affected, except, in the case of clause (ii), for such violations, conflicts, breaches or defaults which, either individually or in the aggregate, would not prevent or materially hinder or delay such Party's ability to consummate the transactions contemplated hereby or perform its obligations hereunder.

## ARTICLE V

### CENDANT REAL ESTATE COVENANTS

#### Section 5.1 Cendant Real Estate Trade Shows, Conferences and Conventions.

(a) Cendant Real Estate shall use reasonable efforts to reserve for the Company and PMC (and not any other Mortgage Loan originator), at each real estate business trade show and Cendant Mobility Conference which Cendant Real Estate or any of its Affiliates organizes: (1) no less than two standard sized booths at a mutually agreeable location prominent to visitors to such trade shows and international business conferences, subject to the same terms and conditions (including registration and other fees) applicable to other participants; and (2) a meaningful opportunity for a Company representative to speak at break-out sessions (if any) during such conferences for such amount of time as shall be mutually agreed upon by Cendant Real Estate and PMC.

(b) Cendant Real Estate shall provide to the Company, and not any other Mortgage Loan originator, the opportunity (at no charge to the Company) for a senior member of the Company's (or PMC's) management to speak at the annual real estate brokerage convention/conference and annual Cendant Mobility conference sponsored by Cendant Real Estate or its Affiliates, subject to Cendant Real Estate's approval of individual and script. The Company and PMC shall abide by all reasonable rules established by Cendant Real Estate for each such convention or conference, including payment of any non-speaking fees charged to other participants and attendees.

(c) Cendant Real Estate shall provide to the Company (subject to the payment of any fees charged to other event sponsors) a “premier” (or the highest level that may exist) sponsorship at all national conventions and regional or local conferences under the control of Cendant Real Estate that relate to the real estate brokerage business or the corporate relocation business.

(d) At the Cendant Member’s request, the Company shall direct Company representatives (in such number and of such seniority as the Cendant Member may reasonably request) to attend, at the Company’s expense, such real estate business or corporate relocation business conventions, trade shows, conferences, meetings and seminars as Cendant may designate from time to time.

Section 5.2 Offline Promotion to Consumers.

Cendant Real Estate shall provide the opportunity to advertise the mortgage products and services offered by the Company in all Cendant Owned Real Estate Offices Tradename publications at Cendant Real Estate’s most favorable pricing, but never below the actual cost incurred by Cendant Real Estate and its Affiliates in connection therewith. Cendant Real Estate will have sole discretion to control positioning and content of advertising of the Company in its publications, provided however, the Company shall not be treated less favorably than other advertisers paying similar prices for advertisement in such publications.

ARTICLE VI

REAL ESTATE BROKERAGE AND SETTLEMENT SERVICES

Section 6.1 Exclusive Recommended Real Estate Broker.

PHH shall, and shall cause its Subsidiaries to, adopt such internal policies and procedures as shall be reasonably necessary so that Cendant Real Estate shall be the exclusive recommended real estate firm for employees of PHH or any of its Subsidiaries and for all customers of PHH or any of its Subsidiaries other than any such customers who are subject to any other venture agreement with a third party.

Section 6.2 Commercial Real Estate.

PHH shall, and shall cause its Subsidiaries to, use Cendant Real Estate on all commercial real estate transactions where a Cendant commercial real estate agent is available, except for transactions in progress as of the date of this Agreement.

Section 6.3 Settlement Services.

PHH shall, and shall cause its Subsidiaries to (i) recommend CSSG as provider of Settlement Services (including, without limitation, on all transactions where PHH or one of its Subsidiaries has the option to choose the provider of such services, all closings by mail, all \*CONFIDENTIAL and all search products such as Property and Judgment Reports), (ii) utilize CSSG on an exclusive basis

\*The term “Confidential” indicates material that has been omitted and for which confidential treatment has been requested. All such omitted material has been filed with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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whenever PHH or one of its Subsidiaries has the option to choose the title or escrow agent and, in the applicable jurisdiction, CSSG either provides such services or receives compensation in connection with such services or both, and (iii) recommend CSSG as provider of Settlement Services to private label solutions (“PLS”) partners and the Small Corps; provided, however, that: (a) during the first eighteen (18) months after the date of this Agreement, CSSG shall provide all such services at the pricing levels which existed immediately prior to execution of this Agreement (and, thereafter, agree to most favored nation status for such pricing); and (b) within one hundred eighty (180) days from the date of this Agreement, Cendant Real Estate shall cause CSSG to provide most favored nation status on service level agreements and processes that are consistent with existing CSSG service levels. PHH shall not, and shall cause its Subsidiaries not to, enter into any arrangement that provides for a party other than CSSG to provide the products and services set forth in (i) above to PHH’s customers or its PLS partners’ customers, unless such PLS partner requires an alternative provider as a condition to entering into or renewing such arrangement with PHH or such Subsidiary and then only after CSSG has been afforded the opportunity to present its service offerings to such PLS partner.

Section 6.4 REO Services. PHH shall, and shall cause its asset management vendors (i.e., attorneys, REO property managers and/or realtors) to utilize, where Cendant has a Brand Franchisee or an NRT office providing such services, such Brand Franchisee and/or NRT office for any and all real estate owned assets of PHH, provided that such Brand Franchisees and/or NRT shall adhere to performance standards substantially similar to those common in the industry.

## ARTICLE VII

### CUSTOMER DATA; PRIVACY REQUIREMENTS

Section 7.1 Customer Information. Subject to such rights as any Person may acquire in any Customer Information of any Customer as a result of owning the servicing rights with respect to a Mortgage Loan to such Customer, the Company and PMC acknowledge and agree that, as between the Company, PMC, and the Cendant Entities, the Cendant Entities are the owner of all rights in Customer Information provided by the Cendant Entities to the Company pursuant to the terms of this Agreement or any other Transaction Document. Nothing contained herein shall be construed as granting the Company or PMC or any Affiliate thereof any rights, express or implied to such Customer Information other than those rights necessary to the conduct, promotion or attainment of the business purposes of the Company specified herein or in Section 2.5(a) of the Operating Agreement.

Section 7.2 Compliance with Privacy Requirements.

(a) In connection with the origination of Mortgage Loans, each of the Company and PMC shall comply with the Privacy Requirements, subject to (i) the mandatory compliance date of such Privacy Requirements and (ii) the applicability of such Privacy Requirements to the Company or PMC, as the case may be. The foregoing obligation to comply with the Privacy Requirements may include the following:

(i) the Company shall not disclose any Customer Information to any person or entity, other than to the extent necessary to carry out Mortgage Loan origination services, and for no other purpose. The Company shall ensure that each person or entity to whom or to which the Company intends to disclose Customer Information shall, prior to any such disclosure of information, agree to: (A) keep confidential any such Customer Information and (B) use or disclose such Customer Information only to the extent necessary to carry out Mortgage Loan origination services;

(ii) the Company shall not use Customer Information for any purpose, including the marketing of products or services to, or the solicitation of business from Customers. The Company may use the Customer Information to the extent necessary to carry out the Company's express obligations under the Transaction Documents;

(iii) The Company shall assess, manage, and control risks relating to the security and confidentiality of Customer Information, shall implement the standards relating to such risks in the manner set forth in the FFIEC Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in 12 CFR Parts 30, 208, et al, and shall maintain at all times an Information Security Program;

(iv) without limiting the scope of the above, the Company shall use at least the same physical and other security measures to protect all Customer Information in the Company's possession or control, as PHH uses for its own confidential and proprietary information.

(b) "Privacy Requirements" means (a) Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*; (b) the applicable federal regulations implementing such act and codified at 12 CFR Parts 40, 216, 332, and/or 573; (c) Interagency Guidelines Establishing Standards For Safeguarding Borrower Information proposed on June 26, 2000, unless and until such proposed guidelines are superseded by final guidelines (such proposed and/or final guidelines and/or rules, the "Interagency Guidelines"); and (d) other applicable federal, state and local laws, rules, regulations, and orders relating to the privacy and security of Customer Information.

## ARTICLE VIII

### CENDANT FRANCHISEES

PMC shall, and shall cause its Subsidiaries to, abide by the following provisions of this Article VIII in connection with its provision of Mortgage Loan services to Brand Franchisees and their customers in connection with the Program contemplated by the MSA:

Section 8.1 Mortgage Loan Types. PMC shall offer to the Franchisee Customers a variety of PMC Mortgage Loan Types in order to permit Franchisee Customers to select a PMC Mortgage Loan Type best suited to their financial needs. PMC shall be responsible for developing the various PMC Mortgage Loan Types to be available to Franchisee Customers and establishing the Mortgage Loan Pricing associated therewith (the “PMC Pricing”); provided, however, that PMC shall offer to the Franchisee Customers the full range of Mortgage Loan Types that are currently offered or may in the future be offered by PHH or any of its Affiliates to their other customers.

Section 8.2 Origination Channels.

(a) PIMI Origination Channel. PMC’s PIMI Origination Channel shall be operated in accordance with the provisions of this Section 8.2(a) in connection with the origination of Mortgage Loans for Franchisee Customers.

(i) Telephone Lines.

(A) PMC shall provide to the Brand Franchisees dedicated and exclusive toll-free telephone lines established and operated at the expense of and by PMC (“Franchisee Telephone Lines”), which PMC reasonably believes are adequate to meet the reasonably anticipated needs of the current and prospective Franchisee Customers.

(B) Trained PMC personnel shall answer Franchisee Telephone Lines in the name of the appropriate Cendant Real Estate Franchisee Brand; provided, however, that the Telephone Lines dedicated to the Brand Franchisees operating under a Cendant Restricted Brand shall be answered in the name of “PHH Mortgage.” Such personnel shall explain to the Franchisee Customer, as appropriate: (a) the procedure to be followed in obtaining a Mortgage Loan; (b) the various Mortgage Loan Types available and their associated Mortgage Loan Pricing; and (c) their short- and long-term financial implications. Such personnel shall provide counsel and advice to the Franchisee Customer as to the Mortgage Loan Types that might best serve the Franchisee Customer’s needs, including answering any questions the Franchisee Customer might have regarding the process.

(C) PMC shall provide each Franchisee Customer who utilizes the Franchisee Telephone Lines with a same day Pre-Approval Decision and Guarantee. A “same day” Pre-Approval Decision and Guarantee means that PMC will provide the Franchisee

Customer with a Pre-Approval Decision during the same day the Franchisee Customer provided PMC with the information requested from the Franchisee Customer for purposes of making a Pre-Approval Decision for that Franchisee Customer or, if PMC does not provide the Franchisee Customer with such Pre-Approval Decision, PMC will promptly pay the Customer the Guarantee Amount. The Brand Franchisees shall have the right to publicize and advertise to their customers the availability of such Pre-Approval Decisions and Guarantees in accordance with all Mortgage Lending Laws.

(D) PMC will provide to Franchisee Customers for whom it has made a Pre-Approval Decision and which Franchisee Customer is likely to be approved for a Mortgage Loan information tailored to the Franchisee Customer's individual circumstances. Such information will be designed to enable the Franchisee Customer to determine the nature of the Mortgage Loan the Franchisee Customer may qualify for if an appropriate property securing the Mortgage Loan is identified and all information submitted is verified.

(ii) Internet.

(A) PMC will take applications for Mortgage Loans from Franchisee Customers via the Internet. In order to accomplish this, PMC will provide each operator of a Cendant Real Estate Franchisee Brand Website with Hyperlinks to such Content as PMC reasonably believes is adequate to meet the reasonably anticipated needs of the current and prospective Franchisee Customers (the "Franchisee Mortgage Content"). By clicking on the Hyperlink at the Cendant Real Estate Franchisee Brand Websites, the Franchisee Customer will be immediately transferred to the Franchisee Mortgage Content via the Internet. Except in the case of Cendant Restricted Brands, such Franchisee Mortgage Content will be presented by the Company in such a way that it will appear as if it were on a World Wide Web page or series of World Wide Web Pages on the Cendant Real Estate Franchisee Brand Website from which the Hyperlink originated to the extent it is consistent with Applicable Requirements to do so. The form and substance of such World Wide Web pages will be subject to the prior written consent of the Cendant Entities. In order to improve the graphical compatibility of the Franchisee Websites and PMC's sites, PMC and the Cendant Entities will consult with each other when developing or modifying such World Wide Web pages, and also when considering the design of future releases of their respective Websites. PMC shall not permit the Franchisee Mortgage Content accessed by Franchisee Customers via Hyperlinks from the Cendant Real Estate Franchisee Brand Websites contemplated by this Agreement to display any advertising, except in such instances where the Cendant Entities have provided their prior written consent to such advertising.



(B) The Franchisee Mortgage Content will include information about the Mortgage Loans and Mortgage Loan Types, Mortgage Loan calculators, counseling regarding down payments and Mortgage Loan affordability, pre-qualification tools to be used by consumers and Mortgage Loan application modules. PMC will ensure that a Franchisee Customer shall be able to complete and submit a Mortgage Loan application by means of the Franchisee Mortgage Content without any other contact with the Company.

(C) Franchisee Customers utilizing the Mortgage Content to initiate the Mortgage Loan process will be offered the option of communicating with a processing team or other persons contemplated in Section 8.8 of this Agreement, either by electronic mail or by telephone, or by a combination of electronic mail and telephone.

(D) Each Franchisee Customer initiating the origination process via the Internet shall receive a Pre-Approval Decision within 24 hours of the time such Franchisee Customer either (i) submits a complete Mortgage Loan application via the Mortgage Content, or (ii) first speaks with a PMC loan consultant by telephone after submitting certain information not constituting a complete Mortgage Loan application through the Mortgage Content, or PMC shall promptly pay the Franchisee Customer the Guarantee Amount.

Section 8.3 Mortgage Loan Application Processing. For each Franchisee Customer who applies for a Mortgage Loan through the origination channels described in Section 8.2, PMC shall arrange for the receipt by the Franchisee Customer, as promptly as practicable under the circumstances, and in any event in accordance with applicable law, of (i) the Mortgage Loan application for the Franchisee Customer to review and sign, accompanied by a request for appropriate Franchisee Customer documents and (ii) all Mortgage Loan Disclosures. In addition, and to the extent required or permitted under PMC Underwriting Guidelines, as applicable, PMC shall communicate a loan decision or counteroffer to the Franchisee Customer in accordance with all applicable laws.

Section 8.4 Underwriting Guidelines. PMC shall develop appropriate underwriting guidelines for each PMC Mortgage Loan Type available to Franchisee Customers (the "PMC Underwriting Guidelines"), which PMC Underwriting Guidelines shall be consistent with the underwriting guidelines followed by PHH and its Affiliates in connection with Mortgage Loans offered to their own customers for the same products in the same geographic area and at the same time. Unless the PMC Underwriting Guidelines specify otherwise for specific PMC Mortgage Loan Types, all Mortgage Loans shall be underwritten in accordance with the standards of FHLMC, FNMA and other applicable federal agencies providing standards for the sale of loans in the secondary market for mortgage loans. PMC shall issue approval letters on those applications which generally satisfy the PMC Underwriting Guidelines.

Section 8.5 Degree of Care. PMC and its Affiliates shall perform the origination, processing, underwriting, approval, closing, shipping, and other origination services on all Mortgage Loans in all material respects in accordance with all Mortgage Lending Laws and with no less degree of care than PMC or any of its Affiliates exercises in originating other Mortgage Loans for its own account or the account of any third party with similar regulatory profile, provided that in no event shall PMC exercise a lesser degree of care than it exercised in originating Mortgage Loans prior to the Closing Date.

Section 8.6 Mortgage Loan Closing. PMC shall use its best efforts to complete the processing and closing of all Mortgage Loans originated pursuant to this Article VIII in the time frame requested by the Franchisee Customer at the time of submission of the Mortgage Loan application. PMC shall: (i) prepare all required Mortgage Loan closing documents in accordance with applicable Mortgage Lending Laws; (ii) arrange for their execution by the Franchisee Customer; (iii) provide the Franchisee Customer with a copy of PMC's privacy policy in accordance with the Privacy Requirements; and (iv) arrange for the Mortgage Loan closing. All Mortgage Loans shall be closed in the name of PMC or an Affiliate thereof. On purchase money Mortgage Loans, PMC shall meet the closing date set by the Franchisee Customer or PMC shall reduce the interest rate payable on that Franchisee Customer's Mortgage Loan by one-eighth percent (1/8%) for the life of loan. For refinance loans, PMC shall use its best efforts (taking into consideration factors such as periods of high volume loan refinance activity (as substantiated by the Refinance Application Index as promulgated by the Mortgage Bankers Association)) to perform its obligations hereunder to complete the processing and closing within thirty (30) days from the date of application.

Section 8.7 PMC Personnel.

(a) PMC will provide, supervise and make available such personnel as are reasonably necessary to carry out PMC's obligations under this Article VIII. Such personnel, including rate lock personnel, shall be available between the hours of 8:30 a.m. and 10:00 p.m. Eastern time, or such additional hours as may be required by operating conditions and requested by the Cendant Entities, on Business Days. Such personnel, excluding rate lock personnel, shall also be available, as needed, to process Mortgage Loans and contact Franchisee Customers, between the hours of 10 a.m. and 7 p.m., Eastern time, or such additional hours as may be required by operating conditions and requested by the Cendant Entities, on Saturdays and Sundays, except in those instances where a Saturday falls on or near a national holiday and PMC provides reasonable advance notice to Cendant Real Estate in writing that its facilities will be closed on any such day.

(b) PMC shall at all times permit employees of Cendant Real Estate and its Subsidiaries access to PMC's offices (including offices where it conducts Mortgage Loan origination services) during PMC's working hours to observe the origination, processing and closing of the Mortgage Loans to Franchisee Customers. PMC shall, at its expense, make available all customary, reasonable office space,

facilities, and equipment for such employees. The salaries, travel, subsistence and other related expenses for such employees shall be borne by Cendant Real Estate.

Section 8.8 Processors. PMC shall cause each Franchisee Customer who makes an application for a Mortgage Loan to be processed through any of the origination channels described in Section 8.2 to be served by a processing team or other persons employed by PMC and determined by PMC to be most efficient under the circumstances. PMC shall cause each such processing team or other persons to serve the Franchisee Customer throughout the entire process of Mortgage Loan application, processing, underwriting and closing, and to use best efforts to meet the Franchisee Customer's closing date.

Section 8.9 Maintenance of Licenses.

PMC shall, at its own cost and expense, obtain and maintain any and all licenses and registrations, and cause each of its employees to obtain any and all licenses and registrations, that are necessary or desirable in the performance of the Mortgage Loan origination services to be provided by PMC pursuant to the terms of this Article VIII.

Section 8.10 Legal and Regulatory Compliance.

(a) Actions taken or not taken by PMC and its Affiliates, and all communications made when performing its obligations under this Agreement (including this Article VIII) shall comply in all material respects with the requirements of all applicable Mortgage Lending Laws.

(b) PMC shall, and shall cause its Affiliates to, keep in full effect its existence, rights and franchises in the state of its incorporation except as permitted herein or in the Operating Agreement, and will obtain and preserve its qualifications to do business as a foreign entity in each jurisdiction in which such qualification is or shall be necessary to protect the validity and enforceability of this Agreement or any of the Mortgage Loans and/or to perform its duties under this Agreement.

(c) PMC and its Affiliates shall not engage in activities in performing origination services hereunder that generally would be reasonably likely to be determined by the relevant regulatory agency to be prohibited as "predatory."

(d) PMC shall promptly inform the Cendant Entities in writing of any notices, inquiries or other communications, written or oral, received by PMC or any Affiliate thereof with respect to any material legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations or findings with respect to Mortgage Loans originated, closed and funded by PMC or any Affiliate thereof or any action or omission of PMC or any of its Affiliates in connection therewith.

Section 8.11 Customer Fees and Charges.

(a) At the closing of any Mortgage Loan and at such other times as may be customary, the closing agent may collect from the Franchisee Customer and

forward to PMC or an Affiliate thereof the Customer Fees and Charges for such Mortgage Loan.

(b) The amount, payor and payee of any Customer Fees and Charges shall be described in the Mortgage Loan Disclosures in accordance with the Mortgage Lending Laws. PMC shall retain and distribute the Customer Fees and Charges to third parties, including settlement service providers, in accordance with applicable law, this Agreement and the arrangements governing such relationships. PMC covenants and agrees that the payment of Customer Fees and Charges to third parties shall be made in a timely manner and in accordance with payment terms governing such relationships.

Section 8.12 Surveys.

With respect to all closed Mortgage Loans, PMC shall conduct a survey of the related Franchisee Customer contemporaneously with the closing (the "Franchisee Customer Survey") and a survey of the Brand Franchisee that referred such Franchisee Customer (the "Franchisee Referral Survey" and, together with the Franchisee Customer Survey, the "Franchisee Surveys") for the purpose of assessing overall satisfaction levels relating to PMC's performance as loan originator. PMC shall administer such Surveys and shall provide the results of the Franchisee Surveys to Cendant Real Estate on a monthly basis. Schedule 3.16(a) hereto sets forth an example of the content of such Franchisee Surveys; provided, however, that Cendant Real Estate shall have the right to amend such Franchisee Surveys from time to time in its sole discretion; provided further, however, that (i) the Franchisee Referral Survey shall always contain the question "would you recommend a PMC Loan to another client?" (the "Franchisee Key Referral Question"), and (iii) the Franchisee Customer Survey shall always contain the question "Would you recommend PMC to a friend/another person?" (the "Franchisee Key Customer Question"). Cendant Real Estate shall (A) have the right to review and audit all Franchisee Survey responses at any time, and (B) have the right, but not the obligation, to disseminate such Surveys once annually at its option.

Section 8.13 MSA Payments.

The Parties hereby agree and acknowledge that all payments under the MSA payable to any Brand (as defined in the MSA) shall be the sole responsibility of PMC and its Affiliates (other than the Company), and neither the Cendant Entities nor their Affiliates, nor the Company, shall be responsible for making any such payment.

ARTICLE IX

FUTURE CENDANT REAL ESTATE BROKERAGE ACQUISITIONS

Section 9.1 Subsequent Small Corps.

(a) In the event that, during the term of this Agreement, Cendant Real Estate, or any Affiliate of Cendant Real Estate, notifies (a "Small Corp Notification") PMC and the Company of its intent to acquire, or enter into an agreement to acquire, directly or indirectly, any Person that owns or conducts a residential real estate brokerage

business and in connection therewith also owns or conducts, directly or indirectly, a mortgage loan origination business (any such Person, a “Qualifying Target”), then promptly thereafter Cendant Real Estate, PMC and the Company shall work together to formulate a plan for the sale by Cendant Real Estate or such Person (such seller, the “Cendant Real Estate Seller”) of such mortgage loan origination business (or the stock or other equity of an entity directly or indirectly conducting such business, as determined by Cendant Real Estate in its sole discretion) (the “Qualifying Target Mortgage Business”) to the Company, and Cendant Real Estate, the Cendant Real Estate Seller and PMC shall use their reasonable best efforts to complete such sale as promptly as practicable thereafter. Cendant Real Estate shall use reasonable best efforts to provide PMC and the Company an adequate opportunity to conduct due diligence with respect to the Qualifying Target Mortgage Business. Cendant Real Estate, the Company and PMC shall cooperate with and assist each other in obtaining all consents and approvals of, making all filings and registrations with and providing all notices to, such Governmental Entities or third parties as shall be necessary or advisable to consummate such sale. At the time agreed upon for the closing of such sale, the Company shall pay to the Cendant Real Estate Seller, by wire transfer of immediately available funds, in consideration for the Qualifying Target Mortgage Business to be acquired, a purchase price (the “Purchase Price”) calculated as follows (with each of the PHH Member and the Cendant Member contributing to the Company cash in an amount equal to its ratable share of the Purchase Price based on their respective percentage ownership interests in the Company):

(i) If the purchase price paid by Cendant to acquire the Qualifying Target represents a multiple (a “Qualifying Target EBITDA Multiple”) of such Qualifying Target’s trailing 12-months’ EBITDA of \*CONFIDENTIAL or less, then the Purchase Price shall be equal to the product of (A) such Qualifying Target EBITDA Multiple and (B) such Qualifying Target Mortgage Business’ trailing 12-months EBITDA, adjusted to remove all refinance originations in excess of \*CONFIDENTIAL% of the Qualifying Target Mortgage Business’ total originations for such trailing twelve months;

(ii) If the Qualifying Target EBITDA Multiple is more than \*CONFIDENTIAL, then Cendant Real Estate and PMC shall negotiate in good faith to agree upon the Purchase Price, provided that in no event shall the Purchase Price be less than the product of (A) \*CONFIDENTIAL and (B) such Qualifying Target Mortgage Business’ trailing 12-months EBITDA, adjusted to remove all refinance originations in excess of \*CONFIDENTIAL% of the Qualifying Target Mortgage Business’ total originations for such trailing twelve months;

(iii) If the total purchase price of a Qualifying Target is \$\*CONFIDENTIAL (to be increased annually by the percentage increase in the National Consumer Price Index) or greater, then the Purchase Price shall be equal to the product of (A) such Qualifying Target Mortgage Business’ trailing 12-months EBITDA, adjusted to remove all refinance originations in excess of \*CONFIDENTIAL% of the Qualifying Target Mortgage

Business' total originations for such trailing twelve months and (B) either (1) the Qualifying Target EBITDA Multiple paid by Cendant if such multiple is less than \*CONFIDENTIAL, or (2) \*CONFIDENTIAL if the Qualifying Target EBITDA Multiple paid by Cendant is \*CONFIDENTIAL or greater.

(b) If, within thirty (30) days after Cendant Real Estate or any Affiliate of Cendant Real Estate delivers to PMC and the Company a Small Corp Notification, PMC and the Company have not completed their due diligence and Cendant Real Estate, PMC and the Company have not agreed upon the amount to be paid by the Company to the Cendant Real Estate Seller, then (i) Cendant Real Estate shall have the option to either (A) sell (or cause to be sold) such mortgage loan origination business to a third party; provided, however, that if the price to be paid by the third party in such sale is less than \*CONFIDENTIAL of the Purchase Price for such Qualifying Target Mortgage Business determined pursuant to Section 9.1(a), or, if no formula is applicable, the price offered by Cendant Real Estate to the Company, then the Company shall have a right of first refusal with respect to such sale at the purchase price offered to the third party (in which case Cendant Real Estate shall offer such Qualifying Target Mortgage Business to the Company for a period of 15 days, during which period the Company shall have the option to accept the sale of such Qualifying Target Mortgage Business on all terms, including price, of such third party sale; provided that if the Company fails to accept all such sale terms pursuant to a binding agreement with Cendant Real Estate within such 15 day period, then the sale to the third party may proceed as planned), or (B) continue to own and operate such mortgage loan origination business and (ii) in either case, the exclusivity provisions of Section 2.1 hereof shall, at the option of the Cendant Entities, terminate with respect to each county in which the Qualifying Target Mortgage Business conducts business (except that exclusivity shall not terminate with respect to any county where the total amount of originations by the Qualifying Target Mortgage Business for the trailing 12-months were less than \*CONFIDENTIAL (to be increased annually by the percentage increase in the National Consumer Price Index)).

