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12-30-2009

### Securities Purchase and Exchange Agreement

United States: Department of the Treasury

GMAC Capital Trust I

General Motors Acceptance Corporation (GMAC)

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**SECURITIES PURCHASE AND EXCHANGE AGREEMENT**

**by and among**

**GMAC INC.,**

**GMAC CAPITAL TRUST I**

**and**

**UNITED STATES DEPARTMENT OF THE TREASURY**

**December 30, 2009**

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## SECURITIES PURCHASE AND EXCHANGE AGREEMENT

### Recitals:

WHEREAS, the United States Department of the Treasury (the “Investor”) may from time to time agree to purchase securities and warrants from eligible companies pursuant to the Automotive Industry Financing Program (“Auto Program”) created under the Troubled Asset Relief Program;

WHEREAS, a company that participates in the Auto Program and intends to issue securities to the Investor shall enter into this Securities Purchase and Exchange Agreement (the “Purchase Agreement”);

WHEREAS, GMAC Inc. (the “Company”) wishes to obtain financing from time to time to restore liquidity to its finance businesses, and to restore stability to the domestic automobile industry in the United States, and the Investor has agreed, subject to the terms and conditions of this Purchase Agreement, to provide such financing to the Company;

WHEREAS, the financing provided hereunder will be used in a manner that (A) enables the Company and its Subsidiaries to develop a viable and competitive business; (B) preserves and promotes the jobs of American workers employed directly by the Company and its Subsidiaries and in related industries; and (C) stimulates the sales of automobiles;

WHEREAS, the Company intends to cause GMAC Capital Trust I (the “Issuer Trust”) to issue in a private placement \$2.667 billion in aggregate liquidation amount of Trust Preferred Securities (the “Trust Preferred Securities”), liquidation preference \$1,000 per security, and the Investor and the Company intend to purchase from the Issuer Trust the Trust Preferred Securities;

WHEREAS, the Investor intends to purchase from the Issuer Trust \$2.540 billion in aggregate liquidation amount of Trust Preferred Securities and the Company intends to purchase from the Issuer Trust \$127 million in aggregate liquidation amount of Trust Preferred Securities and to issue to the Investor in a private placement a warrant (the “Trust Preferred Warrant”) to purchase \$127 million in aggregate liquidation amount Trust Preferred Securities with an initial exercise price of \$0.01 per security (“Exercise Price”);

WHEREAS, the Investor intends to purchase from the Company and immediately exercise the Trust Preferred Warrant;

WHEREAS, the entire proceeds from the sale by the Issuer Trust of the Trust Preferred Securities will be combined with the entire proceeds from the sale by the Issuer Trust to the Company of common securities (the “Common Securities”), and will be used by the Issuer Trust to purchase unsecured junior subordinated debentures of the Company (the “Debentures”);

WHEREAS, the Trust Preferred Securities and the Common Securities of the Issuer Trust will be issued pursuant to the Amended and Restated Declaration of Trust (the “Declaration”), dated as of the Closing Date (as defined below), among the Company, the Administrative Trustees named therein (in such capacity, the “Administrative Trustees”), BNY Mellon Trust of

*[Securities Purchase Agreement]*



Delaware, as Delaware Trustee (in such capacity, the “Delaware Trustee”), The Bank of New York Mellon, as Institutional Trustee (in such capacity, the “Institutional Trustee”) and the holders from time to time of undivided beneficial interests in the assets of the Issuer Trust;

WHEREAS, the Trust Preferred Securities will be fully and unconditionally guaranteed on a subordinated basis by the Company with respect to distributions and amounts payable upon liquidation, redemption or repayment (the “Guarantee”) pursuant, to the extent subject to, the Trust Preferred Securities Guarantee Agreement (the “Guarantee Agreement”), to be dated as of the Closing Date and executed and delivered by the Company and The Bank of New York Mellon, as guarantee trustee (the “Guarantee Trustee”), for the benefit from time to time of the holders of the Trust Preferred Securities;

WHEREAS, the Debentures will be issued pursuant to an Indenture, dated as of the Closing Date (the “Indenture”, and together with this Purchase Agreement, the Declaration and the Guarantee Agreement, the “Operative Documents”), between the Company and The Bank of New York Mellon, as indenture trustee (in such capacity, the “Indenture Trustee”);

WHEREAS, the Company intends to issue in a private placement, and the Investor intends to purchase from the Company, 25,000,000 shares of the Company’s Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F-2 (the “Series F-2 Preferred Stock”) that mandatorily convert to common stock of the Company (the “Common Stock”) and a warrant to purchase 1,250,000 shares of Series F-2 Preferred Stock (the “Series F-2 Warrant” together with the Trust Preferred Warrant, the “Warrants”) (the “Series F-2 Purchase” together with the purchase of the Trust Preferred Securities, the “Purchase”);

WHEREAS, the Company and the Investor intend to exchange (the “Series D Exchange”) 5,000,000 shares of the Company’s Fixed Rate Cumulative Perpetual Preferred Stock, Series D-1 (the “Series D-1 Preferred Stock”), and 250,000 shares of the Company’s Fixed Rate Cumulative Perpetual Preferred Stock, Series D-2 (the “Series D-2 Preferred Stock,” and the shares of the Series D-1 Preferred Stock and the Series D-2 Preferred Stock to be exchanged the “Series D Shares”) for 105,000,000 shares of the Series F-2 Preferred Stock;

WHEREAS, the Company and the Investor intend to exchange (the “Old MCP Exchange” together with the Series D Exchange, the “Exchanges”) 97,500,000 shares of the Company’s Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F (the “Series F Preferred Stock” and the shares of the Series F Preferred Stock to be exchanged in the Old MCP Exchange, the “Old MCP Shares”, together with the Series D Shares, the “Old Shares”) for 97,500,000 shares of Series F-2 Preferred Stock (the Series F-2 Preferred Stock to be issued in the Series F-2 Purchase and the Exchanges together with the Trust Preferred Securities and the Warrants, the “Purchased Securities”);

WHEREAS, the Purchase and the Exchanges will be governed by this Purchase Agreement, specifying additional terms of the Purchase and the Exchanges; and

WHEREAS, as a condition to the Purchase and the Exchanges, 60,000,000 shares of the Series F Preferred Stock held by the Investor will be converted into 259,200 shares of the

Company's Common Stock (the "Conversion") at the conversion rate which shall be 0.00432 shares of Common Stock per share of Series F Preferred Stock.

**NOW, THEREFORE**, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

## **Article I**

### **Purchase; Exchanges; Conversion; Closing**

1.1 Purchase. On the terms and subject to the conditions set forth in this Purchase Agreement, (a) the Issuer Trust agrees to sell (i) to the Investor, and the Investor agrees to purchase from the Issuer Trust, at the Closing (as hereinafter defined), 2,540,000 Trust Preferred Securities and (ii) to the Company, and the Company agrees to purchase from the Issuer Trust, at the Closing, 127,000 Trust Preferred Securities, (b) the Company agrees to sell to the Investor, and the Investor agrees to purchase from Company, at the Closing, the Trust Preferred Warrant, (c) the Company agrees to sell to the Investor, and the Investor agrees to purchase from the Company, at the Closing, the Series F-2 Warrant, and (d) the Company agrees to sell to the Investor, and the Investor agrees to purchase from the Company, at the Closing, 25,000,000 shares of Series F-2 Preferred Stock as consideration for the transactions contemplated by the Purchase and the Exchanges.

1.2 Exchanges. On the terms and subject to the conditions set forth in this Purchase Agreement, (a) the Investor agrees to sell and transfer to the Company, and the Company agrees to accept and acquire from the Investor, all of the Old Shares in exchange for 202,500,000 shares of Series F-2 Preferred Stock and an amount in cash equal to the accrued and unpaid dividends on the Old Shares, to, but excluding, the Closing Date and (b) the Company agrees to sell and transfer to the Investor, and the Investor agrees to accept and acquire from the Company, 202,500,000 shares of Series F-2 Preferred Stock in exchange for the Old Shares, at the Closing.

#### 1.3 Closing.

(a) On the terms and subject to the conditions set forth in this Purchase Agreement, the closing of the Purchase and the Exchanges (the "Closing") will take place at the offices of Sonnenschein Nath & Rosenthal LLP, New York, New York 10281, at 4:00 p.m. New York time, on December 30, 2009, or at such other place, time and date as shall be agreed between the Company and the Investor. The time and date on which the Closing occurs is referred to in this Purchase Agreement as the "Closing Date."

(b) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.3, at the Closing the Issuer Trust will deliver the Trust Preferred Securities and the Company will deliver the Trust Preferred Warrant, in each case as evidenced by one or more certificates dated the Closing Date and bearing appropriate legends as hereinafter provided for, in exchange for payment in full of the purchase price (which shall be equal to the aggregate liquidation preference of the Trust Preferred Securities issued and sold by the Issuer Trust to the Investor) by wire transfer of immediately available United States funds to a bank account designated by the Company in writing to the Investor prior to the Closing Date.

(c) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.3, at the Closing the Company will deliver the shares of Series F-2 Preferred Stock issued and sold to the Investor in the Series F-2 Purchase and the Series F-2 Warrant, in each case as evidenced by one or more certificates dated the Closing Date and bearing appropriate legends as hereinafter provided for, in exchange for payment in full of the purchase price (which shall be equal to the aggregate liquidation amount of the shares of Series F-2 Preferred Stock issued and sold by the Company to the Investor in the Series F-2 Purchase) by wire transfer of immediately available United States funds to a bank account designated by the Company in writing to the Investor prior to the Closing Date.

(d) Subject to the fulfillment or waiver of the conditions to the Closing in this Section 1.3, at the Closing the Company will deliver the shares of Series F-2 Preferred Stock issued to the Investor in the Exchanges, as evidenced by one or more certificates dated the Closing Date and bearing appropriate legends as hereinafter provided for, and an amount in cash equal to the accrued but unpaid dividends on the Old Shares, to, but excluding, the Closing Date, by wire transfer of immediately available United States funds to a bank account designated by the Investor in writing to the Company prior to the Closing Date, in exchange for the surrender of the certificates evidencing the Old Shares at the Closing.

(e) The respective obligations of each of the Investor, the Issuer Trust and the Company to consummate the Purchase and the Exchanges are subject to the fulfillment (or waiver by the Investor, the Issuer Trust and the Company, as applicable) prior to the Closing of the conditions that (i) any approvals or authorizations of all United States and other governmental, regulatory or judicial authorities (collectively, “Governmental Entities”) required for the consummation of the Purchase shall have been obtained or made in form and substance reasonably satisfactory to each party and shall be in full force and effect and all waiting periods required by United States and other applicable law, if any, shall have expired and (ii) no provision of any applicable United States or other law and no judgment, injunction, order or decree of any Governmental Entity shall prohibit the Purchase and the Exchanges as contemplated by this Purchase Agreement.

(f) The obligation of the Investor to consummate the Purchase and the Exchanges is also subject to the fulfillment (or waiver by the Investor) at or prior to the Closing of each of the following conditions:

(i) (A) the representations and warranties of the Company and/or the Issuer Trust, as applicable, set forth in (x) Section 2.2(i) of this Purchase Agreement shall be true and correct in all respects as though made on and as of the Closing Date, (y) Sections 2.2(a) through (h) shall be true and correct in all material respects as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct in all material respects as of such other date) and (z) Sections 2.2(j) through (aa) (disregarding all qualifications or limitations set forth in such representations and warranties as to “materiality”, “Company Material Adverse Effect” and words of similar import) shall be true and correct as though made on and as of the Closing Date (other than representations and warranties that by their terms speak as of another date, which representations and warranties shall be true and correct as of such other date), except to the extent that the

failure of such representations and warranties referred to in this Section 1.3(f)(i)(A)(z) to be so true and correct, individually or in the aggregate, does not have and would not reasonably be expected to have a Company Material Adverse Effect and (B) the Company and the Issuer Trust shall each have performed in all material respects all obligations required to be performed by it under this Purchase Agreement at or prior to the Closing;

(ii) the Investor shall have received a certificate signed on behalf of the Company by a senior executive officer certifying to the effect that the conditions set forth in Section 1.3(f)(i) have been satisfied;

(iii) the Company shall have duly adopted the amendments to its Certificate of Incorporation (the “Charter”) and the Bylaws (the “Bylaws”), each dated as of June 30, 2009, as amended, in substantially the forms attached hereto as Annex A-1 and Annex A-2 (the “Amendments”);

(iv) a waiver shall have been duly executed by the Company and delivered to the Investor, in substantially the form attached hereto as Annex B-1, releasing the Investor from any claims that the Company and its subsidiaries may otherwise have as a result of (A) any modifications to the terms of any compensation, retention award, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachutes, severance and employment agreements) (collectively, “Benefit Plans”) to eliminate any provisions that would not be in compliance with the executive compensation and corporate governance requirements of Section 111 of the Emergency Economic Stabilization Act of 2008, as amended by the American Recovery and Reinvestment Act of 2009, and as may be further amended and in effect from time to time (referred to herein as “EESA”), as implemented by any guidance, rule or regulation thereunder, as the same shall be in effect from time to time including the rules set forth in 31 CFR Part 30 or any rules that replace 31 CFR Part 30 (collectively, the “Compensation Regulations”);

(v) a waiver shall have been duly executed by each of the Senior Executive Officers and delivered to the Investor, in substantially the form attached hereto as Annex B-2, releasing the Investor from any claims that any Senior Executive Officer may otherwise have as a result of any modifications to the terms of any Benefit Plans, arrangements and agreements to eliminate any provisions that would not be in compliance with the executive compensation and corporate governance requirements of Section 111 of the EESA or any Compensation Regulations (“Senior Executive Officers” means the Company’s “senior executive officers” as defined in the EESA or any Compensation Regulations);

(vi) a consent and waiver shall have been duly executed by each Senior Executive Officer and delivered to the Company (with a copy to the Investor), in substantially the form attached hereto as Annex B-3, releasing the Company from any claims that any Senior Executive Officer may otherwise have as a result of any modification of the terms of any Benefit Plans, arrangements and agreements to eliminate any provisions that would not be in compliance with the executive compensation and

corporate governance requirements of Section 111 of the EESA or any Compensation Regulations;

(vii) a waiver shall have been duly executed by each of the Company's top 20 most highly compensated employees (other than the Senior Executive Officers) as determined under the requirements of Section 111 of the EESA or any Compensation Regulations (such employees, the "Senior Employees") and delivered to the Investor, in substantially the form attached hereto as Annex B-4, releasing the Investor from any claims that any Senior Employees may otherwise have as a result of the Company's failure to pay or accrue any bonus, retention award or incentive compensation as a result of any action referenced in this Purchase Agreement;

(viii) a consent and waiver shall have been duly executed by each Senior Employee and delivered to the Company (with a copy to the Investor), in substantially the form attached hereto as Annex B-5, releasing the Company from any claims that any Senior Employee may otherwise have as a result of the Company's failure to pay or accrue any bonus, retention award or incentive compensation as a result of any action referenced in this Purchase Agreement; *provided, however*, the Company shall be deemed to have met the requirements of Sections 1.3(f)(v), (vi), (vii) and (viii) with respect to any Senior Executive Officer or Senior Employee who has provided a waiver to the Investor in connection with either the Securities Purchase Agreement – Standard Terms dated December 29, 2008 (the "2008 SPA") between the Investor and the Company or the Securities Purchase Agreement – Standard Terms dated May 21, 2009 (the "May SPA") between the Investor and the Company;

(ix) the Company shall have delivered to the Investor a written opinion from counsel to the Company (which may be internal counsel), addressed to the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C-1;

(x) the Company shall have delivered to the Investor a written opinion from special tax counsel to the Company, addressed to the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C-2;

(xi) the Company shall have delivered to the Investor a written opinion from special Delaware counsel to the Trust, addressed to the Company and the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C-3;

(xii) the Company shall have delivered to the Investor a written opinion from special Delaware counsel to the Delaware Trustee, addressed to the Company and the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C-4;

(xiii) the Company shall have delivered to the Investor a written opinion from special Delaware counsel to the Institutional Trustee, Indenture Trustee and Guarantee Trustee addressed to the Company and the Investor and dated as of the Closing Date, in substantially the form attached hereto as Annex C-5;

(xiv) the Company shall have delivered an amount in cash equal to the accrued but unpaid dividends on the Old Shares, to, but excluding, the Closing Date, by wire transfer of immediately available United States funds to a bank account designated by the Investor in writing prior to the Closing Date;

(xv) the Trust shall have delivered evidence of certificates in definitive form, evidencing the Trust Preferred Securities, to Investor or its designee(s);

(xvi) the Company shall have delivered evidence of certificates in definitive form, evidencing the Series F-2 Preferred Stock issued in the Series F-2 Purchase and the Exchanges to the Investor or its designee(s);

(xvii) the Company shall have duly executed the Trust Preferred Warrant in substantially the form attached hereto as Annex D and delivered such executed Trust Preferred Warrant to the Investor or its designee(s);

(xviii) the Company shall have duly executed the Series F-2 Warrant in substantially the form attached hereto as Annex E and delivered such executed Series F-2 Warrant to the Investor or its designee(s); and

(xix) the Company shall have delivered evidence of certificates in definitive form, evidencing the 259,200 shares of Common Stock issuable to the Investor in connection with the Conversion and the Investor shall have surrendered the certificates representing the Series F Preferred Stock converted to Common Stock in the Conversion to the Company.

1.4 Interpretation. When a reference is made in this Purchase Agreement to “Recitals,” “Articles,” “Sections,” or “Annexes” such reference shall be to a Recital, Article or Section of, or Annex or Schedule to, this Purchase Agreement, unless otherwise indicated. The terms defined in the singular have a comparable meaning when used in the plural, and vice versa. References to “herein”, “hereof”, “hereunder” and the like refer to this Purchase Agreement as a whole and not to any particular section or provision, unless the context requires otherwise. The table of contents and headings contained in this Purchase Agreement are for reference purposes only and are not part of this Purchase Agreement. Whenever the words “include,” “includes” or “including” are used in this Purchase Agreement, they shall be deemed followed by the words “without limitation.” No rule of construction against the draftsman shall be applied in connection with the interpretation or enforcement of this Purchase Agreement, as this Purchase Agreement is the product of negotiation between sophisticated parties advised by counsel. All references to “\$” or “dollars” mean the lawful currency of the United States of America. Except as expressly stated in this Purchase Agreement, all references to any statute, rule or regulation are to the statute, rule or regulation as amended, modified, supplemented or replaced from time to time (and, in the case of statutes, include any rules and regulations promulgated under the statute) and to any section of any statute, rule or regulation include any successor to the section. References to a “business day” shall mean any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

## Article II Representations and Warranties

### 2.1 Disclosure.

(a) On or prior to the Signing Date, the Company and the Issuer Trust delivered to the Investor a schedule (“Disclosure Schedule”) setting forth, among other things, items the disclosure of which is necessary or appropriate either in response to an express disclosure requirement contained in a provision hereof or as an exception to one or more representations or warranties contained in Section 2.2.

(b) “Company Material Adverse Effect” means a material adverse effect on (i) the business, results of operation or financial condition of the Company and its consolidated subsidiaries taken as a whole; *provided, however*, that Company Material Adverse Effect shall not be deemed to include the effects of (A) changes after the date hereof (the “Signing Date”) in general business, economic or market conditions (including changes generally in prevailing interest rates, credit availability and liquidity, currency exchange rates and price levels or trading volumes in the United States or foreign securities or credit markets), or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, in each case generally affecting the industries in which the Company and its subsidiaries operate, (B) changes or proposed changes after the Signing Date in generally accepted accounting principles in the United States (“GAAP”) or regulatory accounting requirements, or authoritative interpretations thereof, or (C) changes or proposed changes after the Signing Date in securities, banking and other laws of general applicability or related policies or interpretations of Governmental Entities (in the case of each of these clauses (A), (B) and (C), other than changes or occurrences to the extent that such changes or occurrences have or would reasonably be expected to have a materially disproportionate adverse effect on the Company and its consolidated subsidiaries taken as a whole relative to comparable U.S. banking or financial services organizations); or (ii) the ability of the Company to consummate the Purchase, the Exchanges and other transactions contemplated by this Purchase Agreement and perform its obligations hereunder or thereunder on a timely basis.

(c) “Previously Disclosed” means information set forth on the Disclosure Schedule, *provided, however*, that disclosure in any section of such Disclosure Schedule shall apply only to the indicated section of this Purchase Agreement except to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is relevant to another section of this Purchase Agreement.

2.2 Representations and Warranties of the Company and the Issuer Trust. Except as Previously Disclosed, the Company represents and warrants to the Investor, and the Issuer Trust represents and warrants to the Investor with respect to matters relating to the Issuer Trust, that as of the Signing Date and as of the Closing Date (or such other date specified herein):

(a) Organization, Authority and Significant Subsidiaries of the Company. The Company has been duly formed and is validly existing as a corporation in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, and except as

has not, individually or in the aggregate, had and would not reasonably be expected to have a Company Material Adverse Effect, has been duly qualified as a foreign entity for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification; each subsidiary of the Company that would be considered a “significant subsidiary” (“Significant Subsidiary”) within the meaning of Rule 1-02(w) of Regulation S-X under the Securities Act of 1933 (the “Securities Act”), has been duly organized and is validly existing in good standing under the laws of its jurisdiction of organization. The Charter, the Bylaws and all amendments thereto, copies of which have been provided to the Investor prior to the Signing Date, are true, complete and correct copies of such documents as in full force and effect as of the Signing Date.

(b) Organization and Authority of the Issuer Trust. The Issuer Trust has been duly formed and is validly existing as a statutory trust in good standing under the laws of its jurisdiction of organization, with the necessary power and authority to own its properties and conduct its business in all material respects as currently conducted, and except as has not, individually or in the aggregate, had and would not reasonably be expected to have a Company Material Adverse Effect. The Declaration, and any amendment thereto, copies of which have been provided to the Investor on or prior to the Signing Date, are true, complete and correct copies of such documents as in full force and effect as of the Signing Date.

(c) Capitalization. The outstanding capital stock of the Company (including securities convertible into, or exercisable or exchangeable for, equity securities of the Company) as of the most recent fiscal month-end preceding the Signing Date (the “Capitalization Date”) is set forth on Schedule B. The outstanding shares of capital stock of the Company have been duly authorized and are validly issued and outstanding and were not issued in violation of any preemptive rights. As of the Signing Date, the Company does not have outstanding any securities or other obligations providing the holder the right to acquire its capital stock (“Capital Stock”) that are not reserved for issuance as specified on Schedule B, and the Company has not made any other commitment to authorize, issue or sell any Capital Stock, other than as specified on Schedule B. Since the Capitalization Date, the Company has not issued any Capital Stock, other than (i) the shares of Capital Stock issued upon the exercise of options or delivered under other equity-based awards or other convertible securities or warrants which were issued and outstanding on the Capitalization Date and disclosed on Schedule B and (ii) Capital Stock disclosed on Schedule B.

(d) Convertible Preferred Stock. The Series F-2 Preferred Stock has been duly and validly authorized, and, when issued and delivered pursuant to this Purchase Agreement, such shares of Series F-2 Preferred Stock will be duly and validly issued, will not be issued in violation of any preemptive rights (except that the Series F-2 Preferred Stock shall be offered to the holders of the Company’s Common Stock in accordance with Section 3.1 hereof in accordance with the Bylaws), and will rank *pari passu* with or senior to all other series or classes of Preferred Stock of the Company, whether or not issued or outstanding, with respect to dividend rights and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(e) Trust Preferred Securities and Common Securities. The Trust Preferred Securities and Common Securities have been duly and validly authorized by the Issuer Trust and, when



issued and delivered pursuant to this Purchase Agreement, in the case of the Trust Preferred Securities, and to the Company in accordance with the Subscription Agreement between the Company and the Issuer Trust, dated as of the date hereof, such Trust Preferred Securities and Common Securities will be duly and validly issued, fully paid and nonassessable and will represent undivided beneficial interests in the assets of the Issuer Trust entitled to the benefits of the Declaration, enforceable against the Issuer Trust in accordance with their terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity ("Bankruptcy Exceptions"). The Trust Preferred Securities will not be issued in violation of any preemptive rights, and will rank *pari passu* with or senior to all other series or classes of securities of the Issuer Trust, whether or not issued or outstanding, with respect to distribution rights and the distribution of assets in the event of any dissolution, liquidation or winding up of the Issuer Trust.

(f) Debentures. The Debentures have been duly authorized by the Company and, when issued and delivered to the Indenture Trustee for authentication in accordance with the Indenture, and, when authenticated in the manner provided in the Indenture and delivered to the Issuer Trust against payment therefor in accordance with the Subscription Agreement between the Company and the Issuer Trust, dated as of the Closing Date, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the Indenture, enforceable against the Company in accordance with their terms, subject to the Bankruptcy Exceptions.

(g) Guarantee Agreement and the Indenture. The Guarantee Agreement and the Indenture have been duly authorized by the Company and, when executed and delivered will have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the Guarantee Trustee, in the case of the Guarantee Agreement, and by the Indenture Trustee in the case of the Indenture, will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, subject to the Bankruptcy Exceptions.

(h) The Warrants. Each of the Trust Preferred Warrant and the Series F-2 Warrant has been duly authorized and, when executed and delivered as contemplated hereby, will constitute a valid and legally binding obligation of the Company enforceable against the Company in accordance with its terms, subject to the Bankruptcy Exceptions.

(i) Authorization, Enforceability.

(i) The Company has the requisite power and authority to execute and deliver this Purchase Agreement and to carry out its obligations hereunder (which includes the issuance of the Series F-2 Preferred Stock). The execution, delivery and performance by the Company of this Purchase Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company and its stockholders, and no further approval or authorization is required on the part of the Company. This Purchase Agreement is a valid and binding obligation of the Company enforceable against the Company, in accordance with its terms, subject to the Bankruptcy Exceptions.

(ii) The Issuer Trust has the requisite power and authority to execute and deliver this Purchase Agreement and to carry out its obligations hereunder and thereunder (which includes the issuance of the Trust Preferred Securities). The execution, delivery and performance by the Issuer Trust of this Purchase Agreement and the consummation of the transactions contemplated hereby and have been duly authorized by all necessary corporate action on the part of the Issuer Trust and its stockholders, and no further approval or authorization is required on the part of the Issuer Trust. The Issuer Trust is duly qualified to transact business as a foreign entity and is in good standing in each jurisdiction in which such qualification is necessary, except where the failure to so qualify or be in good standing would not have a material adverse effect on the condition (financial or otherwise), earnings, business, prospects or assets of the Issuer Trust, whether or not occurring in the ordinary course of business. The Issuer Trust is not a party to, or otherwise bound by, any agreement other than this Purchase Agreement, the Declaration and the Indenture. The Issuer Trust is, and under current law will continue to be, classified for federal income tax purposes as a grantor trust and not as an association or publicly traded partnership taxable as a corporation. This Purchase Agreement is a valid and binding obligation of the Issuer Trust enforceable against the Issuer Trust, in accordance with its terms, subject to the Bankruptcy Exceptions.

(iii) The Company has the requisite power and authority to execute and deliver the Warrants and to carry out its obligations thereunder (which includes the issuance of the Warrants and the shares of Series F-2 Preferred Stock issuable upon exercise of the Series F-2 Warrant). The execution, delivery and performance by the Company of the Warrants and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of the Company, and no further approval or authorization is required on the part of the Company.

(iv) The execution, delivery and performance by the Company and the Issuer Trust of this Purchase Agreement and the Warrants, as applicable, and the consummation of the transactions contemplated hereby and thereby and compliance by the Company and the Issuer Trust with the provisions hereof and thereof, will not (A) violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration of, or result in the creation of, any lien, security interest, charge or encumbrance upon any of the properties or assets of the Company or any subsidiary of the Company (including the Issuer Trust) (each a “Company Subsidiary” and, collectively, the “Company Subsidiaries”) under any of the terms, conditions or provisions of (i) its organizational documents or (ii) any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which the Company or any Company Subsidiary is a party or by which it or any Company Subsidiary may be bound, or to which the Company or any Company Subsidiary or any of the properties or assets of the Company or any Company Subsidiary may be subject, or (B) subject to compliance with the statutes and regulations referred to in the next paragraph, violate any statute, rule or regulation or any judgment, ruling, order, writ, injunction or decree applicable to the Company or any Company Subsidiary or any of their respective properties or assets except, in the case of clauses (A)(ii) and (B), for

those occurrences that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(v) Other than such filings and approvals as are required to be made or obtained under any state “blue sky” laws and such as have been made or obtained, no notice to, filing with, exemption or review by, or authorization, consent or approval of, any Governmental Entity is required to be made or obtained by the Company or the Issuer Trust in connection with the consummation by the Company of the Purchase or the Exchanges except for any such notices, filings, exemptions, reviews, authorizations, consents and approvals the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(vi) (A) The execution, delivery and performance by the Company of the Operative Documents and the Warrants and the consummation of the transactions contemplated hereby and thereby and compliance by the Company with the provisions hereof will not (1) result in any payment (including severance, unemployment compensation, “excess parachute payment” (within the meaning of the Code), “golden parachute payment” (as defined in the EESA, as implemented by the Compensation Regulations), forgiveness of indebtedness or otherwise) becoming due to any current or former employee, officer or director of the Company or any subsidiary of the Company from the Company or any subsidiary of the Company under any benefit plan or otherwise, (2) increase any benefits otherwise payable under any benefit plan, (3) result in any acceleration of the time of payment or vesting of any such benefits, (4) require the funding or increase in the funding of any such benefits or (5) result in any limitation on the right of the Company or any subsidiary of the Company to amend, merge, terminate or receive a reversion of assets from any benefit plan or related trust, except, in the case of each of clauses (1) through (5) above, to the extent applicable to a benefit plan for the benefit of employees employed primarily outside of the United States, as would not, individually or in the aggregate, reasonably be likely to be material to the Company (it being understood that the Company and its subsidiaries shall use its best efforts to minimize the effect thereof), and (B) neither the Company nor any subsidiary of the Company has taken, or permitted to be taken, any action that required, and no circumstances exist that will require the funding, or increase in the funding, of any benefits or resulted, or will result, in any limitation on the right of the Company or any subsidiary of the Company to amend, merge, terminate or receive a reversion of assets from any benefit plan or related trust.

(j) Anti-takeover Provisions and Rights Plan. The Board of Directors of the Company (the “Board of Directors”) has taken all necessary action to ensure that the transactions contemplated by this Purchase Agreement and the Warrants and the consummation of the transactions contemplated hereby and thereby, including the exercise of the Warrants in accordance with their terms, will be exempt from any anti-takeover or similar provisions of the Company’s Charter and Bylaws, and any other provisions of any applicable “moratorium”, “control share”, “fair price”, “interested stockholder” or other anti-takeover laws and regulations of any jurisdiction.

(k) No Company Material Adverse Effect. Since the last day of the last completed fiscal period for which financial statements are included in the Company Financial Statements (as defined below), no fact, circumstance, event, change, occurrence, condition or development has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Company Material Adverse Effect.

(l) Company Financial Statements. The Company has Previously Disclosed each of the consolidated financial statements of the Company and its consolidated subsidiaries for each of the last three completed fiscal years of the Company (which shall be audited to the extent audited financial statements are available prior to the Signing Date) and each completed quarterly period since the last completed fiscal year (collectively the “Company Financial Statements”). The Company Financial Statements present fairly in all material respects the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated therein and the consolidated results of their operations for the periods specified therein; and except as stated therein, such financial statements (A) were prepared in conformity with GAAP applied on a consistent basis (except as may be noted therein) and (B) have been prepared from, and are in accordance with, the books and records of the Company and the Company Subsidiaries.

(m) Reports.

(i) Since December 31, 2007, the Company and each Company Subsidiary has filed all reports, registrations, documents, filings, statements and submissions, together with any amendments thereto, that it was required to file with any Governmental Entity (the foregoing, collectively, the “Company Reports”) and has paid all fees and assessments due and payable in connection therewith, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. As of their respective dates of filing, the Company Reports complied in all material respects with all statutes and applicable rules and regulations of the applicable Governmental Entities.

(ii) The records, systems, controls, data and information of the Company and the Company Subsidiaries are recorded, stored, maintained and operated under means (including any electronic, mechanical or photographic process, whether computerized or not) that are under the exclusive ownership and direct control of the Company or the Company Subsidiaries or their accountants (including all means of access thereto and therefrom), except for any non-exclusive ownership and non-direct control that would not reasonably be expected to have a material adverse effect on the system of internal accounting controls described below in this Section 2.2(k)(ii). The Company (A) has implemented and maintains adequate disclosure controls and procedures to ensure that material information relating to the Company, including the consolidated Company Subsidiaries, is made known to the chief executive officer and the chief financial officer of the Company by others within those entities, and (B) has disclosed, based on its most recent evaluation prior to the Signing Date, to the Company’s outside auditors and the audit committee of the Board of Directors (x) any significant deficiencies and material weaknesses in the design or operation of internal controls that are reasonably likely to adversely affect the Company’s ability to record, process, summarize and report financial

information and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

(n) No Undisclosed Liabilities. Neither the Company nor any of the Company Subsidiaries has any liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not properly reflected or reserved against in the Company Financial Statements to the extent required to be so reflected or reserved against in accordance with GAAP, except for (A) liabilities that have arisen since the last fiscal year end in the ordinary and usual course of business and consistent with past practice and (B) liabilities that, individually or in the aggregate, have not had and would not reasonably be expected to have a Company Material Adverse Effect.

(o) Offering of Securities. Neither the Company, the Issuer Trust nor any person acting on behalf of either the Company or the Issuer Trust has taken any action (including any offering of any securities of the Company or the Issuer Trust under circumstances which would require the integration of such offering with the offering of any of the Purchased Securities under the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "SEC") promulgated thereunder), which might subject the offering, issuance or sale of any of the Purchased Securities to Investor pursuant to this Purchase Agreement to the registration requirements of the Securities Act.

(p) Litigation and Other Proceedings. Except (i) as set forth on Schedule C or (ii) as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, there is no (A) pending or, to the knowledge of the Company, threatened, claim, action, suit, investigation or proceeding, against the Company or any Company Subsidiary or to which any of their assets are subject nor is the Company or any Company Subsidiary subject to any order, judgment or decree or (B) unresolved violation, criticism or exception by any Governmental Entity with respect to any report or relating to any examinations or inspections of the Company or any Company Subsidiaries.

(q) Compliance with Laws. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have all permits, licenses, franchises, authorizations, orders and approvals of, and have made all filings, applications and registrations with, Governmental Entities that are required in order to permit them to own or lease their properties and assets and to carry on their business as presently conducted and that are material to the business of the Company or such Company Subsidiary. Except as set forth on Schedule D, the Company and the Company Subsidiaries have complied in all respects and are not in default or violation of, and none of them is, to the knowledge of the Company, under investigation with respect to or, to the knowledge of the Company, have been threatened to be charged with or given notice of any violation of, any applicable domestic (federal, state or local) or foreign law, statute, ordinance, license, rule, regulation, policy or guideline, order, demand, writ, injunction, decree or judgment of any Governmental Entity, other than such noncompliance, defaults or violations that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except for statutory or regulatory restrictions of general application or as set forth on Schedule D, no Governmental Entity has placed any restriction on the business or properties of

the Company or any Company Subsidiary that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(r) Employee Benefit Matters. Except as would not reasonably be expected to have, either individually or in the aggregate, a Company Material Adverse Effect: (A) each “employee benefit plan” (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) providing benefits to any current or former employee, officer or director of the Company or any member of its “Controlled Group” (defined as any organization which is a member of a controlled group of corporations within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the “Code”)) that is sponsored, maintained or contributed to by the Company or any member of its Controlled Group and for which the Company or any member of its Controlled Group would have any liability, whether actual or contingent (each, a “Plan”) has been maintained in compliance with its terms and with the requirements of all applicable statutes, rules and regulations, including ERISA and the Code; (B) with respect to each Plan subject to Title IV of ERISA (including, for purposes of this clause (B), any plan subject to Title IV of ERISA that the Company or any member of its Controlled Group previously maintained or contributed to in the six years prior to the Signing Date), (1) no “reportable event” (within the meaning of Section 4043(c) of ERISA), other than a reportable event for which the notice period referred to in Section 4043(c) of ERISA has been waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (2) no “accumulated funding deficiency” (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, has occurred in the three years prior to the Signing Date or is reasonably expected to occur, (3) the fair market value of the assets under each Plan exceeds the present value of all benefits accrued under such Plan (determined based on the assumptions used to fund such Plan) and (4) neither the Company nor any member of its Controlled Group has incurred in the six years prior to the Signing Date, or reasonably expects to incur, any liability under Title IV of ERISA (other than contributions to the Plan or premiums to the PBGC in the ordinary course and without default) in respect of a Plan (including any Plan that is a “multiemployer plan”, within the meaning of Section 4001(c)(3) of ERISA); and (C) each Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service with respect to its qualified status that has not been revoked, or such a determination letter has been timely applied for but not received by the Signing Date, and nothing has occurred, whether by action or by failure to act, which could reasonably be expected to cause the loss, revocation or denial of such qualified status or favorable determination letter.

(s) Taxes. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and the Company Subsidiaries have filed all federal, state, local and foreign income and franchise Tax returns required to be filed through the Signing Date, subject to permitted extensions, and have paid all Taxes due thereon, and (ii) no Tax deficiency has been determined adversely to the Company or any of the Company Subsidiaries, nor does the Company have any knowledge of any Tax deficiencies. “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, property, sales, use, license, excise, franchise, employment, payroll, withholding, alternative or add on minimum, ad valorem, transfer or excise tax, or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, imposed by any Governmental Entity.

(t) Properties and Leases. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries have good and marketable title to all real properties and all other properties and assets owned by them, in each case free from liens, encumbrances, claims and defects that would affect the value thereof or interfere with the use made or to be made thereof by them. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company and the Company Subsidiaries hold all leased real or personal property under valid and enforceable leases with no exceptions that would interfere with the use made or to be made thereof by them.

(u) Environmental Liability. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect:

(i) there is no legal, administrative, or other proceeding, claim or action of any nature seeking to impose, or that would reasonably be expected to result in the imposition of, on the Company or any Company Subsidiary, any liability relating to the release of hazardous substances as defined under any local, state or federal environmental statute, regulation or ordinance, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, pending or, to the Company's knowledge, threatened against the Company or any Company Subsidiary;

(ii) to the Company's knowledge, there is no reasonable basis for any such proceeding, claim or action; and

(iii) neither the Company nor any Company Subsidiary is subject to any agreement, order, judgment or decree by or with any court, Governmental Entity or third party imposing any such environmental liability.

(v) Risk Management Instruments. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, all derivative instruments, including, swaps, caps, floors and option agreements, whether entered into for the Company's own account, or for the account of one or more of the Company Subsidiaries or its or their customers, were entered into (i) only in the ordinary course of business, (ii) in accordance with prudent practices and in all material respects with all applicable laws, rules, regulations and regulatory policies and (iii) with counterparties believed to be financially responsible at the time; and each of such instruments constitutes the valid and legally binding obligation of the Company or one of the Company Subsidiaries, enforceable in accordance with its terms, except as may be limited by the Bankruptcy Exceptions. Neither the Company or the Company Subsidiaries, nor, to the knowledge of the Company, any other party thereto, is in breach of any of its obligations under any such agreement or arrangement other than such breaches that would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(w) Agreements with Regulatory Agencies. Except as set forth on Schedule E, neither the Company nor any Company Subsidiary is subject to any material cease-and-desist or other similar order or enforcement action issued by, or is a party to any material written agreement, consent agreement or memorandum of understanding with, or is a party to any commitment letter or similar undertaking to, or is subject to any capital directive by, or since December 31, 2007,

has adopted any board resolutions at the request of, any Governmental Entity (other than the Appropriate Federal Banking Agencies with jurisdiction over the Company and the Company Subsidiaries) that currently restricts in any material respect the conduct of its business or that in any material manner relates to its capital adequacy, its liquidity and funding policies and practices, its ability to pay dividends, its credit, risk management or compliance policies or procedures, its internal controls, its management or its operations or business (each item in this sentence, a “Regulatory Agreement”). The Company and each Company Subsidiary are in compliance in all material respects with each Regulatory Agreement to which it is party or subject, and neither the Company nor any Company Subsidiary has received any notice from any Governmental Entity indicating that either the Company or any Company Subsidiary is not in compliance in all material respects with any such Regulatory Agreement. “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Company or such Company Subsidiaries, as applicable, as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)).

(x) Insurance. The Company and the Company Subsidiaries are insured with reputable insurers against such risks and in such amounts as the management of the Company reasonably has determined to be prudent and consistent with industry practice. The Company and the Company Subsidiaries are in material compliance with their insurance policies and are not in default under any of the material terms thereof, each such policy is outstanding and in full force and effect, all premiums and other payments due under any material policy have been paid, and all claims thereunder have been filed in due and timely fashion, except, in each case, as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect.

(y) Intellectual Property. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, (i) the Company and each Company Subsidiary owns or otherwise has the right to use, all intellectual property rights, including all trademarks, trade dress, trade names, service marks, domain names, patents, inventions, trade secrets, know-how, works of authorship and copyrights therein, that are used in the conduct of their existing businesses and all rights relating to the plans, design and specifications of any of its branch facilities (“Proprietary Rights”) free and clear of all liens and any claims of ownership by current or former employees, contractors, designers or others and (ii) neither the Company nor any of the Company Subsidiaries is materially infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries received any written (or, to the knowledge of the Company, oral) communications alleging that any of them has materially infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by any other person. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, to the Company’s knowledge, no other person is infringing, diluting, misappropriating or violating, nor has the Company or any of the Company Subsidiaries sent any written communications since January 1, 2007 alleging that any person has infringed, diluted, misappropriated or violated, any of the Proprietary Rights owned by the Company and the Company Subsidiaries.

(z) Brokers and Finders. No broker, finder or investment banker is entitled to any financial advisory, brokerage, finder’s or other fee or commission in connection with this Purchase Agreement or the Warrants or the transactions contemplated hereby or thereby based



upon arrangements made by or on behalf of the Company or any Company Subsidiary for which the Investor could have any liability.

(aa) Bank Holding Company. The Company is a duly registered bank holding company under the Bank Holding Company Act of 1956, as amended, and the regulations of the Board of Governors of the Federal Reserve System (the “Federal Reserve”), and the deposit accounts of the Company’s subsidiary depository institutions are insured by the Federal Deposit Insurance Corporation (the “FDIC”) to the fullest extent permitted by law and the rules and regulations of the FDIC, and no proceeding for the termination of such insurance are pending or, to the knowledge of the Company after due inquiry, threatened.

2.3 Representations and Warranties of the Investor. The Investor represents and warrants to the Company and the Issuer Trust that as of the Signing Date and as of the Closing Date (or such other date specified herein):

(a) Authorization and Title. The Investor has full right, power and authority to execute and deliver this Purchase Agreement and to perform its obligations hereunder and this Purchase Agreement has been duly authorized, executed and delivered by or on behalf of the Investor. The execution, delivery and performance by the Investor of this Purchase Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Investor, and no further approval is required on the part of the Investor. This Purchase Agreement is a valid and binding obligation of the Investor enforceable against the Investor, in accordance with its terms. The Investor has the full right, power, legal capacity and authority to sell and transfer the Old Shares.

(b) No Encumbrances. The Investor has good and marketable title to the Old Shares being exchanged by the Investor in the Exchanges, free and clear of all liens, encumbrances, equities and claims, and full right, power and authority to effect the delivery of the Old Shares in the Exchanges. The Investor represents that the Exchanges will vest in the Company absolute title to the number of shares of the Series D-1 Preferred Stock, the Series D-2 Preferred Stock and the Series F Preferred Stock set forth herein, free and clear of any and all liens, encumbrances, equities and claims.

### **Article III Covenants**

3.1 Commercially Reasonable Efforts. Subject to the terms and conditions of this Purchase Agreement, each of the parties will use its commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or desirable, or advisable under applicable laws, so as to (i) permit consummation of the Purchase and the Exchanges as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and (ii) permit consummation of a subsequent preemptive offering of the Series F-2 Preferred Stock to the holders of the Company’s Common Stock in accordance with Section 10.3 of the Bylaws and shall use, in each case, commercially reasonable efforts to cooperate with the other party to that end (including, in the case of clause (ii), Investor offering to sell, on terms substantially similar to those set forth in this Purchase Agreement (except that the consideration to be paid for each share of Series F-2 Preferred Stock

shall be cash in an amount equal to the liquidation amount per share of Series F-2 Preferred Stock, and shall not include the exchange of Old Shares)), such amount of Series F-2 Preferred Stock to other holders of the Company's Common Stock as may be necessary in order to allow the Company to comply with Section 10.3 of the Bylaws).

3.2 Expenses. Unless otherwise provided in this Purchase Agreement or the Warrants, each of the parties hereto will bear and pay all costs and expenses incurred by it or on its behalf in connection with the transactions contemplated under this Purchase Agreement or the Warrants, including fees and expenses of its own financial or other consultants, investment bankers, accountants and counsel.

3.3 Sufficiency of Authorized Securities; Exchange Listing.

(a) During the period from the Closing Date until the date on which the Trust Preferred Warrant and the Series F-2 Warrant have been fully exercised, the Company shall at all times hold a sufficient number of Trust Preferred Securities and have authorized a sufficient number of shares of Series F-2 Preferred Stock, respectively, to effectuate such exercise.

(b) If the Company lists its Capital Stock, or if the Issuer Trust lists any trust preferred securities, on any national securities exchange, the Company or the Issuer Trust, as applicable, shall, if requested by the Investor, at the Company's expense, promptly use its reasonable best efforts to cause the Series F-2 Preferred Stock and the underlying Common Stock or the Trust Preferred Securities, as applicable, to be approved for listing on a national securities exchange as promptly as practicable following such request.

3.4 Certain Notifications Until Closing. From the Signing Date until the Closing, the Company and the Issuer Trust shall promptly notify the Investor of (i) any fact, event or circumstance of which it is aware and which would reasonably be likely to cause any representation or warranty of the Company or the Issuer Trust contained in this Purchase Agreement to be untrue or inaccurate in any material respect or to cause any covenant or agreement of the Company or the Issuer Trust contained in this Purchase Agreement not to be complied with or satisfied in any material respect and (ii) except as Previously Disclosed, any fact, circumstance, event, change, occurrence, condition or development of which the Company or the Issuer Trust is aware and which, individually or in the aggregate, has had or would reasonably be likely to have a Company Material Adverse Effect; *provided, however*, that delivery of any notice pursuant to this Section 3.4 shall not limit or affect any rights or remedies available to the Investor; *provided, further*, that a failure to comply with this Section 3.4 shall not constitute a breach of this Purchase Agreement or the failure of any condition set forth in Section 1.2 to be satisfied unless the underlying Company Material Adverse Effect or material breach would independently result in the failure of a condition set forth in Section 1.2 to be satisfied.

### 3.5 Access, Information and Confidentiality.

(a) From the Signing Date until the date when the securities beneficially owned by the Investor or an Affiliate of the Investor represent less than 10% of the outstanding shares of Common Stock or 10% of the aggregate liquidation amount of the Purchased Securities issued to the Investor pursuant to this Purchase Agreement (the “Qualifying Ownership Interest”), the Company will permit the Investor and its agents, consultants, contractors and advisors (i) acting through the Company’s Appropriate Federal Banking Agency, to examine the corporate books and make copies thereof and to discuss the affairs, finances and accounts of the Company and Company Subsidiaries with the principal officers of the Company, all upon reasonable notice and at such reasonable times and as often as the Investor may reasonably request and (ii) to review any information material to the Investor’s investment in the Company provided by the Company to its Appropriate Federal Banking Agency.

(b) From the Signing Date until the date when the Investor holds less than the Qualifying Ownership Interest, the Company will permit and cause the Company Subsidiaries to permit (i) the Investor and its agents, consultants and contractors, (ii) the Special Inspector General of the Troubled Asset Relief Program, and (iii) the Comptroller General of the United States access to personnel and any books, papers, records or other data in each case to the extent relevant to ascertaining compliance with the financing terms and conditions; provided that prior to disclosing any information pursuant to clause (ii) or (iii), the Special Inspector General of the Troubled Asset Relief Program and the Comptroller General of the United States shall have agreed, with respect to documents obtained under this Purchase Agreement and in furtherance of its function, to follow applicable law and regulation (and the applicable customary policies and procedures) regarding the dissemination of confidential materials, including redacting confidential information from the public version of its reports and soliciting the input from the Company as to information that should be afforded confidentiality, as appropriate.

(c) The Investor will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents, consultants, contractors and advisors, and United States executive branch officials and employees, to hold, in confidence all non-public records, books, contracts, instruments, computer data and other data and information (collectively, “Information”) concerning the Company furnished or made available to it by the Company or its representatives pursuant to this Purchase Agreement (except to the extent that such information can be shown to have been (i) previously known by such party on a non-confidential basis, (ii) in the public domain through no fault of such party or (iii) later lawfully acquired from other sources by the party to which it was furnished (and without violation of any other confidentiality obligation)); *provided* that nothing herein shall prevent the Investor from disclosing any Information to the extent required by applicable laws or regulations or by any subpoena or similar legal process. The Investor understands that the Information may contain commercially sensitive confidential information entitled to an exception from a Freedom of Information Act request.