(c) If Cendant Real Estate, PMC and the Company agree upon the amount to be paid in connection with, and execute an agreement for, the sale of a Qualifying Target Mortgage Business to the Company within the 30-day period set forth above, then the Company shall pay to the Cendant Real Estate Seller an amount equal to 25% of the Purchase Price agreed to by the Parties if such sale is not consummated in the time frame reasonably requested by Cendant Real Estate (unless such delay is due to the failure to obtain a required regulatory approval, which approval has been diligently pursued by the Company, or due to acts or omissions on the part of Cendant or any of its Affiliates or any of their respective officers, directors or advisors). Such payment shall be made not later than the 30<sup>th</sup> day following the date on which such acquisition was scheduled to close and, if made on any day other than the scheduled closing date, shall include interest through the date of payment. If such payment is not made by the Company within such 30-day period, the exclusivity provisions of Section 2.1 shall, at the option of the Cendant Entities, terminate with respect to each county in which the Qualifying Target conducts business (except that exclusivity shall not terminate with respect to any county where the total amount of originations by the Qualifying Target

Mortgage Business for the trailing 12-months were less than \*CONFIDENTIAL (to be increased annually by the percentage increase in the National Consumer Price Index)).

(d) No term or provision contained in this Section 9.1 or elsewhere in this Agreement shall be deemed to restrict the ability of Cendant Real Estate or any of its Subsidiaries to acquire any Person that owns or conducts a residential real estate brokerage business and in connection therewith also owns or conducts a mortgage loan origination business, provided that such acquisition is completed pursuant to the terms of this Section 9.1.

(e) Notwithstanding anything to the contrary contained in this Agreement, the Parties shall use their reasonable best efforts to structure a sale by the Cendant Real Estate Seller to the Company of the Qualifying Target Mortgage Business on a tax efficient basis to Cendant Real Estate and its Affiliates (including Cendant), including, without limitation, by (x) causing the Cendant Real Estate Seller to contribute a portion of the Qualifying Target Mortgage Business (equal to the Cendant Member's percentage ownership interest in the Company) to the Company in a transaction intended to qualify as a tax-free contribution under section 721 of the Internal Revenue Code of 1986, as amended and (y) by causing the Cendant Real Estate Seller to sell to the PHH Member the remaining portion of the Qualifying Target Mortgage Business (equal to the PHH Member's percentage ownership interest in the Company) for an amount equal to the PHH Member's ratable share of the Purchase Price based on its percentage ownership interest in the Company, followed by the contribution by the PHH Member of such purchased portion of the Qualifying Target Mortgage Business to the Company; provided, however, that nothing contained in this section 9.1(e) shall require the PHH Member to contribute to the Company or pay to Cendant Real Estate or the Cendant Real Estate Seller in respect of the Qualifying Target Mortgage Business an amount in excess of the PHH Member's ratable share of the Purchase Price based on its percentage ownership interest in the Company.

## ARTICLE X

### NON-COMPETITION

#### Section 10.1 PHH Non-Compete.

(a) Without the express prior written consent of the Cendant Entities, neither PHH nor any Affiliate of PHH shall, within the United States of America, directly or indirectly:

(i) engage in the Settlement Services business (or provide any services or products which as of the date of this Agreement are otherwise provided and/or offered by CSSG),

(ii) engage in the residential real estate brokerage business, commercial real estate brokerage business, or corporate relocation services business, or become or operate as a broker, owner or franchisor in any such business, or otherwise, directly or

indirectly, assist or facilitate the purchase or sale of residential or commercial real estate other than through (x) the origination and servicing of Mortgage Loans, or (y) the conduct of the business of STARS substantially as currently conducted, or

(iii) engage in any other business which as of the date of this Agreement is conducted by the Cendant Real Estate Services Division; provided that, to the extent that Cendant Real Estate Services expands into new businesses from and after the date of this Agreement and at the time of such expansion PHH or any of its Affiliates is currently engaged in the same business, nothing herein shall be deemed to prohibit PHH or any such Affiliate from continuing to conduct such business thereafter. Notwithstanding the foregoing, (1) PHH may obtain real estate brokerage licenses solely to the extent necessary to engage in, and solely for the purpose of engaging in, referral business with a Cendant Affiliate via the Cendant Mobility Broker Network and (2) nothing contained herein shall prohibit PHH from acquiring, directly or indirectly, any company that engages in a business as described in (i), (ii) or (iii) above if the revenue derived from such business for the last four full calendar quarters preceding such acquisition equals less than the greater of \$1 million or 1% of such acquired company's total consolidated revenue for such last four full calendar quarters.

(b) In the event that, at any time after the date of this Agreement and prior to the expiration of the covenant set forth in Section 10.1(a), any Person shall, directly or indirectly, acquire PHH or any of its significant subsidiaries (as defined under Regulation S-X of the Securities and Exchange Commission), including but not limited to by way of merger, consolidation, share exchange, asset acquisition or similar transaction (including a merger of PHH or such subsidiary with another Person where the common stockholders of PHH or such subsidiary immediately prior to such merger do not own more than two-thirds of the common stock of the surviving entity in such merger or the Controlling Person thereof), then (i) the acquiring Person, (ii) any Controlling Person thereof, and (iii) all Persons that are Affiliates of such acquiring Person or any such Controlling Person immediately prior to completion of such acquisition shall be bound by the covenant contained in Section 10.1(a) from and after the completion of such acquisition.

(c) PHH shall not, and shall cause its Subsidiaries not to, without the consent of the Cendant Entities, sell directly or indirectly, any Mortgage Loans or mortgage servicing rights to any Cendant Competitor; provided, however, that with respect to any agreement in effect as of the date of this Agreement with a Cendant Competitor, the PHH Member shall use its reasonable best efforts to cause such agreement to be terminated prior to October 1, 2005 if such agreement would violate the provisions of this Section 10.1(c), but only as long as such termination can be accomplished without the payment of a significant economic penalty. A "Cendant Competitor" is any entity that is, or directly or indirectly is affiliated with or controls, one



of the twenty (20) largest residential real estate brokerage firms in the United States or one of the ten largest residential real estate brokerage franchisors in the United States.

(d) PHH acknowledges that the restrictions and agreements contained in this Section 10.1 are reasonable and necessary to protect the legitimate interests of the Cendant Entities, and that any violation of this Section 10.1 will cause substantial and irreparable injury to the Cendant Entities that would not be quantifiable and for which no adequate remedy would exist at law and agrees that injunctive relief, in addition to all other remedies, shall be available therefor.

(e) The covenants contained in this Section 10.1 shall survive for (i) two (2) years following the termination of this Agreement as a result of an SRA Termination Event described in Sections 12.2(a)(i) and (ii), and (ii) one (1) year following a termination of this Agreement as a result of any other SRA Termination Event; provided, however, that in the case of a termination of this Agreement as a result of an SRA Termination Event described in Section 12.2(a)(iv) or (v), the covenants contained in subparagraph (a)(i) of this Section 10.1 shall not survive termination of this Agreement.

Section 10.2 No Mortgage Loan Solicitation by PHH. PHH shall not, and shall cause its Affiliates not to, knowingly solicit any Cendant Customers for Mortgage Loans, except through the Company and as provided for in this Agreement and the Operating Agreement; provided, however, that PMC and its Affiliates may market Mortgage Loans to affinity groups and other groups so long as the information has not been obtained by PMC or its Affiliates from information provided through Cendant Real Estate and its Subsidiaries, the Company or any of their respective customers.

Section 10.3 Cendant Participation.

(a) Neither PHH nor any of its Subsidiaries shall directly solicit any Customer or any Cendant Customer to purchase any product or service, unless an appropriate, mutually agreed upon participation in such transaction by the Cendant Member or by an Affiliate thereof is structured; provided, however, that nothing herein shall prohibit PHH or any of its Subsidiaries from conducting general advertising campaigns through print or other media so long as such campaigns are not directed specifically at such individual Customers or Cendant Customers and do not involve any direct marketing such as mailings, telephone calls, faxes or e-mails or other direct electronic communications.

(b) PHH shall, and shall cause its Subsidiaries to, use commercially reasonable efforts to direct to the Company any Mortgage Loan origination opportunity where such Mortgage Loan refinances or replaces a Mortgage Loan originated by the Company and where such Mortgage Loan results from a general solicitation of the type permitted by Section 10.3(a) above.

(c) Notwithstanding the foregoing, none of the restrictions on cross-selling or refinancing set forth above in this Section 10.3 shall apply to PHH, the

Company or any of their Subsidiaries with respect to Mortgage Loans that have been sold by PHH or one of its Subsidiaries on a servicing-released basis.

(d) For a period of one (1) year following the effective date of any termination of the Company pursuant to Article VIII of the Operating Agreement, the Party relinquishing its interest in the Company in connection with such termination shall not, and shall cause its Affiliates not to, directly or indirectly, solicit for employment any of the employees of the Company or any of its Subsidiaries; provided, however, that nothing herein shall prohibit (i) a general solicitation or advertisement through print or other media not targeted directly or specifically at the Company or any of its Subsidiaries or any of their employees, or (ii) the relinquishing party from hiring or considering for hire any employee of the Company or any of its Subsidiaries if contact was initiated by such employee independently and not pursuant to any solicitation or communication by the relinquishing party in violation of this Section 10.3(d).

## ARTICLE XI

### TERMINATION ASSISTANCE

#### Section 11.1 Termination Assistance Services.

(a) Termination Assistance Services. Upon the consummation of a PHH Sale, a Two Year PHH Sale or a Non-Renewal PHH Sale, PMC shall for a period of one (1) year following the termination date (the "Termination Assistance Period"), upon the Cendant Member's request and at the Cendant Member's expense, continue to provide to the Company all such transition and other services as shall be reasonably necessary to facilitate an orderly transition of the business and operations of the Company to the Cendant Designated Buyer ("Termination Assistance Services"). In providing Termination Assistance Services, PMC shall provide such reasonable cooperation and technical assistance as required to facilitate the transfer of the management of the Company to a Cendant Designated Buyer. The rights of the Cendant Member under this Article XI shall be without prejudice to the Parties' rights to pursue legal remedies for breach of this Agreement, either for breaches prior to termination or during the period this Agreement continues to be in force post-termination. Termination Assistance Services shall be provided for a fee calculated based on then-current fair value for such services, and PMC shall use commercially reasonable best efforts to perform the Termination Assistance Services at the same service levels as such services were provided prior to termination.

(b) Additional Services. From time to time during the Termination Assistance Period, the Cendant Member may find it desirable to request, in addition to the Termination Assistance Services, additional services to be made available to the Company by PMC (the "Additional Services"). In the event that the Cendant Member makes a written request that PMC provide Additional Services and PMC agrees to provide such Additional Services, PMC and the Cendant Member shall negotiate in good faith to agree upon, among other things, (a) the time period during which the Additional Services shall be provided, (b) a description of the Additional Services, and (c)

and the estimated charge for the Additional Services. PMC's obligations with respect to providing any such Additional Services shall become effective only upon an agreement with respect thereto being duly executed and delivered by each of PMC and the Cendant Member.

(c) Obligations as to Additional Services. PMC agrees to enter into discussions with the Cendant Member to provide any Additional Services that (i) the Company is unable to obtain from a third party provider, (ii) are directly dependent upon or inextricably intertwined with the Termination Assistance Services or (iii) were inadvertently and unintentionally omitted from the list of Termination Assistance Services; provided, however, that PMC shall not be obligated to provide such Additional Services if, following good-faith negotiation, PMC and the Cendant Member are unable to reach agreement on such terms.

(d) Standard of Service. PMC agrees that in providing (or causing others to provide) the Termination Assistance Services under this Agreement, it shall (and shall cause each Affiliate or advisor and, to the extent practicable, any or other third-party service provider to): (i) conduct itself in accordance with (A) standards of quality consistent with the standards applied by PMC as of the date of the beginning of the Termination Assistance Period with respect to the specific matters in question, and (B) standards of quality consistent with those applied by PMC hereafter with respect to the specific matters in question in its own business; (ii) comply with all laws, regulations and orders applicable to the conduct of the activities contemplated hereby in all material respects; (iii) comply in all material respects with any applicable standards, procedures, policies, operating guidelines, practices and instructions mutually agreed upon with respect to the relevant Termination Assistance Services; and (iv) comply in all material respects with any commercially reasonable standards, procedures, policies, operating guidelines, practices and instructions imposed by third-parties in connection with the Termination Assistance Services. Notwithstanding the foregoing, it shall not be deemed to be a breach of this Agreement if PMC fails to meet the standards required under this Section 11.1 because of the failure of the Cendant Member to cooperate with PHH or any of its Subsidiaries as may be required under this Agreement.

(i) In addition to the provisions of Section 11.1, if the Cendant Member desires a higher quality of Termination Assistance Services than PMC is otherwise obligated to provide pursuant to Section 11.1 or any of the other provisions of this Agreement, the Cendant Member will be entitled to receive such higher level of quality after giving no less than 30 days' prior written notice to PMC if (i) the Cendant Member agrees to pay for all additional actual costs associated with such increased level and (ii) in the sole judgment of PMC, such increased level does not impose an additional burden on PMC.

(ii) PMC shall promptly notify the Cendant Member of any event or circumstance of which PMC or any of its representatives has knowledge that would or would be reasonably likely to cause a disruption in the Termination Assistance Services.

(e) Supervision and Compensation. PMC shall select, employ, pay, supervise, direct and discharge all the personnel providing Termination Assistance Services under this Article XI. PMC shall be solely responsible for the payment of all benefits and any other direct and indirect compensation for PMC personnel assigned to perform services under this Article XI, as well as such personnel's worker's compensation insurance, employment taxes, and other employer liabilities relating to such personnel as required by law. PMC shall be an independent contractor in connection with the performance of Termination Assistance Services hereunder and the employees performing Termination Assistance Services in connection herewith shall not be deemed to be employees of the Cendant Member or any affiliate thereof.

(f) Staffing of Personnel. PMC shall be solely responsible for assigning personnel to perform the Termination Assistance Services, which personnel will be instructed by PMC to perform the Termination Assistance Services in a timely, efficient and workmanlike manner.

Section 11.2 Development of Transition Plan. If and to the extent requested by the Cendant Member, whether prior to, upon, or following any termination of this Agreement, PMC shall reasonably assist the Cendant Member in developing a plan which shall specify the tasks to be performed by PMC in connection with the Termination Assistance Services and the schedule for the performance of such tasks. The transition plan shall include descriptions of the Termination Assistant Services, service levels, fees, documentation and access requirements that will promote an orderly transition of such services.

Section 11.3 Post-Termination Assistance. For a period of six (6) months following the Termination Assistance Period, PMC shall: (i) answer all reasonable and pertinent verbal or written questions from the Cendant Member or the Cendant Designated Buyer regarding the Termination Assistance Services on an "as needed" basis and (ii) deliver to the Cendant Member any remaining Company-owned reports and documentation still in PMC's possession.

## ARTICLE XII

### TERM AND TERMINATION

Section 12.1 Term. The term of this Agreement shall be coextensive with the term of the Operating Agreement, subject to termination as set forth in Section 12.2 below.

Section 12.2 SRA Termination Event.

(a) For purposes of this Agreement, an "SRA Termination Event" means the consummation of (i) a Cendant Put, (ii) a PHH Sale, (iii) a Purchase Right transaction, (iv) a Two Year Put, (v) a Two Year PHH Sale, (vi) a Special Termination Put, (vii) a Non-Renewal Put, (viii) a Non-Renewal PHH Sale, or (ix) the dissolution of the Company pursuant to Article IX of the Operating Agreement.

(b) Upon the occurrence of an SRA Termination Event, this Agreement shall automatically expire and terminate, provided that:

(i) The obligations of PHH and its Affiliates pursuant to Article VII hereof shall survive the termination of this Agreement to the extent required by law.

(ii) The obligations of PHH and its Affiliates under Section 10.1 of this Agreement shall survive the termination of this Agreement as set forth in Section 10.1(e).

(iii) The respective obligations of each Party under the provisions of Article XI, Article XII and Article XIII hereof shall survive the termination of this Agreement.

(c) Notwithstanding anything to the contrary contained herein, immediately following the consummation of a Cendant Put, a Two Year Put, a Purchase Right transaction, a Special Termination Put or a Non-Renewal Put, the Company and its Subsidiaries shall continue to process, close, fund and sell all Pipeline Loans in a manner consistent with the terms of this Agreement and the Operating Agreement. For purposes of this paragraph (c), "Pipeline Loans" shall mean all potential Mortgage Loans which are in one of various stages of loan origination, approval and processing at the Company or one of its Subsidiaries, but which, as of the time of consummation of a Cendant Put, a Two Year Put, a Purchase Right transaction, a Special Termination Put or a Non-Renewal Put, shall not have closed and funded.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

#### Section 13.1 PHH Guarantee.

(a) Each of PHH and PMC irrevocably, absolutely and unconditionally guarantees (the "Guarantee") each and every representation, warranty, covenant, agreement and other obligation of its Subsidiaries and Affiliates (including the PHH Member but excluding the Company and any Subsidiaries of the Company) and/or any of their respective permitted assigns (collectively, the "PHH Affiliates") set forth in, and the full and timely performance of their respective obligations under the provisions of, this Agreement and each of the other Transaction Documents. This is a guarantee of payment and performance, and not of collection, and each of PHH and PMC acknowledges and agrees that this Guarantee is full and unconditional, and no discharge, release or extinguishment of any of the PHH Affiliates' liabilities (other than in accordance with the terms of this Agreement), whether by decree in any insolvency, bankruptcy, reorganization or other similar proceeding or otherwise, and no change in the corporate existence, structure or ownership of any of the parties hereto or any of their Affiliates, and no assignment, pledge or other transfer (whether voluntary, involuntary or by operation of law) of any of the rights, interests or obligations of the parties hereto under this Agreement or the other Transaction Documents, shall affect the continuing

validity and enforceability of this Guarantee, as well as any provision requiring or contemplating performance by PHH.

(b) Each of PHH and PMC hereby waives, for the benefit of the Cendant Entities, (i) any right to require the Cendant Entities, as a condition of payment or performance by either PHH or PMC, to proceed against any of the PHH Affiliates or pursue any other remedy whatsoever and (ii) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate either PHH or PMC or sureties, except to the extent that any such defense is available to the appropriate PHH Affiliates.

(c) Without limiting in any way the foregoing Guarantee, each of PHH and PMC covenants and agrees to take all actions to enable the PHH Affiliates to adhere to each provision of this Agreement and the other Transaction Documents which requires an act or omission on the part of PHH or PMC or any of their Subsidiaries to enable the PHH Affiliates to comply with their obligations under this Agreement.

(d) Each of PHH and PMC understands that the Cendant Entities are relying on this Guarantee in entering into this Agreement and the other Transaction Documents and may, to the extent PHH or PMC is not a party to any such other Transaction Document, enforce this Guarantee as if each of PHH and PMC were a party thereto.

Section 13.2 Notice of Certain Events. Each Party shall promptly notify the others of (i) any event or condition that would cause any of the representations or warranties of such party contained herein no longer to be complete and accurate, and (ii) any failure on the part of such Party to comply with any of its covenants or agreements contained herein.

Section 13.3 Indemnification.

(a) PHH Indemnification. Except as otherwise provided by the terms of this Agreement, each of the PHH Entities, jointly and severally (each, a "PHH Indemnitor") agrees to indemnify, defend and hold harmless each of the Cendant Entities and their respective officers, directors, employees, agents, attorneys, members and shareholders (collectively called the "Cendant Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable attorneys' fees and disbursements in connection with any investigative, administrative or judicial proceeding) ("Losses") imposed on, incurred by or asserted against any such Cendant Indemnitee, whether brought under common law or in equity, or in contract, tort or otherwise, caused by, arising from or connected with (i) any misrepresentation or the breach in any material respect by the PHH Indemnitor of any term, condition, representation, obligation or warranty of the PHH Indemnitor set forth in this Agreement or in any schedule, exhibit, or certificate furnished by the PHH Indemnitor pursuant to this Agreement; or (ii) the negligence or willful misconduct of the PHH Indemnitor.

(b) Cendant Indemnification. Except as otherwise provided by the terms of this Agreement, each of the Cendant Entities, jointly and severally (each, a “Cendant Indemnitor”) agrees to indemnify, defend and hold harmless each of the PHH Entities and the respective officers, directors, employees, agents, attorneys, members and shareholders (collectively called the “PHH Indemnitees”) from and against any and all Losses imposed on, incurred by or asserted against such PHH Indemnitees, whether brought under common law or in equity, or in contract, tort or otherwise, caused by, arising from or connected with (i) any misrepresentation or the breach in any material respect by the Cendant Indemnitor of any term, condition, representation, obligation or warranty of the Cendant Indemnitor set forth in this Agreement or in any schedule, exhibit, or certificate furnished by the Cendant Indemnitor pursuant to this Agreement; or (ii) the negligence or willful misconduct of the Cendant Indemnitor.

(c) Indemnification of the Company. PMC shall indemnify and hold the Company harmless from and against the following Losses incurred or sustained by the Company:

- (i) any amounts paid by the Company to Cendant Real Estate pursuant to Section 9.1(c) hereof, and
- (ii) any interest paid by the Company pursuant to Section 8.1(d) of the Operating Agreement.

Section 13.4 Lawful Conduct; Severability; Release. The Parties hereto shall not perform, or be expected to perform, any act hereunder that is, or is reasonably believed to be, in violation of any applicable state or federal rule or regulation. If any provision of this Agreement is now or later in violation of any local, state or federal law, then such provision shall be considered null and void for purposes of this Agreement with all other provisions remaining in full force and effect. Each Party expressly releases each other Party from any liability in the event any such Party cannot fulfill any obligation hereunder due to any prohibition under local, state or federal laws pertaining to such obligation; provided, however, that nothing herein shall relieve or release any Party hereto from any liability or obligation under the Operating Agreement.

Section 13.5 Confidential Treatment. Each Party and its respective Affiliates shall request confidential treatment for this Agreement and all Transaction Documents (or appropriate provisions of this Agreement, where applicable) by all applicable regulatory bodies, including, without limitation, the Securities and Exchange Commission, when making any regulatory filings, registrations or notifications, to the extent such request may be made in good faith.

Section 13.6 Expenses. Except as otherwise specified in this Agreement, all costs, fees and expenses incurred in connection with the performance of any and all obligations pursuant to this Agreement shall be paid by the Party incurring such costs, fees and expenses.

Section 13.7 Confidentiality and No Personal Solicitation. Each Party understands that certain information which it has been furnished and will be furnished in connection with this Agreement, including, but not limited to information concerning business procedures or prices, policies or plans of the other Party or any of its Affiliates, is confidential and proprietary, and each Party agrees that it will maintain the confidentiality of such information and will not disclose it to others or use it except in connection with the proposed transactions contemplated by this Agreement, without the prior written consent of the Party furnishing such information. Information which is generally known in the industry concerning a Party or among such Party's creditors generally or which has been disclosed to the other Party by third parties who have a right to do so shall not be deemed confidential or proprietary information for these purposes. If PHH, any of its Affiliates or any officer, director, employee or agent of any of the foregoing is at any time requested or required to disclose any information supplied to it by or on behalf of a Cendant Entity or an Affiliate thereof in connection with the transactions contemplated hereby, PHH agrees to provide the Cendant Entities with prompt notice of such request(s) so that the Cendant Entities may seek an appropriate protective order and/or waive PHH's compliance with the terms of this Section 13.7. If the Cendant Entities, any of their Affiliates or any officer, director, employee or agent of any of the foregoing is at any time requested or required to disclose any information supplied to it by or on behalf of PHH or an Affiliate thereof in connection with the transactions contemplated hereby, the Cendant Entities agree to provide PHH with prompt notice of such request(s) so that PHH may seek an appropriate protective order and/or waive the Cendant Entities' compliance with the terms of this Section 13.7. Notwithstanding the terms of this Section 13.7, if, in the absence of a protective order or the receipt of a waiver hereunder, any Party is nonetheless, in the opinion of its counsel, compelled to disclose information concerning the other Party to any tribunal or else stand liable for contempt or suffer other censure or penalty, such Party may disclose such information to such tribunal without liability hereunder. Upon termination of this Agreement, each Party agrees to promptly return to the other all confidential materials, and all copies thereof, which have been furnished to it in connection with the transactions contemplated hereby.

Section 13.8 Entire Agreement. This Agreement and the other Transaction Documents, as defined in Section 1.1 of the Operating Agreement, constitute the entire agreement among the Parties hereto and contains all of the agreements among such Parties with respect to the subject matter hereof and thereof. This Agreement and the other Transaction Documents supersede any and all other agreements, either oral or written, between such Parties with respect to the subject matter hereof and thereof.

Section 13.9 Amendment. Except as expressly provided herein, this Agreement may be amended only by a written agreement executed by all the Parties. Following such amendment, the Agreement, as amended, shall be binding upon all Parties. Notwithstanding the foregoing, in the event that Cendant Real Estate transfers all or part of its interest in Cendant Mobility or NRT, and in connection therewith the Cendant Member transfers a portion of its Interest in the Company, the Person acquiring such portion of the Cendant Member's Interest shall become a party to this Agreement and shall have all of the same rights and shall be subject to all of the same obligations



with respect to the business acquired from Cendant Real Estate as Cendant Real Estate has hereunder, and the Parties shall execute an amendment to this Agreement to reflect the same.

Section 13.10 Binding Effect. This Agreement will be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns; provided, however, that in the event that any Person acquires Cendant Real Estate, this Agreement will continue to be binding upon Cendant Real Estate but shall not be binding upon such acquiring Person or any Person that was an Affiliate of such acquiring Person immediately prior to such acquisition. In the event that Cendant Real Estate sells, transfers or otherwise disposes of NRT substantially as an entirety (whether by merger, sale of stock, sale of assets or otherwise), Cendant Real Estate shall make proper provision so that NRT and the Person acquiring or succeeding to NRT shall acknowledge and agree in writing that NRT shall assume all rights and obligations of Cendant Real Estate under this Agreement solely as they relate to the business of NRT; provided, however, that this Agreement shall not be binding upon any real estate or other business already owned and operated by such acquiring Person or any Person that was an Affiliate of such acquiring Person immediately prior to the completion of such acquisition.

Section 13.11 Negotiation and Mediation.

(a) Negotiation. In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, or the transactions contemplated hereby (a "Dispute"), upon the written notice of any Party hereto, the Parties shall attempt in good faith to negotiate a resolution of the Dispute. If the Parties are unable for any reason to resolve a Dispute within 30 days after the receipt of such notice, the Dispute shall be submitted to mediation in accordance with Section 13.11(b) hereof.

(b) Mediation. Any Dispute not resolved pursuant to Section 13.11(a) hereof shall, at the request (the "Mediation Request") of any Party (the "Disputing Party"), be submitted to mediation in accordance with the then-prevailing Commercial Mediation Rules of the American Arbitration Association, as modified herein (the "Rules"). The mediation shall be held in New York, New York. The Parties shall have twenty (20) days from receipt by a Party of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the Parties within twenty (20) days of receipt by a Party (or Parties) of a Mediation Request, then any Party may request (on written notice to the other Party or Parties), that the American Arbitration Association appoint a mediator in accordance with the Rules. All mediation pursuant to this Section 13.11(b) shall be confidential and shall be treated as compromise and settlement negotiations, and no oral or documentary representations made by the Parties during such mediation shall be admissible for any purpose in any subsequent proceedings. No Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by another Party in the mediation proceedings or about the existence, contents or results of the mediation award without the prior written consent of such other Party except in the course of a judicial or regulatory proceeding or as may be required by law, rule or regulation or requested by a governmental authority or securities

exchange. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall give the other Party a reasonable opportunity to protect its interests. If the Dispute has not been resolved within sixty (60) days of the appointment of a mediator, or within ninety (90) days of receipt by a Party of a Mediation Request in accordance with this Section 13.11 (whichever occurs sooner) or within such longer period as the Parties may agree to in writing, then any Party may file an action on the Dispute in any court having jurisdiction in accordance with Section 13.12 herein.

Section 13.12 Governing Law. **THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE CHOICE OF LAWS RULES THEREOF, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.** Any legal suit, action or proceeding against any of the Parties hereto arising out of or relating to this Agreement shall only be instituted in any federal or state court in New York, New York, pursuant to Section 5-1402 of the New York General Obligations Law, and each Party hereby irrevocably submits to the exclusive jurisdiction of any such court in any such suit, action or proceeding. The Parties hereby agree to venue in such courts and hereby waive, to the fullest extent permitted by law, any claim that any such action or proceeding was brought in an inconvenient forum. Each of the Parties hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

Section 13.13 Effect of Waiver or Consent. No provision of this Agreement shall be deemed to have been waived unless such waiver is contained in a written notice given to the Party claiming such waiver has occurred. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to this Agreement is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to this Agreement. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to this Agreement, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

Section 13.14 Notices. To be effective, unless otherwise specified in this Agreement, all notices and demands, consents and other communications under this Agreement must be in writing and must be given (a) by depositing the same in the United States mail, postage prepaid, certified or registered, return receipt requested, (b) by delivering the same in person and receiving a signed receipt therefore, (c) by sending the same by a nationally recognized overnight delivery service or (d) by telecopy (promptly confirmed by telephone and followed by personal or nationally recognized overnight delivery). For purposes of notices, demands, consents and other communications under this Agreement, the addresses of the Parties (and their respective counsel, if applicable) shall be as follows:

If to a Cendant Entity, addressed to:

Cendant Corporation  
9 West 57th Street  
New York, New York 10021  
Facsimile: (212) 413-1922  
Attention: Eric J. Bock,  
Executive Vice President-Law  
and Corporate Secretary

If to a PHH Entity or the Company, addressed to:

PHH Mortgage Corporation  
3000 Leadenhall Road  
Mail Stop ACC  
Mt. Laurel, NJ 08054  
Facsimile: (856) 917-0950  
Attention: William F. Brown,  
Senior Vice President  
and General Counsel

Copies of all notices hereunder shall be delivered to:

Skadden, Arps, Slate, Meagher & Flom LLP  
Four Times Square  
New York, New York 10036  
Facsimile: (212) 735-2000  
Attention: Fred B. White III, Esq.

Notices, demands, consents and other communications mailed in accordance with the foregoing clause (a) shall be deemed to have been given, made and received three (3) Business Days following the date so mailed. Notices, demands, consents and other communications given in accordance with the foregoing clauses (b) and (d) shall be deemed to have been given, made and received when sent on a Business Day or, if not a Business Day, then the next succeeding Business Day. Notices, demands, consents and other communications given in accordance with the foregoing clause (c) shall be deemed to have been given, made and received when delivered or refused on a Business Day or, if not a Business Day, then the next succeeding Business Day. Any Party or its assignee may designate a different address to which notices or demands shall thereafter be directed and such designation shall be made by written notice given in the manner hereinabove required, provided, that at all times each Party shall be required to maintain a notice address in the continental United States.

Section 13.15 No Assignment. Except as specifically provided elsewhere herein, no Party may assign all or any part of its rights or obligations hereunder without first obtaining the written consent of the other Party.

Section 13.16 Benefit of Parties Only. This Agreement is made for the sole benefit of the Parties hereto and of their respective successors and permitted assigns. Nothing herein shall create, or be deemed to create, a relationship between the Parties hereto, or either of them and any third person in the nature of a third-party beneficiary, equitable lien or fiduciary relationship.

Section 13.17 No Joint Venture; Legal Entity. The Parties hereto agree that the relationships existing among them are contractual in nature, and that nothing contained herein or in the other Transaction Documents is intended to create, or shall be deemed or construed as creating, any legal entity between the Parties hereto or the Parties thereto other than as specifically set forth in the Operating Agreement. This Agreement shall not be deemed to create a joint venture or partnership among the Parties hereto. No Party hereto shall have the authority or right, or hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of any other Party hereto, except as expressly provided herein or in the Operating Agreement.

Section 13.18 Counterparts. This Agreement may be executed in several counterparts, each of which will be deemed an original but all of which will constitute one and the same.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective officers thereunto duly authorized, as of the day and year first above written.

CENDANT REAL ESTATE SERVICES GROUP, LLC

By: /s/ Eric J. Bock  
Name: Eric J. Bock  
Title: Executive Vice President and Secretary

CENDANT REAL ESTATE SERVICES VENTURE PARTNER, INC.

By: /s/ Eric J. Bock  
Name: Eric J. Bock  
Title: Executive Vice President and Secretary

PHH CORPORATION

By: /s/ Terence W. Edwards  
Name: Terence W. Edwards  
Title: President and Chief Executive Officer

CENDANT MORTGAGE CORPORATION

By: /s/ Terence W. Edwards  
Name: Terence W. Edwards  
Title: President and Chief Executive Officer

PHH HOME LOANS, LLC

By: /s/ Terence W. Edwards  
Name: Terence W. Edwards  
Title: President and Chief Executive Officer

PHH BROKER PARTNER CORPORATION

By: /s/ Terence W. Edwards  
Name: Terence W. Edwards  
Title: President

**SEPARATION AGREEMENT**  
**between**  
**CENDANT CORPORATION**  
**and**  
**PHH CORPORATION**

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**EXHIBITS**

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- Exhibit B Transition Services Agreement
- Exhibit C Cendant Portions
- Exhibit D Certain Indemnified Matters

## SEPARATION AGREEMENT

This Separation Agreement (this "Agreement") is dated as of January 31, 2005, between CENDANT CORPORATION, a Delaware corporation ("Cendant"), and PHH CORPORATION, a Maryland corporation ("PHH," and together with Cendant, each a "Party," and together, the "Parties"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in ARTICLE V hereof.

### RECITALS

WHEREAS, Cendant is the beneficial owner of all the issued and outstanding common stock of PHH;

WHEREAS, Cendant, through its wholly-owned subsidiary, PHH, is engaged in the business of home mortgage lending and commercial fleet management services;

WHEREAS, the Boards of Directors of Cendant and PHH have each determined that it would be appropriate and desirable to separate the PHH Business from Cendant by means of the Distribution (as defined herein);

WHEREAS, PHH has registered shares of PHH common stock pursuant to a registration statement on Form 8-A pursuant to the Securities Exchange Act of 1934 (the "Registration Statement"); and

WHEREAS, the Parties intend in this Agreement, including the Exhibits and Schedules hereto, to set forth the principal arrangements between them regarding the separation of the PHH Business from Cendant;

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and provisions of this Agreement, Cendant and PHH mutually covenant and agree as follows:

### ARTICLE I

#### COVENANTS AND OTHER MATTERS

##### Section 1.1 Other Agreements.

Cendant and PHH agree to execute or cause to be executed by the appropriate parties and deliver, as appropriate, such other agreements, instruments and other documents as may be necessary or desirable in order to effect the purposes of this Agreement and the Ancillary Agreements.

##### Section 1.2 Further Instruments.

At the request of Cendant and without further consideration, PHH will execute and deliver, and will cause its applicable Subsidiaries to execute and deliver, to Cendant and its Subsidiaries all instruments, assumptions, novations, undertakings, substitutions

or other documents and take such other action as Cendant may reasonably deem necessary or desirable in order to have PHH fully and unconditionally assume and discharge the Liabilities contemplated to be assumed by PHH under this Agreement or any document in connection herewith and to relieve Cendant or any Cendant Affiliate of any Liability or obligation with respect thereto and evidence the same to third parties. Neither Party shall be obligated, in connection with the foregoing, to expend money other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees on the behalf of the other Party, unless reimbursed by the other Party. Furthermore, each Party, at the request of the other Party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby.

### **Section 1.3 Agreement For Exchange Of Information.**

(a) Generally. Each of Cendant and PHH agrees to provide, or cause to be provided, to the other, at any time, as soon as reasonably practicable after written request therefor, all reports and other Information regularly provided by PHH or any PHH Affiliate to Cendant prior to the Distribution Date and any Information in the possession or under the control of such Party that the requesting Party reasonably needs (i) to comply with reporting, disclosure, filing or other requirements imposed on the requesting Party (including under applicable securities laws) by a Governmental Authority having jurisdiction over the requesting Party, (ii) to comply with any judicial, regulatory, administrative or other proceeding or order or to satisfy audit, accounting, claims, regulatory, litigation, stock exchange or other similar requirements (except in the case of a legal or other proceeding by one Party against the other Party), or (iii) to comply with its obligations under this Agreement or any Ancillary Agreement; provided, however, that in the event that any Party determines that any such provision of Information could be commercially detrimental, violate any law or agreement, or waive any attorney-client privilege, the Parties shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence. Each of Cendant and PHH agree to make their respective personnel available, at reasonable times and upon the provision of reasonable advance written notice, to discuss the Information exchanged pursuant to this Section 1.3.

(b) Internal Accounting Controls; Financial Information. After the Distribution Date and until the first Cendant fiscal year end occurring after the Distribution Date (and for a reasonable period thereafter as required to fulfill the Parties' respective reporting and tax obligations), (i) each Party shall maintain in effect at its own cost and expense adequate systems and controls for its business to the extent reasonably necessary to enable the other Party to satisfy its reporting, tax return, accounting, audit and other obligations, and (ii) each Party shall provide, or cause to be provided, to the other Party and its Subsidiaries, in such form as the Party has previously provided such information or, if not previously provided, as such requesting Party shall reasonably request, at no charge to the requesting Party, all financial and other data and information as the requesting Party reasonably determines necessary or advisable in order to prepare its financial statements and reports or filings with any Governmental Authority.

(c) Ownership Of Information. Any Information owned by a Party that is provided to a requesting Party pursuant to this Section 1.3 shall be deemed to remain the property of the providing Party. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any such Information.

(d) Record Retention. To facilitate the possible exchange of Information pursuant to this Section 1.3 and other provisions of this Agreement after the Distribution Date, each Party agrees to use its commercially reasonable best efforts until the Distribution Date to retain all Information in its respective possession or control substantially in accordance with its respective record retention policies as in effect on the Distribution Date. However, at any time after the Distribution Date, each Party may amend its respective record retention policies at such Party's discretion; provided, however, that if a Party desires to effect the amendment within seven (7) years after the Distribution Date, the amending Party must give thirty (30) days prior written notice of such change in the policy to the other Party to this Agreement. No Party will destroy, or permit any of its Subsidiaries to destroy, any Information that exists on the Distribution Date (other than Information that is permitted to be destroyed under the current respective record retention policies of each Party) and that falls under the categories listed in Section 1.3(a), without first notifying the other Party of the proposed destruction and giving the other Party the opportunity to take possession or make copies of such Information prior to such destruction.

(e) Limitation Of Liability. Each Party will use its commercially reasonable best efforts to ensure that Information provided to the other Party hereunder is accurate and complete; provided, however, no Party shall have any Liability to any other Party in the event that any Information exchanged or provided pursuant to this Section 1.3 is found to be inaccurate, in the absence of gross negligence or willful misconduct by the party providing such Information. No Party shall have any Liability to any other Party if any Information is destroyed or lost after the relevant Party has complied with the provisions of Section 1.3(d).

(f) Other Agreements Providing For Exchange Of Information. The rights and obligations granted under this Section 1.3 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of Information set forth in this Agreement and any Ancillary Agreement.

(g) Production Of Witnesses; Records; Cooperation. After the Distribution Date, except in the case of a legal or other proceeding by one Party against another Party, each Party hereto shall use its commercially reasonable efforts to make available to each other Party, at reasonable times and upon the provision of reasonable advance written notice, the former, current and future directors, officers, employees, other personnel and agents of such Party as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other

documents may reasonably be required in connection with any legal, administrative or other proceeding in which the requesting Party may from time to time be involved, regardless of whether such legal, administrative or other proceeding is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all costs and expenses in connection therewith.

**Section 1.4 Auditors And Audits; Financial Statements; Accounting Matters.** Each Party agrees that:

(a) Date Of Auditors' Opinion And Quarterly Reviews. Until the first Cendant fiscal year end occurring after the Distribution Date (and for a reasonable period thereafter as required to prepare consolidated financial statements or to complete a financial statement audit for the fiscal year during which the Distribution occurs), PHH shall use its best efforts to enable its independent certified public accountants ("PHH's Auditors") to complete their audit such that they will date their opinion on PHH's audited annual financial statements on the same date that Cendant's independent certified public accountants ("Cendant's Auditors") date their opinion on Cendant's audited annual financial statements, and to enable Cendant to meet its timetable for the printing, filing and public dissemination of Cendant's annual financial statements, which for 2005 shall be March 1, 2005. Until the first Cendant fiscal year end occurring after the Distribution Date (and for a reasonable period thereafter as required to prepare consolidated financial statements or to complete a financial statement audit for the fiscal year during which the Distribution occurs), PHH shall use its best efforts to enable the PHH Auditors to complete their annual audit and quarterly review procedures such that they will provide clearance on PHH's annual and quarterly financial statements on the same date that Cendant's Auditors provide clearance on Cendant's annual and quarterly financial statements. To the extent necessary to fulfill its obligations under this Section 1.4(a), PHH acknowledges and agrees that it will file any quarterly and annual reports required to be filed by it under the Exchange Act on an accelerated basis, consistent with the "accelerated filer" (as defined in Exchange Act Rule 12b-2) filing schedule applicable to Cendant.

(b) Annual And Quarterly Financial Statements. PHH shall not change its fiscal year until the Cendant fiscal year end first occurring after the Distribution Date and thereafter to the extent necessary for the purpose of preparing consolidated financial statements or completing a financial statement audit. PHH shall provide to Cendant on a timely basis all Information that Cendant reasonably requires to meet its schedule for the preparation, printing, filing, and public dissemination of Cendant's annual, quarterly and monthly financial statements; provided that Cendant shall give PHH reasonable prior notice of the Information that will be required so that PHH can satisfy its obligations hereunder. Without limiting the generality of the foregoing, PHH will provide all required financial Information with respect to PHH and its Subsidiaries to PHH's Auditors in a sufficient and reasonable time and in sufficient detail to permit PHH's Auditors to take all steps and perform all reviews necessary to provide sufficient assistance to Cendant's Auditors with respect to financial Information to be included or contained in Cendant's annual, quarterly and monthly financial statements. Similarly, Cendant shall provide to PHH on a timely basis all financial Information that

PHH reasonably requires to meet its schedule for the preparation, printing, filing, and public dissemination of PHH's annual, quarterly and monthly financial statements; provided that PHH shall give Cendant reasonable prior notice of the Information that will be required so that Cendant can satisfy its obligations hereunder. Without limiting the generality of the foregoing, Cendant will provide all required financial Information with respect to Cendant and its Subsidiaries to PHH's Auditors in a sufficient and reasonable time and in sufficient detail to permit PHH's Auditors to take all steps and perform all reviews necessary to provide sufficient assistance to PHH's Auditors with respect to Information to be included or contained in PHH's annual and quarterly financial statements.

(c) Access to Personnel Performing The Annual Audit And Quarterly Reviews. Until March 15, 2006 and thereafter to the extent such information and cooperation is necessary for the preparation of consolidated financial statements or completing a financial statements audit, PHH shall authorize PHH's Auditors to make available to Cendant's Auditors, at reasonable times and upon the provision of reasonable advance written notice, both the personnel who performed or will perform the annual audits and quarterly reviews of PHH and work papers related to the annual audits and quarterly reviews of PHH, in all cases within a reasonable time prior to Cendant's Auditors' opinion date, so that Cendant's Auditors are able to perform the procedures they consider necessary to take responsibility for the work of PHH's Auditors as it relates to Cendant's Auditors' report on Cendant's financial statements, all within sufficient time to enable Cendant to meet its timetable for the printing, filing and public dissemination of Cendant's annual and quarterly statements. Similarly, Cendant shall authorize Cendant's Auditors to make available to PHH's Auditors, at reasonable times and upon the provision of reasonable advance written notice, both the personnel who performed or will perform the annual audits and quarterly reviews of Cendant and work papers related to the annual audits and quarterly reviews of Cendant, in all cases within a reasonable time prior to PHH's Auditors' opinion date, so that PHH's Auditors are able to perform the procedures they consider necessary to take responsibility for the work of Cendant's Auditors as it relates to PHH's Auditors' report on PHH's statements, all within sufficient time to enable PHH to meet its timetable for the printing, filing and public dissemination of PHH's annual and quarterly financial statements.

(d) Controls and Procedures. PHH and the PHH Affiliates agree to provide any assistance reasonably requested by Cendant to enable Cendant to comply with the Sarbanes-Oxley Act of 2002, the rules of the Public Company Accounting Oversight Board and rules of the Securities and Exchange Commission (the "SEC") relating to (i) disclosure controls and procedures (as such act or rules may be amended from time to time, the "Control Rules") and (ii) inquiries by the SEC, including, but not limited to, comment letters. Such assistance shall include but shall not be limited to:

- (i) documenting PHH's controls and procedures related to the PHH Business;
- (ii) cooperating with Cendant's Auditors in connection with the testing of such controls and procedures;



- (iii) making quarterly representations to Cendant regarding any material changes to such controls and procedures;
- (iv) remediating any material weakness or significant deficiency as defined by the Control Rules or any other deficiency that would prevent Cendant from complying with the Control Rules; and
- (v) providing an unqualified "Type 2" SAS 70 Report issued by an auditing firm acceptable to Cendant in connection with its obligations under the Control Rules with respect to the PHH Business.

(e) Access To Books And Records. Until the first Cendant fiscal year end occurring after the Distribution Date and thereafter to the extent such information and cooperation is necessary for the preparation of consolidated financial statements or completing a financial statements audit, and until all governmental audits are complete and the applicable statute of limitations for tax matters has expired, PHH shall provide Cendant's internal auditors, counsel and other designated representatives of Cendant access during normal business hours to (i) the premises of PHH and its Subsidiaries and all Information (and duplicating rights) within the knowledge, possession or control of PHH and its Subsidiaries and (ii) the officers and employees of PHH and its Subsidiaries, so that Cendant or Cendant's Auditors may conduct reasonable audit procedures with respect to the financial information provided by PHH pursuant hereto as well as to the internal accounting controls and operations of PHH and its Subsidiaries. Similarly, Cendant shall provide PHH's internal auditors, counsel and other designated representatives of PHH access during normal business hours to (i) the premises of Cendant and its Subsidiaries and all Information (and duplicating rights with respect thereto) within the knowledge, possession or control of Cendant and its Subsidiaries and (ii) the officers and employees of Cendant and its Subsidiaries, so that PHH or PHH's Auditors may conduct reasonable audit procedures with respect to the financial information provided by Cendant pursuant hereto as well as to the internal accounting controls and operations of Cendant and its Subsidiaries. This Section 1.4(e) shall survive termination of this Agreement for a period of seven (7) years after such termination.

(f) Notice Of Change In Accounting Principles. Until the first Cendant fiscal year end occurring after the Distribution Date and thereafter if a change in accounting principles by a Party hereto would affect the historical financial statements of the other Party, neither Party shall make or adopt any significant changes in its accounting estimates or accounting principles from those in effect on the Distribution Date without first consulting with the other Party, and if requested by the other Party, such Party's independent public accountants with respect thereto. Cendant shall give PHH, and PHH shall give Cendant, as much prior notice as reasonably practical of any proposed determination of, or any significant changes in, its accounting estimates or accounting principles from those in effect on the Distribution Date. Cendant will consult with PHH and, if requested by PHH, Cendant will consult with PHH's independent public auditors with respect thereto. This Section 1.4(f) shall not apply to any changes made by a Party in its accounting estimates or accounting principles which are required to be made

by such Party as result of changes in Generally Accepted Accounting Principles in the United States after the date of this Agreement.

(g) Conflict With Third-Party Agreements. Nothing in Section 1.3 or Section 1.4 shall require PHH or Cendant to violate any agreement with any third party regarding the confidentiality of confidential and proprietary information relating to that third party or its business; provided, however, that in the event that PHH or Cendant is required under Section 1.3 or Section 1.4 to disclose any such Information, PHH or Cendant, as applicable, shall use its commercially reasonable best efforts to seek to obtain such third party's consent to the disclosure of such information.

#### **Section 1.5 Confidentiality.**

(a) Notwithstanding any termination of this Agreement, for a period of ten (10) years from the Distribution Date, Cendant and PHH shall hold, and shall cause each of their respective Subsidiaries to hold, and shall each cause their respective officers, employees, agents, consultants and advisors to hold, in strict confidence, and not to disclose or release or use, without the prior written consent of the other Party, any and all Confidential Information (as defined herein) concerning the other Party; provided, that the Parties may disclose, or may permit disclosure of, Confidential Information (i) to their respective auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such information and are informed of their obligation to hold such information confidential to the same extent as is applicable to the Parties hereto and in respect of whose failure to comply with such obligations, PHH or Cendant, as the case may be, will be responsible, (ii) if the Parties or any of their respective Subsidiaries are required or compelled to disclose any such Confidential Information by judicial or administrative process or by other requirements of law or stock exchange rule, (iii) as required in connection with any legal or other proceeding by one Party against another Party, or (iv) as necessary in order to permit a Party to prepare and disclose its financial statements. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made pursuant to clause (ii) above, Cendant or PHH, as the case may be, shall promptly notify the other of the existence of such request or demand and shall provide the other a reasonable opportunity to seek an appropriate protective order or other remedy, which both Parties will cooperate in obtaining. In the event that such appropriate protective order or other remedy is not obtained, the Party whose Confidential Information is required to be disclosed shall or shall cause the other Party to furnish, or cause to be furnished, only that portion of the Confidential Information that is legally required to be disclosed and shall take commercially reasonable steps to ensure that confidential treatment is accorded such information. As used in this Section 1.5:

(i) "Confidential Information" shall mean Confidential Business Information and Confidential Operational Information concerning one Party which, prior to or following the Distribution Date, has been disclosed by Cendant or its Subsidiaries on the one hand, or PHH or its Subsidiaries, on the other hand, in written, oral (including by recording), electronic, or visual form to, or otherwise has come into the possession of, the other, including pursuant to the

access provisions of Section 1.3 or Section 1.4 hereof or any other provision of this Agreement (except to the extent that such Information can be shown to have been (x) in the public domain through no fault of such Party (or such Party's Subsidiary) or (y) lawfully acquired from other sources by the Party (or such Party's Subsidiary) to which it was furnished; provided, however, in the case of (y) that, to the furnished Party's knowledge, such sources did not provide such Information in breach of any confidentiality obligations).

(ii) "Confidential Operational Information" shall mean all proprietary operational information, data or material including, without limitation, (a) specifications, ideas and concepts for products and services, (b) quality assurance policies, procedures and specifications, (c) customer information, (d) computer software and derivatives thereof, (e) training materials and information and (f) all other know-how, methodology, procedures, techniques and trade secrets related to design and development.

(iii) "Confidential Business Information" shall mean all proprietary information, data or material other than Confidential Operational Information, including, but not limited to (a) proprietary earnings reports and forecasts, (b) proprietary macro-economic reports and forecasts, (c) proprietary business plans, (d) proprietary general market evaluations and surveys and (e) proprietary financing and credit-related information.

(b) Notwithstanding anything to the contrary set forth herein, (i) Cendant and its Subsidiaries, on the one hand, and PHH and its Subsidiaries, on the other hand, shall be deemed to have satisfied their obligations hereunder with respect to Confidential Information if they exercise the same degree of care (but no less than a reasonable degree of care) as they take to preserve confidentiality for their own similar Information and (ii) confidentiality obligations provided for in any agreement between Cendant or its Subsidiaries, or PHH or any of its Subsidiaries, on the one hand, and any employee of Cendant or any of its Subsidiaries, or PHH or any of its Subsidiaries, on the other hand shall remain in full force and effect. Notwithstanding anything contained to the contrary set forth herein, Confidential Information of Cendant and its Subsidiaries, on the one hand, or PHH and its Subsidiaries, on the other hand, in the possession of and used by the other as of the Distribution Date may continue to be used by such Person in possession of the Confidential Information in and only in the operation of the business of Cendant or the PHH Business, as the case may be, provided that such use is not competitive in nature, and may be used only so long as the Confidential Information is maintained in confidence and not disclosed in violation of Section 1.5(a). Such continued right to use may not be transferred to any third party without the prior written consent of the applicable Party.