(d) The Investor represents that it has been informed by the Special Inspector General of the Troubled Asset Relief Program and the Comptroller General of the United States that they, before making any request for access or information pursuant to their audit function under this Purchase Agreement, will establish a protocol to avoid, to the extent reasonably possible, duplicative requests pursuant to this Purchase Agreement. Nothing in this Section shall be

construed to limit the authority that the Special Inspector General of the Troubled Asset Relief Program or the Comptroller General of the United States have under law.

3.6 Reporting. From the Signing Date until the date on which all of the shares of Series F-2 Preferred Stock have been redeemed in whole or converted to Common Stock and the Trust Preferred Securities have been redeemed in whole, the Company will deliver, or will cause to be delivered, to the Investor:

(a) as soon as available after the end of each fiscal year of the Company, and in any event within 90 days thereafter, a consolidated balance sheet of the Company as of the end of such fiscal year, and consolidated statements of income, retained earnings and cash flows of the Company for such year, in each case prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous fiscal year of the Company, and which shall be audited to the extent audited financial statements are available;

(b) as soon as available after the end of the first, second and third quarterly periods in each fiscal year of the Company, a copy of any quarterly reports provided to other members of the Company or Company management;

(c) within 15 days after the conclusion of each calendar month the Company shall deliver to the Investor a certification signed by the principal executive officer (or person acting in similar capacity) of the Company that (i) the Expense Policy (as defined in 4.11(c)(i) of this Purchase Agreement) conforms to the requirements set forth herein; (ii) the Company and its Subsidiaries are in compliance with the Expense Policy; and (iii) there have been no material amendments to the Expense Policy or deviations from the Expense Policy other than those that have been disclosed to and approved by the Investor;

(d) within 15 days after the conclusion of each calendar month, the Company shall deliver to the Investor a certification signed by a principal executive officer (or person acting in similar capacity) of the Company that all Benefit Plans with respect to Senior Executive Officers are in compliance with the covenants made under Sections 4.11(a), (b) and (f) of this Purchase Agreement;

(e) as soon as available, but in any event within 20 days after the end of each calendar month, a monthly management financial report summarizing results of the Company for such monthly period and for the period from the beginning of the fiscal year setting forth, in each case, comparisons to the annual budget for such fiscal year and to the corresponding period in the preceding fiscal year. To the extent the twentieth calendar day falls on a non-Business Day, the due date for such monthly period shall be the next succeeding Business Day;

(f) as soon as available, but no later than concurrently with the delivery of such materials to the Company's Board of Directors and no fewer than six times per calendar year, a management forecast summarizing the financial projections for the Company for the remainder of such fiscal year and setting forth a comparison to the annual budget for such fiscal year and to the corresponding period in the preceding fiscal year.

(g) from time to time such other information regarding the financial condition, operations, or business of the Company as the Investor may reasonably request.

**Article IV**  
**Additional Agreements**

4.1 Purchase for Investment. The Investor acknowledges that the Purchased Securities and the Common Stock underlying the Series F-2 Preferred Stock have not been registered under the Securities Act or under any state securities laws. The Investor (a) is acquiring the Purchased Securities pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute them to any person in violation of the Securities Act or any applicable U.S. state securities laws, (b) will not sell or otherwise dispose of any of the Purchased Securities or the Common Stock underlying the Series F-2 Preferred Stock, except in compliance with the registration requirements or exemption provisions of the Securities Act and any applicable U.S. state securities laws, and (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of the Purchase and of making an informed investment decision.

4.2 Legends.

(a) The Investor agrees that all certificates or other instruments representing the Warrants will bear a legend substantially to the following effect:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.”

(b) In addition, the Investor agrees that all certificates or other instruments representing the Series F-2 Preferred Stock and the Common Stock underlying the Series F-2 Preferred Stock will bear a legend substantially to the following effect:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT), (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.”

(c) In addition, the Investor agrees that all certificates or other instruments representing the Trust Preferred Securities will bear a legend substantially to the following effect:

“THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE NOT SAVINGS ACCOUNTS, DEPOSITS OR OTHER OBLIGATIONS OF A BANK AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION OR ANY OTHER GOVERNMENTAL AGENCY.

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS (X) A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (Y) AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.

THE DEBENTURES WERE ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”), FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. GMAC, INC. (THE “COMPANY”) WILL, BEGINNING NO LATER THAN TEN (10) DAYS AFTER THE ISSUE DATE, PROMPTLY PROVIDE TO HOLDERS OF SECURITIES, UPON WRITTEN REQUEST, THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND

THE YIELD TO MATURITY WITH RESPECT TO THE DEBENTURES. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT GMAC INC., 200 RENAISSANCE CENTER, P.O. BOX 200, DETROIT, MICHIGAN 48265-2000, ATTENTION: CHIEF FINANCIAL OFFICER.”

(d) In the event that any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Company or the Issuer Trust, as applicable, shall issue new certificates or other instruments representing such Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, which shall not contain the applicable legends in Sections 4.2(a), (b) and (c) above; *provided* that the Investor surrenders to the Company the previously issued certificates or other instruments.

4.3 Certain Transactions. The Company will not merge or consolidate with, or sell, transfer or lease all or substantially all of its property or assets to, any other party unless the successor, transferee or lessee party (or its ultimate parent entity), as the case may be (if not the Company), expressly assumes the due and punctual performance and observance of each and every covenant, agreement and condition of this Purchase Agreement to be performed and observed by the Company and the Issuer Trust.

4.4 Transfer of Purchased Securities; Restrictions on Exercise of the Warrants. Subject to compliance with applicable securities laws, the Investor shall be permitted to transfer, sell, assign or otherwise dispose of (“Transfer”) all or a portion of the Purchased Securities and Common Stock underlying the Series F-2 Preferred Stock at any time, and the Company shall take all steps as may be reasonably requested by the Investor to facilitate the Transfer of the Purchased Securities and the Common Stock underlying the Series F-2 Preferred Stock, pursuant to the provisions of the Charter, the Bylaws and the Declaration, as applicable. In furtherance of the foregoing, the Company shall provide reasonable cooperation to facilitate any Transfers of the Purchased Securities and Common Stock underlying the Series F-2 Preferred Stock, including, as is reasonable under the circumstances, by furnishing such information concerning the Company and its business as a proposed transferee may reasonably request (including such information as is required by Section 4.5(f)) and making management of the Company reasonably available to respond to questions of a proposed transferee in accordance with customary practice, subject in all cases to the proposed transferee agreeing to a customary confidentiality agreement.

4.5 Registration Rights.

(a) Registration.

(i) Subject to the terms and conditions of this Purchase Agreement, the Company covenants and agrees that within 30 days of the Closing Date, the Company shall prepare and file with the SEC a Shelf Registration Statement covering all applicable Registrable Securities (or otherwise designate an existing Shelf Registration Statement filed with the SEC to cover the Registrable Securities), and, to the extent the Shelf Registration Statement has not theretofore been declared effective or is not automatically



effective upon such filing, the Company shall use reasonable best efforts to cause such Shelf Registration Statement to be declared or become effective and to keep such Shelf Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of such Registrable Securities for a period from the date of its initial effectiveness until such time as there are no Registrable Securities remaining (including by refiling such Shelf Registration Statement (or a new Shelf Registration Statement) if the initial Shelf Registration Statement expires). Notwithstanding the foregoing, if the Company is not eligible to file a registration statement on Form S-3 with respect to all or a portion of the Registrable Securities, then the Company shall not be obligated to file a Shelf Registration Statement with respect to such Registrable Securities unless and until requested to do so in writing by the Investor.

(ii) Any registration pursuant to Section 4.5(a)(i) shall be effected by means of a shelf registration on an appropriate form under Rule 415 under the Securities Act (a “Shelf Registration Statement”). If the Investor or any other Holder intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall take all reasonable steps to facilitate such distribution, including the actions required pursuant to Section 4.5(c); *provided* that the Company shall not be required to facilitate an underwritten offering of Registrable Securities unless the expected gross proceeds from such offering exceed an amount equal to \$50 million. The lead underwriters in any such distribution shall be selected by the Holders of a majority of the Registrable Securities to be distributed; *provided* that to the extent appropriate and permitted under applicable law, such Holders shall consider the qualifications of any broker-dealer Affiliate of the Company in selecting the lead underwriters in any such distribution.

(iii) The Company shall not be required to effect a registration (including a resale of Registrable Securities from an effective Shelf Registration Statement) or an underwritten offering pursuant to Section 4.5(a): (A) with respect to securities that are not Registrable Securities; or (B) if the Company has notified the Investor and all other Holders that in the good faith judgment of the Board of Directors, it would be materially detrimental to the Company or its securityholders for such registration or underwritten offering to be effected at such time, in which event the Company shall have the right to defer such registration for a period of not more than 45 days after receipt of the request of the Investor or any other Holder; *provided* that such right to delay a registration or underwritten offering shall be exercised by the Company, (1) only if the Company has generally exercised (or is concurrently exercising) similar black-out rights against holders of similar securities that have registration rights and (2) not more than three times in any 12-month period and not more than 90 days in the aggregate in any 12-month period.

(iv) If during any period when an effective Shelf Registration Statement is not available, the Company proposes to register any of its equity securities, other than a registration pursuant to Section 4.5(a)(i) or a Special Registration, and the registration form to be filed may be used for the registration or qualification for distribution of Registrable Securities, the Company will give prompt written notice to the Investor and all other Holders of its intention to effect such a registration (but in no event less than 10 days prior to the anticipated filing date) and will include in such registration all

Registrable Securities with respect to which the Company has received written requests for inclusion therein within ten business days after the date of the Company's notice (a "Piggyback Registration"). Any such person that has made such a written request may withdraw its Registrable Securities from such Piggyback Registration by giving written notice to the Company and the managing underwriter, if any, on or before the fifth business day prior to the planned effective date of such Piggyback Registration. The Company may terminate or withdraw any registration under this Section 4.5(a)(iv) prior to the effectiveness of such registration, whether or not Investor or any other Holders have elected to include Registrable Securities in such registration.

(v) If the registration referred to in Section 4.5(a)(iv) is proposed to be underwritten, the Company will so advise the Investor and all other Holders as a part of the written notice given pursuant to Section 4.5(a)(iv). In such event, the right of the Investor and all other Holders to registration pursuant to Section 4.5(a) will be conditioned upon such persons' participation in such underwriting and the inclusion of such person's Registrable Securities in the underwriting if such securities are of the same class of securities as the securities to be offered in the underwritten offering, and each such person will (together with the Company and the other persons distributing their securities through such underwriting) enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company; *provided* that the Investor (as opposed to other Holders) shall not be required to indemnify any person in connection with any registration. If any participating person disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by written notice to the Company the managing underwriters and the Investor (if the Investor is participating in the underwriting).

(vi) If either (x) the Company grants "piggyback" registration rights to one or more third parties to include their securities in an underwritten offering under the Shelf Registration Statement pursuant to Section 4.5(a)(ii) or (y) a Piggyback Registration under Section 4.5(a)(iv) relates to an underwritten offering on behalf of the Company and in either case the managing underwriters advise the Company that in their reasonable opinion the number of securities requested to be included in such offering exceeds the number which can be sold without adversely affecting the marketability of such offering (including an adverse effect on the per share offering price), the Company will include in such offering only such number of securities that in the reasonable opinion of such managing underwriters can be sold without adversely affecting the marketability of the offering (including an adverse effect on the per share offering price), which securities will be so included in the following order of priority: (A) first, in the case of a Piggyback Registration under Section 4.5(a)(iv), the securities the Company proposes to sell, (B) then the Registrable Securities of the Investor and all other Holders who have requested inclusion of Registrable Securities pursuant to Section 4.5(a)(ii) or Section 4.5(a)(iv), as applicable, *pro rata* on the basis of the aggregate number of such securities or shares owned by each such person and (C) lastly, any other securities of the Company that have been requested to be so included, subject to the terms of this Purchase Agreement; *provided, however*, that if the Company has, prior to the Signing Date, entered into an agreement with respect to its securities that is inconsistent with the order of priority

contemplated hereby then it shall apply the order of priority in such conflicting agreement to the extent that it would otherwise result in a breach under such agreement.

(b) Expenses of Registration. All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered *pro rata* on the basis of the aggregate offering or sale price of the securities so registered.

(c) Obligations of the Company. Whenever required to effect the registration of any Registrable Securities or facilitate the distribution of Registrable Securities pursuant to an effective Shelf Registration Statement, the Company shall, as expeditiously as reasonably practicable:

(i) Prepare and file with the SEC a prospectus supplement or post-effective amendment with respect to a proposed offering of Registrable Securities pursuant to an effective registration statement, subject to Section 4.5(c), keep such registration statement effective and keep such prospectus supplement current until the securities described therein are no longer Registrable Securities.

(ii) Prepare and file with the SEC such amendments and supplements to the applicable registration statement and the prospectus or prospectus supplement used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement.

(iii) Furnish to the Holders and any underwriters such number of copies of the applicable registration statement and each such amendment and supplement thereto (including in each case all exhibits) and of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned or to be distributed by them.

(iv) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or blue sky laws of such jurisdictions as shall be reasonably requested by the Holders or any managing underwriter(s), to keep such registration or qualification in effect for so long as such registration statement remains in effect, and to take any other action which may be reasonably necessary to enable such seller to consummate the disposition in such jurisdictions of the securities owned by such Holder; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(v) Notify each Holder of Registrable Securities at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the applicable prospectus, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to

be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

(vi) Give written notice to the Holders:

(A) when any registration statement filed pursuant to Section 4.5(a) or any amendment thereto has been filed with the SEC (except for any amendment effected by the filing of a document with the SEC pursuant to the Securities Exchange Act of 1934 (the “Exchange Act”) and when such registration statement or any post-effective amendment thereto has become effective;

(B) of any request by the SEC for amendments or supplements to any registration statement or the prospectus included therein or for additional information;

(C) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement or the initiation of any proceedings for that purpose;

(D) of the receipt by the Company or its legal counsel of any notification with respect to the suspension of the qualification of the applicable Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(E) of the happening of any event that requires the Company to make changes in any effective registration statement or the prospectus related to the registration statement in order to make the statements therein not misleading (which notice shall be accompanied by an instruction to suspend the use of the prospectus until the requisite changes have been made); and

(F) if at any time the representations and warranties of the Company contained in any underwriting agreement contemplated by Section 4.5(c)(x) cease to be true and correct.

(vii) Use its reasonable best efforts to prevent the issuance or obtain the withdrawal of any order suspending the effectiveness of any registration statement referred to in Section 4.5(c)(vi)(C) at the earliest practicable time.

(viii) Upon the occurrence of any event contemplated by Section 4.5(c)(v) or 4.5(c)(vi)(E), promptly prepare a post-effective amendment to such registration statement or a supplement to the related prospectus or file any other required document so that, as thereafter delivered to the Holders and any underwriters, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If the Company notifies the Holders in accordance with Section 4.5(c)(vi)(E) to suspend the use of the prospectus until the requisite changes to the prospectus have been made, then the Holders and any underwriters shall suspend use of such prospectus and use their reasonable best efforts to return to the Company all copies of such

prospectus (at the Company's expense) other than permanent file copies then in such Holders' or underwriters' possession. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(ix) Use reasonable best efforts to procure the cooperation of the Company's transfer agent for the applicable Registrable Securities in settling any offering or sale of Registrable Securities, including with respect to the transfer of physical certificates into book-entry form in accordance with any procedures reasonably requested by the Holders or any managing underwriter(s).

(x) If an underwritten offering is requested pursuant to Section 4.5(a)(ii), enter into an underwriting agreement in customary form, scope and substance and take all such other actions reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith or by the managing underwriter(s), if any, to expedite or facilitate the underwritten disposition of such Registrable Securities, and in connection therewith in any underwritten offering (including making members of management and executives of the Company available to participate in "road shows", similar sales events and other marketing activities), (A) make such representations and warranties to the Holders that are selling stockholders and the managing underwriter(s), if any, with respect to the business of the Company and its subsidiaries, and the Shelf Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in customary form, substance and scope, and, if true, confirm the same if and when requested, (B) use its reasonable best efforts to furnish the underwriters with opinions of counsel to the Company, as applicable, addressed to the managing underwriter(s), if any, covering the matters customarily covered in such opinions requested in underwritten offerings, (C) use its reasonable best efforts to obtain "cold comfort" letters from the independent certified public accountants of the Company (and, if necessary, any other independent certified public accountants of any business acquired by the Company for which financial statements and financial data are included in the Shelf Registration Statement) who have certified the financial statements included in such Shelf Registration Statement, addressed to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in "cold comfort" letters, (D) if an underwriting agreement is entered into, the same shall contain indemnification provisions and procedures customary in underwritten offerings (*provided*, that the Investor shall not be obligated to provide any indemnity), and (E) deliver such documents and certificates as may be reasonably requested by the Holders of a majority of the Registrable Securities being sold in connection therewith, their counsel and the managing underwriter(s), if any, to evidence the continued validity of the representations and warranties made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Company.

(xi) Make available for inspection by a representative of Holders that are selling stockholders, the managing underwriter(s), if any, and any attorneys or accountants retained by such Holders or managing underwriter(s), at the offices where normally kept, during reasonable business hours, financial and other records, pertinent corporate documents and properties of the Company and cause the officers, directors and

employees of the Company to supply all information in each case reasonably requested (and of the type customarily provided in connection with due diligence conducted in connection with a registered public offering of securities) by any such representative, managing underwriter(s), attorney or accountant in connection with such Shelf Registration Statement.

(xii) Use reasonable best efforts to cause all such Registrable Securities to be listed on each national securities exchange on which similar securities issued by the Company are then listed or, if no similar securities issued by the Company are then listed on any national securities exchange, use its reasonable best efforts to cause all such Registrable Securities to be listed on such securities exchange as the Investor may designate.

(xiii) If requested by Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith, or the managing underwriter(s), if any, promptly include in a prospectus supplement or amendment such information as the Holders of a majority of the Registrable Securities being registered and/or sold in connection therewith or managing underwriter(s), if any, may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or such amendment as soon as practicable after the Company has received such request.

(xiv) Timely provide to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder.

(d) Suspension of Sales. Upon receipt of written notice from the Company that a registration statement, prospectus or prospectus supplement contains or may contain an untrue statement of a material fact or omits or may omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or that circumstances exist that make inadvisable use of such registration statement, prospectus or prospectus supplement, the Investor and each Holder of Registrable Securities shall forthwith discontinue disposition of Registrable Securities until the Investor and/or Holder has received copies of a supplemented or amended prospectus or prospectus supplement, or until the Investor and/or such Holder is advised in writing by the Company that the use of the prospectus and, if applicable, prospectus supplement may be resumed, and, if so directed by the Company, the Investor and/or such Holder shall deliver to the Company (at the Company's expense), all copies, other than permanent file copies then in the Investor and/or such Holder's possession, of the prospectus and, if applicable, prospectus supplement covering such Registrable Securities current at the time of receipt of such notice. The total number of days that any such suspension may be in effect in any 12-month period shall not exceed 90 days.

(e) Termination of Registration Rights. A Holder's registration rights as to any securities held by such Holder (and its Affiliates, partners, members and former members) shall not be available unless such securities are Registrable Securities.

(f) Furnishing Information.

(i) Neither the Investor nor any Holder shall use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.

(ii) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 4.5(c) that Investor and/or the selling Holders and the underwriters, if any, shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registered offering of their Registrable Securities.

(g) Indemnification.

(i) The Company agrees to indemnify each Holder and, if a Holder is a person other than an individual, such Holder's officers, directors, employees, agents, representatives and Affiliates, and each person, if any, that controls a Holder within the meaning of the Securities Act (each, an "Indemnitee"), against any and all losses, claims, damages, actions, liabilities, costs and expenses (including reasonable fees, expenses and disbursements of attorneys and other professionals incurred in connection with investigating, defending, settling, compromising or paying any such losses, claims, damages, actions, liabilities, costs and expenses), joint or several, arising out of or based upon any untrue statement or alleged untrue statement of material fact contained in any registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or any documents incorporated therein by reference or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto); or any omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; *provided*, that the Company shall not be liable to such Indemnitee in any such case to the extent that any such loss, claim, damage, liability (or action or proceeding in respect thereof) or expense arises out of or is based upon (A) an untrue statement or omission made in such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405) prepared by the Company or authorized by it in writing for use by such Holder (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company by such Indemnitee for use in connection with such registration statement, including any such preliminary prospectus or final prospectus contained therein or any such amendments or supplements thereto, or (B) offers or sales effected by or on behalf of such Indemnitee "by means of" (as defined in Rule 159A) a "free writing prospectus" (as defined in Rule 405) that was not authorized in writing by the Company.

(ii) If the indemnification provided for in Section 4.5(g)(i) is unavailable to an Indemnitee with respect to any losses, claims, damages, actions, liabilities, costs or expenses referred to therein or is insufficient to hold the Indemnitee harmless as contemplated therein, then the Company, in lieu of indemnifying such Indemnitee, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, claims, damages, actions, liabilities, costs or expenses in such proportion as is appropriate to reflect the relative fault of the Indemnitee, on the one hand, and the Company, on the other hand, in connection with the statements or omissions which resulted in such losses, claims, damages, actions, liabilities, costs or expenses as well as any other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Indemnitee, on the other hand, shall be determined by reference to, among other factors, whether the untrue statement of a material fact or omission to state a material fact relates to information supplied by the Company or by the Indemnitee and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; the Company and each Holder agree that it would not be just and equitable if contribution pursuant to this Section 4.5(g)(ii) were determined by *pro rata* allocation or by any other method of allocation that does not take account of the equitable considerations referred to in Section 4.5(g)(i). No Indemnitee guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from the Company if the Company was not guilty of such fraudulent misrepresentation.

(h) Assignment of Registration Rights. The rights of the Investor to registration of Registrable Securities pursuant to Section 4.5(a) may be assigned by the Investor to a transferee or assignee of Registrable Securities with a liquidation amount or, in the case of the Warrants, the liquidation amount of the underlying Trust Preferred Securities or Series F-2 Preferred Stock, as applicable, no less than an amount equal to \$50 million; *provided, however*, the transferor shall, within 10 days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the number and type of Registrable Securities that are being assigned.

(i) Clear Market. With respect to any underwritten offering of Registrable Securities by the Investor or other Holders pursuant to this Section 4.5, the Company agrees not to effect (other than pursuant to such registration or pursuant to a Special Registration) any public sale or distribution, or to file any Shelf Registration Statement (other than such registration or a Special Registration) covering any equity securities of the Company, any securities convertible into or exchangeable or exercisable for such equity securities or any trust preferred securities during the period not to exceed 10 days prior and 60 days following the effective date of such offering or such longer period up to 90 days as may be requested by the managing underwriter for such underwritten offering. The Company also agrees to cause such of its directors and senior executive officers to execute and deliver customary lock-up agreements in such form and for such time period up to 90 days as may be requested by the managing underwriter. "Special Registration" means the registration of (A) equity securities and/or options or other rights in respect thereof solely registered on Form S-4 or Form S-8 (or successor form) or (B) shares of equity securities and/or options or other rights in respect thereof to be offered to directors, members of management, employees, consultants, customers, lenders or vendors of the Company or Company Subsidiaries or in connection with dividend reinvestment plans.



(j) Rule 144; Rule 144A. With a view to making available to the Investor and Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its reasonable best efforts to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144(c)(1) or any similar or analogous rule promulgated under the Securities Act, at all times after the Signing Date;

(ii) (A) file with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act, and (B) if at any time the Company is not required to file such reports, make available, upon the request of any Holder, such information necessary to permit sales pursuant to Rule 144A (including the information required by Rule 144A(d)(4) under the Securities Act);

(iii) so long as the Investor or a Holder owns any Registrable Securities, furnish to the Investor or such Holder forthwith upon request: a written statement by the Company and, to the extent applicable, the Issuer Trust as to its compliance with the reporting requirements of Rule 144 under the Securities Act, and of the Exchange Act; a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as the Investor or Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities to the public without registration; and

(iv) take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act.

(k) As used in this Section 4.5, the following terms shall have the following respective meanings:

(i) “Holder” means the Investor and any other holder of Registrable Securities to whom the registration rights conferred by this Purchase Agreement have been transferred in compliance with Section 4.5(h) hereof.