#### **Section 1.6 Privileged Matters.**

(a) Cendant and PHH agree that their respective rights and obligations to maintain, preserve, assert or waive any or all privileges belonging to either Party or their Subsidiaries with respect to the PHH Business or the business of Cendant,

including but not limited to the attorney-client and work product privileges (collectively, "Privileges"), shall be governed by the provisions of this Section 1.6. With respect to Privileged Information of Cendant (as defined below), Cendant shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and PHH shall take no action (nor permit any of its Subsidiaries to take action) without the prior written consent of Cendant that could result in any waiver of any Privilege that could be asserted by Cendant or any of its Subsidiaries under applicable law and this Agreement. With respect to Privileged Information of PHH (as defined below), PHH shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and Cendant shall take no action (nor permit any of its Subsidiaries to take action) without the prior written consent of PHH that could result in any waiver of any Privilege that could be asserted by PHH or any of its Subsidiaries under applicable law and this Agreement. The rights and obligations created by this Section 1.6 shall apply to all Information as to which Cendant or PHH or their respective Subsidiaries would be entitled to assert or has asserted a Privilege without regard to the effect, if any, of the Distribution ("Privileged Information"). Privileged Information of Cendant includes but is not limited to (i) any and all Privileged Information regarding the business of Cendant and its Subsidiaries (other than the PHH Business; provided that PHH has assumed and will be liable on or after the Distribution Date for any Liability or claim arising with respect to such Information), whether or not it is in the possession of PHH or any of its Subsidiaries; (ii) all communications subject to a Privilege between counsel for Cendant (including in-house counsel) and any person who, at the time of the communication, was an employee of Cendant, regardless of whether such employee is or becomes an employee of PHH or any of its Subsidiaries and (iii) all Information that refers or relates to Privileged Information of Cendant. Privileged Information of PHH includes but is not limited to (x) any and all Privileged Information regarding the PHH Business, whether or not it is in the possession of Cendant or any of its Subsidiaries; provided that PHH has assumed and will be liable on or after the Distribution Date for any Liability or claim arising with respect to such Information; (y) all communications subject to a Privilege between counsel for the PHH Business (including in-house counsel and former in-house counsel who are employees of Cendant) and any person who, at the time of the communication, was an employee of PHH, regardless of whether such employee was, is or becomes an employee of Cendant or any of its Subsidiaries and (z) all Information that refers or relates to Privileged Information of PHH.

(b) Upon receipt by Cendant or PHH, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other, or if Cendant or PHH, as the case may be, obtains knowledge that any current or former employee of Cendant or PHH, as the case may be, has received any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other, Cendant or PHH, as the case may be, shall promptly notify the other of the existence of the request and shall provide the other a reasonable opportunity to review the Information and to assert any rights it may have under this Section 1.6 or otherwise to prevent the production or disclosure of Privileged Information. Cendant or PHH, as the case may be, will not produce or disclose to any third party any of the other's Privileged Information under this Section 1.6 unless (a) the

other has provided its express written consent to such production or disclosure or (b) a court of competent jurisdiction has entered an order not subject to interlocutory appeal or review finding that the Information is not entitled to protection from disclosure under any applicable privilege, doctrine or rule.

(c) Cendant's transfer of books and records pertaining to the PHH Business and other Information to PHH, Cendant's agreement to permit PHH to obtain Information existing prior to the Distribution Date, PHH's transfer of books and records pertaining to Cendant, if any, and other Information and PHH's agreement to permit Cendant to obtain Information existing prior to the Distribution Date are made in reliance on Cendant's and PHH's respective agreements, as set forth in Section 1.5 and this Section 1.6, to maintain the confidentiality of such Information and to take the steps provided herein for the preservation of all Privileges that may belong to or be asserted by Cendant or PHH, as the case may be. The access to Information, witnesses and individuals being granted pursuant to Section 1.3 and Section 1.4 and the disclosure to PHH and Cendant of Privileged Information relating to the PHH Business or the business of Cendant pursuant to this Agreement shall not be asserted by Cendant or PHH to constitute, or otherwise deemed, a waiver of any Privilege that has been or may be asserted under this Section 1.6 or otherwise. Nothing in this Agreement shall operate to reduce, minimize or condition the rights granted to Cendant and PHH in, or the obligations imposed upon Cendant and PHH by, this Section 1.6.

**Section 1.7 Mail And Other Communications.** After the Distribution Date, each of Cendant and PHH may receive mail, facsimiles, packages and other communications properly belonging to the other. Accordingly, at all times after the Distribution Date, each of Cendant and PHH authorizes the other to receive and open all mail, telegrams, packages and other communications received by it and not unambiguously intended for the other Party or any of the other Party's officers or directors, and to retain the same to the extent that they relate to the business of the receiving Party or, to the extent that they do not relate to the business of the receiving Party, the receiving Party shall promptly deliver such mail, telegrams, packages or other communications, including, without limitation, notices of any liens or encumbrances on any asset transferred to PHH in connection with its separation from Cendant (or, in case the same relate to both businesses, copies thereof), to the other Party as provided for in Section 4.5 hereof. The provisions of this Section 1.7 are not intended to, and shall not, be deemed to, constitute an authorization by either Cendant or PHH to permit the other to accept service of process on its behalf and neither Party is or shall be deemed to be the agent of the other for service of process purposes.

**Section 1.8 Payment Of Expenses.** Except as otherwise provided in this Agreement, the Ancillary Agreements or any other agreement between the Parties relating to the Distribution, the Parties agree that all out-of-pocket fees and expenses incurred, or to be incurred, and directly related to the transactions contemplated hereby shall be paid by Cendant; provided, however, that Cendant shall not be obligated to pay any such expenses incurred by PHH unless such expenses shall have had the prior written approval of an officer of Cendant. Notwithstanding the foregoing, PHH and Cendant

shall each be responsible for their own internal fees, costs and expenses (*e.g.*, salaries of personnel) incurred in connection with the Distribution.

**Section 1.9 Dispute Resolution.**

(a) **Negotiation.** In the event of any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, or the transactions contemplated hereby (a “Dispute”), upon the written notice of any Party hereto, the Parties shall attempt in good faith to negotiate a resolution of the Dispute. If the Parties are unable for any reason to resolve a Dispute within 30 days after the receipt of such notice, the Dispute shall be submitted to mediation in accordance with Section 1.9(b) hereof.

(b) **Mediation.** Any Dispute not resolved pursuant to Section 1.9(a) hereof shall, at the request (the “Mediation Request”) of any Party (the “Disputing Party”), be submitted to mediation in accordance with the then-prevailing Commercial Mediation Rules of the American Arbitration Association, as modified herein (the “Rules”). The mediation shall be held in New York, New York. The Parties shall have twenty (20) days from receipt by a party of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the Parties within twenty (20) days of receipt by a Disputing Party (or Parties) of a Mediation Request, then any Party may request (on written notice to the other Party), that the American Arbitration Association appoint a mediator in accordance with the Rules. All mediation pursuant to this Section 1.9(b) shall be confidential and shall be treated as compromise and settlement negotiations, and no oral or documentary representations made by the Parties during such mediation shall be admissible for any purpose in any subsequent proceedings. Neither Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by the other Party in the mediation proceedings or about the existence, contents or results of the mediation award without the prior written consent of such other Party except in the course of a judicial or regulatory proceeding or as may be required by law, rule or regulation or requested by a governmental authority or securities exchange. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall give the other Party a reasonable opportunity to protect its interests. If the Dispute has not been resolved within sixty (60) days of the appointment of a mediator, or within ninety (90) days of receipt by a Disputing Party of notice in accordance with Section 4.5 (whichever occurs sooner) or within such longer period as the Parties may agree to in writing, then any Party may file an action on the Dispute in any court having jurisdiction in accordance with Section 4.3 herein.

**Section 1.10 Governmental Approvals.** To the extent that any of the transactions contemplated by this Agreement requires any Governmental Approvals, the Parties will use their commercially reasonable best efforts to obtain such Governmental Approvals.

**Section 1.11 No Representation Or Warranty.** Cendant does not, in this Agreement or any other agreement, instrument or document contemplated by this Agreement, make any representation as to, warranty of or covenant with respect to:

(a) the value of any asset or thing of value transferred, or to be transferred, to PHH;

(b) the freedom from encumbrance of any asset or thing of value transferred, or to be transferred, to PHH; provided, however, that Cendant agrees to notify PHH promptly in the event Cendant receives any notice or claim of any encumbrance on or against any asset or thing of value transferred, or to be transferred, to PHH;

(c) the absence of defenses or freedom from counterclaims with respect to any claim transferred, or to be transferred, to PHH; provided, however, that neither Cendant nor its Subsidiaries have any counterclaims with respect to any claim transferred, or to be transferred, to PHH; or

(d) the legal sufficiency of any assignment, document or instrument delivered hereunder to convey title to any asset or thing of value upon its execution, delivery and filing.

Except as may expressly be set forth herein or in any Ancillary Agreement, all assets transferred, or to be transferred, to PHH have been, or shall be, as the case may be, transferred "AS IS, WHERE IS" and PHH shall bear the economic and legal risk that any conveyance shall prove to be insufficient to vest in PHH good and marketable title, free and clear of any lien, claim, equity or other encumbrance.

**Section 1.12 Employee Solicitation.** Neither Cendant nor any Cendant Affiliate on the one hand, nor PHH nor any PHH Affiliate on the other hand, will, without the prior written consent of the other Party, either directly or indirectly, on their own behalf or in the service or on behalf of others, hire as an employee or independent contractor (i) for a period of two years following the Distribution Date, any person employed by the other Party whose then current annual base salary plus then current target cash bonus exceeds \$150,000 (excluding any equity-based compensation), or (ii) for a period of two years following the Distribution Date, any person employed by the other Party who provides information technology services whose then current annual base salary plus then current target cash bonus exceeds \$75,000 (excluding any equity-based compensation).

**Section 1.13 Public Announcements.** PHH shall not issue a press release or other public announcement making reference to the transactions contemplated by this Agreement, other than as required by law, unless it has received the prior written approval of Cendant with respect to the proposed text of such press release or announcement, which approval shall not be unreasonably withheld or delayed, nor shall it make or publish any statement that is, or may be reasonably considered to be, disparaging of Cendant or any Cendant Affiliate, directors, employees, products or services.

**Section 1.14 Pension Plan.**

(a) As of the Distribution Date, PHH shall have adopted, approved and established the PHH Corporation Pension Plan, which shall be substantially

identical in all material respects to the Cendant Corporation Pension Plan, except that only those persons who (i) are actively employed by PHH as of the Distribution Date and (ii) have accrued a benefit under the Cendant Corporation Pension Plan as of the Distribution Date shall be eligible to participate therein (the "Eligible PHH Participants"). The PHH Corporation Pension Plan shall be qualified under Section 401(a) of the Code, and the trust under such plan shall be qualified under Section 501(a) of the Code. PHH shall take such action to obtain a determination letter in respect of the PHH Corporation Pension Plan.

(b) As of the Distribution Date, the PHH Corporation Pension Plan shall assume all Liabilities and obligations owed to the Eligible PHH Participants under the Cendant Corporation Pension Plan (and all predecessor plans). In addition and notwithstanding the generality of the foregoing, as of the Distribution Date, PHH shall retain or assume, as the case may be, all Liabilities and obligations owed or accrued with respect to active employees of PHH (or any PHH Affiliate) as of the Distribution Date under all non-qualified supplemental pension plans, including, without limitation, any supplemental executive retirement plan or excess benefits plan, (collectively, "Supplemental Plans") which cover such active employees, or with respect to which any such employee has an accrued benefit. Cendant and the Cendant Corporation Pension Plan, as applicable, shall retain all Liabilities and obligations owed to all other participants (the "Eligible Cendant Participants") under the Cendant Corporation Pension Plan (and all predecessor plans, including benefits of participants who are not active employees of PHH or a PHH Affiliate as of the Distribution Date under Supplemental Plans). Following the Distribution Date, Eligible PHH Participants shall continue to accrue additional benefits under the PHH Corporation Pension Plan in accordance with the terms and conditions of the PHH Corporation Pension Plan; provided, however, that, immediately following the Distribution, such terms and conditions shall be identical to the terms and conditions of the Cendant Corporation Pension Plan as in effect immediately prior to the Distribution Date, except that for all purposes references to service performed after the Distribution Date with Cendant shall instead apply to service with PHH; and; further, provided, that the foregoing shall in no way alter any right of PHH to, subsequent to the Distribution Date, amend or terminate the PHH Corporation Pension Plan or any Supplemental Plan in accordance with its terms and applicable law.

(c) Notwithstanding any other provision set forth in this Agreement (i) PHH and the PHH Corporation Pension Plan hereby agree to indemnify and hold harmless Cendant and the Cendant Corporation Pension Plan (and each of their respective affiliates, Subsidiaries, officers, employees, agents and fiduciaries) with respect to any and all claims, obligations and Liabilities applicable to or brought by the Eligible PHH Participants relating to the provision of pension benefits and the transactions contemplated hereunder, whether pursuant to the Cendant Corporation Pension Plan, the PHH Corporation Pension Plan, any predecessor or Supplemental Plan or otherwise and (ii) Cendant and the Cendant Corporation Pension Plan hereby agree to indemnify and hold harmless PHH and the PHH Corporation Pension Plan (and each of their respective affiliates, Subsidiaries, officers, employees, agents and fiduciaries) with respect to any and all claims, obligations and Liabilities applicable to or brought by the Eligible Cendant Participants relating to the provision of pension benefits and the



transactions contemplated hereunder, whether pursuant to the PHH Corporation Pension Plan, the Cendant Corporation Pension Plan, any predecessor or Supplemental Plan or otherwise.

(d) In consideration of the PHH Corporation Pension Plan accepting and assuming the Liabilities and obligations owed to Eligible PHH Participants, Cendant will cause the Cendant Corporation Pension Plan to make a direct transfer of a portion of its assets held in trust to the trust under the PHH Corporation Pension Plan (as soon as practicable but not earlier than 30 days following the filing of Form 5310A with the Internal Revenue Service). The value of the assets to be transferred from the Cendant Corporation Pension Plan to the PHH Corporation Plan will be determined as of the Distribution Date, and such value will be determined based upon applicable law, including under ERISA and IRS regulations, and as further reasonably agreed to by the respective independent actuaries engaged by the respective plans. With respect to each Eligible PHH Participant, the foregoing transfer and assumption of Liabilities shall be in accordance with Section 414(l) of the Code.

(e) PHH and Cendant will reasonably cooperate with each other in order to facilitate the foregoing provisions of this Section 1.14.

**Section 1.15 401(k) Plan.**

(a) As the Distribution Date, PHH shall have adopted, approved and established the PHH Corporation Employee Savings Plan (the "PHH 401(k) Plan"), which shall be substantially identical to the Cendant Corporation Employee Savings Plan (the "Cendant 401(k) Plan"), except that only persons who are actively employed by PHH following the Distribution Date, shall, following the Distribution Date, be eligible to participate therein. Following the Distribution Date (or, if earlier, the implementation of the PHH 401(k) Plan), no active employees of PHH shall be eligible to participate in the Cendant Corporation Employee Savings Plan. PHH shall promptly obtain a favorable IRS Determination Letter in respect of the PHH 401(k) Plan.

(b) Immediately following the Distribution Date, Cendant shall direct the trustee of the Cendant 401(k) Plan to transfer to the PHH 401(k) Plan all of the assets relating to account balances of all PHH 401(k) Plan participants as of the date of transfer, in kind, and including loan balances and loan agreements. Upon such transfer, PHH and the PHH 401(k) Plan shall assume all Liabilities under the Cendant 401(k) Plan with respect to all such PHH 401(k) Plan participants.

(c) PHH and Cendant will cooperate in order to accomplish the foregoing and to file any required forms.

**Section 1.16 Retiree Medical Plan.** As of the Distribution Date, PHH shall have adopted, approved and established the PHH Corporation Retiree Medical Plan, and Cendant shall have adopted the Cendant corporation Retiree Medical Plan, in such forms substantially as previously disclosed to each other. Following the Distribution Date (i) PHH shall assume any and all retiree medical and retiree insurance obligations, to the extent in existence immediately prior to the Distribution Date, related to any person who is actively employed by PHH immediately following the Distribution Date and (ii) Cendant shall retain any and all retiree medical and retiree insurance obligations,

to the extent in existence immediately prior to the Distribution Date, related to both (A) any person who was formerly employed by PHH and has retired by either PHH or Cendant prior to the Distribution Date and (B) any person who does not become an employee of PHH immediately following the Distribution Date.

**Section 1.17 Deferred Compensation Plans.** As of the Distribution Date, PHH shall have taken all steps necessary and appropriate to transfer and assign to Cendant sponsorship of the PHH Corporation Directors Deferred Compensation Plan and the PHH Corporation Directors Deferred Stock Plan (collectively, the “Director Plans”) and all liabilities and obligations thereunder (the “Director Plan Liabilities”). Such transfer and assignment shall be subject to and contingent upon (i) Cendant’s agreement to assume the Director Plans and the Director Plan Liabilities (which agreement shall not be unreasonably withheld) and (ii) the transfer by PHH to Cendant of all assets, trusts and other funding vehicles relating to the Director Plans and the Director Plan Liabilities, which assets, trusts and vehicles shall be at least equal in value to the Director Liabilities as of the date of actual transfer.

**Section 1.18 Equity Awards.** In accordance with such terms as the Cendant Compensation Committee shall determine in connection with the Distribution, Cendant shall adjust some or all of the Cendant equity-based incentive awards held by employees of PHH such that they are converted into awards based on or relating to PHH common stock. Following such adjustment and conversion, PHH shall assume all such awards relating to PHH common stock and all Liabilities and obligations therefor.

**Section 1.19 Certain Transactions**

(a) Prior to Distribution Date, Cendant and PHH shall, and shall cause each of their respective affiliates to, as applicable, (i) implement each of the following transactions: (a) the distribution by Cendant Mobility Services Corporation, a Delaware corporation (“Mobility”), to PHH of \$100 million in cash, (b) the distribution by PHH to Cendant of all of the outstanding stock of Mobility (which, at such time, will own all the other entities comprising the relocation and fuel card businesses previously owned by PHH, directly and indirectly) and (c) the contribution by Cendant Finance Holdings Corporation, a Delaware corporation, to PHH of all of the membership interests of Speedy Title and Appraisal Review Services, LLC and (ii) issue the redemption notices in connection with the prepayment by PHH of \$443 million of aggregate principal amount of outstanding unsecured indebtedness pursuant to the Note Purchase Agreement, dated May 3, 2002, between PHH and each of the purchasers named in Schedule A thereto.

(b) Prior to the Distribution Date, Cendant and PHH shall, and shall cause each of their respective affiliates to, as applicable (to the extent not previously effected) eliminate (whether by repayment, capital contribution, discharge or otherwise)

all intercompany accounts between Cendant and any Cendant Affiliates, on the one hand, and PHH and any PHH Affiliates, on the other hand.

**Section 1.20 Release.** PHH shall terminate the following agreements at the earliest date possible pursuant to the terms of each agreement, respectively, (i) the Alliance Agreement dated as of June 30, 2000, between Avis Group Holdings, Inc. (“Avis”) and BNP Paribas, a French societe anonyme (“Paribas”), entered into on behalf of certain of PHH’s Subsidiaries (the “Alliance Agreement”) and (ii) the Technology Agreement dated August 9, 2000 among Avis, Paribas and certain PHH Subsidiaries, as amended (the “Technology Agreement”), unless PHH shall have obtained the prior written release from Paribas, in a form reasonably satisfactory to Cendant, releasing Avis and Wright Express LLC from any liability or obligations in connection with the Alliance Agreement and the Technology Agreement (the “Paribas Release”). In connection with obtaining the Paribas Release, Avis and Cendant agree to execute the Paribas Release and such other documents as, in the reasonable opinion of Cendant, may be necessary to effect the Paribas Release.

**Section 1.21 Use of Cendant Name.** Except as otherwise provided pursuant to (x) the Trademark License Agreement dated as of January 31, 2005 between TM Acquisition Corp., Century 21 Real Estate LLC, Coldwell Banker Real Estate Corporation, ERA Franchise Systems, Inc. and PHH Home Loans, LLC or (y) the Trademark License Agreement dated as of January 31, 2005 between TM Acquisition Corp., Coldwell Banker Real Estate Corporation, ERA Franchise Systems, Inc. and PHH Mortgage Corporation, PHH agrees that it shall, and shall cause all PHH Affiliates to, as soon as reasonably practicable after the Distribution Date and in any event within ninety (90) days after the Distribution Date, (i) cease to make any use of the name “Cendant” and any trademarks related thereto or containing or comprising the foregoing, including any name or mark confusingly similar thereto or dilutive thereof (the “Cendant Marks”), (ii) terminate any license with Cendant or any Cendant Affiliates with respect to the use of any Cendant Marks, (iii) take all steps necessary, and fully cooperate with Cendant and any Cendant Affiliate, to remove the Cendant Marks from any corporate, trade, and assumed names and cancel any recordation of such names with any Governmental Authority, and change any corporate, trade, and assumed name that uses the Cendant Marks to a name that does not include the Cendant Marks or any variation, derivation, or colorable imitation thereof and (iv) remove, strike over or otherwise obliterate all Cendant Marks from (or otherwise not use) in all materials owned by PHH or any PHH Affiliate, including without limitation, any business cards, stationary, packaging materials, displays, signs, promotional and advertising materials, and other materials or media including any Internet usage or domain names that include the Cendant Marks.

## ARTICLE II

### MUTUAL RELEASES; INDEMNIFICATION

#### Section 2.1 Release Of Pre-Distribution Date Claims.

(a) PHH Release. Except as provided in Section 2.1(c), as of the Distribution Date, PHH does hereby, for itself and as agent for each PHH Affiliate,

remise, release and forever discharge the Cendant Indemnitees from any and all Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any past acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date, including in connection with the transactions and all other activities to implement the Distribution.

(b) Cendant Release. Except as provided in Section 2.1(c), as of the Distribution Date, Cendant does hereby, for itself and as agent for each Cendant Affiliate, remise, release and forever discharge the PHH Indemnitees from any and all Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any past acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date, including in connection with the transactions and all other activities to implement the Distribution.

(c) No Impairment. Nothing contained in Section 2.1(a) or Section 2.1(b) shall limit or otherwise affect any Party's rights or obligations pursuant to or contemplated by this Agreement or any Ancillary Agreement, in each case in accordance with its terms, including, without limitation, any obligations relating to indemnification, including indemnification pursuant to Section 2.2 and Section 2.3 of this Agreement, and any Insurance Proceeds under any Cendant Insurance Policies relating to the PHH Business which PHH is entitled to be paid.

(d) No Actions As To Released Pre-Distribution Date Claims. PHH agrees, for itself and as agent for each PHH Affiliate, not to make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against Cendant or any Cendant Affiliate, or any other Person released pursuant to Section 2.1(a), with respect to any Liabilities released pursuant to Section 2.1(a). Cendant agrees, for itself and as agent for each Cendant Affiliate, not to make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against PHH or any PHH Affiliate, or any other Person released pursuant to Section 2.1(b), with respect to any Liabilities released pursuant to Section 2.1(b).

(e) Further Instruments. At any time, at the request of any other Party, each Party and the Cendant Affiliates or PHH Affiliates, as applicable, shall execute and deliver releases reflecting the provisions hereof.

**Section 2.2 Indemnification By PHH.** Except as otherwise provided in this Agreement, PHH shall, for itself and as agent for each PHH Affiliate, indemnify, defend (or, where applicable, pay the defense costs for) and hold harmless the Cendant Indemnitees from and against, and shall reimburse such Cendant Indemnitees with respect to, any and all Losses that any third party seeks to impose upon the Cendant Indemnitees, or which are imposed upon the Cendant Indemnitees, and that relate to,

arise or result from, whether prior to or following the Distribution Date, any of the following items (without duplication):

- (a) any PHH Liability;
- (b) any breach by PHH or any PHH Affiliate of this Agreement or any of the Ancillary Agreements; and
- (c) any Liabilities relating to the Registration Statement, the Information Statement or the Investor Presentation, in each case, other than the Cendant Portions.

Except for any payment by PHH or any PHH Affiliate relating to the Escheatment Matter, in the event that PHH or any PHH Affiliate makes a payment to the Cendant Indemnitees hereunder, and any of the Cendant Indemnitees subsequently diminishes the Liability on account of which such payment was made, either directly or through a third-party recovery (other than a recovery indirectly from Cendant), Cendant will promptly repay (or will procure a Cendant Indemnitee to promptly repay) such PHH Affiliate the amount by which the payment made by such PHH Affiliate exceeds the actual cost of the associated indemnified Liability.

**Section 2.3 Indemnification By Cendant.** Except as otherwise provided in this Agreement, Cendant shall, for itself and as agent for each Cendant Affiliate, indemnify, defend (or, where applicable, pay the defense costs for) and hold harmless the PHH Indemnitees from and against, and shall reimburse such PHH Indemnitee with respect to, any and all Losses that any third party seeks to impose upon the PHH Indemnitees, or which are imposed upon the PHH Indemnitees, and that relate to, arise or result from, whether prior to or following the Distribution Date, any of the following items (without duplication):

- (a) any Liability of Cendant or any Cendant Affiliate arising out of the operation or conduct of the Cendant Business prior to, on or after the Distribution Date;
- (b) any breach by Cendant or any Cendant Affiliate of this Agreement or any of the Ancillary Agreements;
- (c) any Liabilities relating to Cendant Portions; and
- (d) any Liabilities for the matters set forth in Exhibit D.

In the event that Cendant or any Cendant Affiliate makes a payment to the PHH Indemnitees hereunder, and any of the PHH Indemnitees subsequently diminishes the Liability on account of which such payment was made, either directly or through a third-party recovery (other than a recovery indirectly from PHH), PHH will promptly repay (or will procure a PHH Indemnitee to promptly repay) such Cendant Affiliate the amount by which the payment made by such Cendant Affiliate exceeds the actual cost of the indemnified Liability.

**Section 2.4 Contribution.**

(a) If the indemnification provided for in Section 2.2(c) or Section 2.3(c) is unavailable to an indemnified party in respect of any Losses referred to therein, then an Indemnifying Party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses in such proportion as is appropriate to reflect the relative fault of PHH or any PHH Affiliate on the one hand and Cendant or any Cendant Affiliate on the other in connection with the statements or omissions that resulted in such Losses.

(b) No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

**Section 2.5 Ancillary Agreement Liabilities.** Notwithstanding any other provision in this Agreement to the contrary, any Liability specifically assumed by, or allocated to, a Party in any of the Ancillary Agreements shall be governed exclusively by the terms of such Ancillary Agreement. Moreover, notwithstanding anything in this Agreement to the contrary, this Agreement shall have no application to any matter that is governed by the Tax Sharing Agreement.

**Section 2.6 Other Agreements Evidencing Indemnification Obligations.** Cendant hereby agrees to execute, for the benefit of any PHH Indemnitee, such documents as may be reasonably requested by such PHH Indemnitee, evidencing Cendant's agreement that the indemnification obligations of Cendant set forth in this Agreement inure to the benefit of and are enforceable by such PHH Indemnitee. PHH hereby agrees to execute, for the benefit of any Cendant Indemnitee, such documents as may be reasonably requested by such Cendant Indemnitee, evidencing PHH's agreement that the indemnification obligations of PHH set forth in this Agreement inure to the benefit of and are enforceable by such Cendant Indemnitee.

**Section 2.7 Reductions For Insurance Proceeds And Other Recoveries.**

(a) **Insurance Proceeds.** The amount that any Indemnifying Party is or may be required to provide indemnification to or on behalf of any Indemnitee pursuant to Section 2.2 or Section 2.3, as applicable, shall be reduced (retroactively or prospectively) by any Insurance Proceeds or other amounts actually recovered from third parties by or on behalf of such Indemnitee in respect of the related Loss. The existence of a claim by an Indemnitee for monies from an insurer or against a third party in respect of any indemnifiable Loss shall not, however, delay any payment pursuant to the indemnification provisions contained herein and otherwise determined to be due and owing by an Indemnifying Party. Rather, the Indemnifying Party shall make payment in full of the amount determined to be due and owing by it against an assignment by the Indemnitee to the Indemnifying Party of the entire claim of the Indemnitee for Insurance Proceeds or against such third party. Notwithstanding any other provisions of this Agreement, it is the intention of the Parties that no insurer or any other third party shall

be (i) entitled to a benefit it would not be entitled to receive in the absence of the foregoing indemnification provisions, or (ii) relieved of the responsibility to pay any claims for which it is obligated. If an Indemnitee has received the payment required by this Agreement from an Indemnifying Party in respect of any indemnifiable Loss and later receives Insurance Proceeds or other amounts in respect of such indemnifiable Loss, then such Indemnitee shall hold such Insurance Proceeds or other amounts in trust for the benefit of the Indemnifying Party (or Indemnifying Parties) and shall pay to the Indemnifying Party, as promptly as practicable after receipt, a sum equal to the amount of such Insurance Proceeds or other amounts received, up to the aggregate amount of any payments received from the Indemnifying Party pursuant to this Agreement in respect of such indemnifiable Loss (or, if there is more than one Indemnifying Party, the Indemnitee shall pay each Indemnifying Party, its proportionate share (based on payments received from the Indemnifying Parties) of such Insurance Proceeds).

(b) Tax Cost/Tax Benefit. The amount that any Indemnifying Party is or may be required to provide indemnification to or on behalf of any Indemnitee pursuant to Section 2.2 or Section 2.3, as applicable, shall be (i) increased to take account of any net Tax cost incurred by the Indemnitee arising from the receipt or accrual of an indemnification payment hereunder (grossed up for such increase) and (ii) reduced to take account of any net Tax benefit realized by the Indemnitee arising from incurring or paying such loss or other Liability. In computing the amount of any such Tax cost or Tax benefit, the Indemnitee shall be deemed to recognize all other items of income, gain, loss, deduction or credit before recognizing any item arising from the receipt or accrual of any indemnification payment hereunder or incurring or paying any indemnified Loss. Any indemnification payment hereunder shall initially be made without regard to this Section 2.7(b) and shall be increased or reduced to reflect any such net Tax cost (including gross-up) or net Tax benefit only after the Indemnitee has actually realized such cost or benefit. For purposes of this Agreement, an Indemnitee shall be deemed to have “actually realized” a net Tax cost or a net Tax benefit to the extent that, and at such time as, the amount of Taxes payable by such Indemnitee is increased above or reduced below, as the case may be, the amount of Taxes that such Indemnitee would be required to pay but for the receipt or accrual of the indemnification payment or the incurrence or payment of such Loss, as the case may be. The amount of any increase or reduction hereunder shall be adjusted to reflect any Final Determination with respect to the Indemnitee’s Liability for Taxes, and payments between such indemnified parties to reflect such adjustment shall be made if necessary. Notwithstanding any other provision of this Agreement, to the extent permitted by applicable law and unless otherwise required by any Final Determination, the Parties hereto agree that any Indemnity Payment made hereunder shall be treated as a capital contribution or dividend distribution, as the case may be, made immediately prior to the Distribution and, accordingly, as not includible in the taxable income of the recipient or deductible by the payor.

**Section 2.8 Procedures For Defense, Settlement And Indemnification Of Third Party Claims.** Except as provided in Exhibit D, the

Parties agree as follows:

- (a) Notice Of Claims. If an Indemnitee shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a Cendant Affiliate or a PHH Affiliate of any claim or of the commencement by any such Person of any Action (collectively, a "Third Party Claim") with respect to which an Indemnifying Party may be obligated to provide indemnification, Cendant and PHH (as applicable) will ensure that such Indemnitee shall give such Indemnifying Party written notice thereof as soon as reasonably practicable, but no later than thirty (30) days, after becoming aware of such Third Party Claim. Any such notice shall describe the Third Party Claim in reasonable detail. Notwithstanding the foregoing, the delay or failure of any Indemnitee or other Person to give notice as provided in this Section 2.8 shall not relieve the related Indemnifying Party of its obligations under this ARTICLE II, except to the extent that such Indemnifying Party is actually and substantially prejudiced by such delay or failure to give notice.
- (b) Defense By Indemnifying Party. An Indemnifying Party shall be entitled to participate in the defense of any Third Party Claim and, to the extent that it wishes, at its cost, risk and expense, to assume the defense thereof, with counsel reasonably satisfactory to the party seeking indemnification. After timely notice from the Indemnifying Party to the Indemnitee of such election to so assume the defense thereof, the Indemnifying Party shall not be liable to the party seeking indemnification for any legal expenses of other counsel or any other expenses subsequently incurred by the Indemnitee in connection with the defense thereof. The Indemnitee agrees to cooperate in all reasonable respects with the Indemnifying Party and its counsel in the defense against any Third Party Claim. The Indemnifying Party shall be entitled to compromise or settle any Third Party Claim as to which it is providing indemnification, which compromise or settlement shall be made only with the written consent of the Indemnitee, such consent not to be unreasonably withheld or delayed.
- (c) Defense By Indemnitee. If an Indemnifying Party fails to assume the defense of a Third Party Claim within thirty (30) calendar days after receipt of written notice in accordance with Section 4.5 of such claim, the Indemnitee will, upon delivering notice to such effect to the Indemnifying Party, have the right to undertake the defense, compromise or settlement of such Third Party Claim on behalf of and for the account of the Indemnifying Party subject to the limitations as set forth in this Section 2.8; provided, however, that such Third Party Claim shall not be compromised or settled without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. If the Indemnitee assumes the defense of any Third Party Claim, it shall keep the Indemnifying Party reasonably informed of the progress of any such defense, compromise or settlement. The Indemnifying Party shall reimburse all such costs and expenses of the Indemnitee in the event it is ultimately determined that the Indemnifying Party is obligated to indemnify the Indemnitee with respect to such Third Party Claim. In no event shall an Indemnifying Party be liable for any settlement effected without its consent, which consent will not be unreasonably withheld or delayed.



## Section 2.9 Additional Matters.

(a) Cooperation In Defense And Settlement. With respect to any Third Party Claim that implicates both PHH and Cendant in a material fashion due to the allocation of Liabilities, responsibilities for management of defense and related indemnities set forth in this Agreement or any of the Ancillary Agreements, the Parties agree to cooperate fully and maintain a joint defense (in a manner that will preserve for both Parties the attorney-client privilege, joint defense or other privilege with respect thereto) so as to minimize such Liabilities and defense costs associated therewith. The Party that is not responsible for managing the defense of such Third Party Claims shall, upon reasonable request, be consulted with respect to significant matters relating thereto and may, if necessary or helpful, retain counsel to assist in the defense of such claims.

(b) Pre-Distribution Date Actions. Except with respect to matters pertaining solely to, or solely in connection with, the PHH Business, Cendant may, in its sole discretion have exclusive authority and control over the investigation, prosecution, defense and appeal of all Actions pending at the Distribution Date relating to or arising in connection with, in any manner, the PHH assets or the PHH Liabilities if Cendant or a Cendant Affiliate is named as a party thereto; provided, however, that Cendant must obtain the prior written consent of PHH, such consent not to be unreasonably withheld or delayed, to settle or compromise or consent to the entry of judgment with respect to any such Action involving amounts in excess of the greater of (i) \$1,000,000 and (ii) the amount reserved on the accounting records of PHH at the time of the Distribution with respect to such Action; provided, however, that Cendant shall not settle any such Action without the prior written consent of PHH if the terms of such settlement would materially restrict the conduct by PHH or any PHH Affiliate in any line of business in any geographic area. After any such compromise, settlement, consent to entry of judgment or entry of judgment, Cendant shall reasonably and fairly allocate to PHH, after reasonable consultation with PHH, and PHH shall be responsible for PHH's proportionate share of, any such compromise, settlement, consent or judgment attributable to the PHH Business, the PHH assets and/or the PHH Liabilities, including its proportionate share of the costs and expenses associated with defending same.

(c) Substitution. In the event of an Action in which the Indemnifying Party is not a named defendant, if either the Indemnitee or the Indemnifying Party shall so request, the Parties shall endeavor to substitute the Indemnifying Party for the named defendant. If such substitution or addition cannot be achieved for any reason or is not requested, the rights and obligations of the Parties regarding indemnification and the management of the defense of claims as set forth in this ARTICLE II shall not be altered.

(d) Subrogation. In the event of payment by or on behalf of any Indemnifying Party to or on behalf of any Indemnitee in connection with any Third Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee, in whole or in part based upon whether the Indemnifying Party has paid all or only part of the Indemnitee's Liability, as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third Party Claim against any claimant or plaintiff asserting such Third

Party Claim or against any other person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(e) Certain Pending Settlements. Notwithstanding any other provision in this Agreement, Cendant may, in its sole discretion, have exclusive authority and control over the investigation, prosecution, defense, settlement and appeal of all matters relating to any investigation, claim or allegation by, or on behalf of, any federal, state, local, foreign or international governmental authority, pending at the Distribution Date, relating to whether Cendant, any Cendant Affiliate, PHH or any PHH Affiliate owe amounts with respect to unclaimed property (the "Escheatment Matter"). If (i) Cendant enters into any compromise, settlement, consent to entry of judgment or entry of judgment in connection with the Escheatment Matter and (ii) Cendant elects, in its sole discretion, to include PHH or any PHH Affiliate in any such compromise, settlement, consent to entry of judgment or entry of judgment in connection with the Escheatment Matter, Cendant shall reasonably and fairly allocate to PHH, after reasonable consultation with PHH, and PHH shall be responsible for PHH's proportionate share of, any such compromise, settlement, consent or judgment attributable to the PHH Business, the PHH assets and/or the PHH Liabilities, including its proportionate share of the costs and expenses associated with defending or settling same.

(f) Assumption of Certain Agreements. PHH agrees to assume all rights and obligations of Avis under (i) the Alliance Agreement, except those obligations pertaining to compliance by Wright Express LLC with the provisions of Article 14 of the Alliance Agreement applicable to Wright Express LLC, and (ii) the Technology Agreement.

**Section 2.10 Survival Of Indemnities.** Notwithstanding any other provision of this Agreement to the contrary, the rights and obligations of the Cendant Affiliates and the PHH Affiliates under this ARTICLE II shall survive indefinitely.

### ARTICLE III

#### INSURANCE MATTERS

**Section 3.1 Cooperation; Payment Of Insurance Proceeds To PHH; Agreement Not To Release Carriers.** Each of Cendant and PHH will share such information as is reasonably necessary in order to permit the other to manage and conduct its insurance matters in an orderly fashion. Cendant, at the request of PHH, shall cooperate with and use commercially reasonable efforts to assist PHH in recovering Insurance Proceeds under Cendant Insurance Policies for claims relating to the PHH Business, the PHH assets or the PHH Liabilities, whether such claims arise under any contract or agreement, by operation of law or otherwise, existing or arising from any past acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed before, on or after the Distribution Date, and shall promptly pay any such recovered Insurance Proceeds to PHH.

Neither Cendant nor PHH, nor any of their Subsidiaries, shall take any action which would intentionally jeopardize or otherwise interfere with either Party's ability to collect any proceeds payable pursuant to any Insurance Policy. Except as otherwise contemplated by this Agreement or any Ancillary Agreement, after the Distribution Date, neither Cendant nor PHH shall (and each Party shall ensure that no Cendant Affiliate or PHH Affiliate, as applicable, shall), without the consent of the other, provide any insurance carrier with a release, or amend, modify or waive any rights under any such policy or agreement, if such release, amendment, modification or waiver would adversely affect any rights or potential rights of any Cendant Affiliate or any PHH Affiliate thereunder. However, nothing in this Section 3.1 shall (A) preclude any Cendant Affiliate or any PHH Affiliate from presenting any claim or from exhausting any policy limit, (B) require any Cendant Affiliate or any PHH Affiliate to pay any premium or other amount or to incur any Liability, or (C) require any Cendant Affiliate or any PHH Affiliate to renew, extend or continue any policy in force.

**Section 3.2 PHH Insurance Coverage After The Distribution.** From and after the Distribution, PHH shall be responsible for obtaining and maintaining insurance programs for its risk of loss and such insurance arrangements shall be separate and apart from Cendant's insurance programs.

**Section 3.3 Responsibilities For Deductibles And/Or Self-Insured Obligations.** PHH will reimburse Cendant for all amounts necessary to exhaust or otherwise satisfy all applicable self-insured retentions, amounts for fronted policies, deductibles and retrospective premium adjustments and similar amounts not covered by Insurance Policies in connection with PHH Liabilities and Insured PHH Liabilities to the extent that Cendant is required to pay any such amounts.

**Section 3.4 Procedures With Respect To Insured PHH Liabilities.**

(a) Reimbursement. PHH will reimburse Cendant for all out-of-pocket expenses reasonably incurred by it to pursue insurance recoveries from Insurance Policies for Insured PHH Liabilities.

(b) Management Of Claims. The defense of claims, suits or actions giving rise to potential or actual Insured PHH Liabilities will be managed (in conjunction with Cendant's insurers, as appropriate) by the Party that would have had responsibility for managing such claims, suits or actions had such Insured PHH Liabilities been PHH Liabilities.

**Section 3.5 Cooperation.** Cendant and PHH will cooperate with each other in all respects, and they shall execute any additional documents which are reasonably necessary, to effectuate the provisions of this ARTICLE III.

**Section 3.6 No Assignment Or Waiver.** This Agreement shall not be considered as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of Cendant or any

Cendant Affiliate in respect of any Insurance Policy or any other contract or policy of insurance.

**Section 3.7 No Liability.** PHH does hereby, for itself and as agent for each PHH Affiliate, agree that no Cendant Affiliate nor any Cendant Indemnitee shall have any Liability whatsoever as a result of the insurance policies and practices of Cendant and its Subsidiaries as in effect at any time prior to the Distribution, including as a result of the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise, so long as Cendant complies with the provisions of, and maintains the coverages required by, this ARTICLE III.

**Section 3.8 Additional Or Alternate Insurance.** Notwithstanding any provision of this Agreement, Cendant and PHH shall work together to evaluate insurance options and secure additional or alternate insurance for PHH and/or Cendant if desired by and cost effective for PHH and Cendant. Nothing in this Agreement shall be deemed to restrict any PHH Affiliate from acquiring, at any time, at its own expense any other insurance policy in respect of any Liabilities or covering any period.

**Section 3.9 Further Agreements.** The Parties acknowledge that they intend to allocate financial obligations without violating any laws regarding insurance, self-insurance or other financial responsibility. If it is determined that any action undertaken pursuant to this Agreement or any Ancillary Agreement is violative of any insurance, self-insurance or related financial responsibility law or regulation, the Parties agree to work together to do whatever is necessary to comply with such law or regulation while trying to accomplish, as much as possible, the allocation of financial obligations as intended in this Agreement or any Ancillary Agreement.

#### ARTICLE IV

##### MISCELLANEOUS

**Section 4.1 LIMITATION OF LIABILITY.** IN NO EVENT SHALL ANY CENDANT AFFILIATE OR ANY PHH AFFILIATE BE LIABLE TO ANY OTHER CENDANT AFFILIATE OR ANY PHH AFFILIATE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT THAT ANY SUCH DAMAGES RELATE TO A CLAIM FOR INDEMNIFICATION PURSUANT TO SECTION 2.2 OR SECTION 2.3 OR A BREACH OF ANY OF THE CONFIDENTIALITY PROVISIONS OF THIS AGREEMENT OR ANY ANCILLARY AGREEMENTS.

**Section 4.2 Entire Agreement.** This Agreement, the Ancillary Agreements and the Exhibits and Schedules referenced or attached hereto and thereto,

constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof and thereof.

**Section 4.3 Governing Law And Jurisdiction.** This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of New York, without giving effect (to the fullest extent provided by law) to any choice or conflict of law provision or rule thereof which might result in the application of the laws of any other jurisdiction. Subject to Section 1.9, each of the Parties hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of New York and of the United States of America in each case located in the County of New York for any litigation arising out of or relating to this Agreement (and agrees not to commence any litigation relating thereto except in such courts) and further agrees that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth in Section 4.5 (or to such other address for notice that such Party has given the other Party written notice of in accordance with Section 4.5) shall be effective service of process for any litigation brought against it in any such court. Each Party hereby irrevocably and unconditionally waives any objection to the laying of venue of any litigation arising out of this Agreement in the courts of the State of New York or of the United States of America in each case located in the County of New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such litigation brought in any such court has been brought in an inconvenient forum.

**Section 4.4 Termination; Amendment.** This Agreement may be terminated at any time by mutual consent of Cendant and PHH, evidenced by an instrument in writing signed on behalf of each of the Parties. This Agreement may be amended only with the mutual consent of Cendant and PHH, evidenced by an instrument in writing signed on behalf of each of the Parties.

**Section 4.5 Notices.** Notices, offers, requests or other communications required or permitted to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective Parties to the following addresses:

if to Cendant:

Cendant Corporation

9 West 57<sup>th</sup> Street

New York, New York 10021

Attention: Eric J. Bock,

Executive Vice President-Law and

Corporate Secretary

Fax: (212) 413-1922

if to PHH:

PHH Corporation

3000 Leadenhall Road  
Mt. Laurel, New Jersey 08054  
Attention: William F. Brown  
Fax: (856) 917-0950

or to such other address or facsimile number as the party to whom notice is given may have previously furnished to the other in writing as provided herein. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier or, within the United States, may also be sent via certified mail, return receipt requested. All other notices may also be sent by facsimile, confirmed by first class mail. All notices shall be deemed to have been given when received, if hand delivered; when transmitted, if transmitted by facsimile or similar electronic transmission method; one working day after it is sent, if sent by recognized overnight courier; and three days after it is postmarked, if mailed first class mail or certified mail, return receipt requested, with postage prepaid.

**Section 4.6 Counterparts.** This Agreement, including the Ancillary Agreement and the Exhibits and Schedules hereto and thereto and the other documents referred to herein or therein, may be executed in two counterparts, each of which shall be deemed to be an original but both of which shall constitute one and the same agreement.

**Section 4.7 Binding Effect; Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives and successors, and, nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement; provided that, any PHH Affiliate, the PHH Indemnitees, any Cendant Affiliate and the Cendant Indemnitees shall be entitled to the benefits and subject to the obligations of those provisions of this Agreement which expressly confer rights and/or impose obligations upon them. Such provisions of this Agreement may be enforced separately by each Cendant Affiliate, each Cendant Indemnitee, each PHH Affiliate and each PHH Indemnitee. Except for an assignment from Cendant to any other Cendant Affiliate, Cendant may not assign this Agreement or any rights or obligations hereunder, without the prior written consent of PHH, and any such assignment shall be void. PHH may not assign this Agreement or any rights or obligations hereunder, without the prior written consent of Cendant, and any such assignment shall be void.

**Section 4.8 Severability.** If any term or other provision of this Agreement or the Exhibits or Schedules attached hereto is determined by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner

materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

**Section 4.9 Failure Or Indulgence Not Waiver; Remedies Cumulative.** No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the Exhibits or Schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

**Section 4.10 Authority.** Each of the Parties hereto represents to the other that (a) it has the corporate or other requisite power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other actions, (c) it has duly and validly executed and delivered this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

**Section 4.11 Interpretation.** The headings contained in this Agreement, in any Exhibit or Schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an Article or a Section, Exhibit or Schedule, such reference shall be to an Article or Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated.

**Section 4.12 Conflicting Agreements.** None of the provisions of this Agreement are intended to supersede any provision in any Ancillary Agreement or any other agreement with respect to the respective subject matters thereof. In the event of conflict between this Agreement and any Ancillary Agreement or other agreement executed in connection herewith, the provisions of such other agreement shall prevail.

**Section 4.13 Third Party Beneficiaries.** None of the provisions of this Agreement shall be for the benefit of or enforceable by any third party, including any creditor of any Person. No such third party shall obtain any right under any provision of this Agreement or shall by reasons of any such provision make any claim in respect of any Liability (or otherwise) against either Party hereto. Notwithstanding the foregoing to the contrary, any PHH Affiliate, the PHH Indemnitees, any Cendant Affiliate and the Cendant Indemnitees shall be entitled to the benefits of those provisions of this Agreement which expressly confer rights upon them.

**Section 4.14 Waiver of Jury Trial.**

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTER ARISING HEREUNDER.

**ARTICLE V**

**DEFINITIONS**

**Section 5.1 Defined Terms.** The following capitalized terms shall have the meanings given to them in this Section 5.1:

“Action” means any demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any federal, state, local, foreign or international governmental authority or any arbitration or mediation tribunal, other than any demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation relating to Taxes.

“Agreement” shall mean this Separation Agreement, together with the schedules and exhibits hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“Alliance Agreement” shall have the meaning set forth in Section 1.20.

“Ancillary Agreements” shall mean the Tax Sharing Agreement and the Transition Services Agreement.

“Avis” shall have the meaning set forth in Section 1.20.

“Cendant” shall have the meaning set forth in the preamble to this Agreement.

“Cendant Affiliate” means any corporation or other entity directly or indirectly controlled by Cendant, but excluding PHH and any PHH Affiliate.

“Cendant’s Auditors” shall have the meaning set forth in Section 1.4(a) of this Agreement.

“Cendant Business” means any business of Cendant other than the PHH Business.

“Cendant Indemnitees” means Cendant, each Cendant Affiliate and each of their respective directors, officers and employees.

“Cendant Marks” shall have the meaning set forth in Section 1.21.

“Cendant Portions” means all information set forth in, or incorporated by reference into, the Registration Statement, to the extent such information is set forth on Exhibit C.



“Cendant 401(k) Plan” shall have the meaning set forth in Section 1.15(a).

“Code” means the Internal Revenue Code of 1986 (or any successor statute), as amended from time to time, and the regulations promulgated thereunder.

“Confidential Business Information” shall have the meaning set forth in Section 1.5(a)(iii) of this Agreement.

“Confidential Information” shall have the meaning set forth in Section 1.5(a)(i) of this Agreement.

“Confidential Operational Information” shall have the meaning set forth in Section 1.5(a)(ii) of this Agreement.

“Contract” means any contract, agreement, lease, license, sales order, purchase order, instrument or other commitment that is binding on any Person or any part of its property under applicable law.

“Control Rules” shall have the meaning set forth in Section 1.4(d).

“Director Plans” shall have the meaning set forth in Section 1.17.

“Director Plan Liabilities” shall have the meaning set forth in Section 1.17.

“Dispute” shall have the meaning set forth in Section 1.9(a).

“Disputing Party” shall have the meaning set forth in Section 1.9(b).

“Distribution” means the distribution by Cendant of all of the shares of common stock of PHH held by it to the holders of Cendant’s common stock on a pro rata basis.

“Distribution Date” means the date of the Distribution.

“Eligible PHH Participants” shall have the meaning set forth in Section 1.14(a).

“Eligible Cendant Participants” shall have the meaning set forth in Section 1.14(b).

“Escheatment Matter” shall have the meaning set forth in Section 2.9(e).

“Exchange Act” means the Securities Exchange Act of 1934.

“Final Determination” has the meaning set forth in the Tax Sharing Agreement.

“Governmental Approvals” means any notices, reports or other filings to be made, or any consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

“Governmental Authority” shall mean any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

“Indemnifying Party” means any party which may be obligated to provide indemnification to an Indemnitee pursuant to Section 2.2 or Section 2.3 hereof or any other section of this Agreement or any Ancillary Agreement.

“Indemnitee” means any party which may be entitled to indemnification from an Indemnifying Party pursuant to Section 2.2 or Section 2.3 hereof or any other section of this Agreement or any Ancillary Agreement.

“Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), communications and materials otherwise related to or made or prepared in connection with or in preparation for any legal proceeding, and other technical, financial, employee or business information or data.

“Information Statement” means that certain information statement filed by PHH on Form 8-K on January 19, 2005.

“Insurance Policies” means insurance policies pursuant to which a Person makes a true risk transfer to an insurer.

“Insurance Proceeds” means those monies: (a) received by an insured from an insurance carrier; or (b) paid by an insurance carrier on behalf of the insured; or (c) from Insurance Policies.

“Insured PHH Liability” means any PHH Liability to the extent that (i) it is covered under the terms of Cendant’s Insurance Policies in effect prior to the Distribution, and (ii) PHH is not a named insured under, or otherwise entitled to the benefits of, such Insurance Policies.

“Investor Presentation” means that certain investor presentation of PHH Corporation furnished on Form 8-K on January 19, 2005.

“Liabilities” means all claims, debts, liabilities, guarantees, assurances, commitments and obligations, whether fixed, contingent or absolute, asserted or unasserted, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including, without limitation, whether arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required by generally accepted

principles and accounting policies to be reflected in financial statements or disclosed in the notes thereto.

“Loss” and “Losses” mean any and all damages, losses, deficiencies, Liabilities, obligations, penalties, judgments, settlements, claims, payments, fines, interest, costs and expenses (including, without limitation, the costs and expenses of any and all Actions and demands, assessments, judgments, settlements and compromises relating thereto and the reasonable costs and expenses of attorneys’, accountants’, consultants’ and other professionals’ fees and expenses incurred in the investigation or defense thereof or the enforcement of rights hereunder), excluding special, consequential, indirect, incidental and/or punitive damages (other than special, consequential, indirect, incidental and/or punitive damages awarded to any third party against an indemnified party).