(ii) “Holders’ Counsel” means one counsel for the selling Holders chosen by Holders holding a majority interest in the Registrable Securities being registered.

(iii) “Register,” “registered,” and “registration” shall refer to a registration effected by preparing and (A) filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement or (B) filing a prospectus and/or prospectus supplement in respect of an appropriate effective registration statement on Form S-3.

(iv) “Registrable Securities” means (A) all shares of the Series F-2 Preferred Stock, (B) the Warrants (subject to Section 4.5(p)), (C) the Trust Preferred Securities, including those received upon the Investor’s exercise of the Warrants and (D) any equity

securities issued or issuable directly or indirectly with respect to the securities referred to in the foregoing clauses (A) or (B) by way of conversion, exercise or exchange thereof, including the Common Stock, or distribution or split or in connection with a combination of securities, recapitalization, reclassification, merger, amalgamation, arrangement, consolidation or other reorganization, *provided* that, once issued, such securities will not be Registrable Securities when (1) they are sold pursuant to an effective registration statement under the Securities Act, (2) except as provided below in Section 4.5(o), they may be sold pursuant to Rule 144 without limitation thereunder on volume or manner of sale, (3) they shall have ceased to be outstanding or (4) they have been sold in a private transaction in which the transferor's rights under this Purchase Agreement are not assigned to the transferee of the securities. No Registrable Securities may be registered under more than one registration statement at any one time.

(v) "Registration Expenses" mean all expenses incurred by the Company in effecting any registration pursuant to this Purchase Agreement (whether or not any registration or prospectus becomes effective or final) or otherwise complying with its obligations under this Section 4.5, including all registration, filing and listing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, expenses incurred in connection with any "road show", the reasonable fees and disbursements of Holders' Counsel, and expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

(vi) "Rule 144", "Rule 144A", "Rule 159A", "Rule 405" and "Rule 415" mean, in each case, such rule promulgated under the Securities Act (or any successor provision), as the same shall be amended from time to time.

(vii) "Selling Expenses" mean all discounts, selling commissions and transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of Holders' Counsel included in Registration Expenses).

(l) At any time, any holder of Securities (including any Holder) may elect to forfeit its rights set forth in this Section 4.5 from that date forward; *provided*, that a Holder forfeiting such rights shall nonetheless be entitled to participate under Section 4.5(a)(v) – (vi) in any Pending Underwritten Offering to the same extent that such Holder would have been entitled to if the holder had not withdrawn; and *provided, further*, that no such forfeiture shall terminate a Holder's rights or obligations under Section 4.5(f) with respect to any prior registration or Pending Underwritten Offering. "Pending Underwritten Offering" means, with respect to any Holder forfeiting its rights pursuant to this Section 4.5(l), any underwritten offering of Registrable Securities in which such Holder has advised the Company of its intent to register its Registrable Securities either pursuant to Section 4.5(a)(ii) or 4.5(a)(iv) prior to the date of such Holder's forfeiture.

(m) Specific Performance. The parties hereto acknowledge that there would be no adequate remedy at law if the Company fails to perform any of its obligations under this Section 4.5 and that the Investor and the Holders from time to time may be irreparably harmed by any

such failure, and accordingly agree that the Investor and such Holders, in addition to any other remedy to which they may be entitled at law or in equity, to the fullest extent permitted and enforceable under applicable law shall be entitled to compel specific performance of the obligations of the Company under this Section 4.5 in accordance with the terms and conditions of this Section 4.5.

(n) No Inconsistent Agreements. The Company shall not, on or after the Signing Date, enter into any agreement with respect to its securities that may impair the rights granted to the Investor and the Holders under this Section 4.5 or that otherwise conflicts with the provisions hereof in any manner that may impair the rights granted to the Investor and the Holders under this Section 4.5. In the event the Company has, prior to the Signing Date, entered into any agreement with respect to its securities that is inconsistent with the rights granted to the Investor and the Holders under this Section 4.5 (including agreements that are inconsistent with the order of priority contemplated by Section 4.5(a)(vi)) or that may otherwise conflict with the provisions hereof, the Company shall use its reasonable best efforts to amend such agreements to ensure they are consistent with the provisions of this Section 4.5.

(o) Certain Offerings by the Investor. In the case of any securities held by the Investor that cease to be Registrable Securities solely by reason of clause (2) in the definition of “Registrable Securities,” the provisions of Sections 4.5(a)(ii), clauses (iv), (ix) and (x)-(xii) of Section 4.5(c), Section 4.5(g) and Section 4.5(i) shall continue to apply until such securities otherwise cease to be Registrable Securities. In any such case, an “underwritten” offering or other disposition shall include any distribution of such securities on behalf of the Investor by one or more broker-dealers, an “underwriting agreement” shall include any purchase agreement entered into by such broker-dealers, and any “registration statement” or “prospectus” shall include any offering document approved by the Company or the Issuer Trust and used in connection with such distribution.

(p) Registered Sales of the Warrant. The Holders agree to sell the Trust Preferred Warrant, the Series F-2 Warrant or any portion thereof under the Shelf Registration Statement only beginning 30 days after notifying the Company and the Issuer Trust, of any such sale, during which 30-day period the Investor and all Holders of the Trust Preferred Warrant or the Series F-2 Warrant, as applicable, shall take reasonable steps to agree to revisions to the Trust Preferred Warrant or the Series F-2 Warrant, as applicable, to permit a public distribution of the Trust Preferred Warrant or the Series F-2 Warrant, as applicable, including entering into a warrant agreement and appointing a warrant agent.

4.6 Depository Shares. Upon request by the Investor at any time following the Closing Date, the Company or the Issuer Trust, as applicable, shall promptly enter into a depository arrangement, pursuant to customary agreements reasonably satisfactory to the Investor and with a depository reasonably acceptable to the Investor, pursuant to which the Series F-2 Preferred Stock, the Common Stock underlying the Series F-2 Preferred Stock or the Trust Preferred Securities, as applicable, may be deposited and depository interests, each representing a fraction of a share of Series F-2 Preferred Stock, a share of Common Stock underlying the Series F-2 Preferred Stock, or of a Trust Preferred Security, as applicable, as specified by the Investor, may be issued. From and after the execution of any such depository arrangement, and the deposit of any shares of Series F-2 Preferred Stock, any shares of Common

Stock underlying the Series F-2 Preferred Stock, or any Trust Preferred Securities, as applicable, pursuant thereto, the depositary interests issued pursuant thereto shall be deemed “Series F-2 Preferred Stock,” “Common Stock,” “Trust Preferred Securities” and, as applicable, “Registrable Securities” for purposes of this Purchase Agreement.

4.7 Repurchase of Common Stock; Sale of Purchased Securities. Following the conversion of the shares of F-2 Preferred Stock into shares of Common Stock, the Company may repurchase any such shares of Common Stock held by the Investor at a price equal to the greater of (A) the conversion price calculated by dividing the liquidation amount per share of the Series F-2 Preferred Stock by the then applicable conversion rate and (B)(i) if the Common Stock is traded on a national securities exchange, the market price of the Common Stock on the date of repurchase (calculated based on the average closing price during the 20 trading day period beginning on the day after notice of repurchase is given) or (ii) if the Common Stock is not traded on a national securities exchange, the per share of Common Stock fair market value of the Company as of the last day of the most recent calendar quarter prior to the repurchase date as determined by an investment bank of national reputation, which shall be selected by the Investor and at the expense of the Company. Any such repurchases must be made with the proceeds of an issuance of Common Stock for cash or additions to retained earnings from the date of the investment closing through the date of the repurchase.

4.8 Restriction on Dividends and Repurchases.

(a) Prior to the date on which all of the shares of Series F-2 Preferred Stock have been converted or redeemed in whole or the Investor has transferred all of the Series F-2 Preferred Stock to third parties which are not Affiliates of the Investor, neither the Company nor any Company Subsidiary shall declare or pay any dividend or distribution on any capital stock or other equity securities of any kind of the Company or any Company Subsidiary (other than (i) in the case of pari passu preferred stock of the Company, dividends on a pro rata basis with the Series F-2 Preferred Stock, (ii) regular dividends on preferred stock in accordance with the terms thereof and which are permitted under the terms of the Series F-2 Preferred Stock, or (iii) dividends or distributions by or other transactions solely among the Company and any wholly-owned Company Subsidiary or solely among any wholly-owned Company Subsidiaries) unless all accrued and unpaid dividends for all past dividend periods on the Series F-2 Preferred Stock are fully paid. For the avoidance of doubt, any remaining tax distributions on junior membership interests of GMAC LLC that are made consistent with the Company’s Plan of Conversion, dated June 30, 2009 (the “Plan of Conversion”) will not be prohibited by this Section 4.8(a).

(b) For so long as any shares of Series F-2 Preferred Stock issued pursuant to this Purchase Agreement are outstanding and owned by the Investor of an Affiliate of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, or, in the case of tax distributions on junior membership interests of GMAC LLC, other than as permitted pursuant to the Plan of Conversion, declare and pay distributions on any junior stock, preferred stock ranking pari passu with the Series F-2 Preferred Stock, or common stock (other than (1) in the case of pari passu preferred stock, dividends on a pro rata basis with the Series F-2 Preferred Stock or (2) dividends or distributions by or among any wholly-owned Company Subsidiaries). Notwithstanding the foregoing, the Company may pay any remaining tax

distributions on junior membership interests of GMAC LLC, subject to the provisions of the Plan of Conversion.

For so long as any shares of Series F-2 Preferred Stock are outstanding and owned by the Investor or an Affiliate of the Investor, neither the Company nor any Company Subsidiary shall, without the consent of the Investor, redeem, purchase or acquire any equity securities of any kind of the Company or any Company Subsidiary, or any trust preferred securities issued by the Company or any Affiliate of the Company (other than the Trust Preferred Securities), other than (i) redemptions, purchases or other acquisitions of the Series F-2 Preferred Stock, (ii) Common Stock held by the Investor following the conversion of the Series F-2 Preferred Stock, subject to Section 4.7 and the approval of the Federal Reserve, (iii) in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (iv) the acquisition by the Company or any of the Company Subsidiaries of record ownership in Junior Stock or Parity Preferred Stock or trust preferred securities for the beneficial ownership of any other persons (other than the Company or any other Company Subsidiary), including as trustees or custodians, (v) the exchange or conversion of shares of Junior Stock for or into shares of other Junior Stock or shares of Parity Preferred Stock or units of trust preferred securities for or into shares of other Parity Preferred Stock or units of other trust preferred securities, respectively (with the same or lesser aggregate liquidation amount) or shares of Junior Stock, in each case set forth in this clause (v), solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Capital Stock, (clauses (ii), (iii) and (iv), collectively, the “Permitted Repurchases”), (vi) redemptions of securities held by the Company or any wholly-owned Company Subsidiary, (vii) any transaction between the Company and any wholly-owned Company Subsidiary, or between wholly-owned Company Subsidiaries, or (viii) redemptions, purchases or other acquisitions of capital stock or other equity securities of any kind of any Company Subsidiary required pursuant to binding contractual agreements entered into prior to the Signing Date.

(c) Until such time as the Investor or an Affiliate of the Investor ceases to own any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, the Company shall not repurchase any shares of Series F-2 Preferred Stock, any shares of Common Stock underlying the Series F-2 Preferred Stock or any Trust Preferred Securities from any holder thereof, whether by means of open market purchase, negotiated transaction, or otherwise, other than Permitted Repurchases, unless it offers to repurchase a ratable portion of the Series F-2 Preferred Stock, the Common Stock underlying the Series F-2 Preferred Stock or the Trust Preferred Securities then held by the Investor on the same terms and conditions.

(d) “Junior Stock” means Common Stock and any class or series of equity securities, including Capital Stock, of the Company the terms of which expressly provide that it ranks junior to the Series F-2 Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company. “Parity Preferred Stock” means any class or series of equity securities of the Company, including Capital Stock, the terms of which do not expressly provide that such class or series will rank senior or junior to the Series F-2 Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Company (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

4.9 Employ American Workers Act. Until the Company is no longer deemed a recipient of funding under title I of the EESA or Section 13 of the Federal Reserve Act for purposes of the EAWA, as the same may be determined pursuant to any regulations or other legally binding guidance promulgated under EAWA, the Company shall comply, and the Company shall take all necessary action to ensure that its subsidiaries comply, in all respects with the provisions of the EAWA and any regulations or other legally binding guidance promulgated under the EAWA. “EAWA” means the Employ American Workers Act (Section 1611 of Division A, Title XVI of the American Recovery and Reinvestment Act of 2009), Public Law No. 111-5, effective as of February 17, 2009, as may be amended and in effect from time to time.

4.10 Internal Controls; Recordkeeping; Additional Reporting.

(a) The Company shall maintain internal controls to provide reasonable assurance of compliance in all material respects with each of the covenants and agreements set forth in Sections 3.5, 4.8, 4.9, 4.10 and 4.11 hereof and shall collect, maintain and preserve reasonable records evidencing such internal controls and compliance therewith, a copy of which records shall be provided to the Investor promptly upon request. On the 15th day after the last day of each calendar quarter (or, if such day is not a Business Day, on the first Business Day after such day), the Company shall deliver to the Investor (at its address set forth in Section 5.6) a report setting forth in reasonable detail (x) the status of implementing such internal controls and (y) compliance (including any instances of material non compliance) of the Company with such covenants and agreements. Such report shall be accompanied by a certification duly executed by a Senior Executive Office of the Company stating that such quarterly report is accurate in all material respects to the best of such Senior Executive Officer’s knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(b) The Company shall use its reasonable best efforts to account for the lending and financing activities it undertakes through the use of its available capital, of which the proceeds from the Purchase shall be deemed to be a part, on a fully fungible basis with all other sources of available capital. On the 15th day after the last day of each calendar quarter (or, if such day is not a Business Day, on the first Business Day after such day), the Company shall deliver to the Investor (at its address set forth in Section 5.6) a report setting forth in reasonable detail a summary of its lending activities which are supported by its available capital. Such report shall be accompanied by a certification duly executed by a Senior Executive Officer of the Company that such quarterly report is accurate in all material respects to the best of such Senior Executive Officer’s knowledge, which certification shall be made subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(c) The Company shall collect, maintain and preserve reasonable records relating to the implementation of all Federal support programs provided to the Company or any of the Company Subsidiaries pursuant to the EESA and the compliance with the terms and provisions of such programs; provided that the Company shall have no obligation to comply with the foregoing in connection with any such program to the extent that such program independently requires, by its express terms, the Company to collect, maintain and preserve any records in

connection therewith. The Company shall provide the Investor with copies of all such reasonable records promptly upon request.

#### 4.11 Executive Privileges and Compensation.

(a) Benefit Plans. During the period in which any obligation of the Company arising from financial assistance provided under the Troubled Asset Relief Program remains outstanding (such period, as it may be further described in the Compensation Regulations, the “Relevant Period”), the Company shall take all necessary action to ensure that Benefit Plans of the Company and Company Subsidiaries comply in all respects with, and shall take all other actions necessary to comply with, (x) Section 111 of the EESA, as implemented by the Compensation Regulations and (y) any rulings, limitations or restrictions implemented or issued by the Office of the Special Master for TARP Compensation (the “Special Master”) with respect to the Company or Company Subsidiaries, including, without limitation, pursuant to those certain letters from the Special Master to the Company, dated as of October 22, 2009, December 11, 2009 and December 23, 2009, and neither the Company nor any Company Subsidiaries shall adopt any new Benefit Plan (i) that does not comply therewith or (ii) that does not expressly state and require that such Benefit Plan and any compensation thereunder shall be subject to any relevant Compensation Regulations adopted, issued or released on or after the date any such Benefit Plan is adopted. To the extent that EESA and/or the Compensation Regulations are amended or otherwise changed during the Relevant Period or to the extent that the Special Master issues new rulings that are applicable to the Company and Company Subsidiaries, in each case, in a manner that requires changes to then-existing Benefit Plans, or that requires other actions, the Company and Company Subsidiaries shall effect such changes to its Benefit Plans, and take such other actions, as promptly as practicable after it has actual knowledge of such changes in order to be in compliance with this Section 4.11(a) (and shall be deemed to be in compliance for a reasonable period to effect such changes). In addition, the Company and the Company Subsidiaries shall take all necessary action, other than to the extent prohibited by applicable law or regulation applicable outside of the United States, to ensure that the consummation of the transactions contemplated by this Purchase Agreement will not accelerate the vesting, payment or distribution of any equity-based awards, deferred cash awards or any nonqualified deferred compensation payable by the Company or any of its subsidiaries.

(b) Additional Waivers. After the Signing Date in connection with the hiring or promotion of a Section 4.11 Employee and/or the promulgation of applicable Compensation Regulations or the issuance of any rulings by the Special Master, to the extent any Section 4.11 Employee shall not have executed waivers satisfying the requirements of Sections 1.3(f)(v) - (viii) with respect to the application to such Section 4.11 Employee of the Compensation Regulations, the Company shall use its best efforts to (i) obtain from such Section 4.11 Employee (x) in the case of a Senior Executive Officer, waivers in the form of Annex B-2 and Annex B-3 and (y) in the case of any other Section 4.11 Employee, waivers in the form of Annex B-4 and Annex B-5 and (ii) deliver such waivers to the Investor as promptly as possible. “Section 4.11 Employee” means each (A) Senior Executive Officer and (B) any other employee of the Company or any Company Subsidiary determined at any time to be subject to Section 111 of the EESA.

(c) Restrictions on Lobbying. Until such time as the Investor ceases to own any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, the Company shall, within 60 days of the Signing Date, amend its comprehensive written policy on lobbying, governmental ethics and political activity (the “U.S. Lobbying Policy”) to comply with the requirements hereof, shall distribute such U.S. Lobbying Policy to all Company employees and lobbying firms involved in any such activity, and shall implement and maintain such policy. Until such time as the Investor ceases to own any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, any material amendments to the U.S. Lobbying Policy shall require the prior written consent of the Investor, and any material deviations from the U.S. Lobbying Policy, whether in contravention thereof or pursuant to waivers provided for thereunder, shall promptly be reported to the Investor. The U.S. Lobbying Policy shall, at a minimum: (i) require compliance with all applicable law; (ii) apply to the Company, the Company Subsidiaries that constitute the Company’s consolidated subsidiaries and affiliated foundations; (iii) govern (A) the provision of items of value to any U.S. government officials; (B) lobbying of U.S. government officials and (C) U.S. political activities and contributions; and (iv) provide for (x) internal reporting and oversight and (y) mechanisms for addressing non-compliance with the U.S. Lobbying Policy.

(d) Restrictions on Expenses. Until such time as the Investor ceases to own any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, the Company shall continue to maintain and implement its comprehensive written policy (the “Expense Policy”, it being understood that the Expense Policy may be comprised of more than one written policy) on corporate expenses and distribute the Expense Policy to all Company employees. Until such time as the Investor ceases to own any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, any material amendments to the Expense Policy shall require the prior written consent of the Investor, and any material deviations from the Expense Policy, whether in contravention thereof or pursuant to waivers provided for thereunder, shall promptly be reported to the Investor. The Expense Policy shall, at a minimum: (i) require compliance with all applicable law; (ii) apply to the Company and the Company Subsidiaries that constitute the Company’s consolidated subsidiaries; (iii) govern (A) the hosting, sponsorship or other payment for conferences and events, (B) the use of corporate aircraft, (C) travel accommodations and expenditures, (D) consulting arrangements with outside service providers, (E) any new lease or acquisition of real estate, (F) expenses relating to office or facility renovations or relocations and (G) expenses relating to entertainment or holiday parties; (iv) provide for (x) internal reporting and oversight and (y) mechanisms for addressing non-compliance with the Expense Policy; and (v) be promptly amended as may from time to time be necessary to comply with the Compensation Regulations.

(e) Risk Management Report. Within 30 days of making the certification required for compliance with Section 111(b)(4) of EESA and any guidance, rules or regulations issued thereunder regarding the compensation committee review of compensation arrangements with the Company’s Senior Executive Officers, the Company will provide a report to the Investor detailing (i) the risks identified during that review, (ii) the steps to be taken to mitigate those risks and (iii) the Company’s recommendations for amending compensation arrangements to reduce the risk through implementation of long term performance metrics or other mechanisms; provided, however, that to the extent the Company has already submitted a substantially similar



report to the Investor, the Company's resubmission of such a report shall be deemed to satisfy the requirements of this Section 4.11(e).

(f) Clawback. In the event that any Section 4.11 Employee receives a payment in contravention of the provisions of this Section 4.11, the Company shall promptly provide such individual with written notice that the amount of such payment must be repaid to the Company in full within 15 business days following receipt of such notice or such earlier time as may be required by the Compensation Regulations and shall promptly inform the Investor (i) upon discovering that a payment in contravention of this Section 4.11 has been made (ii) following the repayment to the Company of such amount and (iii) take such other actions as may be necessary to comply with the Compensation Regulations.

(g) Limitation on Deductions. During the Relevant Period, the Company agrees that it shall not claim a deduction for remuneration for federal income tax purposes in excess of \$500,000 for each Senior Executive Officer that would not be deductible if Section 162(m)(5) of the Code applied to the Company.

(h) Compliance.

(i) During the Relevant Period, the Company shall submit a certification on the last day of each fiscal quarter beginning with the first fiscal quarter of 2010 certifying that the Company has complied with and is in compliance with the provisions set forth in Section 4.11(a) through 4.11(g). Such certification shall be made to the TARP Compliance Office by a Senior Executive Officer, subject to the requirements and penalties set forth in Title 18, United States Code, Section 1001.

(ii) The Company's chief executive officer and chief financial officer shall continue to provide the written certification of compliance by the Company with the requirements of Section 111 of the EESA in the manner specified by Section 111(b)(4) thereunder or in any guidance, rules or regulations issued thereunder.

(i) Amendment to Prior Agreements. The parties agree that, effective as of the Signing Date, each of (i) the 2008 SPA and (ii) the May SPA, shall be amended in its entirety by replacing Section 4.8 of the 2008 SPA and Section 4.11 of the May SPA with the provisions set forth in this Section 4.11 and any terms included in this Section 4.11 that are not otherwise defined in the 2008 SPA or the May SPA shall have the meanings ascribed to such terms in this Purchase Agreement. For purposes of clarity, this Section 4.11(i) applies prospectively, and the Investor shall not have a claim in respect of such actions as a result of this Section 4.11(i) with respect to any actions that, at the time they were taken, did not violate the 2008 SPA or the May SPA as they were then in effect.

4.12 Related Party Transactions. Until such time as the Investor or an Affiliate of the Investor ceases to own any Purchased Securities or shares of Common Stock underlying the Series F-2 Preferred Stock, the Company and the Company Subsidiaries shall not enter into transactions with Affiliates or related persons (within the meaning of Item 404 under the SEC's Regulation S-K) (other than Company Subsidiaries) unless (i) such transactions are on terms no less favorable to the Company and the Company Subsidiaries than could be obtained from an

unaffiliated third party and (ii) if otherwise required by applicable law, rule or regulation (including any requirement of the New York Stock Exchange), have been approved by the audit committee of the Board of Directors or comparable body of independent Directors of the Company, *provided* that this Section 4.12 shall not restrict the performance of transactions pursuant to binding contractual agreements entered into prior to the date hereof.

4.13 Bank and Thrift Holding Company Status. The Company shall maintain its status as a Bank Holding Company for as long as the Investor or an Affiliate of the Investor owns any debt or equity securities of the Company or an Affiliate of the Company acquired pursuant to this Purchase Agreement. “Bank Holding Company” means a company registered as such with the Federal Reserve pursuant to 12 U.S.C. § 1842 and the regulations of the Federal Reserve promulgated thereunder.

4.14 Predominantly Financial. For as long as the Investor or an Affiliate of the Investor owns any Purchased Securities or Common Stock underlying the Series F-2 Preferred Stock, the Company, to the extent it is not itself an insured depository institution, agrees to remain predominantly engaged in financial activities. A company is predominantly engaged in financial activities if the annual gross revenues derived by the company and all subsidiaries of the company (excluding revenues derived from subsidiary depository institutions), on a consolidated basis, from engaging in activities that are financial in nature or are incidental to a financial activity under Subsection (k) of Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)) represent at least 85% of the consolidated annual gross revenues of the company.

4.15 Home Affordable Modification Program. The Company and its Affiliates shall participate in the Investor’s Home Affordable Mortgage Program (“HAMP”) of the Making Home Affordable program. The Company shall (a) if it services residential mortgage loans enter into (i) a Commitment to Purchase Financial Instrument and Servicer Participation Agreement and (ii) a Financial Instrument (together, a “SPA”), with the Federal National Mortgage Association, as financial agent of the Investor, with respect to HAMP and (b) cause any of its Affiliates that services residential mortgage loans (or, for any residential mortgage loans that are subserviced by a non-affiliate servicer on behalf of the Company or any of its affiliates, cause the related subservicer) to enter into a SPA with Fannie Mae, in each case within fifteen days after the date of this Purchase Agreement. For purposes of this Section, participation in HAMP shall include participation in HAMP’s second lien program and each additional program promulgated under the HAMP guidelines.

## **Article V Miscellaneous**

5.1 Termination. This Purchase Agreement may be terminated at any time prior to the Closing:

(a) by either the Investor or the Company if the Closing shall not have occurred by the 30<sup>th</sup> calendar day following the Signing Date; *provided, however*, that in the event the Closing has not occurred by such 30<sup>th</sup> calendar day, the parties will consult in good faith to determine whether to extend the term of this Purchase Agreement, it being understood that the

parties shall be required to consult only until the fifth day after such 30<sup>th</sup> calendar day and not be under any obligation to extend the term of this Purchase Agreement thereafter; *provided, further*, that the right to terminate this Purchase Agreement under this Section 5.1(a) shall not be available to any party whose breach of any representation or warranty or failure to perform any obligation under this Purchase Agreement shall have caused or resulted in the failure of the Closing to occur on or prior to such date; or

(b) by either the Investor or the Company in the event that any Governmental Entity shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Purchase Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(c) by the mutual written consent of the Investor, the Company and the Issuer Trust.

In the event of termination of this Purchase Agreement as provided in this Section 5.1, this Purchase Agreement shall forthwith become void and there shall be no liability on the part of either party hereto except that nothing herein shall relieve either party from liability for any breach of this Purchase Agreement.

5.2 Survival of Representations and Warranties. All covenants and agreements, other than those which by their terms apply in whole or in part after the Closing, shall terminate as of the Closing. The representations and warranties of the Company and the Issuer Trust made herein or in any certificates delivered in connection with the Closing shall survive the Closing without limitation.

5.3 Amendment. No amendment of any provision of this Purchase Agreement will be effective unless made in writing and signed by an officer or a duly authorized representative of each party; *provided* that the Investor may unilaterally amend any provision of this Purchase Agreement to the extent required to comply with any changes after the Signing Date in applicable federal statutes. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative of any rights or remedies provided by law.

5.4 Waiver of Conditions. The conditions to each party's obligation to consummate the Purchase are for the sole benefit of such party and may be waived by such party in whole or in part to the extent permitted by applicable law. No waiver will be effective unless it is in a writing signed by a duly authorized officer of the waiving party that makes express reference to the provision or provisions subject to such waiver.

5.5 Governing Law: Submission to Jurisdiction, Etc. **This Purchase Agreement will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the parties hereto agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the Southern District of New York and the United States Court of Federal Claims for any and all civil actions, suits or proceedings**

**arising out of or relating to this Purchase Agreement or the Warrants or the transactions contemplated hereby or thereby, and (b) that notice may be served upon (i) the Company at the address and in the manner set forth for notices to the Company in Section 5.6, (ii) the Issuer Trust at the address and in the manner set forth for notice to the Issuer Trust in Section 5.6 and (iii) the Investor in accordance with federal law. To the extent permitted by applicable law, each of the parties hereto hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to this Purchase Agreement or the Warrants or the transactions contemplated hereby or thereby.**

5.6 Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices shall be delivered, telecopied or sent by a recognized next day courier service to the Company, the Issuer Trust or Investor as set forth below, or pursuant to such other instructions as may be designated in writing by the Investor to the Company.

If to the Company:

GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Attention: General Counsel

If to the Issuer Trust:

GMAC Capital Trust I  
c/o GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Attention: General Counsel

If to the Investor:

United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220  
Attention: Chief Counsel, Office of Financial Stability  
Facsimile: (202) 927-9225  
Email: OFSChiefCounselNotices@do.treas.gov

## 5.7 Definitions

(a) When a reference is made in this Purchase Agreement to a subsidiary of a person, the term “subsidiary” means any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general

partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person and/or one or more subsidiaries thereof.

(b) The term “Affiliate” means, with respect to any person, any person directly or indirectly controlling, controlled by or under common control with, such other person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) when used with respect to any person, means the possession, directly or indirectly, of the power to cause the direction of management and/or policies of such person, whether through the ownership of voting securities by contract or otherwise.

(c) The terms “knowledge of the Company” or “Company’s knowledge” mean the actual knowledge after reasonable and due inquiry of the “officers” (as such term is defined in Rule 3b-2 under the Exchange Act, but excluding any Vice President or Secretary) of the Company or the Issuer Trust.

5.8 Assignment. Neither this Purchase Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except (a) an assignment, in the case of a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Company’s members (a “Business Combination”) where such party is not the surviving entity, or a sale of substantially all of its assets, to the entity which is the survivor of such Business Combination or the purchaser in such sale and (b) as provided in Sections 3.5 and 4.5.

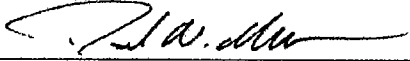
5.9 Severability. If any provision of this Purchase Agreement or the Warrant, or the application thereof to any person or circumstance, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, 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, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties.

5.10 No Third Party Beneficiaries. Nothing contained in this Purchase Agreement, expressed or implied, is intended to confer upon any person or entity other than the Company and the Investor any benefit, right or remedies, except that the provisions of Section 4.5 shall inure to the benefit of the persons referred to in that Section.

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In witness whereof, this Purchase Agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE  
TREASURY

By: 

Name: David Miller

Title: Acting Chief Investment Officer

GMAC INC.

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

Name:

Title:

GMAC CAPITAL TRUST I

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

Name:

Title:

Date: December 30, 2009

In witness whereof, this Agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE  
TREASURY

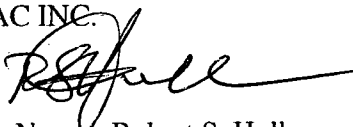
By:

Name:

Title:

GMAC INC.

By:



Name: Robert S. Hull

Title: Executive Vice President and Chief  
Financial Officer

GMAC CAPITAL TRUST I

By:

Name:

Title:

Date: December 30, 2009

In witness whereof, this Purchase Agreement has been duly executed and delivered by the duly authorized representatives of the parties hereto as of the date written below.

UNITED STATES DEPARTMENT OF THE  
TREASURY

By:

Name:

Title:

GMAC INC.

By:

Name:

Title:

GMAC CAPITAL TRUST I

By: *Cathy L. Quenneville*

By: GMAC INC.

Name: Cathy L. Quenneville

Title: Secretary

Date: December 30, 2009



**FORM OF AMENDMENT TO CERTIFICATE OF INCORPORATION**

[SEE ATTACHED]

**FIXED RATE CUMULATIVE MANDATORILY  
CONVERTIBLE PREFERRED STOCK, SERIES F-2**

**OF GMAC INC.**

Part 1. Designation and Number of Shares. There is hereby created a series of preferred stock designated as the “Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F-2” (the “Designated Preferred Stock”). The authorized number of shares of Designated Preferred Stock shall be 228,750,000.

Part 2. Standard Provisions. The Standard Provisions contained in Schedule A attached hereto are incorporated herein by reference in their entirety and shall be deemed to be a part of this Exhibit to the same extent as if such provisions had been set forth in full herein.

Part 3. Definitions. The following terms are used in this Exhibit (including the Standard Provisions in Schedule A hereto) as defined below:

- (a) “Common Stock” means the common stock, par value \$0.01 per share, of the Issuer.
- (b) “Dividend Payment Date” means February 15, May 15, August 15 and November 15 of each year.
- (c) “Issuer” means GMAC Inc., a Delaware corporation.
- (d) “Junior Stock” means the Common Stock and the Class C Preferred Stock, and any other class or series of stock of the Issuer the terms of which expressly provide that it ranks junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer.
- (e) “Liquidation Amount” means, with respect to each share of Designated Preferred Stock, \$50.
- (f) “Parity Stock” means any class or series of stock of the Issuer (other than Designated Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Designated Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Issuer (in each case without regard to whether dividends accrue cumulatively or non-cumulatively). Without limiting the foregoing, Parity Stock shall include (i) the Class A Preferred Stock; (ii) the Class E Preferred Stock, and (iii) the Class G Preferred Stock.
- (g) “Signing Date” means December 30, 2009.

Part 4. Certain Voting Matters. Holders of shares of Designated Preferred Stock will be entitled to one vote for each such share on any matter on which holders of Designated Preferred Stock are entitled to vote, including any action by written consent.

## Schedule A

### STANDARD PROVISIONS

Section 1. General Matters. Each share of Designated Preferred Stock shall be identical in all respects to every other share of Designated Preferred Stock. The Designated Preferred Stock shall rank equally with Parity Stock and shall rank senior to Junior Stock with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Issuer.

Section 2. Standard Definitions. As used herein with respect to Designated Preferred Stock:

(a) “Adjusted Conversion Rate” means (i) the liquidation amount per share of Designated Preferred Stock divided by (ii) the weighted average price at which the shares of common equity securities were sold or the price implied by the conversion of securities into common equity securities in all Applicable Transactions (if any), subject to the anti-dilution provisions set forth in Appendix A.

(b) “Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, whether through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person, excluding any employee benefit plan or related trust.

(c) “Applicable Dividend Rate” means 9.0% per annum.

(d) “Applicable Transactions” means any transactions completed in calendar year 2010 in which the Issuer raised at least \$500 million of common equity capital (either through the sale of new common equity securities or through the conversion of existing indebtedness or preferred stock (other than Designated Preferred Stock held by the Investor at the time of conversion) to common equity securities) from a party or parties that are not the Investor or Affiliates of the Investor.

(e) “Appraiser” means an investment bank of national reputation, engaged by the Issuer with the approval of the United States Department of the Treasury (such approval not to be unreasonably withheld).

(f) “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Issuer as defined in Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(q)), or any successor provision.

(g) “As-Converted Value” means the amount equal to the product of (x) the then applicable Conversion Rate and (y) the greater of (A) the Conversion Price and (B)(i) if the Common Stock is traded on a national securities exchange, the market price of the Common Stock on the date of repurchase or conversion (calculated based on the average closing price during the 20 trading day period beginning on the day after notice of repurchase or conversion is given) or (ii) if the Common Stock is not traded on a national securities exchange, the per Common Share Fair Market Value of the Issuer as of the last day of the most recent calendar quarter prior to the repurchase or conversion date as determined by an Appraiser.

(h) “Business Combination” means a merger, consolidation, statutory share exchange or similar transaction that requires the approval of the Issuer’s stockholders.

(i) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

(j) “Bylaws” means the bylaws of the Issuer, as they may be amended from time to time.

(k) “Change of Control” means the existence or occurrence of any of the following: (i) the sale, conveyance or disposition of all or substantially all of the assets of the Issuer; (ii) the effectuation of a transaction or series of related transactions in which more than fifty percent (50%) of the voting power of the Issuer is disposed of (excluding any disposition in connection with a public offering or to widely dispersed institutional purchasers); (iii) the consolidation, merger or other business combination of the Issuer with or into any other entity, immediately following which the members of the Issuer fail to own, directly or indirectly, at least fifty percent (50%) of the voting equity of the surviving entity; (iv) a transaction or series of transactions in which any person or “group” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended) acquires more than fifty percent (50%) of the voting equity of the Issuer; or (v) the replacement of a majority of the Board of Directors with individuals who were not nominated or elected by at least a majority of the Directors at the time of such replacement; provided, however, that the issuance and sale of Common Stock pursuant to any conversion of any of the Issuer’s Preferred Stock shall not constitute a change of control.

(l) “Charter” means the Issuer’s certificate of incorporation, as it may be amended from time to time.

(m) “Class A Preferred Stock” means the Issuer’s Fixed Rate Perpetual Preferred Stock, Series A.

(n) “Class C Preferred Stock” means the Issuer’s Preferred Stock, Series C.

(o) “Class E Preferred Stock” means the Issuer’s Fixed Rate Perpetual Preferred Stock, Series E.

(p) “Class G Preferred Stock” means the Issuer’s Fixed Rate Cumulative Perpetual Preferred Stock, Series G.

(q) “Company Sale” means a transaction with a third Person that is not an Affiliate of the Issuer or group of third Persons that, acting in concert, do not collectively constitute Affiliates of the Issuer, pursuant to which such Person or Persons acquire, in any single transaction or series of related transactions, (i) all of the outstanding Equity Securities of the Issuer, (ii) all or substantially all of the assets of the Issuer and its Subsidiaries or (iii) Equity Securities of the Issuer authorized and issued following December 31, 2009 and possessing the power to elect or appoint a majority of the Board of Directors (or any similar governing body of any surviving or resulting Person).

(r) “Control,” “Controlled” or “Controlling” means, with respect to any Person, any circumstance in which such Person is directly or indirectly controlled by another Person by virtue of the latter Person having the power to (i) elect, or cause the election of (whether by way of voting capital stock, by contract, trust or otherwise), the majority of the members of the Board of Directors or a similar governing body of the first Person, or (ii) direct (whether by way of voting capital stock, by contract, trust or otherwise) the affairs and policies of such Person.

(s) “Conversion Price” means the liquidation amount per share of Designated Preferred Stock divided by the then-applicable Conversion Rate.

(t) “Conversion Rate” means the number of shares of Common Stock for which a share of Designated Preferred Stock shall be exchanged pursuant to the exercise of the Optional Conversion or the Mandatory Conversion, calculated as follows:

(i) for an Optional Conversion at the option of the Issuer pursuant to an order of the Federal Reserve in accordance with Section 6(a)(i)(A)(2) which occurs:

(1) on or prior to December 31, 2010, the Conversion Rate shall equal the Initial Conversion Rate;

(2) subsequent to December 31, 2010, the Conversion Rate shall equal the Reset Conversion Rate if the Issuer has completed any Applicable Transactions, and shall otherwise equal the Initial Conversion Rate;

(ii) for an Optional Conversion at the option of the Issuer in accordance with Section 6(a)(i)(A)(1), other than pursuant to an order of the Federal Reserve, which occurs:

(1) on or prior to December 31, 2010, the Conversion Rate shall equal the Initial Conversion Rate;

(2) subsequent to December 31, 2010, the Conversion Rate shall equal the Reset Conversion Rate if the Issuer has completed any Applicable Transactions, and shall otherwise equal the Initial Conversion Rate;

(iii) for an Optional Conversion at the option of a Holder in accordance with Section 6(a)(i)(B) which occurs on or prior to December 31, 2010, the Conversion Rate shall equal the greater of (a) the Initial Conversion Rate and (b) the rate equal to the liquidation amount per share of Designated Preferred Stock divided by the price at which such Common Stock is offered in such public offering or the price at which such Common Stock is sold or otherwise valued in such Change of Control of the Issuer, as applicable;

(iv) for an Optional Conversion at the option of a Holder in accordance with Section 6(a)(i)(B) which occurs subsequent to December 31, 2010, the Conversion Rate shall equal the Reset Conversion Rate if the Issuer has completed any Applicable Transactions, and shall otherwise equal the Initial Conversion Rate; and

(v) for any Mandatory Conversion, the Conversion Rate shall be the Reset Conversion Rate if the Company has completed any Applicable Transactions, and shall otherwise be the Initial Conversion Rate.

(u) “Dividend Period” has the meaning set forth in Section 3(a).

(v) “Dividend Record Date” has the meaning set forth in Section 3(a).

(w) “Equity Securities” means, as applicable, (i) any capital stock, membership or limited liability company interests or other share capital, (ii) any securities directly or indirectly convertible into or exchangeable for any capital stock, membership or limited liability company interests or other share capital or containing any profit participation features, (iii) any rights or options directly or indirectly to subscribe for or to purchase any capital stock, membership or limited liability company interests, other share capital or securities containing any profit participation features or to subscribe for or to purchase any securities directly or indirectly convertible into or exchangeable for any capital stock, membership or limited liability company interests, other share capital or securities containing any profit participation features, (iv) any share appreciation rights, phantom share rights or other similar rights, or (v) any Equity Securities issued or issuable with respect to the securities referred to in clauses (i) through (iv) above in connection with a combination of shares, recapitalization, merger, consolidation, conversion or other reorganization.

(x) “Fair Market Value” means, in reference to the Common Stock, the fair market value of the Common Stock, as between a willing buyer and a willing seller in an arms’ length transaction occurring on the date of valuation, taking into account the factors suggested by the Issuer and the United States Department of the Treasury, to the extent the Appraiser deems appropriate.

(y) “Federal Reserve” means the Board of Governors of the Federal Reserve System.

(z) “Holder” means the holder of any shares of Designated Preferred Stock.

(aa) “Initial Conversion Rate” means 0.00432, subject to the anti-dilution provisions set forth in Appendix A.

(bb) “Investor” means the United States Department of the Treasury or any of its Affiliates to which shares of Designated Preferred Stock are transferred in accordance with the terms hereof and the Certificate of Designations with respect to the Designated Preferred Stock. For the avoidance of doubt, “Investor” does not include any third party transferee of the Investor to which any shares of Designated Preferred Stock are transferred.

(cc) “LLC Agreement” means the Sixth Amended and Restated Limited Liability Company Operating Agreement of GMAC LLC, dated as of May 22, 2009.

(dd) “Liquidation Preference” has the meaning set forth in Section 4(a).

(ee) “Mandatory Conversion” means the mandatory conversion of each share of the Designated Preferred Stock into Common Stock at the then-applicable Conversion Rate on the seventh anniversary of the Original Issue Date.

(ff) “Optional Conversion” means the conversion of shares of the Designated Preferred Stock into Common Stock at the then-applicable Conversion Rate, either (i) in whole or in part, at any time or from time to time, at the election of the Issuer, subject to the requirements and conditions set forth in Section 6(a)(i)(A), or (ii) in whole or in part, at the election of the Holder, upon any public offering of the Common Stock or upon the occurrence of a Change of Control of the Issuer, subject to the requirements and conditions set forth in Section 6(a)(i)(B).

(gg) “Original Issue Date” means December 30, 2009.

(hh) “Person” means any individual or Entity.

(ii) “Plan of Conversion” means the plan of conversion of GMAC LLC into GMAC Inc., dated as of June 30, 2009.

(jj) “Preferred Stock” means any and all series of preferred stock of the Issuer, including the Designated Preferred Stock.

(kk) “Public Offering” means an underwritten sale to the public of the Issuer’s (or its successor’s) Equity Securities pursuant to an effective registration statement filed with the SEC on Form S-1 and after which the Issuer’s (or its successor’s) Equity Securities are listed on the New York Stock Exchange, NASDAQ or any other national security exchange; provided that a Public Offering shall not include any issuance of Equity Securities in any merger or other business combination, and shall not include any registration of the issuance of Equity Securities to existing securityholders or employees of the Issuer and its Subsidiaries on Form S-4 or Form S-8.

(ll) “Qualified Public Offering” means one or a series of Public Offerings by the Issuer and/or one or more securityholders of the Issuer that results in at least twenty percent (20%) of the issued and outstanding common stock (or equivalent Equity Securities) of the Issuer at the time of such determination having been sold at such time or previously through a Public Offering or Public Offerings.

(mm) “Redemption Price” means (i) during the period from the Original Issue Date to, but excluding, the second anniversary of the Original Issue Date, the sum of (A) the Liquidation Preference and (B) any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) below, dividends on such amount) to, but excluding, the date fixed for redemption, and (ii) from and after the second anniversary of the Original Issue Date, the greater of (A) the amount calculated in clause (i) and (B) the As-Converted Value of the Designated Preferred Stock to be redeemed.

(nn) “Reset Conversion Rate” means the greater of (a) the Initial Conversion Rate or (b) the Adjusted Conversion Rate.

(oo) “Standard Provisions” mean these Standard Provisions that form a part of the Exhibit relating to the Designated Preferred Stock.

(pp) “Subsidiary” means, with respect to any Person, any other Person of which a majority of the voting interests is owned directly or indirectly by such Person.

(qq) “Transfer” means any sale, transfer, assignment (other than a contingent assignment for the benefit of creditors), exchange, or other disposition of an interest (whether with or without consideration, whether voluntarily or involuntarily or by operation of Law). The terms “Transferee,” “Transferor,” “Transferred,” and other forms of the word “Transfer” shall have the correlative meanings.

### Section 3. Dividends.

(a) Rate. Holders of Designated Preferred Stock shall be entitled to receive, on each share of Designated Preferred Stock if, as and when declared by the board of directors of the Issuer (the “Board of Directors”) or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cumulative cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate on (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of accrued and unpaid dividends for any prior Dividend Period on such share of Designated Preferred Stock, if any. Such dividends shall begin to accrue and be cumulative from the Original Issue Date, shall compound on each subsequent Dividend Payment Date (i.e., no dividends shall accrue on other dividends unless and until the first Dividend Payment Date for such other dividends has passed without such other dividends having been paid on such date) and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 20 calendar days after the Original Issue Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day and no additional dividends will accrue as a result of that postponement. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a “Dividend Period,” provided that the initial Dividend Period shall be the period from and including the Original Issue Date to, but excluding, the next Dividend Payment Date.

Dividends that are payable on Designated Preferred Stock in respect of any Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months. The amount of dividends payable on Designated Preferred Stock on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on the basis of a 360-day year consisting of twelve 30-day months, and actual days elapsed over a 30-day month.

Dividends that are payable on Designated Preferred Stock on any Dividend Payment Date will be payable to holders of record of Designated Preferred Stock as they appear on the stock register of the Issuer on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record”



Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Designated Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Designated Preferred Stock as specified in this Section 3 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends. So long as any share of Designated Preferred Stock remains outstanding and owned by the United States Department of the Treasury or its Affiliates, no dividend shall be declared or paid on the Common Stock or any other shares of Junior Stock or Parity Stock, subject to the immediately following paragraph in the case of Parity Stock, and no Common Stock, Junior Stock, Parity Stock or trust preferred securities issued by the Issuer or any Affiliate of the Issuer shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Issuer or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period (including, if applicable as provided in Section 3(a) above, dividends on such amount), on all outstanding shares of Designated Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Designated Preferred Stock on the applicable record date). The foregoing limitation shall not apply to (i) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (ii) the acquisition by the Issuer or any of its subsidiaries of record ownership in shares of Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Issuer or any of its subsidiaries), including as trustees or custodians; (iii) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Signing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock; (iv) distributions by or other transactions solely among the Issuer and any wholly-owned subsidiary of the Issuer or solely among wholly-owned subsidiaries of the Issuer; (v) redemptions of securities held by the Issuer or any wholly-owned subsidiary of the Issuer; and (vi) for the avoidance of doubt, unpaid tax distributions on junior membership interests of GMAC LLC pursuant to Section 5.1(e) of the LLC Agreement and consistent with Section 4(b) of the Plan of Conversion.

When dividends are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date) in full upon Designated Preferred Stock and any shares of Parity Stock, all dividends declared on Designated Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared pro rata so that the respective amounts of such dividends declared shall bear the same ratio to each other as

all accrued and unpaid dividends per share on the shares of Designated Preferred Stock (including, if applicable as provided in Section 3(a) above, dividends on such amount) and all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other. If the Board of Directors or a duly authorized committee of the Board of Directors determines not to pay any dividends or a full dividend on a Dividend Payment Date, the Issuer will provide written notice to the holders of Designated Preferred Stock prior to such Dividend Payment Date. Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Designated Preferred Stock shall not be entitled to participate in any such dividends.

#### Section 4. Liquidation Rights.

(a) Voluntary or Involuntary Liquidation. In the event of any liquidation, dissolution or winding up of the affairs of the Issuer, whether voluntary or involuntary, holders of Designated Preferred Stock shall be entitled to receive for each share of Designated Preferred Stock held by them, out of the assets of the Issuer or proceeds thereof (whether capital or surplus) available for distribution to stockholders of the Issuer, subject to the rights of any creditors of the Issuer, before any distribution of such assets or proceeds is made to or set aside for the holders of Junior Stock and any other stock of the Issuer ranking junior to Designated Preferred Stock as to such distribution (other than, for the avoidance of doubt, unpaid tax distributions on junior membership interests of GMAC LLC pursuant to Section 5.1(e) of the LLC Agreement and consistent with Section 4(b) of the Plan of Conversion), payment in full in an amount equal to the sum of (i) the Liquidation Amount per share of Designated Preferred Stock and (ii) the amount of any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment (such amounts collectively, the “Liquidation Preference”).

(b) Partial Payment. If in any distribution described in Section 4(a) above the assets of the Issuer or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Designated Preferred Stock and the corresponding amounts payable with respect to any Parity Stock of the Issuer ranking equally with Designated Preferred Stock as to such distribution, holders of Designated Preferred Stock and the holders of such Parity Stock shall share ratably in any such distribution in proportion to the full respective distributions to which they are entitled.