“Mediation Request” shall have the meaning set forth in Section 1.9(b).

“Mobility” shall have the meaning set forth in Section 1.19.

“Party” or “Parties” shall have the meaning set forth in the preamble to this Agreement.

“Paribas” shall have the meaning set forth in Section 1.20.

“Paribas Release” shall have the meaning set forth in Section 1.20.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“PHH” shall have the meaning set forth in the preamble to this Agreement.

“PHH Affiliate” means any corporation or other entity directly or indirectly controlled by PHH other than PHH Home Loans, LLC and any of its Subsidiaries.

“PHH’s Auditors” shall have the meaning set forth in Section 1.4(a) of this Agreement.

“PHH Balance Sheet” shall mean PHH’s Pro Forma Balance Sheet as of September 30, 2004.

“PHH Business” shall mean any business conducted by PHH or any of its Subsidiaries either prior to or following the Distribution Date other than (i) PHH’s relocation business conducted by Cendant Mobility Services Corporation and its Subsidiaries and PHH’s other Subsidiaries that engaged in such relocation business and (ii) PHH’s fuel card business conducted by Wright Express LLC and its Subsidiaries and PHH’s other subsidiaries that engaged in such fuel card business.

“PHH Excluded Liability” shall mean any Liability for matters described in Exhibit D.

“PHH Indemnitees” means PHH, each PHH Affiliate and each of their respective directors, officers and employees.

“PHH Liability” shall mean (without duplication) the following Liabilities other than any PHH Excluded Liability:

- (i) all Liabilities reflected in the PHH Balance Sheet;
- (ii) all Liabilities of Cendant or its Subsidiaries that arise after the date of the PHH Balance Sheet that would be reflected in a PHH balance sheet as of the date of such Liabilities, if such balance sheet was prepared using the same principles and accounting policies under which the PHH Balance Sheet was prepared;
- (iii) all Liabilities that should have been reflected in the PHH Balance Sheet but are not reflected in the PHH Balance Sheet due to mistake or unintentional omission;
- (iv) all Liabilities whether arising before, on or after the Distribution Date, that relate to, arise or result from:
  - (1) the operation, or any of the assets, of the PHH Business, as conducted at any time prior to, on or after the Distribution Date (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority)); or
  - (2) the operation of any business conducted by any PHH Affiliate at any time after the Distribution Date (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority));
- (v) all Liabilities relating to, or arising from, any performance guaranty of Avis in connection with indebtedness issued by Chesapeake Funding, LLC;
- (vi) all Liabilities in respect of any employee of PHH or any PHH Affiliate;
- (vii) all Liabilities of Cendant or any Cendant Affiliate, or PHH or any PHH Affiliate that are not expressly contemplated by this Agreement or any other Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by Cendant or any Cendant Affiliate;

(viii) all Liabilities arising out of or relating to (x) the Alliance Agreement, except those obligations pertaining to compliance by Wright Express LLC with the provisions of Article 14 of the Alliance Agreement applicable to Wright Express LLC, or (y) the Technology Agreement; and

(ix) all Liabilities that are expressly contemplated by this Agreement or any other Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed or retained by PHH or any PHH Affiliate (including, without limitation, the Liabilities assumed or retained pursuant to Sections 1.14, 1.15, 1.16 and 1.18), and all agreements, obligations and Liabilities of any PHH Affiliate under this Agreement or any of the Ancillary Agreements.

“PHH 401(k) Plan” shall have the meaning set forth in Section 1.15(a).

“Privileges” shall have the meaning set forth in Section 1.6(a) of this Agreement.

“Privileged Information” shall have the meaning set forth in Section 1.6(a) of this Agreement.

“Registration Statement” shall have the meaning set forth in the recitals to this Agreement.

“Rules” shall have the meaning set forth in Section 1.9(b).

“SEC” shall have the meaning set forth in Section 1.4(d).

“Securities Act” means the Securities Act of 1933, as amended.

“Subsidiary” of any Person means a corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries; provided, however, that no Person that is not directly or indirectly wholly-owned by any other Person shall be a Subsidiary of such other Person unless such other Person controls, or has the right, power or ability to control, that Person.

“Supplemental Plan” shall have the meaning set forth in Section 1.14(b) of this Agreement.

“Tax” and “Taxes” have the meaning set forth in the Tax Sharing Agreement.

“Tax Sharing Agreement” means the Tax Sharing Agreement, attached as Exhibit A to this Agreement.

“Technology Agreement” shall have the meaning set forth in Section 1.20.

“Transition Services Agreement” means the Transition Services Agreement, attached as Exhibit B to this Agreement.

“Third Party Claim” has the meaning set forth in Section 2.8(a) of this Agreement.

WHEREFORE, the Parties have signed this Separation Agreement effective as of the date first set forth above.

**CENDANT CORPORATION**

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

**PHH CORPORATION**

By: /s/ Terence W. Edwards  
Name: Terence W. Edwards  
Title: President and Chief Executive Officer

**TAX SHARING AGREEMENT**

by and among

**CENDANT CORPORATION**

and

**PHH CORPORATION**

\*The term "Confidential" indicates material that has been omitted and for which confidential treatment has been requested. All such omitted material has been filed with the Securities and Exchange Commission pursuant to Rule 24b-2 under the Securities Exchange Act of 1934, as amended.

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## TAX SHARING AGREEMENT

This Tax Sharing Agreement (this "Agreement") is dated as of January 31, 2005, by and among Cendant Corporation, a Delaware corporation ("Cendant"), PHH Corporation, a Maryland corporation ("PHH"), and each PHH Affiliate that executes this Agreement. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Article VII hereof.

### RECITALS

WHEREAS, as of the date hereof, Cendant and its direct and indirect domestic subsidiaries are members of an Affiliated Group, of which Cendant is the common parent corporation;

WHEREAS, Cendant's Board of Directors has determined that it is appropriate and desirable for Cendant to distribute all of its shares of PHH common stock to Cendant shareholders;

WHEREAS, Cendant and PHH have agreed to undertake a series of transactions including (i) as more fully set forth in the Steps Memo, the contribution by PHH to Cendant Mobility Services Corporation, a Delaware corporation ("Mobility"), of certain assets, and, in connection therewith, the distribution by Mobility to PHH of \$100 million to be distributed by PHH to its creditors, followed by the distribution by PHH to Cendant of all of the stock of Mobility (collectively, the "Internal Distribution"), (ii) the distribution by Cendant to its common shareholders pro rata of all of the stock of PHH (the "Distribution"), and (iii) each of the other transactions set forth in the Steps Memo and each other transaction effected on or before the Distribution Date that is related to the transactions set forth in the Steps Memo (collectively, the "Internal Reorganization"); and

WHEREAS, the Internal Distribution is intended to qualify as a reorganization and distribution that are tax-free to PHH, Mobility, and Cendant under sections 368(a)(1)(D), 361(c), and 355 of the Code; the Distribution is intended to qualify as a distribution that is tax-free to Cendant and its shareholders under section 355 of the Code; and steps comprising the Internal Reorganization are intended to be tax-free to Cendant and PHH and their respective affiliates.

WHEREAS, in contemplation of the Distribution pursuant to which PHH and its direct and indirect domestic subsidiaries will cease to be members of the Affiliated Group of which Cendant is the common parent, Cendant and PHH desire to set forth their agreement on the rights and obligations of Cendant and PHH and their respective groups with respect to handling and allocating Taxes for periods beginning before and after the Distribution Date, Taxes, if any, resulting from transactions effectuated in connection with the Internal Distribution, the Distribution, the Internal Reorganization, and various other Tax matters.

NOW, THEREFORE, in consideration of the foregoing and the terms, conditions, covenants and provisions of this Agreement, Cendant and PHH mutually covenant and agree as follows:

## ARTICLE I

### PREPARATION AND FILING OF TAX RETURNS; PAYMENT OF TAXES

Section 1.1 Cendant's Responsibility. (a) Cendant shall have sole and exclusive responsibility for the preparation and timely filing of:

- (i) all Cendant Separate Income Tax Returns;
- (ii) all Cendant Consolidated and Combined Income Tax Returns; and
- (iii) all Tax Returns required to be filed by Cendant or any Cendant Affiliate with respect to Other Taxes

as determined pursuant to Section 1.3 hereof.

(b) Subject to Section 1.2(c), and Sections 2.1(b), (c), and (d), Cendant shall be liable for and shall timely pay, or cause to be paid, to the applicable Taxing Authority all Taxes required to be reported on Tax Returns for which it has responsibility under this Section 1.1 and shall be entitled to receive and retain any refunds of Taxes paid with respect thereto.

Section 1.2 PHH's Responsibility. (a) PHH shall have sole and exclusive responsibility for the preparation and timely filing of:

- (i) all PHH Separate Income Tax Returns;
- (ii) all PHH Consolidated and Combined Income Tax Returns; and
- (iii) all Tax Returns required to be filed by PHH or any PHH Affiliate with respect to Other Taxes as

determined pursuant to Section 1.3 hereof.

(b) Subject to Section 2.1(a), (c), and (d), PHH shall be liable for and shall timely pay, or cause to be paid, to the applicable Taxing Authority all Taxes required to be reported on Tax Returns for which it has responsibility under this Section 1.2 and subject to Section 1.6, shall be entitled to receive and retain any refunds of Taxes paid with respect thereto.

(c) Notwithstanding Section 1.1 or any other provision of this Agreement to the contrary, PHH shall be liable for any Taxes attributable to transactions or actions taken by

PHH or any PHH Affiliate on the Distribution Date, except for (i) any transactions or actions undertaken in the ordinary course of business consistent with past practices or (ii) the Distribution, to the extent PHH would not otherwise be liable for any such Taxes under Section 2.1(b), (c), or (d). To the extent required or permissible, any extraordinary item, within the meaning of Treasury Regulation Section 1.1502-76(b)(2)(ii)(C), of PHH or any PHH Affiliate that occurs or results from a transaction that takes place on the Distribution Date shall be treated as occurring at the beginning of the day following the Distribution Date.

Section 1.3 Liability for Other Taxes. PHH shall and shall cause each PHH Affiliate to prepare and timely file all Tax Returns for Other Taxes in respect of which the legal incidence of the Other Tax is imposed on PHH or any PHH Affiliate, as the case may be, and PHH shall be liable for and timely pay (or cause to be paid) all such Other Taxes. Cendant shall and shall cause each Cendant Affiliate to prepare and timely file all Tax Returns for Other Taxes in respect of which the legal incidence of the Other Tax is imposed on Cendant or any Cendant Affiliate, as the case may be, and Cendant shall be liable for and timely pay (or cause to be paid) all such Other Taxes. Responsibility for filing any Tax Return and liability for paying any Other Tax that is legally imposed on more than one legal entity (e.g., joint and several liability) shall be allocated in accordance with past practices as reasonably determined by Cendant, or in the absence of such practices, in accordance with any reasonable allocation method determined by Cendant.

Section 1.4 Agent. PHH hereby irrevocably designates, and agrees to cause each PHH Affiliate to so designate, Cendant as its sole and exclusive agent and attorney-in-fact and agrees to take such action and to cause the PHH Affiliates to take such action (including execution of powers of attorney and other documents) as Cendant may reasonably request in connection with any matter relating to Taxes, provided, that except as otherwise provided in Section 1.6(g) and Section 5.4, this Section 1.4 shall not apply to Taxes described in Section 1.2(b).

Section 1.5 Manner of Tax Return Preparation.

(a) Unless otherwise required by a Taxing Authority, the parties hereto shall prepare and file all Tax Returns and take all other actions in a manner consistent with this Agreement. All Tax Returns shall be filed on a timely basis (taking into account applicable extensions) by the party responsible for filing such Tax Returns under this Agreement.

(b) Subject to Section 1.5(a), Cendant shall have the exclusive right in its reasonable discretion with respect to any Tax Return described in Section 1.1 to determine all relevant matters, including without limitation (1) the manner in which such Tax Return shall be prepared and filed, including the elections, methods of accounting, positions, conventions and principles of taxation to be used and the manner in which any Tax Asset or Tax related matter regarding such Tax Return shall be reported, provided that Cendant shall elect out of bonus depreciation under section 168(k) of the Code for PHH and each PHH Affiliate for the taxable year ended December 31, 2004, (2) whether any extensions may be requested, (3) the elections that will be made by Cendant, any Cendant Affiliate, PHH, or any PHH Affiliate on such Tax

Return, (4) whether any amended Tax Return(s) shall be filed, (5) whether any claim(s) for refund shall be made, (6) whether any refund shall be paid by way of refund or credited against any liability for the related Tax, and (7) whether to retain outside firms to prepare or review such Tax Returns.

Section 1.6 Certain Tax Benefits.

(a) PHH shall pay to Cendant the amount of any Tax Benefit Realized by PHH or any PHH Affiliate in each taxable year that is attributable to the transactions undertaken pursuant to the Avis Merger Agreement being characterized in a manner other than as reported by Cendant or any Cendant Affiliate on its originally filed applicable income Tax Returns. Within sixty (60) days of any Final Determination that may give rise to an obligation of PHH under this Section 1.6(a) (an "Avis Final Determination"), Cendant shall notify PHH in writing of such Avis Final Determination and shall provide PHH with such information reasonably required by PHH for PHH and each relevant PHH Affiliate to account for any Tax Asset (or any increase in any Tax Asset) and to determine the Tax Benefit potentially available attributable to the Avis Final Determination. Notwithstanding the foregoing, the failure of Cendant to provide notice to PHH within the time required by the preceding sentence shall not relieve PHH of any liability and/or obligation which it may have under this Section 1.6.

(b) Within sixty (60) days after PHH receives notice of any Avis Final Determination, PHH shall provide to Cendant a schedule showing, in reasonable detail, the effect of the Avis Final Determination (the "Tax Benefit Schedule") on any Tax Asset or Tax liability of PHH and the PHH Affiliates for each taxable period ending on or before the date of the notice for which PHH filed the applicable Tax Return. Within thirty (30) days of the finalization of the Tax Benefit Schedule, as described in subsection (d) below, PHH shall take or cause to be taken all steps necessary or appropriate to Realize any Tax Benefit attributable to past taxable periods, including the prompt filing of amended Tax Returns and/or claims for refund.

(c) PHH shall file and shall cause each PHH Affiliate to file all current and future Tax Returns consistent with the Avis Final Determination and so as to Realize as quickly as possible any Tax Benefit potentially available to PHH and each PHH Affiliate, and shall provide to Cendant a Tax Benefit Schedule and a calculation of the Tax Benefit Realized annually, no later than 120 days prior to the due date, including applicable extensions, of PHH's federal Income Tax Return until such time as the parties in good faith agree that PHH has no remaining obligation for any Tax Benefit.

(d) Each time PHH delivers the Tax Benefit Schedule to Cendant, PHH shall also (i) deliver to Cendant schedules and work papers providing reasonable detail regarding the preparation of the Tax Benefit Schedule and the Tax Benefit Realized and an Advisory Firm Letter supporting such Tax Benefit Schedule and Tax Benefit Realized and (ii) allow Cendant reasonable access to the appropriate representatives at PHH and each PHH Affiliate and the Advisory Firm in connection with its review of such schedule. The Tax Benefit Schedule shall become final and binding on the parties unless Cendant, within thirty (30) calendar days after receiving such schedule, provides PHH with notice of a good faith objection to such Tax Benefit

Schedule. If a Dispute arises between PHH and Cendant with respect to the Tax Benefit Schedule, Tax Benefit or the Tax Benefit Realized, such Dispute shall be resolved in accordance with the principles and procedures set forth in Section 6.3.

(e) PHH shall pay Cendant the amount of Tax Benefit Realized by PHH and each PHH Affiliate within thirty (30) days of the date on which such Tax Benefit is Realized by PHH or such PHH Affiliate, as the case may be.

(f) There shall be an adjustment to any Tax Benefit calculated under Section 1.6 hereof in the event of an Audit which results in a Final Determination that increases or decreases the amount of such Tax Benefit to PHH or any PHH Affiliate reported on any relevant Tax Return of PHH or any PHH Affiliate. PHH shall promptly inform Cendant of any such Audit, shall use its reasonable best efforts to sustain the Tax Benefit at issue in the Audit, and shall, at Cendant's request, allow Cendant to participate in the Audit. Upon receiving written notice of a Final Determination affecting any Tax Benefit, PHH shall redetermine the relevant Tax Benefit, taking into account the Final Determination (the "Restated Tax Benefit"). If the Restated Tax Benefit is greater than the relevant Tax Benefit, PHH shall promptly pay Cendant the difference between such amounts. If the Restated Tax Benefit is less than the relevant Tax Benefit, Cendant shall pay to PHH the difference between such amounts promptly after receipt of written notice setting forth the amount due and the computation thereof.

(g) New Jersey Business Incentive Program.

(i) Notwithstanding anything to the contrary set forth in this Agreement, Cendant shall have the exclusive right and sole discretion to control, contest and represent the interests of PHH and each PHH Affiliate in any filing, claim and/or proceeding relating or attributable to the New Jersey Business Employment Incentive Program (the "BEIP") for all periods ending on or prior to the Distribution Date. In connection with this Section 1.6(g), PHH shall designate, and shall cause each PHH Affiliate to designate, Cendant (and Cendant employees and representatives of Cendant) as its attorney-in-fact and agrees to take such action and cause each PHH Affiliate to take such action (including execution of appropriate powers of attorney and other documents) as Cendant may reasonably request for all periods ending on or prior to the Distribution Date. With respect to a filing, claim and/or proceeding relating or attributable to the BEIP for a Straddle Period (as defined below), PHH shall have the right and discretion to control, contest and represent the interests of PHH and each PHH Affiliate, provided that (x) Cendant shall have the right to participate in any such contest or other matter relating to the BEIP for such Straddle Period, and PHH and each PHH Affiliate shall keep Cendant fully informed of all matters relating to such contest or other matter and (y) PHH shall use reasonable best efforts to obtain any BEIP Payments (as defined below) that are attributable to such Straddle Period and are otherwise legally obtainable by PHH and/or one or more PHH Affiliates.

(ii) Notwithstanding anything to the contrary set forth in this Agreement, PHH shall pay to Cendant, no later than five calendar days after receipt by PHH and each PHH Affiliate, as the case may be, of each BEIP Payment (as defined below), an amount equal to (x) with respect to all periods ending on or before the Distribution Date, the Net BEIP Payment (as defined below) attributable to each BEIP Payment and (y) with respect to any period that begins on or before and ends after the Distribution Date (a "Straddle Period"), the Net BEIP Payment for such Straddle Period multiplied by a fraction the numerator of which is the number of calendar days in the Straddle Period ending on (and including) the Distribution Date and the denominator of which is the number of calendar days in such entire Straddle Period. For purposes of the Agreement, (i) "BEIP Payment" means each payment received by PHH and each PHH Affiliate from the State of New Jersey attributable to the BEIP, (ii) "Net BEIP Payment" means the excess of (x) one hundred percent (100%) of each BEIP Payment received by PHH and each PHH Affiliate over (y) the PHH BEIP Deductible Amount, and (iii) "PHH BEIP Deductible Amount" means, with respect to each BEIP Payment, the lesser of (x) 10 percent of such BEIP Payment and (y) \*CONFIDENTIAL. PHH shall provide to Cendant promptly upon request any contract (and any modification or amendments thereto) between PHH and the PHH Consultant.

Section 1.7 Net Operating Losses. Notwithstanding any other provision of this Agreement, PHH shall elect (under section 172(b)(3) of the Code and, to the extent feasible, any similar provision of any state, local or foreign Tax law) to relinquish any right to carry back net operating losses to any Cendant Consolidated and Combined Income Tax Return.

## ARTICLE II

### DISTRIBUTION TAXES AND INTERNAL REORGANIZATION TAXES

#### Section 2.1 Distribution Taxes and Internal Reorganization Taxes.

(a) Cendant's Liability for Distribution Taxes and Internal Reorganization Taxes. Notwithstanding any other provision of this Agreement to the contrary other than Section 2.1(c), Cendant shall be liable for one hundred percent (100%) of any Distribution Taxes and/or Internal Reorganization Taxes that are attributable to, or result from, one or more of the following:

(i) any action, or failure or omission to act, by Cendant or any Cendant Affiliate that is inconsistent with any material, information, fact, or statement, or that constitutes a breach of any covenant or representation, pertaining to Cendant or any Cendant Affiliate in the Cendant Representation Letters;

(ii) any action, or failure or omission to act, by Cendant or any Cendant Affiliate after the Distribution, including, without limitation, a cessation, transfer to affiliates, or disposition of its active trades or businesses or other businesses, or an issuance of stock, stock buyback, or payment of an extraordinary dividend by Cendant or any Cendant Affiliate following the Distribution;

(iii) any acquisition of stock or other equity or assets of Cendant or any Cendant Affiliate by one or more other Persons occurring prior to or following the Distribution; or

(iv) any issuance of stock by Cendant or any Cendant Affiliate, or change in ownership of stock in Cendant or any Cendant Affiliate, that causes section 355(d) or section 355(e) of the Code to apply to the Distribution.

(b) PHH's Liability for Distribution Taxes and Internal Reorganization Taxes. Notwithstanding any other provision of this Agreement to the contrary other than Section 2.1(c), PHH shall be liable for one hundred percent (100%) of any Distribution Taxes and/or Internal Reorganization Taxes that are attributable to, or result from, one or more of the following:

(i) any action, or failure or omission to act, by PHH or any PHH Affiliate that is inconsistent with any material, information, fact, or statement, or that constitutes a breach of any covenant or representation, pertaining to PHH in the PHH Representation Letter;

(ii) any action, or failure or omission to act, by PHH or any PHH Affiliate after the Distribution, including without limitation, a cessation, transfer to affiliates or disposition of its active trades or businesses or other businesses, or an issuance of stock, stock buyback, or payment of an extraordinary dividend by PHH or any PHH Affiliate following the Distribution;

(iii) any acquisition of stock or other equity or assets of PHH or any PHH Affiliate by one or more other Persons following the Distribution; or

(iv) any issuance of stock by PHH or any PHH Affiliate, or change in ownership of stock in PHH or any PHH Affiliate, that causes section 355(d) or section 355(e) of the Code to apply to the Distribution.

(c) First Party Responsible. The first party to act or fail to act in a manner that results in the imposition of Distribution Taxes and/or Internal Reorganization Taxes shall be liable for one hundred percent (100%) of such Distribution Taxes and/or Internal Reorganization Taxes pursuant to Section 2.1(a) or 2.1(b), as applicable; provided, that if such first party is subsequently able to act, and does act, in a manner that results in Distribution Taxes and/or Internal Reorganization Taxes not being imposed, then such first party shall not be liable for any

Distribution Taxes and/or Internal Reorganization Taxes imposed as a result of any act, or failure or omission to act, by the other party subsequent to the first party's action, or failure or omission to act.

(d) "No Fault" Allocation. In the event of the imposition of Distribution Taxes or Internal Reorganization Taxes for which neither party is liable pursuant to Sections 2.1(a) or 2.1(b), such Taxes shall be borne 86.3 percent by Cendant and 13.7 percent by PHH.

Section 2.2 Continuing Covenants.

(a) PHH shall not and shall cause the PHH Affiliates not to take any action, or fail or omit to take any action that would cause any of the facts, representations or statements set forth in the PHH Representation Letter to be untrue. Moreover, (x) during the two-year period following the Distribution Date, PHH will not cease to be engaged in the active trade or business relied upon for purposes of satisfying the requirements of Section 355(b) of the Code with respect to the Internal Distribution and/or the Distribution, and (y) during the applicable period provided in Section 355(e)(2)(B) of the Code with respect to the Distribution, PHH will not enter into any transaction or make or permit any change in equity structure (including, without limitation, stock issuances, pursuant to the exercise of options, option grants or otherwise, capital contributions, or mergers or acquisitions, but not including the Distribution) that could cause the Distribution or the Internal Distribution to be treated as part of a plan pursuant to which one or more Persons acquire directly or indirectly PHH stock representing a "50-percent or greater interest" within the meaning of Section 355(e) of the Code.

(b) Notwithstanding Section 2.2(a), PHH shall be permitted to take and shall permit the PHH Affiliates to take actions inconsistent with the covenants contained in such section if: (i) PHH obtains a ruling from the IRS in form and substance acceptable to Cendant to the effect that such actions will not result in the Distribution, the Internal Distribution or the Internal Reorganization, as the case may be, being taxable transactions, in whole or in part, or (ii) PHH obtains an opinion in form and substance acceptable to Cendant of nationally recognized tax counsel acceptable to Cendant to the effect that such actions will not result in the Distribution, the Internal Distribution or the Internal Reorganization being taxable transactions, in whole or in part. Notwithstanding the receipt of an IRS ruling or a tax opinion described in this Section 2.2(b), PHH and the PHH Affiliates shall not be relieved of any indemnification obligations under this Agreement.

### ARTICLE III

#### INDEMNIFICATION

Section 3.1 Generally.

(a) Cendant shall indemnify PHH, each PHH Affiliate, and their respective directors, officers and employees, and hold them harmless from and against all Taxes and associated Losses, without duplication, (i) for which Cendant is liable under this Agreement,



(ii) imposed on PHH or any PHH Affiliate under Treasury Regulation Section 1.1502-6 (or any corresponding provision of state, local, or foreign Tax law) as a result of PHH or any PHH Affiliate being a member of the Affiliated Group (or similar group under state, local, or foreign Tax law) of which Cendant or any Cendant Affiliate is the common parent, except to the extent that PHH otherwise would be liable for such Taxes under Article II of this Agreement, or (iii) attributable to a breach of any covenant or obligation of Cendant under this Agreement.

(b) PHH shall indemnify Cendant, each Cendant Affiliate, and their respective directors, officers, and employees, and hold them harmless from and against all Taxes and associated Losses, without duplication, (i) for which PHH is liable under this Agreement, (ii) imposed on any Cendant Affiliate under Treasury Regulation Section 1.1502-6 (or any corresponding provision of state, local, or foreign Tax law) as a result of any Cendant Affiliate being a member of the Affiliated Group (or similar group under state, local, or foreign Tax law) of which PHH or any PHH Affiliate is the common parent, except to the extent that Cendant otherwise would be liable for such Taxes under Article II of this Agreement, or (iii) attributable to a breach of any covenant or obligation of PHH under this Agreement.