(c) Residual Distributions. If the Liquidation Preference has been paid in full to all holders of Designated Preferred Stock and the corresponding amounts payable with respect to any Parity Stock of the Issuer ranking equally with the Designated Preferred Stock as to such distribution have been paid in full, the holders of other stock of the Issuer shall be entitled to

receive all remaining assets of the Issuer (or proceeds thereof) according to their respective rights and preferences.

(d) Merger, Consolidation and Sale of Assets Not Liquidation. For purposes of this Section 4, the merger or consolidation of the Issuer with any other corporation or other entity, including a merger or consolidation in which the holders of Designated Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Issuer, shall not constitute a liquidation, dissolution or winding up of the Issuer.

#### Section 5. Redemption.

(a) Optional Redemption. The Issuer, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, the shares of Designated Preferred Stock at the time outstanding, upon notice given as provided in Section 5(c) below, at the then-applicable Redemption Price.

(b) Payment of Redemption Price. The Redemption Price for any shares of Designated Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Issuer or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the Redemption Price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(c) No Sinking Fund. The Designated Preferred Stock will not be subject to any mandatory redemption, sinking fund or other similar provisions. Holders of Designated Preferred Stock will have no right to require redemption or repurchase of any shares of Designated Preferred Stock.

(d) Notice of Redemption. Notice of every redemption of shares of Designated Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Issuer. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Designated Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if the shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (1) the redemption date; (2) the number of shares of Designated Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be

redeemed from such holder; (3) the Redemption Price, or the method pursuant to which the Redemption Price shall be calculated; and (4) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price.

(e) Partial Redemption. In case of any redemption of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be redeemed shall be redeemed pro rata. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Designated Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(f) Effectiveness of Redemption. If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Issuer, in trust for the pro rata benefit of the holders of the shares called for redemption, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Issuer, after which time the holders of the shares so called for redemption shall look only to the Issuer for payment of the redemption price of such shares.

## Section 6. Conversion.

### (a) Optional and Mandatory Conversion.

#### (i) Prior to the seventh anniversary of the Original Issue Date,

(A) the Issuer may, at its option, exercise the Optional Conversion in whole or in part, subject to the approval of the Federal Reserve, and with respect to shares of Designated Preferred Stock held by the Investor (1) with the prior written consent of the Investor (such consent to be granted in the sole discretion of the Investor, it being understood that with respect to any Optional Conversion, the Investor may consider such factors as it deems appropriate at such time and may seek to condition the terms on which it may provide such consent which may include an alteration of the Conversion Rate), or (2) pursuant to an order of the Federal Reserve compelling such a conversion. For the avoidance of doubt, any consent granted by the Investor with respect to any Optional Conversion shall not constitute a waiver by the Investor of any consent right regarding any other Optional Conversion or estop the Investor from withholding such consent; and

(B) in the event of any public offering of the Common Stock or upon the occurrence of a Change of Control of the Issuer, a Holder may, at its option, exercise the Optional Conversion in whole or in part with respect to such shares of Designated Preferred Stock held by such Holder, other than with respect to any shares of Designated Preferred Stock with respect to which the Issuer shall have given notice of redemption pursuant to Section 5.

(ii) On the seventh anniversary of the Original Issue Date, any shares of Designated Preferred Stock which remain outstanding shall each convert to Common Stock pursuant to the Mandatory Conversion.

(iii) Upon any conversion of shares of the Designated Preferred Stock pursuant to the Optional Conversion or the Mandatory Conversion, the Issuer shall pay any accrued and unpaid dividends (including, if applicable as provided in Section 3(a) above, dividends on such amount), whether or not declared, to the date of payment, in either cash or Common Stock, to the holder of each share of the Designated Preferred Stock to be converted into Common Stock. If the Issuer elects to make such payment in the form of Common Stock, the number of shares of Common Stock to be distributed for this purpose will be determined based on the Conversion Price.

(iv) Shares of Common Stock issuable pursuant to the conversion of any share of the Designated Preferred Stock shall be issued on the conversion date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Issuer or its agent, duly endorsed or assigned to the Issuer or in blank. Any issuance of Common Stock or payment of cash in respect of declared but unpaid dividends payable on a conversion date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the Common Stock issued pursuant to the conversion on the conversion date, but rather shall be paid to the holder of record of the converted shares on such Dividend Record Date relating to the Dividend Payment Date as provided in Section 3 above.

(b) Notice of Conversion. Notice of any election to convert shares of Designated Preferred Stock shall be given by first class mail, postage prepaid. Any such notice given by the Issuer shall be addressed to the holders of record of the shares to be converted at their respective last addresses appearing on the books of the Issuer. Any such notice given by the holders of shares of the Designated Preferred shall be addressed to the Issuer at its principal business address. Such mailing shall be at least 30 days and not more than 60 days before the date fixed for conversion. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder or the Issuer receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to the Issuer or to any holder of shares of Designated Preferred Stock designated for conversion shall not affect the validity of the proceedings for the conversion of any other shares of Designated Preferred Stock. Notwithstanding the foregoing, if the shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of conversion may be given to the holders of Designated Preferred Stock at such time and in any manner permitted by such facility. Each notice of conversion given to a holder or to the Issuer shall state: (1) the conversion date; (2) the number of shares of Designated Preferred Stock

to be converted and, if less than all the shares held by such holder are to be converted, the number of such shares to be converted from such holder; (3) the number of shares of Common Stock into which such shares of Designated Preferred Stock shall be converted; and (4) the place or places where certificates for such shares are to be surrendered for payment.

(c) Cash Payments in Lieu of Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Designated Preferred Stock. In lieu of any fractional shares which would otherwise be deliverable upon the conversion of any Designated Preferred Stock, the Issuer shall pay to the holder of such shares an amount in cash (computed to the nearest cent), determined based on the Conversion Price.

(d) Partial Conversion. In case of any conversion of part of the shares of Designated Preferred Stock at the time outstanding, the shares to be converted shall be converted pro rata; provided that if GMAC is prohibited by Section 6(a)(i)(A) hereof from converting shares of the Designated Preferred Stock held by the Investor, it may convert any shares of the Designated Preferred held by parties other than the Investor, in a manner consistent with the other terms and conditions hereof. If fewer than all the shares represented by any certificate are converted, a new certificate shall be issued representing the unconverted shares without charge to the holder thereof.

(e) Effectiveness of Conversion. If notice of conversion has been duly given and if on or before the conversion date specified in the notice all funds necessary for the conversion and certificates representing the shares of Common Stock to be issued have been deposited by the Issuer, in trust for the pro rata benefit of the holders of the shares called for conversion, with a bank or trust company doing business in the Borough of Manhattan, The City of New York, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for conversion has not been surrendered for cancellation, on and after the conversion date distributions shall cease to accrue on all shares so called for conversion, all shares so called for conversion shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such conversion date cease and terminate, except only the right of the holders thereof to receive the amount payable on such conversion from such bank or trust company, without interest. Any funds or certificates representing shares of Common Stock unclaimed at the end of three years from the conversion date shall, to the extent permitted by law, be released to the Issuer, after which time the holders of the shares so called for conversion shall look only to the Issuer for payment of the conversion price of such shares.

#### Section 7. Voting Rights.

(a) General. The holders of Designated Preferred Stock shall not have any voting rights except as set forth below or as otherwise from time to time required by law.

(b) RESERVED.

(c) Class Voting Rights as to Particular Matters. So long as any shares of Designated Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by the Charter, the vote or consent of the holders of at least a majority of the shares of

Designated Preferred Stock at the time outstanding, voting as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(i) Authorization of Senior Stock. Any amendment or alteration of the Certificate of Designations for the Designated Preferred Stock or the Charter to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Issuer ranking senior to the Designated Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Issuer;

(ii) Amendment of Designated Preferred Stock. Any amendment, alteration or repeal of any provision of the Certificate of Designations for the Designated Preferred Stock or the Charter (including, unless no vote on such merger or consolidation is required by Section 7(c)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Designated Preferred Stock; or

(iii) Share Exchanges, Reclassifications, Mergers and Consolidations. Any consummation of a binding share exchange or reclassification involving the Designated Preferred Stock, other than an Optional Conversion or Mandatory Conversion, or of a merger or consolidation of the Issuer with another corporation or other entity, unless in each case (x) the shares of Designated Preferred Stock remain outstanding or, in the case of any such merger or consolidation with respect to which the Issuer is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Designated Preferred Stock immediately prior to such consummation, taken as a whole;

provided, however, that for all purposes of this Section 7(c), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Designated Preferred Stock necessary to satisfy preemptive or similar rights granted by the Issuer to other persons prior to the Signing Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking equally with and/or junior to Designated Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Issuer will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock; provided, further, however, any amendments to the Charter entered into in connection with the compliance by the Issuer with its commitments to the United States Department of the Treasury for purposes of the Issuer's participation in the Troubled Asset

Relief Program, or any similar or successor program, will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Designated Preferred Stock.

(d) Changes after Provision for Redemption. No vote or consent of the holders of Designated Preferred Stock shall be required pursuant to Section 7(c) above if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Section, all outstanding shares of the Designated Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Section 5 above.

(e) Procedures for Voting and Consents. The rules and procedures for calling and conducting any meeting of the holders of Designated Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of the Charter, the Bylaws and applicable law and the rules of any national securities exchange or other trading facility on which Designated Preferred Stock is listed or traded at the time.

Section 8. Record Holders. To the fullest extent permitted by applicable law, the Issuer and the transfer agent for Designated Preferred Stock may deem and treat the record holder of any share of Designated Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Issuer nor such transfer agent shall be affected by any notice to the contrary.

Section 9. Notices. All notices or communications in respect of Designated Preferred Stock shall be sufficiently given if given in writing and delivered in person or by first class mail, postage prepaid, or if given in such other manner as may be permitted in this Certificate of Designations, in the Charter or Bylaws or by applicable law. Notwithstanding the foregoing, if shares of Designated Preferred Stock are issued in book-entry form through The Depository Trust Company or any similar facility, such notices may be given to the holders of Designated Preferred Stock in any manner permitted by such facility.

Section 10. Preemptive Rights.

(a) The Issuer shall not issue, sell or exchange, agree to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, any Preemptive Securities (as defined below) of the Issuer to any Person unless, in each case, the Issuer shall have first offered to sell to each holder of Common Stock, and the holders of any shares of Designated Preferred Stock (each a "Preemptive Holder") such Preemptive Holder's Preemptive Share (as defined below) of the Preemptive Securities, at a price and on such other terms as shall have been specified by the Issuer in writing delivered to each such Preemptive Holder (the "Preemptive Offer"), which Preemptive Offer shall by its terms remain open and irrevocable for a period of at least ten calendar days from the date it is delivered by the Issuer (the "Preemptive Offer Period"). Each Preemptive Holder may elect to purchase all or any portion of such Preemptive Holder's



Preemptive Share of the Preemptive Securities as specified in the Preemptive Offer at the price and upon the terms specified therein by delivering written notice of such election to the Issuer as soon as practical but in any event within the Preemptive Offer Period; provided that if the Issuer is issuing Preemptive Securities together as a unit with any other securities, then any Preemptive Holder who elects to purchase the Preemptive Securities pursuant to this section must purchase the same proportionate mix of all of such securities. Notwithstanding anything to the contrary set forth in this Exhibit, a Preemptive Holder may assign all or any portion of its right to acquire Preemptive Securities to its direct or indirect equityholders, and upon any such assignment, each such equityholder shall be deemed a Preemptive Holder for the purposes of this section.

“Preemptive Securities” means, as applicable, (i) Common Stock or any other common equity securities of the Issuer or other securities of the Issuer that vote together with the Common Stock, (ii) any securities directly or indirectly convertible into or exchangeable for Common Stock or other common equity securities of the Issuer or other securities of the Issuer that vote together with the Common Stock, (iii) any rights or options directly or indirectly to subscribe for or to purchase Common Stock or other common equity securities of the Issuer or other securities of the Issuer that vote together with the Common Stock, or to subscribe for or purchase any securities directly or indirectly convertible into or exchangeable for Common Stock or other common equity securities of the Issuer, (iv) any share appreciation rights, phantom share rights, or other similar rights, to the extent related to Common Stock or other securities of the Issuer that vote together with the Common Stock, or (v) any Preemptive Securities issued or issuable with respect to the securities referred to in clauses (i) through (iv) above in connection with a combination of shares, recapitalization, merger, consolidation, conversion or other reorganization.

Each Preemptive Holder’s “Preemptive Share” of Preemptive Securities shall be determined as follows: the total number of Preemptive Securities, multiplied by a fraction, (i) the numerator of which is the number of shares of Common Stock then held, directly or indirectly, by such Preemptive Holder on a Fully-Diluted Basis (as defined below), and (ii) the denominator of which is the number shares of Common Stock then held by all Preemptive Holders (including such Preemptive Holder) on a Fully-Diluted Basis. “Fully Diluted Basis” means after taking into account all outstanding shares of Common Stock and assuming the exercise, conversion or exchange of all outstanding options, warrants, convertible or exchangeable securities and similar rights (“Convertible Securities”) and the issuance of all shares of Common Stock that the Issuer is obligated to issue thereunder.

Upon the expiration of the Preemptive Offer Period, the Issuer shall be entitled to sell such Preemptive Securities which the Preemptive Holders have not elected to purchase for a period ending on the later to occur of (i) one hundred twenty calendar days following the expiration of the Preemptive Offer Period, or (ii) if a definitive agreement to Transfer the Preemptive Securities is entered into by the Issuer within such one hundred twenty calendar day period, the date on which all applicable approvals and consents of Governmental Entities and other Persons with respect to such proposed Transfer have been obtained and any applicable waiting periods under Law have expired or been terminated, in each case on terms and conditions not materially more favorable to the purchasers thereof than those offered to the Preemptive Holders. Any Preemptive Securities to be sold by the Issuer following the expiration of such period must be reoffered to the Preemptive Holders pursuant to the terms of this section if any such agreement to Transfer is terminated.

(b) The provisions of this Section 10 shall not apply to the following issuances of Preemptive Securities:

(i) Preemptive Securities issued to or for the benefit of employees, officers, directors and other service providers of or to the Issuer or any of its Subsidiaries in accordance with the terms hereof or any applicable incentive plan of the Issuer;

(ii) securities issued by the Company in connection with a Public Offering;

(iii) securities issued as consideration in acquisitions or commercial borrowings or leasing;

(iv) securities issued upon conversion of convertible or exchangeable securities of the Company or any of its Subsidiaries that were outstanding on June 30, 2009 or were not issued in violation of any preemptive rights held by stockholders of the Issuer and,

(v) a subdivision of shares of capital stock (including any stock dividend or stock split), any combination of shares of capital stock (including any reverse stock split) or any recapitalization, reorganization, reclassification or conversion of the Issuer or any of its Subsidiaries.

(c) The preemptive rights granted in this Section 10 shall terminate upon the earlier to occur of the consummation of a Qualified Public Offering and a Company Sale.

(d) Notwithstanding the procedural requirements of Section 10(a) above, with respect to any issuance of Preemptive Securities to the Investor in connection with the Supervisory Capital Assessment Program, in the event that the Issuer determines that it is necessary or advisable, the Issuer may complete a transaction covered by Section 10(a) above prior to making a Preemptive Offer to Preemptive Holders provided that the Issuer (x) shall make the Preemptive Offer to Preemptive Holders promptly following completion of such transaction and (y) Preemptive Holders shall have no less than 10 calendar days to consider any such Preemptive Offer.

Section 11. Replacement Certificates. The Issuer shall replace any mutilated certificate at the holder's expense upon surrender of that certificate to the Issuer. The Issuer shall replace certificates that become destroyed, stolen or lost at the holder's expense upon delivery to the Issuer of reasonably satisfactory evidence that the certificate has been destroyed, stolen or lost, together with any indemnity that may be reasonably required by the Issuer.

Section 12. Other Rights. The shares of Designated Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein, in the Charter or the Bylaws, or as provided by applicable law.

Anti-dilution Provisions

The Conversion Rate will be adjusted, without duplication, if certain events occur:

(1) the issuance of shares of Common Stock as a dividend to all holders of Common Stock, or a subdivision or combination of Common Stock, in which event the Conversion Rate will be adjusted based on the following formula:

$$CR^1 = CR_0 \times (CM^1 / CM_0)$$

where,

$CR_0$  = the Conversion Rate in effect at the close of business on the record date for such dividend or the open of business on the effective date of such subdivision or combination, as the case may be;

$CR^1$  = the Conversion Rate in effect immediately after the close of business on such record date or the open of business on such effective date, as the case may be;

$CM_0$  = the number of shares of Common Stock outstanding at the close of business on such record date for such dividend or at the open of business on the effective date of such subdivision or combination, in each case, prior to giving effect to such event;

$CM^1$  = the number of shares of Common Stock that would be outstanding immediately after, and solely as a result of, such event.

(2) the issuance to all holders of Common Stock of rights, options or warrants entitling them for a period expiring 60 days or less from the date of issuance of such rights, options or warrants to purchase shares of Common Stock at less than the current Trading Value of Common Stock as of the record date, in which event the Conversion Rate will be increased based on the following formula:

$$CR^1 = CR_0 \times [(CM_0 + X) / (CM_0 + Y)]$$

where,

$CR_0$  = the Conversion Rate in effect at the close of business on the record date for such issuance;

$CR^1$  = the Conversion Rate in effect immediately after the close of business on the record date for such issuance;

$CM_0$  = the number of shares of Common Stock outstanding at the close of business on the record date for such issuance;

X = the total number of shares of Common Stock issuable pursuant to such rights; and

Y = the aggregate price payable to exercise such rights divided by the Trading Value as of the record date.

However, the Conversion Rate will be readjusted to the extent that any such rights, options or warrants are not exercised prior to their expiration.

(3) the distribution (other than any tax distributions paid to holders of junior membership interests in GMAC LLC) to all holders of Common Stock of capital stock of the Issuer (other than Common Stock) or evidences of Issuer indebtedness or Issuer assets (excluding any distribution or issuance covered by clauses (1) or (2) above or (4) below, and including any distribution of cash which is excluded from clause (4) below) in which event the Conversion Rate will be increased based on the following formula:

$$CR^1 = CR_0 \times [TV_0 / (TV_0 - FMV)]$$

where,

$CR_0$  = the Conversion Rate in effect at the close of business on the record date for such distribution;

$CR^1$  = the Conversion Rate in effect immediately after the close of business on the record date for such distribution;

$TV_0$  = the Trading Value as of the record date for such distribution, or, if the Common Stock is not listed on a national securities exchange, as of the date that would be the record date for such distribution if the Common Stock was listed on the New York Stock Exchange; and

FMV = the fair market value (as determined by the Issuer's Board of Directors) on the record date for such distribution of the shares of capital stock, evidences of indebtedness or assets so distributed, expressed as an amount per share of Common Stock.

However, if the transaction that gives rise to an adjustment pursuant to this clause (3) is one pursuant to which the payment of a distribution on Common Stock consists of shares of capital stock of, or similar equity interests in, a subsidiary or other business unit of the Issuer (i.e., a spin-off) that are, or, when issued, will be, traded on a U.S. national securities exchange, then the Conversion Rate will instead be increased based on the following formula:

$$CR^1 = CR_0 \times [(FMV + TV_0) / TV_0]$$

where,

$CR_0$  = the Conversion Rate in effect at the close of business on the record date for such distribution;

$CR^1$  = the Conversion Rate in effect immediately after the close of business on the record date for such distribution;

FMV = the average of the VWAP of the capital stock or similar equity interests distributed to holders of Common Stock applicable to one share of Common Stock over each of the 10 consecutive trading days commencing on, and including, the third trading day after the date on which “ex-distribution trading” commences for such distribution on the New York Stock Exchange or such other U.S. national securities exchange on which such shares of capital stock or similar equity interests are then listed; and

TV<sub>0</sub> = the Trading Value calculated twenty trading days from the third trading day after which “ex-distribution trading” commences for such distribution, or, if the Common Stock is not listed on a national securities exchange, as of twenty trading days from the date that would be the third trading day after which “ex-distribution trading” would commence if the Common Stock was listed on the New York Stock Exchange.

(4) The Issuer makes a distribution (other than any tax distributions paid to holders of junior membership interests in GMAC LLC) consisting exclusively of cash to all holders of Common Stock, excluding (a) any cash that is distributed as part of a distribution referred to in clause (3) above, and (b) any consideration payable in connection with a tender or exchange offer made by Issuer or any of its subsidiaries referred to in clause (5) below, in which event, the Conversion Rate will be increased based on the following formula:

$$CR^1 = CR_0 \times [TV_0 / (TV_0 - C)]$$

where,

CR<sub>0</sub> = the Conversion Rate in effect at the close of business on the record date for such distribution;

CR<sup>1</sup> = the Conversion Rate in effect immediately after the close of business on the record date for such distribution;

TV<sub>0</sub> = the Trading Value as of the record date for such distribution; and

C = the amount in cash per share of Common Stock that Issuer distributes to holders.

(5) Issuer or one or more of Issuer’s subsidiaries make purchases of shares of Common Stock pursuant to a tender offer or exchange offer by Issuer or one of its subsidiaries for Common Stock to the extent that the cash and value of any other consideration included in the payment per share of Common Stock validly tendered or exchanged exceeds the Trading Value of Common Stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “expiration date”), in which event the Conversion Rate will be increased based on the following formula:

$$CR^1 = CR_0 \times [(FMV + (TV^1 * CM^1)) / (TV^1 * CM_0)]$$

where,

CR<sub>0</sub> = the Conversion Rate in effect at the close of business on the trading day next succeeding the expiration date;

$CR^1$  = the Conversion Rate in effect immediately after the close of business on the trading day next succeeding the expiration date;

FMV = the fair market value (as determined by the Issuer's Board of Directors), at the close of business on the trading day next succeeding the expiration date, of the aggregate value of all cash and any other consideration paid or payable for Common Stock validly tendered or exchanged and not withdrawn as of the expiration date (the "purchased shares");

$CM^1$  = the number of shares of Common Stock outstanding as of the last time tenders or exchanges may be made pursuant to such tender or exchange offer (the "expiration time") less any purchased shares;

$CM_0$  = the number of shares of Common Stock outstanding at the expiration time, including any purchased shares; and

$TV^1$  = the Trading Value calculated twenty trading days from the trading day immediately after the expiration date.

"Conversion Rate" means the number of shares of Common Stock that will be exchanged for each share of Designated Preferred Stock upon a conversion pursuant to the exercise of either the Optional Conversion or the Mandatory Conversion.

"Trading Value" means (i) if the Common Stock is traded on a national securities exchange, the market price of the Common Stock on the applicable date (calculated based on the average closing price during the preceding 20 day trading period) or (ii) if the Common Stock is not traded on a national securities exchange, the per Common Share Fair Market Value of the Issuer, as determined in good faith by the Issuer's Board of Directors.

"Record date" means, for purpose of a Conversion Rate adjustment, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which Common Stock (or any other applicable security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of Common Stock entitled to receive such cash, securities or other property (whether such date is fixed by the Issuer's Board of Directors or by statute, contract or otherwise).

"VWAP" per share of common stock on any trading day means the market price of one share of common stock from the open of trading on the relevant trading day until the close of trading on the relevant trading day determined, using a volume-weighted average method, by a nationally recognized investment banking firm retained for this purpose by the Issuer).

A "trading day" means, for purposes of determining a VWAP or closing price, a business day on which the relevant exchange or quotation system is scheduled to be open for business and a day on which there has not occurred or does not exist a market disruption event.

A “market disruption event” is defined as any of the following events that has occurred:

- any suspension of, or limitation imposed on, trading by the relevant exchange or quotation system during the one-hour period prior to the close of trading for the regular trading session on the exchange or quotation system (or for purposes of determining VWAP any period or periods aggregating one half-hour or longer) and whether by reason of movements in price exceeding limits permitted by the relevant exchange or quotation system or otherwise relating to Common Stock or in futures or option contracts relating to Common Stock on the relevant exchange or quotation system;
- any event (other than a failure to open or a closure as described below) that disrupts or impairs the ability of market participants during the one-hour period prior to the close of trading for the regular trading session on the exchange or quotation system (or for purposes of determining VWAP any period or periods aggregating one half-hour or longer) in general to effect transactions in, or obtain market values for Common Stock on the relevant exchange or quotation system or futures or options contracts relating to Common Stock on any relevant exchange or quotation system; or
- the failure to open of the exchange or quotation system on which futures or options contracts relating to Common Stock are traded or the closure of such exchange or quotation system prior to its respective scheduled closing time for the regular trading session on such day (without regard to after hours or other trading outside the regular trading session hours) unless such earlier closing time is announced by such exchange or quotation system at least one hour prior to the earlier of the actual closing time for the regular trading session on such day and the submission deadline for orders to be entered into such exchange or quotation system for execution at the actual closing time on such day.

Except as stated above, the Conversion Rate will not be adjusted for the issuance of Common Stock or any securities convertible into or exchangeable for Common Stock or carrying the right to purchase any of the foregoing or for the repurchase of Common Stock. An adjustment to the Conversion Rate also need not be made for a transaction referred to in clauses (1) through (5) above if holders of the Designated Preferred Stock may participate (as a result of holding the Designated Preferred Stock, and at the same time as Common Stock holders participate) in such transaction as if such holders of the Designated Preferred Stock held a number of shares of Common Stock equal to the product of the number of shares of Designated Preferred Stock held by such holder and the Conversion Rate, without having to convert their shares of Designated Preferred Stock. The Issuer may, but shall not be required to, make such increases in the Conversion Rate, in addition to those that are required, as the Issuer’s Board of Directors considers to be advisable in order to avoid or diminish any income tax to any holders of Common Stock resulting from any distribution of capital stock or issuance of rights or warrants to purchase or subscribe for capital stock or from any event treated as such for income tax purposes or for any other reason.

No adjustment in the Conversion Rate will be required unless such adjustment would require an increase or decrease of at least 1%; provided, however, that any such minor adjustments that are

not required to be made will be carried forward and taken into account in any subsequent adjustment, and provided further that any such adjustment of less than 1% that has not been made will be made upon (x) the end of each fiscal year of the Issuer, (y) the date of any notice of a redemption and (z) any conversion date.

Adjustments to the Conversion Rate will be calculated to the nearest 1/10,000<sup>th</sup> of a share. Whenever the Conversion Rate is adjusted, the Issuer shall notify the holders of the Designated Preferred Stock of the adjustment within ten Business Days of any event requiring such adjustment and describe in reasonable detail the method by which the Conversion Rate was adjusted.



**FORM OF AMENDMENT TO BYLAWS**

[SEE ATTACHED]

**BYLAWS OF GMAC INC.**

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Dated as of December 30, 2009

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**ARTICLE I**  
**DEFINITIONS; INTERPRETATIVE MATTERS**

**Section 1.1** **Definitions.** The following terms, as used herein, shall have the following meanings:

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, whether through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person, excluding any employee benefit plan or related trust. For purposes of Section 6.10(c)(ii), the definition of “Affiliate” does not include any Subsidiary of the Company and does not include any Governmental Entity except UST in its capacity as a Stockholder.

“Antitrust Law” means any Law relating to the preservation of or restraint against competition in commercial activities, including the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“Bankruptcy” means, with respect to any Person, the occurrence of any of the following events: (i) the filing of an application by such Person for, or a consent to, the appointment of a trustee or custodian of such Person’s assets; (ii) the filing by such Person of a voluntary petition in bankruptcy or the seeking of relief under Title 11 of the United States Code, or the filing of a pleading in any court of record admitting in writing such Person’s inability to pay its debts as they become due; (iii) the making by such Person of a general assignment for the benefit of creditors; (iv) the filing by such Person of an answer admitting the material allegations of, or such Person’s consenting to, or defaulting in answering, a bankruptcy petition filed against him in any bankruptcy proceeding or petition seeking relief under Title 11 of the United States Code; or (v) the entry of any order, judgment or decree by any court of competent jurisdiction adjudicating such Person a bankrupt or insolvent or for relief in respect of such Person or appointing a trustee or custodian of such Person’s assets and the continuance of such order, judgment or decree unstayed and in effect for a period of sixty consecutive calendar days.

“BHC Act” means the Bank Holding Company Act of 1956, as amended.

“Blocker Preferred” means the 9% perpetual preferred stock of Blocker Sub.

“Blocker Sub” means Preferred Blocker, Inc., a Delaware corporation.

“Business Day” means any calendar day other than a Saturday, a Sunday or any other day on which commercial banks in Detroit, Michigan or New York, New York are authorized or required to close.

“Cause” means, with respect to any Director, one or more of the following: (i) the commission of a felony or other crime involving moral turpitude or the commission of an act involving dishonesty or fraud with respect to the Company or any of its Subsidiaries or any of their customers or suppliers; (ii) any act undertaken with the intent of aiding or abetting a competitor, supplier or customer of the Company or any of its Subsidiaries to the disadvantage or detriment of the Company and its Subsidiaries; (iii) any breach of fiduciary duty, gross

negligence or willful misconduct with respect to the Company or any of its Subsidiaries, in each case which is detrimental to the Company in any material respect; (iv)(A) continued abuse of alcohol or illegal drugs, (B) repeated public drunkenness or (C) other repeated conduct (1) causing the Company or its Subsidiaries public disgrace or disrepute or economic harm or (2) materially impairing such Director's ability to perform his or her duties and responsibilities as a Director of the Company; or (v) any breach of his or her obligations of confidentiality to the Company or any of its Subsidiaries.

“Charter” means the Company’s Certificate of Incorporation filed with the Secretary of State of the State of Delaware, including each certificate of designations adopted with respect thereto.

“Class A Preferred Holder” means a holder of the Class A Preferred Stock.

“Class A Preferred Stock” means capital stock having the rights and obligations specified with respect to Class A Preferred Stock in the Charter and these Bylaws.

“Class C Holder” means a holder of the Class C Preferred Stock.

“Class C Preferred Stock” means capital stock, issued in one or more series, having the rights and obligations specified with respect to Class C Preferred Stock in the Charter and these Bylaws.

“Class E Preferred Holder” means the holder of the Class E Preferred Stock.

“Class E Preferred Stock” means capital stock having the rights and obligations specified with respect to Class E Preferred Stock in the Charter and these Bylaws.

“Class F-2 Preferred Holder” means a holder of the Class F-2 Preferred Stock.

“Class F-2 Preferred Stock” means capital stock having the rights and obligations specified with respect to Class F-2 Preferred Stock in the Charter, these Bylaws and the applicable Certificate of Designations.

“Class G Preferred Holder” means a holder of the Class G Preferred Stock.

“Class G Preferred Stock” means capital stock having the rights and obligations specified with respect to Class G Preferred Stock in the Charter and these Bylaws.

“Code” means the United States Internal Revenue Code of 1986 and, to the extent applicable, any Treasury Regulations promulgated thereunder.

“Common Holder” means a holder of Common Stock.

“Common Stock” means common stock, par value \$0.01 per share, of the Issuer.

“Company” means GMAC Inc., a Delaware corporation.

“Company Sale” means a transaction with a third Person that is not an Affiliate of the Company or group of third Persons that, acting in concert, do not collectively constitute Affiliates of the Company, pursuant to which such Person or Persons acquire, in any single transaction or series of related transactions, (i) all of the outstanding Equity Securities of the Company, (ii) all or substantially all of the assets of the Company and its Subsidiaries or (iii) Equity Securities of the Company authorized and issued following the Effective Date and possessing the power to elect or appoint a majority of the Board of Directors (or any similar governing body of any surviving or resulting Person).

“Confidential Information” means, collectively, all documents and information that, in each case, is non-public, confidential or proprietary in nature concerning the Company (including commercial information and information with respect to customers, suppliers, vendors and proprietary technologies or processes), the Stockholders or their Affiliates that was or may in the future be furnished to the Company, any Stockholder or any of their respective Affiliates in connection with (i) the transactions leading up to and contemplated by these Bylaws and the Purchase Agreement, including the terms hereof and thereof, or (ii) the operation and activities of the Company; provided that any such information will not be Confidential Information if it is (A) otherwise available to the public through no wrongful action by a Stockholder or an Affiliate of a Stockholder or (B) otherwise in the rightful possession of a Stockholder or an Affiliate of a Stockholder from any third Person having, to the knowledge of such Stockholder or such Affiliate after reasonable inquiry, no obligation of confidentiality with respect to such information to the other Stockholders or the Company or any of its Subsidiaries, as applicable.

“Control,” “Controlled” or “Controlling” means, with respect to any Person, any circumstance in which such Person is directly or indirectly controlled by another Person by virtue of the latter Person having the power to (i) elect, or cause the election of (whether by way of voting capital stock, by contract, trust or otherwise), the majority of the members of the Board of Directors or a similar governing body of the first Person, or (ii) direct (whether by way of voting capital stock, by contract, trust or otherwise) the affairs and policies of such Person.

“Credit Downgrade” means a downgrade of the credit rating of any unsecured indebtedness of the Company or any Material Subsidiary or a negative change in the outlook of such credit rating of the Company or any of its Material Subsidiaries.

“DGCL” means the General Corporation Law of the State of Delaware, as in effect from time to time.

“Effective Date” means June 30, 2009.

“Entity” means any general partnership, limited partnership, corporation, association, cooperative, joint stock company, trust, limited liability company, business or statutory trust, joint venture, unincorporated organization or Governmental Entity.

“Equity Incentive Plan” means the equity incentive plan adopted by Management Company on November 30, 2006.

“Equity Securities” means, as applicable, (i) any capital stock, membership or limited liability company interests or other share capital, (ii) any securities directly or indirectly



convertible into or exchangeable for any capital stock, membership or limited liability company interests or other share capital or containing any profit participation features, (iii) any rights or options directly or indirectly to subscribe for or to purchase any capital stock, membership or limited liability company interests, other share capital or securities containing any profit participation features or to subscribe for or to purchase any securities directly or indirectly convertible into or exchangeable for any capital stock, membership or limited liability company interests, other share capital or securities containing any profit participation features, (iv) any share appreciation rights, phantom share rights or other similar rights, or (v) any Equity Securities issued or issuable with respect to the securities referred to in clauses (i) through (iv) above in connection with a combination of shares, recapitalization, merger, consolidation, conversion or other reorganization.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System.

“FIM” means FIM Holdings LLC, a Delaware limited liability company.

“Fiscal Year” means the fiscal year of the Company and shall be the same as its taxable year, which shall be the year ending December 31 unless otherwise required by the Code or, subject to Section 6.10, as otherwise determined by the Board of Directors. Each Fiscal Year shall commence on the day immediately following the last day of the immediately preceding Fiscal Year.

“Fully Diluted Basis” means after taking into account all outstanding shares of Common Stock and assuming the exercise, conversion or exchange of all outstanding options, warrants, convertible or exchangeable securities and similar rights (“Convertible Securities”) and the issuance of all shares of Common Stock that the Company is obligated to issue thereunder.

“GAAP” means accounting principles generally accepted in the United States of America as in effect from time to time, consistently applied and maintained throughout the applicable periods both as to classification or items and amounts.

“General Motors Acceptance Corporation” means General Motors Acceptance Corporation, a Delaware corporation and a predecessor to the Company.

“GM” means General Motors Corporation, a Delaware corporation, and any successor thereto, including by assignment of assets that include GM’s rights under the Charter or these Bylaws.

“GM Holdco” means GM Finance Co. Holdings LLC, a Delaware limited liability company.

“GM Trust” means the trust established by GM Holdco on May 22, 2009, named GMAC Common Equity Trust I.

“GMAC LLC” means GMAC LLC, a Delaware limited liability company and a predecessor to the Company.

“Governance Agreement” means the Amended and Restated Governance Agreement, dated May 21, 2009, by and among GMAC LLC, FIM, GM Holdco, and the UST, as amended.

“Governmental Entity” means the United States of America or any other nation, any state, province or other political subdivision, any international or *supra national* entity, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, including any court, in each case having jurisdiction over the Company or any of its Subsidiaries or any of the property or other assets of the Company or any of its Subsidiaries.

“Indebtedness” means, for any Person at the time of any determination, without duplication, and without including any amounts owed by such Person to the Company or any wholly-owned Subsidiary of the Company, the following obligations, contingent or otherwise: (i) all obligations for borrowed money, (ii) all obligations evidenced by notes, bonds, debentures, acceptances or similar instruments, or arising out of letters of credit or bankers’ acceptances issued for such Person’s account, (iii) all obligations, whether or not assumed, secured by any Lien or payable out of the proceeds or production from any property or assets now or hereafter owned or acquired by such Person other than a Permitted Lien, (iv) the capitalized portion of lease obligations under capitalized leases, (v) all obligations arising from installment purchases of property or representing the deferred purchase price of property or services in respect of which such Person is liable, contingently or otherwise, as obligor or otherwise, other than trade payables and other current liabilities incurred in the Ordinary Course of Business, (vi) all obligations of such Person upon which interest charges are customarily paid or accrued, and (vii) any other obligations, contingent or otherwise, of such Person that, in accordance with GAAP, should be classified upon the balance sheet of such Person as indebtedness, other than trade payables and other current liabilities incurred in the Ordinary Course of Business.

“Independent Director” means a Director who the Board of Directors has affirmatively determined is “independent” with respect to the Company within the meaning of the rules and regulations promulgated by the SEC and the New York Stock Exchange, each as in effect from time to time, regardless of who appointed that Director and notwithstanding any other provision of the Charter, these Bylaws or the Governance Agreement; provided, that, for the avoidance of doubt, solely for purposes of Section (3)(b)(ii) and (iii) of the Governance Agreement, the term “Independent Manager” shall not be read to include any “UST Designated Manager” or “Treasury Designated Manager.”

“IRS” means the United States Internal Revenue Service.

“Issuer” means the Company, any direct or indirect Subsidiary of the Company or any successor to the Company, or the issuer of any Equity Securities of which the Company distributes to the holders of capital stock of the Company or that are received or receivable by the holders of capital stock of the Company in connection with a transaction contemplated by Section 10.2.

“Law” means any applicable law, statute, ordinance, rule, regulation, code, order, judgment, tax ruling, injunction or decree of any Governmental Entity, including any Law relating to the protection of the environment.

“License Agreement” means that certain Trademark and Trade Name License Agreement, dated as of November 30, 2006, by and among GMAC LLC, GM and those of GM’s Subsidiaries from time to time party thereto.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof), any sale of receivables with recourse against the Company or any of its Subsidiaries, any filing or agreement to file a financing statement as a debtor under the Uniform Commercial Code or any similar statute of any jurisdiction other than to reflect ownership by a third Person of property leased to the Company or any of its Subsidiaries under a lease that is not in the nature of a conditional sale or title retention agreement.

“LLC Act” means the Delaware Limited Liability Company Act, 6 Del. C. Sections 18-101 *et seq.*

“LLC Agreement” means the Sixth Amended and Restated Limited Liability Company Operating Agreement of GMAC LLC, dated as of May 22, 2009.

“Majority Holders” means, at any time, the Common Holders holding a majority of the outstanding shares of Common Stock.

“Management Company” means GMAC Management LLC, a Delaware limited liability company.

“Management Holders” means the holders of units in Management Company.

“Management Units” means the class C membership interests issued by Management Company in one or more series. Each series of class C membership interests issued by Management Company shall be consecutively numbered, commencing with the class C-1 membership interests authorized by Management Company on November 30, 2006.

“Material Subsidiary” means each Subsidiary listed on the Schedule of Material Subsidiaries and each other Subsidiary of the Company that from time to time may be designated as a Material Subsidiary by the Board of Directors.

“Ordinary Course of Business” means the ordinary course of the business of the Company (including the Predecessors) and its Subsidiaries.

“Permitted Additional Stock” means (i) shares of capital stock issued and/or created and issued following June 30, 2009 that are junior to, or rank *pari passu* with, the Common Stock with respect to dividends or upon a sale or liquidation of the Company and in connection with the issuance and/or creation and issuance thereof, the voting and approval rights of the holders of the Common Stock are not amended, changed or terminated, or (ii) additional shares of Series A Preferred Stock issued and/or created and issued following June 30, 2009;

provided that the liquidation preference with respect to such additional Series A Preferred Stock shall not exceed \$3 billion in the aggregate. For the avoidance of doubt, (x) the granting of approval rights to any holder of Permitted Additional Stock and (y) any dilution resulting from the issuance of such Permitted Additional Stock each shall not be deemed a change to the voting and approval rights of the Common Holders hereunder, except as otherwise provided by the terms of the Permitted Additional Stock.

“Permitted Liens” means:

(i) Liens securing Indebtedness that (A) is not required to be approved or (B) has been approved, in either case, pursuant to the approval rights set forth herein;

(ii) Liens with respect to taxes, assessments and other governmental charges or levies not yet due and payable or actively contested in good faith;

(iii) deposits or pledges made in the Ordinary Course of Business in connection with, or to secure payment of, utilities or similar services, workers’ compensation, unemployment insurance, old age pensions or other social security, governmental insurance and governmental benefits, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations;

(iv) purchase money Liens in any property acquired by the Company or any of its Subsidiaries in the Ordinary Course of Business to the extent permitted by these Bylaws

(v) interests or title of a licensor, licensee, lessor or sublessor under any license or lease permitted by these Bylaws;

(vi) Liens in respect of property of the Company or any of its Subsidiaries imposed by Law which were incurred in the Ordinary Course of Business, such as warehousemen’s, mechanic’s, statutory landlord’s, materialmen’s, carriers’ or contractors’ liens or encumbrances or any similar Lien or restriction for amounts not yet due and payable; and

(viii) easements, rights-of-way, restrictions and other similar charges and encumbrances on real property and minor defects or irregularities in the title thereof that do not (A) secure obligations for the payment of money or (B) materially impair the value of such property or its use by the Company or any of its Subsidiaries in the Ordinary Course of Business.

“Person” means any individual or Entity.

“Predecessors” mean General Motors Acceptance Corporation and GMAC LLC.

“Project Agreements” means those certain agreements between the Company (including the Predecessors) and its Subsidiaries, on the one hand, and the Stockholders and their Affiliates, on the other hand, set forth on Exhibit A.

“Public Offering” means an underwritten sale to the public of the Company’s (or its successor’s) Equity Securities pursuant to an effective registration statement filed with the SEC on Form S-1 and after which the Company’s (or its successor’s) Equity Securities are listed on the New York Stock Exchange, NASDAQ or any other national security exchange; provided that a Public Offering shall not include any issuance of Equity Securities in any merger or other business combination, and shall not include any registration of the issuance of Equity Securities to existing securityholders or employees of the Company and its Subsidiaries on Form S-4 or Form S-8.

“Purchase Agreement” means the Purchase and Sale Agreement dated April 2, 2006, among GM, GM Holdco, GMAC LLC and FIM.

“Qualified Public Offering” means one or a series of Public Offerings by the Issuer and/or one or more securityholders of the Issuer that results in at least twenty percent (20%) of the issued and outstanding common stock (or equivalent Equity Securities) of the Issuer at the time of such determination having been sold at such time or previously through a Public Offering or Public Offerings.

“Rating Agencies” means, collectively, Moody’s Investors Service, Inc., (“Moody’s”), Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., (“S&P”), and Fitch Ratings, and, in each case, any successor.

“Required Capital Amount” means the minimum amount of equity capital of the Company sufficient to satisfy (a) the requirements of the BHC Act, (b) the requirements of other applicable banking regulations, and (c) the requirements of the Federal Reserve Board.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Senior Executive Officers” means, collectively, the Chief Executive Officer, the Presidents and the Chief Financial Officer.

“Significant Joint Venture” means each joint venture listed on the Schedule of Joint Ventures and each other joint venture of which the Company or any of its Subsidiaries holds Equity Securities and that from time to time may be designated as a Significant Joint Venture by the Board of Directors.

“Stockholders” means holders of shares of capital stock of the Company.

“Subsidiary” means, with respect to any Person, any other Person of which a majority of the voting interests is owned directly or indirectly by such Person.

“Transaction Documents” means the agreements and other documents set forth on Exhibit B.

“Transfer” means any sale, transfer, assignment (other than a contingent assignment for the benefit of creditors), exchange, or other disposition of an interest (whether

with or without consideration, whether voluntarily or involuntarily or by operation of Law). The terms “Transferee,” “Transferor,” “Transferred,” and other forms of the word “Transfer” shall have the correlative meanings.

“Treasury Regulations” means the regulations, including temporary regulations, promulgated by the United States Treasury Department under the Code.

“UST” means The United States Department of the Treasury.

**Section 1.2 Cross-References.** In addition to the terms set forth in Section 1.1, the following terms are defined in the text of these Bylaws in the locations specified below:

<b><u>Term</u></b>	<b><u>Cross-Reference</u></b>
Agents	Section 11.1
Audit Committee	Section 7.13(d)
Board of Directors	Section 7.1
Chief Executive Officer	Section 7.15(c)(i)
Chief Financial Officer	Section 7.15(c)(iii)
Compensation Committee	Section 7.13(e)
Convertible Securities	Definition of “Fully Diluted Basis”
Directors	Section 7.1
FIM Blocker Corp	Section 6.12
Fully-Diluted Majority Holders	Section 10.2(a)
Independent Auditor	Section 4.5
Moody’s	Definition of “Rating Agencies”
Officers	Section 7.15(a)
Preemptive Holder	Section 10.3(a)
Preemptive Offer	Section 10.3(a)
Preemptive Offer Period	Section 10.3(a)
Preemptive Securities	Section 10.3(a)

<u>Term</u>	<u>Cross-Reference</u>
Preemptive Share	Section 10.3(b)
President	Section 7.15(c)(ii)
S&P	Definition of “Rating Agencies”
Sarbanes-Oxley Act	Section 4.5
Secretary	Section 7.15(c)(iv)
Voting Power	Section 6.7(a)

**Section 1.3 Interpretative Matters.** In these Bylaws, unless otherwise specified or where the context otherwise requires:

- (a) the headings of particular provisions of these Bylaws are inserted for convenience only and will not be construed as a part of these Bylaws or serve as a limitation or expansion on the scope of any term or provision of these Bylaws;
- (b) words importing any gender shall include other genders;
- (c) words importing the singular only shall include the plural and vice versa;
- (d) the words “include,” “includes” or “including” shall be deemed to be followed by the words “without limitation”;
- (e) the words “hereof,” “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to these Bylaws as a whole and not to any particular provision of these Bylaws;
- (f) references to “Articles,” “Exhibits,” “Sections” or “Schedules” shall be to Articles, Exhibits, Sections or Schedules of or to these Bylaws;
- (g) references to any Person include the heirs, executors, administrators, legal representatives, successors and permitted assigns of such Person where the context so permits;
- (h) the use of the words “or,” “either” and “any” shall not be exclusive;
- (i) references to “\$” mean the lawful currency of the United States of America;
- (j) references to any agreement, contract, guideline, exhibit or schedule, unless otherwise stated, are to such agreement, contract, guideline, exhibit or schedule as amended, amended and restated, replaced, substituted, modified or supplemented from time to time in accordance with the terms hereof and thereof;

(k) references to any Law or a particular provision of any Law, unless otherwise stated, are to such Law and any successor Law or to such provision of Law and the corresponding provision in any successor Law, as applicable;

(l) references in these Bylaws to redemptions shall not be deemed to include actions taken upon a liquidation, winding-up or dissolution of the Company, and a reference to any of a dissolution, liquidation or winding-up of the Company shall refer to each such transaction; and

## **ARTICLE II**

### **ORGANIZATIONAL MATTERS; GENERAL PROVISIONS**

#### **Section 2.1 Formation.**

(a) The Company was converted from a limited liability company to a corporation under the DGCL by the filing of a certificate of conversion and the Charter with the Secretary of State of the State of Delaware on June 30, 2009.

(b) The rights, duties and liabilities of the Stockholders shall be as provided in the DGCL, except as otherwise provided in the Charter and these Bylaws. To the extent that the rights, powers, duties, obligations and liabilities of any Stockholders are different by reason of any provision of the Charter or these Bylaws than they would be in the absence of such provision, the Charter and these Bylaws shall, to the extent permitted by the DGCL, control.

#### **Section 2.2 Name; Office; Registered Agent.**

(a) The name of the Company is set forth in the Charter. The Board of Directors may change the name of the Company at any time and from time to time by complying with the terms of the DGCL regarding amendments to the Charter. Prompt notification of any such change shall be given to all Directors. The Company may conduct business under its name, the name "GMAC" pursuant to the License Agreement, or, subject to the terms of the License Agreement, one or more assumed names approved by the Board of Directors from time to time. The Company shall continue to use the trade name and trademark "GMAC" in connection with GM-directed automotive consumer and dealer finance incentive, and other promotional programs involving GM products for which GM compensates GMAC, except as provided for in the License Agreement or as otherwise may be agreed by the Company and GM. Except as provided for in the License Agreement, the Company may not use any names, trade names, service marks or logos of any Stockholder or any of its Affiliates without the prior written consent of such Stockholder or Affiliate.