Section 3.2 No Indemnification for Tax Attributes. Notwithstanding anything to the contrary contained in this Agreement, Cendant shall not indemnify PHH or any PHH Affiliate from and against, and none of PHH or any PHH Affiliate shall be entitled to indemnification pursuant to this Agreement, for any Taxes or Losses resulting from PHH or any PHH Affiliates not having, or having a reduced amount, of Tax attributes (including basis of assets, net operating loss carryovers and credit carryovers).

## ARTICLE IV

### PAYMENTS

Section 4.1 Payments Under This Agreement. Any payment required to be made pursuant to this Agreement by one party to the other shall be made according to this Section 4.1.

(a) In General. All payments shall be made within the time prescribed for payment in this Agreement, or if no period is prescribed, within twenty (20) days after delivery of written notice of payment owing together with a computation of the amounts due.

(b) Treatment of Payments. Unless otherwise required by any Final Determination, payments made by one party to another party (other than payments of interest pursuant to Section 4.1(e) and payments of After Tax Amounts pursuant to Section 4.1(d)) pursuant to this Agreement shall be treated for all Tax and financial accounting purposes as nontaxable payments (dividend distributions or capital contributions, as the case may be) made immediately prior to the Distribution and, accordingly, as not includible in the taxable income of the recipient.

(c) Prompt Performance. All actions required to be taken by any party under this Agreement shall be performed within the time prescribed for performance in this Agreement, or if no period is prescribed, such actions shall be performed promptly.

(d) After Tax Amounts. If, pursuant to a Final Determination, it is determined that the receipt or accrual of any payment made under this Agreement (other than payments pursuant to Section 1.6 or of interest pursuant to Section 4.1(e)), including any payment made pursuant to this Section 4.1(d), is includible in income by the receiving party, the party making such payment shall pay to the receiving party an additional amount equal to (a) the After Tax Amount with respect to such payment and (b) interest at the rate described in Section 4.1(e) on the amount of any Tax attributable to such inclusion in income from the date such Tax accrues through the date of payment of such After Tax Amount. A party making a demand for a payment pursuant to this Agreement and for a payment of an After Tax Amount with respect to such payment shall separately specify and compute such After Tax Amount. However, a party may choose not to specify an After Tax Amount in a demand for payment pursuant to this Agreement without thereby being deemed to have waived its right subsequently to demand an After Tax Amount with respect to such payment.

(e) Interest. Payments pursuant to this Agreement that are not made within the period prescribed in this Agreement (the "Payment Period") shall bear interest for the period from and including the date immediately following the last date of the Payment Period through and including the date of payment at a per annum rate equal to the prime rate as published in *The Wall Street Journal* on the last day of such Payment Period, plus two percent (2%). Such interest shall be payable at the same time as the payment to which it relates and shall be calculated on the basis of a year of 365 days and the actual number of days for which due.

## ARTICLE V

### TAX PROCEEDINGS

Section 5.1 Audits. Subject to Section 5.4, the party responsible for preparing and filing a Tax Return pursuant to Article I (the "Filing Party") shall have the exclusive right to control, contest, and represent the interests of Cendant, any Cendant Affiliate, PHH, and any PHH Affiliate, as applicable, in any Audit relating to such Tax Return and, in its reasonable discretion, to resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of any such Audit. The Filing Party's rights shall extend to any matter pertaining to the management and control of an Audit, including execution of waivers, choice of forum, scheduling of conferences and the resolution of any Tax related matter regarding such Tax Return.

Section 5.2 Notice. Within ten (10) days after a party receives a written notice or other information from a Taxing Authority of the existence of a Tax issue that may require the indemnifying party to indemnify the receiving party under this Agreement, such party shall notify the indemnifying party of such issue, and thereafter shall promptly forward to the other

party copies of notices and material communications with any Taxing Authority relating to such issue. The failure of one party to notify the other party of any matter relating to a particular Tax for a taxable period or to take any action specified in this Agreement shall not relieve such other party of any liability and/or obligation which it may have under this Agreement with respect to such Tax for such taxable period, except to the extent that such other party's rights under this Agreement are materially prejudiced by such failure.

Section 5.3 Remedies. PHH shall make no claim against Cendant and shall not raise or assert any defense to PHH's liabilities and/or obligations to Cendant under this Agreement based upon the resolution by Cendant of any deficiency, claim or adjustment relating to any Tax related matter pertaining to Cendant or any Cendant Affiliate.

Section 5.4 Control of Distribution Tax and Internal Reorganization Tax Proceedings. Notwithstanding any other provision of this Agreement to the contrary, Cendant shall have the exclusive right and sole discretion to control, contest, and represent the interests of Cendant, any Cendant Affiliate, PHH, and any PHH Affiliate in any Audits (including, without limitation, audits of PHH Separate Income Tax Returns) relating to Distribution Taxes and/or Internal Reorganization Taxes and to resolve, settle or agree to any deficiency, claim or adjustment proposed, asserted or assessed in connection with or as a result of any such Audit, provided that to the extent that Cendant reasonably believes that PHH may potentially have liability for such Distribution Taxes and/or Internal Reorganization Taxes pursuant to this Agreement, Cendant shall permit PHH to participate in the relevant Audit. Cendant's rights shall extend to any matter pertaining to the management and control of such Audit, including execution of waivers, choice of forum, scheduling of conferences and the resolution of any Tax related matter regarding such Tax Return. In connection with this Section 5.4, PHH shall designate and shall cause the PHH Affiliates to designate, Cendant (and Cendant employees and representatives of Cendant) as its attorney-in-fact and agrees to take such action and to cause the PHH Affiliates to take such action (including execution of appropriate powers of attorney and other documents) as Cendant may reasonably request.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 6.1 Effectiveness. This Agreement shall become effective on the Distribution Date.

Section 6.2 Cooperation and Exchange of Information.

(a) Cooperation. PHH and Cendant shall each cooperate fully (and each shall cause its respective affiliates to cooperate fully) with all reasonable requests from the other party hereto, or from an agent, representative or advisor to such party, in connection with the preparation and filing of Tax Returns, claims for refund, Audits, and other matters related to

Taxes covered by this Agreement. Such cooperation shall include, without limitation, at each party's own cost:

- (i) the retention until the expiration of the applicable statute of limitations, and the provision upon request, of Tax Returns, books, records (including information regarding ownership and Tax basis of property), documentation and other information relating to the Tax Returns, including accompanying schedules, related work papers, and documents relating to rulings or other determinations by Taxing Authorities;
- (ii) the execution of any document that may be necessary or reasonably helpful in connection with any Audit, or the filing of a Tax Return or refund claim by Cendant or any Cendant Affiliate or PHH or any PHH Affiliate, including certification, to the best of a party's knowledge, of the accuracy and completeness of the information it has supplied; and
- (iii) the use of the party's reasonable best efforts to obtain any documentation that may be necessary or reasonably helpful in connection with any of the foregoing.

Each party shall make its employees and facilities available on a reasonable and mutually convenient basis in connection with the foregoing matters. Notwithstanding anything to the contrary contained in this Agreement or otherwise, neither PHH nor any PHH Affiliate shall have the right to receive or obtain any information relating to Taxes of Cendant, any Cendant Affiliate or its predecessors, in each case, other than information relating solely to PHH or a PHH Affiliate.

(b) Retention of Records. Subject to Section 6.2(a), a party intending to dispose of documentation relating to the Taxes of Cendant or any Cendant Affiliate or PHH or any PHH Affiliate, including without limitation, Tax Returns, books, records, documentation and other information relating to the Tax Returns, including accompanying schedules, related work papers, and documents relating to rulings or other determinations by Taxing Authorities (after the expiration of the applicable statute of limitations) as permitted by this Agreement, shall provide written notice to the other party describing the documentation to be destroyed or disposed of sixty (60) business days prior to taking such action. The other party may arrange to take delivery of the documentation described in the notice at its expense during the succeeding sixty (60) day period.

Section 6.3 Dispute Resolution. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity hereof ("Dispute") shall first be negotiated between the appropriate senior executives of Cendant and PHH who have the authority to resolve the matter. Such executives shall meet to attempt in good faith to negotiate a resolution of the Dispute prior to pursuing other available remedies, within ten (10) days of receipt by Cendant or PHH, as applicable, of notice of a Dispute, which date of receipt shall be referred to herein as the "Dispute Resolution Commencement Date." If the senior executives are

unable to resolve the Dispute within thirty (30) days from the Dispute Resolution Commencement Date, then Cendant and PHH shall jointly retain an Independent Firm to resolve the Dispute. If Cendant and PHH cannot mutually agree upon an Independent Firm, then any Dispute which Cendant and PHH cannot resolve within thirty (30) days from the Dispute Resolution Commencement Date shall be resolved by a nationally recognized accounting firm selected by the American Arbitration Association; provided, that the American Arbitration Association shall not select any accounting firm that is then providing auditing services to Cendant, any Cendant Affiliate, PHH or any PHH Affiliate. The accounting firm selected by Cendant and PHH or the American Arbitration Association, as the case may be, shall act as an arbitrator to resolve all points of disagreement, and its decision shall be final and binding upon all parties involved. Following the decision of such firm, Cendant and PHH shall each take or cause to be taken any action necessary to implement the decision of such firm. Cendant and PHH shall share equally the administrative costs of the arbitration and such firm's fees and expenses, and shall each bear their respective other costs and expenses related to the arbitration.

Section 6.4 Notices. Notices, offers, requests or other communications required or permitted to be given by any party pursuant to the terms of this Agreement shall be given in writing to Cendant or PHH, as applicable, to the following addresses or facsimile numbers:

If to Cendant, at:

Cendant Corporation  
9 West 57<sup>th</sup> Street  
37<sup>th</sup> Floor  
New York, NY 10019  
Attention: Erick Bock  
EVP, Legal Corporate Secretary  
Fax Number: (212) 413-1922

with a copy to:

Cendant Corporation  
1 Campus Drive  
Parsippany, NJ 07054  
Attention: Joseph Huber  
Group Vice President, Corporate Taxes  
Fax Number: (973) 496-7390

If to PHH, at:

Cendant Mortgage  
3000 Leadenhall Road  
Mailstop LGL  
Mount Laurel, NJ 08054  
Attention: William F. Brown

Senior Vice President & General Counsel  
Fax Number: (856) 917-0950

with a copy to:  
PHH Corporation  
940 Ridgebrook Road  
Sparks, MD 21152-9390  
Attention: Michael Morrison  
VP Corporate Tax  
Fax Number: (410) 771-3362

or to such other address or facsimile number as the party to whom notice is given may have previously furnished to the other in writing as provided herein. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier or, within the United States, may also be sent via certified mail, return receipt requested. All other notices may also be sent by facsimile, confirmed by first class mail. All notices shall be deemed to have been given when received, if hand-delivered; when receipt confirmed, if transmitted by facsimile or similar electronic transmission method; one (1) working day after it is sent, if sent by recognized overnight courier; and three (3) days after it is postmarked, if mailed by first class mail or certified mail, return receipt requested, with postage prepaid.

Section 6.5 Changes in Law.

(a) Any reference to a provision of the Code, Treasury Regulations, or a law of another jurisdiction shall include a reference to any applicable successor provision or law.

(b) If, due to any change in applicable law or regulations or their interpretation by any court of law or other governing body having jurisdiction subsequent to the date hereof, performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable or impossible, the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such provision.

Section 6.6 Confidentiality. Each of the parties hereto shall hold and cause its directors, officers, employees, advisors, and consultants to hold in strict confidence, unless compelled to disclose by judicial or administrative process or, in the opinion of its counsel, by other requirements of law, all information (other than any such information relating solely to the business or affairs of such party) concerning the other parties hereto furnished it by such other party or its representatives pursuant to this Agreement (except to the extent that such information can be shown to have been (1) in the public domain through no fault of such party or (2) later lawfully acquired from other sources not under a duty of confidentiality by the party to which it was furnished), and no party shall release or disclose such information to any other Person, except its directors, officers, employees, auditors, attorneys, financial advisors, bankers or other consultants who shall be advised of and agree to be bound by the provisions of this Section 6.6.

Each of the parties hereto shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other parties if it exercises the same care as it takes to preserve confidentiality for its own similar information.

Section 6.7 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. No party may assign this Agreement or any rights or obligations hereunder, without the prior written consent of the other parties hereto, and any such assignment shall be void; provided, that each of Cendant and PHH may assign this Agreement to a successor entity in conjunction with such party's reincorporation without obtaining the consent of the other.

Section 6.8 Affiliates. Cendant shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Cendant Affiliate, and PHH shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any PHH Affiliate. PHH shall, upon the written request of Cendant, cause any PHH Affiliate formally to execute this Agreement; upon execution, each such PHH Affiliate shall become a party to this Agreement and shall be jointly and severally liable the obligations of PHH hereunder.

Section 6.9 Authority. Each of the parties hereto represents to the other that (a) it has the corporate power and authority to execute, deliver and perform this Agreement, (b) the execution, delivery and performance of this Agreement by it have been duly authorized by all necessary corporate or other action, (c) it has duly and validly executed and delivered this Agreement and (d) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

Section 6.10 Entire Agreement. This Agreement and Appendix A attached hereto, constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof. To the extent that this Agreement is inconsistent with any of such other agreements with respect to the matters discussed herein, this Agreement shall control. Except as set forth in Article III of the Transition Services Agreement, (i) this Agreement shall exclusively control matters relating to Taxes and (ii) neither the Transition Services Agreement nor the Separation Agreement shall have any application to any matter that is governed by this Agreement.

Section 6.11 Governing Law and Jurisdiction. This Agreement shall be construed in accordance with, and all Disputes hereunder shall be governed by, the laws of the State of New York, excluding its conflict of law rules.

Section 6.12 Counterparts. This Agreement, including Appendix A hereto, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Section 6.13 Severability. If any term or other provision of this Agreement is determined by a non-appealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 6.14 Parties in Interest. This Agreement, including Appendix A hereto, shall be binding upon Cendant and PHH, and any PHH Affiliate that executes this Agreement, and inure solely to the benefit of PHH, any PHH Affiliate that executes this Agreement, and Cendant and their respective permitted assigns, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 6.15 Failure or Indulgence Not Waiver. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any failure to exercise, or any single or partial exercise, of any such right preclude other or further exercise thereof or of any other right.

Section 6.16 Amendments. No change or amendment will be made to this Agreement except by an instrument in writing signed on behalf of each of the parties to this Agreement.

Section 6.17 Interpretation. When a reference is made in this Agreement to an Article or a Section, or to an Appendix, such reference shall be to an Article or Section of, or an Appendix to, this Agreement unless otherwise indicated. The headings contained in this Agreement, in any Appendix, and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The use of the term "including" in the Agreement shall always mean "including, without limitation".

Section 6.18 Tax Sharing Agreements. As of the Closing Date, all tax sharing agreements (including the Cendant Tax Sharing Agreement) between PHH and/or any PHH Affiliate, on the one hand, and Cendant and/or any Cendant Affiliate, on the other hand, shall be terminated as of the Distribution Date and, after the Distribution Date, none of the parties to any such tax sharing agreement shall have any further rights or obligations under any such agreement. Notwithstanding anything to the contrary contained in this Agreement, this Section



6.18 shall not operate to terminate any tax sharing agreement (including the Cendant Tax Sharing Agreement) between or as it relates to Cendant, on the one hand, and any Cendant Affiliate, on the other hand.

## ARTICLE VII

### DEFINITIONS

Section 7.1 Defined Terms. The following terms shall have the meanings given them in this Section 7.1:

“Advisory Firm” means a nationally recognized accounting or law firm that is reasonably acceptable to Cendant.

“Advisory Firm Letter” means a letter from an Advisory Firm stating that any Tax Benefit Schedule or other information to be provided by PHH to Cendant pursuant to Section 1.6(d) and all supporting schedules and work papers were prepared in a manner consistent with the terms of this Agreement and, to the extent not expressly provided in this Agreement, on a reasonable basis in light of the facts and law in existence on the date of such Tax Benefit Schedule or other information delivered to Cendant.

“Affiliated Group” means an affiliated group of corporations within the meaning of section 1504(a)(1) of the Code that files a United States federal consolidated Income Tax Return.

“After Tax Amount” means any additional amount necessary to eliminate (through a gross-up mechanism) the Tax consequences of the receipt or accrual of any payment required to be made under this Agreement (including payment of any additional amount required to gross up such additional amounts), taking into account the effect of the deductions available for interest paid or accrued and for Taxes such as state and local Income Taxes), and determined by assuming that the recipient of the payment pays Tax at the highest applicable marginal corporate Tax rate (or rates, in the case of an item that affects more than one Tax) for the relevant taxable period (or portion thereof).

“Audit” includes any audit, assessment of Taxes, other examination by any Taxing Authority, proceeding, or appeal of such a proceeding relating to Taxes, whether administrative or judicial, including proceedings relating to competent authority determinations.

“Avis Final Determination” has the meaning set forth in Section 1.6(a).

“Avis Merger Agreement” means the Agreement and Plan of Merger and Reorganization by and among PHH Corporation, PHH Holdings Corporation, Avis Rent A Car, Inc. and Avis Fleet Leasing and Management Corporation, dated as of May 22, 1999.

“Cendant Affiliate” means any corporation or other entity directly or indirectly Controlled by Cendant immediately after the Distribution. For the avoidance of doubt, “Cendant Affiliate” shall exclude PHH and each PHH Affiliate.

“Cendant Consolidated and Combined Income Tax Returns” means each Tax Return required to be filed for Income Taxes of the federal Affiliated Group filing a consolidated Income Tax Return and each state, local, or foreign affiliated, consolidated, combined, unitary, or similar group, in each case, of which Cendant or any Cendant Affiliate is the common parent.

“Cendant Representation Letters” means the Tax Certificate from Cendant to Skadden dated January 31, 2005, and the Business Purpose Letter from Cendant to Skadden dated January 31, 2005, in which certain representations, warranties and covenants are made on behalf of Cendant in connection with the issuance of the Tax Opinion.

“Cendant Separate Income Tax Return” means each Tax Return with respect to Income Taxes required to be filed by Cendant or any Cendant Affiliate that is not a Cendant Consolidated or Combined Return.

“Cendant Tax Sharing Agreement” means the Tax sharing agreement effective as of the first day of the consolidated return year beginning January 1, 2003 by and between Cendant and its subsidiaries.

“Code” means the Internal Revenue Code of 1986, as amended, and any successor thereto.

“Control” means the ownership of stock, directly or indirectly, possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote.

“Dispute” has the meaning set forth in Section 6.3.

“Dispute Resolution Commencement Date” has the meaning set forth in Section 6.3.

“Distribution” has the meaning set forth in the recitals to this Agreement.

“Distribution Date” has the meaning set forth in the Separation Agreement between Cendant and PHH dated as of January 31, 2005.

“Distribution Taxes” means the product of (x) the aggregate amount of any gain or income recognized by Cendant, each Cendant Affiliate, PHH and each PHH Affiliate resulting from or arising in connection with the failure of the Internal Distribution to be wholly tax-free under sections 355, 361(c), and/or 368(a)(1)(D) of the Code (or any other applicable section of the Code), or the Distribution to be wholly tax-free under section 355 of the Code (or any other applicable sections of the Code), including, without limitation, any gain or income resulting from the application of section 355(d) or section 355(e) of the Code to the Distribution or the Internal Distribution, or corresponding provisions of the laws of any other jurisdiction and (y) the highest applicable marginal aggregate corporate Income Tax rate (for federal, state, local and foreign purposes) for the relevant taxable period (or portion thereof). Notwithstanding the foregoing,

Distribution Taxes shall not include income or gain attributable to (i) intercompany items with respect to (A) the December 31, 2002 transfer of Speedy Title and Appraisal Review Services Corporation (“STARS”) by PHH Holdings to Cendant Settlement Services Group, Inc. (“CSSG”) or (B) the transfer of certain domain names from Cendant Mortgage Corporation to one or more Cendant Affiliates and/or (ii) any excess loss account with respect to the stock of PHH Corner Leasing, Inc., PHH Market Leasing, Inc., PHH Milford Leasing, Inc., and PHH St. Paul Leasing, Inc. For purposes of this definition, “intercompany items” and “excess loss accounts” shall be, in each case, taken into account pursuant to the Treasury Regulations promulgated pursuant to section 1502 of the Code.

“Filing Party” has the meaning set forth in Section 5.1.

“Final Determination” means the final resolution of liability for any Tax for any taxable period, by or as a result of: (i) a final and unappealable decision, judgment, decree or other order by any court of competent jurisdiction; (ii) a final settlement with the IRS, a closing agreement or accepted offer in compromise under Code sections 7121 or 7122, or a comparable agreement under the laws of other jurisdictions, which resolves the entire Tax liability for any taxable period; (iii) any allowance of a refund or credit in respect of an overpayment of Tax, but only after the expiration of all periods during which such refund may be recovered by the jurisdiction imposing the Tax; or (iv) any other final disposition, including by reason of the expiration of the applicable statute of limitations.

“Income Tax” means any Tax determined by reference to income, net worth, gross receipts or capital, or any such Taxes imposed in lieu of such Tax.

“Independent Firm” means a nationally recognized accounting firm acceptable to Cendant and PHH.

“Internal Distribution” has the meaning set forth in the recitals to the Agreement.

“Internal Reorganization” has the meaning set forth in the recitals to the Agreement.

“Internal Reorganization Taxes” means the product of (x) the aggregate amount of any gain or income recognized by Cendant, each Cendant Affiliate, PHH and each PHH Affiliate resulting from or arising in connection with the failure of any of the transactions set forth in the Steps Memo, or any transactions related thereto, to be wholly tax-free and (y) the highest applicable marginal aggregate corporate Income Tax rate (for federal, state, local and foreign purposes) for the relevant taxable period (or portion thereof). Notwithstanding the forgoing, Internal Reorganization Taxes shall not include (i) Distribution Taxes, (ii) income or gain attributable to the sale, pursuant to the Steps Memo, of PHH stock by Cendant and/or the Cendant Rabbi Trust (as defined in the Steps Memo), and (iii) income or gain attributable to (A) intercompany items with respect to (x) the December 31, 2002 transfer of STARS by PHH Holdings to CSSG and (y) the transfer of certain domain names from Cendant Mortgage Corporation to one or more Cendant Affiliates and/or (B) any excess loss account with respect to the stock of PHH Corner Leasing, Inc., PHH Market Leasing, Inc., PHH Milford Leasing, Inc., and PHH St. Paul Leasing, Inc. For purposes of this definition, “intercompany items” and “excess loss accounts” shall be, in each case, taken into account pursuant to the Treasury Regulations promulgated pursuant to section 1502 of the Code.

“IRS” means the United States Internal Revenue Service or any successor thereto, including, but not limited to its agents, representatives, and attorneys.

“Losses” means any loss, cost, damage or expense, including reasonable attorneys’ fees and costs attributable to the foregoing.

“Mobility” has the meaning set forth in the recitals.

“Other Taxes” means any Taxes other than Income Taxes.

“Payment Period” has the meaning set forth in Section 4.1(e).

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

“PHH Affiliate” means any corporation or other entity directly or indirectly Controlled by PHH immediately after the Distribution. For purposes of this Agreement, PHH Affiliate shall also include AFL, PHH Holdings, AFL Management, VMS Holdings, Inc., PHH Financial Services, Inc., PHH Continental Leasing, Inc., PHH Auto Finance Corporation, Speedy Title & Appraisal Review Services Corporation, and the successor of each of the foregoing.

“PHH Consolidated and Combined Income Tax Returns” means each Tax Return required to be filed for Income Taxes of any federal Affiliated Group filing a consolidated Income Tax Return and each state, local, or foreign affiliated, consolidated, combined, unitary, or similar group, in each case, of which PHH or any PHH Affiliate is the common parent.

“PHH Representation Letter” means the Tax Certificate from PHH to Skadden dated January 31, 2005, in which certain representations, warranties and covenants are made on behalf of PHH in connection with the issuance of the Tax Opinion.

“PHH Separate Income Tax Return” means each Tax Return with respect to Income Taxes required to be filed by PHH or any PHH Affiliate that is not a PHH Consolidated or Combined Return.

“Realized” A Tax Benefit or other benefit shall be deemed to have been Realized from a Tax Asset in a taxable period only if and to the extent that the Tax liability of the taxpayer (or of the Affiliated Group or any other state, local, foreign or similar group of which it is a member) for such period, after taking into account the effect of the Tax Asset on the Tax liability of such taxpayer in the current period and all prior periods, is less than it would have been if such Tax liability were determined without regard to such Tax Asset. For purposes of this definition and Section 1.6, any carryback of a net operating loss or other tax attribute by PHH or any PHH Affiliate to a taxable period shall be disregarded. For purposes of this Agreement, a Tax Benefit

shall be deemed to have been “Realized” (i) at the time of the filing of a Tax Return (including any amended Tax Return or any Tax Return relating to estimated Taxes) on which a loss, deduction or credit or increase in basis is applied to reduce the amount of Taxes which would otherwise be payable and (ii) at the time of the filing of a claim or form for the refund of a Tax.

“Restated Tax Benefit” has the meaning set forth in Section 1.6(f).

“Separation Agreement” means the Separation Agreement between Cendant and PHH dated as of January 31, 2005.

“Skadden” means Skadden, Arps, Slate, Meagher & Flom LLP.

“Steps Memo” means the memorandum attached hereto as Appendix A.

“Tax and Taxes” include all taxes, charges, fees, duties, levies, imposts, rates or other assessments imposed by any federal, state, local or foreign Taxing Authority, including, but not limited to, income, gross receipts, excise, property, sales, use, license, capital stock, transfer, franchise, payroll, withholding, social security, value added and other taxes, and any interest, penalties or additions attributable thereto.

“Tax Asset” means any loss, deduction (including any deduction attributable to depreciation or amortization), credit, Tax basis, or other Tax attribute.

“Tax Benefit” means any reduction in the Tax liability of a taxpayer (or of the Affiliated Group or any other state, local, foreign or similar group of which it is a member) for any taxable period. For purposes of this Agreement, Tax Benefit shall include, without limitation, the reduction of any Tax liability of a taxpayer resulting from any deductions from the amortization or depreciation of property, or reduction in income or gain from the sale of property or increase in any loss from the sale of property to the extent such loss reduces the Tax liability of the taxpayer in such taxable year.

“Tax Benefit Schedule” has the meaning set forth in Section 1.6(b).

“Tax Opinion” means the opinions issued to Cendant by Skadden in connection with the Internal Distribution, the Distribution and the Internal Reorganization.

“Tax Return” means any return, report, certificate, form or similar statement or document (including any related or supporting information or schedule attached thereto and any information return, amended tax return, claim for refund or declaration of estimated tax) required to be supplied to, or filed with, a Taxing Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

“Taxing Authority” means any governmental authority or any subdivision, agency, commission or authority thereof or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or imposition of any Tax (including the IRS).

“Transition Services Agreement” means the Transition Services Agreement between Cendant and PHH dated as of January 31, 2005.

“Treasury Regulations” means the final and temporary (but not proposed) income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

[SIGNATURE PAGE FOLLOWS]

WHEREFORE, the parties have signed this Tax Sharing Agreement effective as of the date first set forth above.

CENDANT CORPORATION

/s/ Joseph J. Huber

Name: Joseph J. Huber

Title: Group Vice President, Corporate Taxes

PHH CORPORATION

/s/ Terence W. Edwards

Name: Terence W. Edwards

Title: President & Chief Executive Officer

**CENDANT COMPLETES SPIN-OFF OF ITS MORTGAGE  
AND FLEET BUSINESSES**

*Company Continues to Sharpen Focus on Core Travel and Real Estate Businesses*

*Cendant to Move Forward with Initial Public Offering of Wright Express in February  
and with Plans for the Sale of its Marketing Services Division in the Third Quarter of 2005*

**NEW YORK, NY January 31, 2005** — Cendant Corporation (NYSE: CD) announced today that it has completed the previously announced spin-off of its mortgage and fleet management businesses through the distribution to its stockholders of 100 percent of the shares of its previously wholly-owned subsidiary, PHH Corporation. In addition, Cendant announced that it has entered into a mortgage venture with PHH, which Cendant expects to be operational in mid-2005. The venture will originate mortgage loans for customers of Cendant's real estate brokerage and relocation businesses.

Today, Cendant distributed one share of PHH common stock for every 20 shares of Cendant common stock outstanding as of January 19, 2005. Cash will be issued in lieu of fractional shares. The distribution was structured to qualify as a tax-free stock dividend to Cendant stockholders for U.S. federal income tax purposes, although cash received instead of fractional shares will be taxable. The distribution resulted in the issuance of approximately 52.7 million shares of PHH common stock. On February 1, 2005, PHH common stock is expected to begin regular-way trading on the New York Stock Exchange under the symbol "PHH," and Cendant will begin trading excluding PHH.

"We are making significant progress on our strategic plan to simplify our business by focusing solely on our core travel and real estate services verticals," said Ronald L. Nelson, Cendant's president and chief financial officer. "The PHH spin-off completes the next step in Cendant's program to divest itself of profitable, but non-core business units, a process that began with the successful IPO of Jackson Hewitt in June 2004."

As previously disclosed, Cendant expects to record a non-cash impairment charge in connection with the spin-off of PHH to reflect any difference between PHH's carrying value and PHH's market value. The Company anticipates that such non-cash charge will be in the range of \$500 million to \$650 million after-tax (\$0.47 to \$0.61 per share). Approximately one-third of this charge will be allocated to continuing operations and approximately two-thirds to discontinued operations, reflecting the relative values of the mortgage and fleet businesses, respectively, and the fact that mortgage will not be accounted for as a discontinued operation. The Company does not anticipate recording a tax benefit associated with this charge.

Separately, Cendant intends to dispose of its ownership interest in its Wright Express subsidiary in an initial public offering expected to take place in February 2005. Cendant

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anticipates it will receive more than \$1.0 billion in cash proceeds from the Wright Express disposition, inclusive of the equity offering proceeds and a one-time dividend payable to Cendant at closing. Cendant expects to record a gain on the sale of Wright Express in the range of \$200 million to \$300 million after-tax (\$0.19-\$0.28 per share), partially offsetting the non-cash impairment charge related to PHH. The Company further anticipates that it will use its net operating loss carry-forwards to offset any federal taxes that may be due on the gain.

Additionally, Cendant reconfirmed its previously disclosed intent to dispose of its Marketing Services Division, including its Progeny Marketing Innovations, Trilegiant and Cims businesses, and anticipates the disposition of the division will take place in the third quarter of 2005.

A registration statement relating to the shares of Wright Express common stock has been filed with the Securities and Exchange Commission but has not yet become effective. The shares of Wright Express common stock may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This press release shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the shares of Wright Express common stock in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state. A copy of the prospectus relating to the shares of Wright Express common stock may be obtained, when available, from J.P. Morgan Securities Inc., Prospectus Department, One Chase Manhattan Plaza, New York, NY 10081 (Telephone: (212) 552-5164); Credit Suisse First Boston LLC, Prospectus Department, One Madison Avenue, Level 1B, New York, New York 10010 by faxing a request to (212) 325-8057; or Merrill Lynch & Co. at 4 World Financial Center, New York, New York 10080 (Telephone: (212) 449-1000).

Cendant can give no assurances that the Wright Express initial public offering or the disposition of the Marketing Services Division will be consummated. Prior to consummating the initial public offering, Cendant and Wright Express will need to complete the negotiation of financial and other terms, including the initial public offering price. In addition, consummation of the initial public offering is subject to market conditions and other factors outside of the control of Cendant and Wright Express.

*Statements about future results made in this release, including the pending initial public offering of Wright Express and the disposition of the Marketing Services Division, constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These statements are based on current expectations and the current economic environment. The Company cautions that these statements are not guarantees of future performance. Actual results may differ materially from those expressed or implied in the forward-looking statements. Important assumptions and other important factors that could cause actual results to differ materially from those in the forward-looking statements are specified in Cendant's Form 10-Q for the quarter ended September 30, 2004.*

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**About Cendant Corporation**

Cendant Corporation is primarily a provider of travel and residential real estate services. With approximately 80,000 employees, New York City-based Cendant provides these services to business and consumers in over 100 countries. More information about Cendant, its companies, brands and current SEC filings may be obtained by visiting the Company's Web site at <http://www.cendant.com>.

**About PHH Corporation**

Headquartered in Mount Laurel, N.J., PHH Corporation is a leading outsource provider of mortgage and vehicle fleet management services. It is the sixth-largest retail originator of residential mortgages in the United States and the second-largest fleet management services provider in the United States and Canada. For additional information on the company and its subsidiaries please visit [www.PHH.com](http://www.PHH.com).

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**UNAUDITED PRO FORMA FINANCIAL INFORMATION**

The following Unaudited Pro Forma Condensed Consolidated Balance Sheets as of September 30, 2004 and December 31, 2003 and the Unaudited Pro Forma Condensed Consolidated Statements of Operations for the nine months ended September 30, 2004 and for the years ended December 31, 2003, 2002 and 2001 have been derived from our historical financial statements and adjusted to give effect to the following, all of which were consummated in connection with the distribution of PHH Corporation common stock to Cendant stockholders by Cendant on January 31, 2005:

• the equity contribution from us to PHH of \$100 million in cash and our assumption of \$55 million of pension-related liabilities for which PHH was previously responsible; and

• the subsequent distribution of our mortgage, fleet leasing and appraisal business as PHH Corporation to our common stockholders.

The Unaudited Pro Forma Condensed Consolidated Balance Sheets assume that the above-mentioned transactions occurred on the date of such balance sheet and the Unaudited Pro Forma Condensed Consolidated Statements of Operations assume that the above-mentioned transactions occurred on January 1 of each period presented.

Management believes that the assumptions used to derive the Unaudited Pro Forma Condensed Consolidated Financial Statements are reasonable under the circumstances and given the information available. The Unaudited Pro Forma Condensed Consolidated Financial Statements have been provided for information purposes and are not necessarily indicative of the future financial condition or results of future operations or the actual financial condition or results that would have been achieved had the transactions occurred on the dates indicated. These Unaudited Pro Forma Condensed Consolidated Financial Statements (together with the footnotes thereto) should be read in conjunction with our historical consolidated financial statements and accompanying notes thereto, which can be found in our quarterly report on Form 10-Q for the period ended September 30, 2004 filed with the Securities and Exchange Commission on November 2, 2004, our current report on Form 8-K filed with the Securities and Exchange Commission on August 2, 2004 and our annual report on Form 10-K for the fiscal year ended December 31, 2003 filed with the Securities and Exchange Commission on March 1, 2004.

The Unaudited Pro Forma Condensed Consolidated Statements of Operations do not reflect material non-recurring charges which will impact net income within the 12 months following the transaction, including: (i) any non-cash impairment charge that we may be required to record to reflect any difference between PHH's carrying value and PHH's market value, which, based upon currently available information, we estimate will be in the range of \$535 million to \$590 million after tax (\$0.50 to \$0.55 per diluted share); (ii) any tax provision associated with separating the appraisal business from us upon spin-off, which we currently estimate to be approximately \$24 million (\$0.02 per diluted share) and (iii) any transaction costs, which we currently estimate to be approximately \$15 million (\$0.01 per diluted share).

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**CENDANT CORPORATION**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET**  
**AS OF SEPTEMBER 30, 2004**  
(in millions)

	<u>Historical As Reported</u>	<u>Spin-off of PHH Corporation (a)</u>	<u>Equity Contribution (b)</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Cendant</u>
<b>Assets</b>						
Cash and cash equivalents	\$ 1,633	\$ (243)	\$ (100)	\$ 3	(c)	\$ 1,293
Restricted cash	364	(231)	—	—		133
Receivables, net	1,544	(329)	—	—		1,215
Deferred income taxes	502	(51)	—	(14)	(d)	437
Other current assets	812	(41)	—	—		771
<b>Total current assets</b>	<u>4,855</u>	<u>(895)</u>	<u>(100)</u>	<u>(11)</u>		<u>3,849</u>
Property and equipment, net	1,749	(101)	—	—		1,648
Deferred income taxes	1,848	20	—	—		1,868
Goodwill	10,981	(504)	—	208	(e)	10,685
Other intangibles, net	2,494	(58)	—	—		2,436
Other non-current assets	830	(223)	—	29	(f)	636
<b>Total assets exclusive of assets under programs</b>	<u>22,757</u>	<u>(1,761)</u>	<u>(100)</u>	<u>226</u>		<u>21,122</u>
<b>Assets under management and mortgage programs:</b>						
Program cash	457	(309)	—	—		148
Mortgage loans held for sale	2,150	(2,150)	—	—		—
Relocation receivables	761	—	—	—		761
Vehicle-related, net	11,242	(3,684)	—	—		7,558
Timeshare-related, net	2,306	—	—	—		2,306
Mortgage servicing rights, net	1,653	(1,653)	—	—		—
Other	283	(151)	—	—		132
	<u>18,852</u>	<u>(7,947)</u>	<u>—</u>	<u>—</u>		<u>10,905</u>
<b>Total assets</b>	<u>\$ 41,609</u>	<u>\$ (9,708)</u>	<u>\$ (100)</u>	<u>\$ 226</u>		<u>\$ 32,027</u>
<b>Liabilities and stockholders' equity</b>						
Accounts payable and other current liabilities	\$ 4,429	\$ (73)	\$ —	\$ (16)	(g)	\$ 4,340
Current portion of long-term debt	864	(3)	—	—		861
Deferred income	809	(1)	—	—		808
<b>Total current liabilities</b>	<u>6,102</u>	<u>(77)</u>	<u>—</u>	<u>(16)</u>		<u>6,009</u>
Long-term debt	3,601	(5)	—	—		3,596
Deferred income	316	(6)	—	—		310
Other non-current liabilities	830	(78)	55	—		807
<b>Total liabilities exclusive of liabilities under programs</b>	<u>10,849</u>	<u>(166)</u>	<u>55</u>	<u>(16)</u>		<u>10,722</u>
<b>Liabilities under management and mortgage programs:</b>						
Debt	15,570	(6,706)	—	—		8,864
Deferred income taxes	2,712	(943)	—	—		1,769
Other	67	(67)	—	—		—
	<u>18,349</u>	<u>(7,716)</u>	<u>—</u>	<u>—</u>		<u>10,633</u>
<b>Commitments and contingencies</b>						
Stockholders' equity	12,411	(1,826)	(155)	242	(h)	10,672
<b>Total liabilities and stockholders' equity</b>	<u>\$ 41,609</u>	<u>\$ (9,708)</u>	<u>\$ (100)</u>	<u>\$ 226</u>		<u>\$ 32,027</u>

**CENDANT CORPORATION**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET**  
**AS OF DECEMBER 31, 2003**  
**(in millions)**

	<u>Historical As Reported</u>	<u>Spin-off of PHH Corporation (a)</u>	<u>Equity Contribution (b)</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Cendant</u>
<b>Assets</b>						
Cash and cash equivalents	\$ 839	\$ (58)	\$ (100)	\$ (10)	(c)	\$ 671
Restricted cash	448	(214)	—	—		234
Receivables, net	1,665	(369)	—	—		1,296
Deferred income taxes	454	(48)	—	(86)	(d)	320
Assets of discontinued operations	556	—	—	—		556
Other current assets	1,060	(56)	—	—		1,004
<b>Total current assets</b>	<u>5,022</u>	<u>(745)</u>	<u>(100)</u>	<u>(96)</u>		<u>4,081</u>
Property and equipment, net	1,763	(104)	—	—		1,659
Deferred income taxes	1,040	12	—	—		1,052
Goodwill	10,716	(481)	—	200	(e)	10,435
Other intangible assets	2,311	(52)	—	—		2,259
Other non-current assets	965	(256)	—	29	(f)	738
<b>Total assets exclusive of assets under programs</b>	<u>21,817</u>	<u>(1,626)</u>	<u>(100)</u>	<u>133</u>		<u>20,224</u>
<b>Assets under management and mortgage programs:</b>						
Program cash	542	(441)	—	—		101
Mortgage loans held for sale	2,508	(2,508)	—	—		—
Relocation receivables	534	—	—	—		534
Vehicle-related, net	10,143	(3,405)	—	—		6,738
Timeshare-related, net	1,803	—	—	—		1,803
Mortgage servicing rights, net	1,641	(1,641)	—	—		—
Other	468	(465)	—	—		3
	<u>17,639</u>	<u>(8,460)</u>	<u>—</u>	<u>—</u>		<u>9,179</u>
<b>Total assets</b>	<u>\$ 39,456</u>	<u>\$ (10,086)</u>	<u>\$ (100)</u>	<u>\$ 133</u>		<u>\$ 29,403</u>
<b>Liabilities and stockholders' equity</b>						
Accounts payable and other current liabilities	\$ 4,668	\$ (112)	\$ —	\$ (75)	(g)	\$ 4,481
Current portion of long-term debt	1,629	(1)	—	—		1,628
Liabilities of discontinued operations	61	—	—	—		61
Deferred income	854	(1)	—	—		853
<b>Total liabilities exclusive of liabilities under programs</b>	<u>7,212</u>	<u>(114)</u>	<u>—</u>	<u>(75)</u>		<u>7,023</u>
Long-term debt	4,373	(1)	—	—		4,372
Deferred income	311	(2)	—	—		309
Other non-current liabilities	883	(84)	55	—		854
<b>Total liabilities exclusive of liabilities under programs</b>	<u>12,779</u>	<u>(201)</u>	<u>55</u>	<u>(75)</u>		<u>12,558</u>
<b>Liabilities under management and mortgage programs:</b>						
Debt	14,785	(6,868)	—	—		7,917
Deferred income taxes	1,429	(943)	—	—		486
Other	277	(277)	—	—		—
	<u>16,491</u>	<u>(8,088)</u>	<u>—</u>	<u>—</u>		<u>8,403</u>
<b>Commitments and contingencies</b>						
Stockholders' equity	10,186	(1,797)	(155)	208	(i)	8,442
<b>Total liabilities and stockholders' equity</b>	<u>\$ 39,456</u>	<u>\$ (10,086)</u>	<u>\$ (100)</u>	<u>\$ 133</u>		<u>\$ 29,403</u>

**CENDANT CORPORATION**  
**NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET**  
**AS OF SEPTEMBER 30, 2004 AND DECEMBER 31, 2003**  
**(Dollars in millions)**

- (a) Represents the assets, liabilities and equity of our mortgage, fleet and appraisal businesses, which have been distributed to our shareholders. The fuel card and relocation operations of PHH were distributed to Cendant prior to the spin-off.
  - (b) Represents our equity contribution to PHH, comprising (i) a cash contribution of \$100 million from us and (ii) our assumption of \$55 million of PHH's pension-related liabilities. Cendant's contribution of its appraisal business to PHH is reflected in the column entitled "Spin-off of PHH Corporation(a)."
  - (c) Represents a cash inflow relating to the settlement of intercompany liabilities due from PHH (\$32 million and \$19 million at September 30, 2004 and December 31, 2003, respectively), offset by a cash outflow relating to our purchase of a 49.9% ownership interest in the mortgage venture to be established with PHH (\$29 million at September 30, 2004 and December 31, 2003).
  - (d) Represents an adjustment to reflect an estimate of the tax benefit of net operating losses we expect to allocate to PHH at the time of spin-off.
  - (e) Represents the reallocation of goodwill from PHH relating to the separation of entities that will not be included within the PHH ownership structure following the spin-off (\$208 million and \$200 million as of September 30, 2004 and December 31, 2003, respectively).
  - (f) Represents an estimate of our 49.9% ownership interest in the mortgage venture.
  - (g) Represents an adjustment to reflect the forgiveness of an estimated intercompany tax payable to PHH as of the date of the spin-off (\$48 million and \$94 million at September 30, 2004 and December 31, 2003, respectively), after giving effect to the current estimate of \$24 million of taxes associated with separating the appraisal business from us; partially offset by the cash settlement of intercompany liabilities from PHH (\$32 million and \$19 million at September 30, 2004 and December 31, 2003, respectively).
  - (h) Represents (i) the reallocation of \$208 million of goodwill and (ii) the \$48 million forgiveness of the intercompany tax payable; partially offset by the \$14 million tax benefit adjustment.
  - (i) Represents (i) the reallocation of \$200 million of goodwill and (ii) the \$94 million forgiveness of the intercompany tax payable; partially offset by the \$86 million tax benefit adjustment.
-

**CENDANT CORPORATION**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2004**  
(in millions, except per share data)

	<u>Historical As Reported</u>	<u>Spin-off of PHH Corporation (a)</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Cendant</u>
<b>Revenues</b>					
Net revenues	\$ 14,881	\$ (1,753)	\$ 10	<b>(b)</b>	\$ 13,138
<b>Expenses</b>					
Operating	7,717	(516)	—		7,201
Vehicle depreciation, lease charges and interest, net	1,882	(947)	—		935
Marketing and reservation	1,514	(5)	—		1,509
General and administrative	1,122	(145)	23	<b>(c)</b>	1,000
Non-program related depreciation and amortization	395	(34)	—		361
Non-program related interest, net	202	—	—		202
Acquisition and integration related costs:					
Amortization of pendings and listings	13	—	—		13
Other	(3)	—	—		(3)
Total expenses	<u>12,842</u>	<u>(1,647)</u>	<u>23</u>		<u>11,218</u>
<b>Income before income taxes and minority interest</b>	2,039	(106)	(13)		1,920
Provision for income taxes	570	(41)	(4)	<b>(d)</b>	525
Minority interest, net of tax	6	—	—		6
<b>Income from continuing operations</b>	<u>\$ 1,463</u>	<u>\$ (65)</u>	<u>\$ (9)</u>		<u>\$ 1,389</u>
<b>Weighted average shares outstanding (e)</b>					
Basic	1,024				1,024
Diluted	1,059				1,059
<b>Earnings per share (e)</b>					
Basic	\$ 1.43				\$ 1.36
Diluted	\$ 1.38				\$ 1.31

**CENDANT CORPORATION**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**  
**FOR THE YEAR ENDED DECEMBER 31, 2003**  
(in millions, except per share data)

	<u>Historical As Reported</u>	<u>Spin-off of PHH Corporation (a)</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Cendant</u>
<b>Revenues</b>					
Net revenues	\$ 18,015	\$ (2,505)	\$ 76	<b>(b)</b>	\$ 15,586
<b>Expenses</b>					
Operating	9,341	(730)	—		8,611
Vehicle depreciation, lease charges and interest, net	2,487	(1,176)	—		1,311
Marketing and reservation	1,732	(8)	—		1,724
General and administrative	1,352	(221)	32	<b>(c)</b>	1,163
Non-program related depreciation and amortization	507	(38)	—		469
Non-program related interest, net	364	—	—		364
Acquisition and integration related costs:					
Amortization of pendings and listings	20	—	—		20
Other	34	—	—		34
Litigation and related charges, net	11	—	—		11
Restructuring and other unusual charges	(6)	—	—		(6)
Total expenses	<u>15,842</u>	<u>(2,173)</u>	<u>32</u>		<u>13,701</u>
<b>Income before income taxes and minority interest</b>	2,173	(332)	44		1,885
Provision for income taxes	722	(131)	14	<b>(d)</b>	605
Minority interest, net of tax	21	—	—		21
<b>Income from continuing operations</b>	<u>\$ 1,430</u>	<u>\$ (201)</u>	<u>\$ 30</u>		<u>\$ 1,259</u>
<b>Weighted average shares outstanding (e)</b>					
Basic	1,017				1,017
Diluted	1,040				1,040
<b>Earnings per share (e)</b>					
Basic	\$ 1.41				\$ 1.24
Diluted	\$ 1.38				\$ 1.21



**CENDANT CORPORATION**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**  
**FOR THE YEAR ENDED DECEMBER 31, 2002**  
(in millions, except per share data)

	<u>Historical As Reported</u>	<u>Spin-off of PHH Corporation (a)</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Cendant</u>
<b>Revenues</b>					
Net revenues	\$ 14,025	\$ (1,904)	\$ 54	<b>(b)</b>	\$ 12,175
<b>Expenses</b>					
Operating	6,765	(495)	—		6,270
Vehicle depreciation, lease charges and interest, net	2,094	(1,173)	—		921
Marketing and reservation	1,374	(7)	—		1,367
General and administrative	1,112	(183)	24	<b>(c)</b>	953
Non-program related depreciation and amortization	455	(32)	—		423
Non-program related interest, net	304	—	—		304
Acquisition and integration related costs:					
Amortization of pendings and listings	256	—	—		256
Other	29	—	—		29
Litigation and related charges, net	103	—	—		103
Restructuring and other unusual charges	(14)	—	—		(14)
Total expenses	<u>12,478</u>	<u>(1,890)</u>	<u>24</u>		<u>10,612</u>
<b>Income before income taxes and minority interest</b>	1,547	(14)	30		1,563
Provision for income taxes	516	(7)	11	<b>(d)</b>	520
Minority interest, net of tax	22	(1)	—		21
<b>Income from continuing operations</b>	<u>\$ 1,009</u>	<u>\$ (6)</u>	<u>\$ 19</u>		<u>\$ 1,022</u>
<b>Weighted average shares outstanding (e)</b>					
Basic	1,019				1,019
Diluted	1,043				1,043
<b>Earnings per share (e)</b>					
Basic	\$ 0.99				\$ 1.00
Diluted	\$ 0.97				\$ 0.98

**CENDANT CORPORATION**  
**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF INCOME**  
**FOR THE YEAR ENDED DECEMBER 31, 2001**  
(in millions, except per share data)

	<u>Historical As Reported</u>	<u>Spin-off of PHH Corporation (a)</u>	<u>Pro Forma Adjustments</u>		<u>Pro Forma Cendant</u>
<b>Revenues</b>					
Net revenues	\$ 8,612	\$ (2,014)	\$ 55	<b>(b)</b>	\$ 6,653
<b>Expenses</b>					
Operating	2,718	(362)	—		2,356
Vehicle depreciation, lease charges and interest, net	1,789	(1,020)	—		769
Marketing and reservation	1,100	(7)	—		1,093
General and administrative	957	(174)	16	<b>(c)</b>	799
Non-program related depreciation and amortization	462	(44)	—		418
Non-program related interest, net	254	—	—		254
Acquisition and integration related costs:					
Amortization of pendings and listings	—	—	—		—
Other	112	—	—		112
Litigation and related charges, net	86	—	—		86
Restructuring and other unusual charges	378	—	—		378
Mortgage servicing rights impairment	94	(94)	—		—
Total expenses	<u>7,950</u>	<u>(1,701)</u>	<u>16</u>		<u>6,265</u>
Net losses relating to impairments of investments and dispositions of businesses	<u>(24)</u>	<u>—</u>	<u>—</u>		<u>(24)</u>
<b>Income before income taxes, minority interest and equity in Homestore</b>	638	(313)	39		364
Provision for income taxes	207	(128)	14	<b>(d)</b>	93
Minority interest, net of tax	24	—	—		24
Losses related to equity in Homestore, net of tax	77	—	—		77
<b>Income from continuing operations</b>	<u>\$ 330</u>	<u>\$ (185)</u>	<u>\$ 25</u>		<u>\$ 170</u>
<b>Weighted average shares outstanding(e)</b>					
Basic	869				869
Diluted	917				917
<b>Earnings per share(e)</b>					
Basic	\$ 0.36				\$ 0.18
Diluted	\$ 0.35				\$ 0.17

**CENDANT CORPORATION**  
**NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
**FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2004 AND YEARS ENDED DECEMBER 31, 2003, 2002 AND 2001**

- (a) Represents the results of operations of our mortgage, fleet and appraisal businesses, which have been distributed to our shareholders. The fuel card and relocation operations of PHH were distributed to Cendant prior to the spin-off.
- (b) Represents (i) our portion of the mortgage venture's earnings based upon our 49.9% ownership interest (\$15 million and \$84 million for the nine months ended September 30, 2004 and the year ended December 31, 2003, respectively, and \$63 million for both the years ended December 31, 2002 and 2001) and (ii) income associated with marketing services and license agreements executed with PHH (\$3 million for the nine months ended September 30, 2004 and \$4 million for each of the years ended December 31, 2003, 2002 and 2001); partially offset by the elimination of interest expense allocations to PHH (\$8 million, \$12 million, \$13 million and \$12 million for the nine months ended September 30, 2004 and the years ended December 31, 2003, 2002 and 2001, respectively).
- (c) Represents (i) the elimination of general corporate overhead allocations to PHH (\$20 million \$28 million, \$25 million and \$19 million for the nine months ended September 30, 2004 and the years ended December 31, 2003, 2002 and 2001, respectively) and (ii) the assumption by us of a portion of PHH's pension plan and the related expense (income) (\$3 million, \$4 million, \$(1) million and \$(3) million for the nine months ended September 30, 2004 and the years ended December 31, 2003, 2002 and 2001, respectively).
- (d) Represents the tax effects of (b) and (c) above.
- (e) Earnings per share and weighted average shares outstanding do not reflect any adjustments required to be made to existing Cendant common stock options and restricted stock units in connection with the spin-off of PHH. We estimate that an incremental six million common stock options and one million restricted stock units will be issued to Cendant employees as an equitable adjustment to existing equity awards.