(b) The Company's principal office shall be located at 200 Renaissance Center, Detroit, Michigan 48265-2000, or such other location in the United States of America as the Board of Directors shall designate from time to time in the manner provided by Law, which need not be in the State of Delaware, and the Company shall maintain records at such place. The Company may maintain offices at such other place or places as the Board of Directors deems advisable. Prompt notice of any change in the principal office shall be given to all Stockholders. The Company's initial registered agent in the State of Delaware for the service of process is as identified in the Charter filed with the Secretary of State of the State of Delaware. The Board of



Directors may from time to time change the registered agent, and any such change shall be reflected in appropriate filings with the Secretary of State of the State of Delaware.

**Section 2.3 Purposes; Powers.**

(a) The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which corporations may be organized under the DGCL. The Company may engage in any and all activities necessary, desirable or incidental to the accomplishment of the foregoing. Notwithstanding anything herein to the contrary, nothing set forth herein shall be construed as authorizing the Company to possess any purpose or power, or to do any act or thing, forbidden by Law to a corporation organized under the Laws of the State of Delaware.

(b) Subject to the provisions of these Bylaws and except as prohibited by Law, (i) the Company may, with the approval of the Board of Directors, enter into, deliver and perform any and all agreements, consents, deeds, contracts, proxies, covenants, bonds, checks, drafts, bills of exchange, notes, acceptances and endorsements, and all evidences of indebtedness and other documents, instruments or writings of any nature whatsoever, all without any further act, vote or approval of any Stockholder, and (ii) the Board of Directors may, pursuant to Section 7.14, authorize (including by general delegated authority) any Person (including any Stockholder, Director or Officer) to enter into, deliver and perform on behalf of the Company any and all agreements, consents, deeds, contracts, proxies, covenants, bonds, checks, drafts, bills of exchange, notes, acceptances and endorsements, and all evidences of indebtedness and other documents, instruments or writings of any nature whatsoever.

(c) Subject to the other provisions of the Charter and these Bylaws, the Company shall do all things necessary to maintain its existence separate and apart from each Stockholder and any Affiliate of any Stockholder, including holding regular meetings of the Board of Directors and maintaining its books and records on a current basis separate from that of any Affiliate of the Company or any other Person.

**Section 2.4 Duration.** The period of the Company's duration commenced on the commencement of the existence of General Motors Acceptance Corporation and shall continue in full force and effect in perpetuity; provided that the Company may be dissolved and wound up in accordance with the provisions of the Charter, these Bylaws and the DGCL.

**Section 2.5 Filings; Qualification in Other Jurisdictions.** The Company shall prepare, following the date of these Bylaws, any documents required to be filed or, in the Board of Directors' view, appropriate for filing under the DGCL, and the Company shall cause each such document to be filed in accordance with the DGCL, and, to the extent required by Law, to be filed and recorded, and/or notice thereof to be published, in the appropriate place in each jurisdiction in which the Company may have established, or after the Effective Date may establish, a place of business. The Board of Directors may cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar Laws in any jurisdiction in which the Company transacts business where the Company is not currently so qualified, formed or registered. Any Director or Officer, acting individually as an authorized person within the meaning of the DGCL, shall execute, deliver and file any such documents (and any

amendments and/or restatements thereof) necessary for the Company to accomplish the foregoing. The Board of Directors may appoint any other authorized persons to execute, deliver and file any such documents.

### **ARTICLE III** **CAPITALIZATION; CAPITAL STOCK**

#### **Section 3.1 Capital Stock; Capitalization.**

(a) The Company shall have six authorized series of capital stock, consisting of 2,021,384 shares of Common Stock, which shall have equal rights and preferences in the assets of the Company, 8,330 shares of Class C Preferred Stock, which may be issued in one or more series and which shall be issued in the same amount and same class as the Management Units issued by Management Company, 4,021,764 shares of Class A Preferred Stock, 2,576,601 shares of Class E Preferred Stock, 228,750,000 shares of Class F-2 Preferred Stock, and 2,576,601 shares of Class G Preferred Stock. A share of capital stock shall for all purposes be personal property. For purposes of these Bylaws, except for the Class E Preferred Stock held by Blocker Sub and the Class C Preferred Stock held by Management Company, shares of capital stock held by the Company or any of its Subsidiaries shall be deemed not to be outstanding. The Company may issue fractional shares pursuant to the terms of these Bylaws, and all shares of capital stock shall be rounded to the fourth decimal place.

(b) Upon the Effective Date, the Stock Register of the Company shall be in the form attached to these Bylaws. Following the Effective Date, the Company shall update the Stock Register to reflect any changes in the Stockholders and the capital stock held by the Stockholders in accordance with the terms of these Bylaws.

#### **Section 3.2 Authorization and Issuance of Additional Capital Stock.**

(a) The Board of Directors shall have the right to cause the Company to issue and/or create and issue at any time after the Effective Date, and for such amount and form of consideration as the Board of Directors may determine, subject to the provisions of Section 6.10, Section 10.3, and Section 12.1, (i) Permitted Additional Stock and (ii) (A) other additional capital stock (of existing classes or new classes) or other Equity Securities of the Company (including creating additional classes or series thereof having such powers, designations, preferences and rights as may be determined by the Board of Directors) and (B) shares of Class C Preferred Stock; provided, however, that, without the prior written consent of the Majority Holders, the Board of Directors shall not have the right to cause the Company to issue or create more shares of capital stock than are authorized by the Charter. For the avoidance of doubt, the Majority Holders shall be deemed to have given such consent to the issuance of the Common Stock issuable to the Class F-2 Preferred Holder pursuant to the conversion of the Class F-2 Preferred Stock into Common Stock. In connection with the foregoing, subject to Section 6.10, the Board of Directors shall have the power to make such amendments to these Bylaws in order to provide for such Permitted Additional Stock, additional shares of Series A Preferred Stock or additional series of Class C Preferred Stock (provided, that the aggregate number of shares of Class C Preferred Stock shall not exceed 6,970) or, subject to Section 6.10(a)(i), other additional shares of capital stock, and such powers, designations and preferences and rights as the Board of

Directors in its discretion deems necessary or appropriate to give effect to such additional authorization or issuance; provided that any such amendment shall not reasonably be expected to have a material adverse effect on any Stockholder, in its capacity as such, that would be borne disproportionately by such Stockholder relative to other Stockholders having comparable rights under the Charter or these Bylaws with respect to the capital stock held by such Stockholder and other Stockholders prior to such amendment (unless such Stockholder or Stockholders consent in writing thereto); provided further that any such amendment shall not have the effect of treating any Stockholder's right to receive dividends pursuant to Article V or distributions pursuant to Article IX differently with respect to such dividends or distributions than other Stockholders that are entitled to receive dividends pursuant to the same provision of Article V or distributions pursuant to the same provision of Article IX with respect to the capital stock held by such Stockholder and other Stockholders prior to such amendment, whether or not of the same class of capital stock (unless the holders of a majority of the stock so differently treated consent in writing thereto).

**Section 3.3 Certification of Stock.** Shares of capital stock shall be issued in non-certificated form; provided that the Board of Directors may cause the Company to issue certificates to a Stockholder representing the shares of capital stock held by such Stockholder. If any stock certificate is issued, then such certificate shall bear a legend substantially in the following form:

This certificate evidences a [Insert specific title of class of stock] representing an interest in GMAC Inc.

The shares of capital stock in GMAC Inc. represented by this certificate are subject to restrictions on transfer set forth in the Bylaws of GMAC Inc., dated as of June 30, 2009, as the same may be amended from time to time.

The shares of capital stock in GMAC Inc. represented by this certificate have not been registered under the United States Securities Act of 1933, as amended, or under any other applicable securities laws. Such shares of stock may not be sold, assigned, pledged or otherwise disposed of at any time without effective registration under such Act and laws or, in each case, exemption therefrom.

#### **ARTICLE IV**

#### **STOCK REGISTER; BOOKS AND RECORDS; AFFIRMATIVE COVENANTS**

**Section 4.1 Stock Register.** The Company shall maintain and keep at its principal office the Stock Register on which it shall set forth the name and notice address of each Stockholder (and, upon notice of any Transfer by any Stockholder of any shares of capital stock

in accordance with Article VIII, each Transferee) and the aggregate number of shares of capital stock of each class held by such Stockholder.

**Section 4.2 Books and Records; Other Documents.**

(a) The Company shall keep, or cause to be kept, (i) complete and accurate books and records of account of the Company, (ii) minutes of the proceedings of meetings of the Common Holders, any class of Stockholders, the Board of Directors and any committee of the Board of Directors (including the Compensation Committee), and (iii) a current list of the Directors and Officers and their notice addresses. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being accurately and completely converted into written form within a reasonable time. The books of the Company shall be kept on the accrual basis of accounting, and otherwise in accordance with GAAP, and shall at all times be maintained or made available at the principal office of the Company. The Company shall, and shall cause its Subsidiaries to, (A) make and keep financial records in reasonable detail that accurately and fairly reflect all financial transactions and dispositions of the assets of the Company and its Subsidiaries and (B) maintain a system of internal accounting controls sufficient to provide reasonable assurances that (1) transactions are executed in accordance with authorization by the Person in charge and are recorded so as to provide proper financial statements and maintain accountability for assets and (2) safeguards are established to prevent unauthorized persons from having access to the assets, including the performance of periodic physical inventories.

(b) At all times the Company shall maintain at its principal office a current list of the name and notice address of each Stockholder, a copy of the Charter, including any amendments thereto, copies of these Bylaws and all amendments hereto, and all other records required to be maintained pursuant to the DGCL.

(c) The Company also shall maintain at all times, at its principal office, copies of the Company's federal, state, local and foreign income tax returns and reports, if any, and all financial statements of the Company for all years ending after November 30, 2006; provided, however, the Company shall not be required to maintain copies of income tax returns and reports, if any, and any financial statements of the Company for any year which each member of GMAC LLC has notified Company in writing that such member's tax year has been closed.

**Section 4.3 Reports and Audits.**

(a) Each Stockholder shall, to the extent that they have such right under Section 220 of the General Corporation Law of the State of Delaware, have the right, at all reasonable times and upon reasonable notice during normal business hours, and at its own expense, so long as such access does not unreasonably interfere with the normal operation of the Company, to examine and make copies of or extracts from the books of account of the Company or any other Company record for any purpose reasonably related to such Stockholder's interest as a Stockholder of the Company, including to satisfy any reporting obligations of such Stockholder under the Exchange Act, and for federal, state, local or foreign income or franchise tax purposes, provided that the Company shall not be obligated to provide access to any information that is privileged or that is subject to restrictions of Law on such access.

(b) If (i) GM or any of its Affiliates is required by Law or GAAP to consolidate the financial results of the Company into GM's or such Affiliate's financial statements or to file or furnish the Company's financial statements with or to the SEC and (ii) the Company has failed for any reason to receive an unqualified audit opinion from a "Big Four" accounting firm, then GM shall have the right, at all reasonable times and upon reasonable notice during normal business hours and at its own expense, so long as such access does not unreasonably interfere with the normal operation of the Company, to conduct an audit of the accounting, financial, disclosure and internal controls of the Company and its Subsidiaries. Such audit right may be exercised through any designated agent or employee of GM, or its respective Affiliates. The parties agree that such audit is not intended to duplicate in its entirety the audit conducted by the Independent Auditor. GM shall bear all of its costs and expenses related to such review or audit (including all audit fees of the auditor employed by GM) and the Company shall bear all of its costs and expenses related to cooperating with such review or audit.

Any information provided to any Stockholder pursuant to this Section 4.3 shall be subject to the provisions of Article XI.

#### **Section 4.4 Financial Statements and Other Information.**

(a) Notwithstanding that the Company may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company shall file with the SEC such annual, quarterly, current and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such sections, including (i) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Company were required to file such forms and (ii) all current reports that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports. All such reports shall be filed at or prior to the times specified for the filings of such reports under the Exchange Act and shall contain all the information, audit reports and exhibits required for such reports under the Exchange Act. Notwithstanding the foregoing, if the SEC will not accept the filing such reports from the Company, then the Company shall provide such reports directly to each Stockholder.

(b) The Stockholders shall be supplied with all other Company information reasonably necessary to enable each Stockholder to prepare its federal, state, local and foreign income tax returns. Such information shall be prepared by the Company, and the Company shall use its reasonable best efforts to deliver such information to each Stockholder with reasonable promptness in light of the timing applicable to the purpose for which such information is to be used by such Stockholder.

(c) All determinations, valuations and other matters of judgment required to be made for ordinary course accounting purposes and in respect of tax accounting policies under the Charter or these Bylaws shall be made by the Board of Directors (subject, as applicable, to Section 6.10) and shall be conclusive and binding on all Stockholders, their Successors in Interest and any other Person, and to the fullest extent permitted by Law or as otherwise provided in these Bylaws, no such Person shall have the right to an accounting or an appraisal of the assets of the Company or any successor thereto.

(d) The Company shall provide to GM such quarterly, annual and other information reasonably required by GM so as to enable GM and each of its Affiliates to comply with all Law and GAAP requirements applicable to it, including any requirement to consolidate the financial results of the Company into GM's or such Affiliate's financial statements, to file or furnish the Company's financial statements with or to the SEC, and to include information regarding the Company in GM's Exchange Act reports. The Company shall provide such information to GM promptly following GM's request and, so long as GM has made such request reasonably in advance of the applicable Law or GAAP deadline, within a sufficient period of time so as to enable GM or such Affiliate to comply with such Law or GAAP deadline. The Company acknowledges that GM is an "accelerated filer" under the Exchange Act and, as such, the Company will be required to provide quarterly and annual financial information to GM for the purposes of GM's Exchange Act reports earlier than the Company would otherwise be required to produce such information in connection with the Company's own Exchange Act reports.

(e) Subject to applicable law and stock exchange regulations, with respect to the GM Trust, for so long as the GM Trust holds at least 2.5% of the then-outstanding Common Stock, and provided that such trust shall have executed a customary confidentiality agreement with respect to the use and treatment of confidential information and further provided that the Company shall be permitted to exclude such trust from receiving certain information if, based on the advice of counsel, such exclusion is necessary to preserve the attorney-client privilege of the Company, provided that to the extent practicable the Company shall provide such non-voting observer advance written notice of any such exclusion:

(i) The GM Trust shall receive copies of all written materials and other information given to Directors in connection with all meetings of the Board (including minutes of meetings) at substantially the same time such materials and information are given to Directors;

(ii) Senior management of the Company (including at least two of the Chief Executive Officer, Chief Financial Officer and Chief Risk Officer, and such others as are necessary) shall meet on at least a quarterly basis with the trustee of the GM Trust to discuss the Company, its operations, its financial results and its forward looking plans and projections and such other information as such trustees may reasonably request related thereto;

(iii) The Company shall also make available to the trustee of the GM Trust the Company's auditors on an annual basis and as reasonably requested in connection with any sale of the Company's securities or in connection with the occurrence of other material events involving the Company, with reasonable notice to discuss issues relevant to the trustee. The Company will invite the trustee of the GM Trust to attend the orientation session for new Directors, it being understood and agreed that the trustee may attend other similar sessions or events upon invitation.

(iv) Senior management of the Company shall use their reasonable best efforts to otherwise respond to reasonable questions and phone calls of the trustee

of the GM Trust and support their information requirements in effecting the trustee's responsibilities under the trust agreement; and

(v) To the extent that the GM Trust is not otherwise informed through its receipt of materials distributed to observers to the Board of Directors, the Company shall use its reasonable best efforts to inform such trust of material events involving the Company a reasonable period prior (to the extent practicable) to the occurrence thereof, including any public offering of the Company's securities and material mergers and acquisitions and corporate finance activity involving the Company.

All information provided to the GM Trust pursuant to this Section 4.4 shall remain subject to Article XI.

**Section 4.5 Independent Auditor.** The Company and its Subsidiaries at all times shall engage a Person to audit its financial statements (the "Independent Auditor") that (a) is an independent public accounting firm within the meaning of the American Institute of Certified Public Accountants' Code of Professional Conduct (American Institute of Certified Public Accountants, Professional Standards, vol. 2, *et sec.* 101), (b) is a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act")), and (c) if the Company were an "issuer" (as defined in the Sarbanes-Oxley Act), would not be in violation of the auditor independence requirements of the Sarbanes-Oxley Act by reason of its acting as the auditor of the Company and its Subsidiaries. Subject to Section 6.10, the Independent Auditor shall be appointed by the Board of Directors and shall be a nationally recognized certified public accounting firm. The Company shall engage the Independent Auditor from time to time to conduct such review and testing as from time to time may be necessary or reasonably required under the Sarbanes-Oxley Act and to issue to the Company its written opinions and recommendations with respect thereto.

**Section 4.6 Company Policies.** On December 18, 2006, the Board of Managers of GMAC LLC (a) reconfirmed the policies, standards and procedures relating to the Company and its Subsidiaries set forth on Exhibit C and (b) adopted or reconfirmed, as applicable, the environmental guidelines set forth on Exhibit D. It is the intent of the Company and its Subsidiaries to operate in compliance with all Laws.

## **ARTICLE V** **DIVIDENDS**

### **Section 5.1 Dividends.**

(a) Subject to the DGCL, dividends shall be paid to each class of preferred stock as set forth in the respective certificate of designations and to the Common Stock when, as, and if declared by the Board of Directors, in accordance with these Bylaws and the Charter. Dividends shall be paid in cash, except as may otherwise be allowed pursuant to Section 5.2.

(b) Notwithstanding the other provisions of the Charter or these Bylaws, in the event that any dividend (or portion thereof) that is required to be paid pursuant to the Charter or these Bylaws would, based on a good faith determination of the Board of Directors, result in a reduction of the equity capital of the Company below the Required Capital Amount, then such dividend (or such portion) shall not be paid unless it has been approved in writing by at least a majority of the Board of Directors.

**Section 5.2 Non-Cash Dividends.** With the consent of the Majority Holders (including at least two Common Holders), and in each case subject to the DGCL, the Company shall be permitted to distribute property consisting of assets other than cash to the Common Holders; provided that all Common Holders receive the same type of asset; and provided further that no such consent shall be required in connection with any distribution in-kind pursuant to Section 9.2.

**Section 5.3 No Set-Off.** The Company shall pay all dividends without regard to any claims that the Company or any Subsidiary of the Company or any Stockholder may have against any other Stockholder or any Affiliate of a Stockholder

## **ARTICLE VI** **RIGHTS AND DUTIES OF STOCKHOLDERS**

**Section 6.1 Stockholders.** The Stockholders of the Company, and their respective class and number of shares of capital stock, are listed on the Stock Register. No Person may be a Stockholder without the ownership of a share of capital stock. The Stockholders shall have only such rights and powers as are granted to them pursuant to the express terms of the Charter, these Bylaws and the DGCL. Except as otherwise expressly provided in the Charter or these Bylaws, no Stockholder, in such capacity, shall have any authority to bind, to act for, to sign for or to assume any obligation or responsibility on behalf of, any other Stockholder or the Company.

**Section 6.2 No Management or Dissent Rights.** Except as set forth in the Charter or these Bylaws or otherwise required by the DGCL, the Stockholders shall not have any right to take part in the management or operation of the Company other than through the Directors elected by the Stockholders to the Board of Directors. No Stockholder shall, without the prior written approval of the Board of Directors, take any action on behalf of or in the name of the Company, or enter into any commitment or obligation binding upon the Company, except for actions expressly authorized by the terms of the Charter or these Bylaws. Except as required by



the DGCL, Stockholders shall not be entitled to any rights to dissent or seek appraisal with respect to any transaction, including the merger or consolidation of the Company with any Person.

**Section 6.3 No Stockholder Fiduciary Duties.**

(a) No Stockholder shall, to the maximum extent permitted by the DGCL and other applicable Law, owe any duties (including fiduciary duties) as a Stockholder to the other Stockholders or the Company, notwithstanding anything to the contrary existing at law, in equity or otherwise; provided, however, that each Stockholder shall have the duty to act in accordance with the implied contractual covenant of good faith and fair dealing.

(b) Except as otherwise expressly provided in the Charter or these Bylaws or any contractual arrangements between the Company and one or more Stockholders, any Stockholder may engage in or possess any interest in another business or venture of any nature and description, independently or with others, whether or not such business or venture is competitive with the Company or any of its Subsidiaries, and neither the Company nor any other Stockholder shall have any rights in or to any such independent business or venture or the income or profits derived therefrom, and the doctrine of corporate opportunity or any analogous doctrine shall not apply to the Stockholders and the members, shareholders, partners and Affiliates thereof. The pursuit of any such business or venture shall not be deemed wrongful, improper or a breach of any duty hereunder, at law, in equity or otherwise. Any Stockholder and the members, shareholders, partners and Affiliates thereof shall be able to transact business or enter into agreements with the Company to the fullest extent permissible under the DGCL, subject to the terms and conditions of the Charter and these Bylaws.

(c) Except as otherwise expressly provided in the Charter or these Bylaws or any contractual arrangements between the Company and one or more Stockholders, if a Stockholder acquires knowledge, other than solely from or through the Company, of a potential transaction or matter that may be a business opportunity for both such Stockholder and the Company or another Stockholder, such Stockholder shall have no duty to communicate or offer such business opportunity to the Company or any other Stockholder and shall not be liable to the Company or the other Stockholders for breach of any duty (including fiduciary duties) as a Stockholder by reason of the fact that such Stockholder pursues or acquires such business opportunity for itself, directs such opportunity to another Person, or does not communicate information regarding such opportunity to the Company.

(d) The provisions of the Charter and these Bylaws, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liabilities of a Stockholder otherwise existing at law or in equity, are agreed by the Stockholders to replace such duties and liabilities of such Stockholder.

**Section 6.4 Meetings of the Common Holders.**

(a) An annual meeting of the Common Holders shall be held in Detroit, Michigan, New York, New York or at such other place, within or without the State of Delaware, as shall from time to time be determined by the Board of Directors, but in no event later than

April 30 of each year. Prior to each annual meeting, the Secretary shall circulate an agenda for such meeting, which agenda shall include a discussion of the financial reports of the Company most recently filed with the SEC (or delivered to the Stockholders, as applicable) pursuant to Section 4.4(a), such other matters relating to the Company as any Common Holder holding in excess of thirty three percent (33%) of the Voting Power shall request to be included in such agenda and such other matters relating to the Company as the representatives of the Common Holders attending such meeting shall elect to discuss. Any Common Holder(s) holding in excess of thirty three percent (33%) of the Voting Power individually or in the aggregate may request that the Directors or Officers of the Company participate in such annual meeting or make presentations regarding such matters relating to the Company as such Common Holder(s) shall reasonably request; provided that such participation does not unreasonably interfere with the normal performance of their duties.

(b) A special meeting of the Common Holders for any purpose or purposes specified by the person calling the meeting may be called at any time by (i) the Board of Directors, (ii) the Chief Executive Officer, or (iii) any Common Holder(s) holding in excess of thirty three percent (33%) of the Voting Power individually or in the aggregate. At a special meeting, no business shall be transacted and no action shall be taken other than that stated in the notice for such meeting.

(c) Each Common Holder shall have the right to attend any such meeting. Any Common Holder who is not a natural person shall designate one individual to act as such Common Holder's legal representative for purposes of voting at such meeting.

**Section 6.5 Notice of Meetings.** Written notice stating the place, day and time of every meeting of the Common Holders and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed (a) with respect to any annual meeting, not less than ten nor more than sixty calendar days before the date of the meeting (or if sent by facsimile, not less than five Business Days before the date of the meeting) or (b) with respect to any special meeting, not less than five nor more than thirty calendar days before the date of the meeting (or if sent by facsimile, not less than three Business Days before the date of the meeting), in either case to each Common Holder entitled to vote at such meeting, at its notice address maintained in the records of the Company by the Secretary. Such further notice shall be given as may be required by Law, but meetings may be held without notice if all the Common Holders entitled to vote at the meeting are present in person or by telephone or represented by proxy or if notice is waived in writing by those not present, either before or after the meeting.

**Section 6.6 Quorum.** Any number of Common Holders holding at least a majority of the shares of Common Stock entitled to vote with respect to the business to be transacted and who shall be present in person or by telephone or represented by proxy at any meeting duly called shall constitute a quorum for the transaction of business. If such quorum is not present within sixty minutes after the time appointed for such meeting, such meeting shall be adjourned and the Board of Directors shall reschedule the meeting no fewer than three nor more than ten Business Days thereafter. If such meeting is rescheduled two consecutive times, then those Common Holders who are present or represented by proxy at the second such rescheduled meeting shall constitute a valid quorum for all purposes hereunder; provided that written notice

of any rescheduled meetings shall have been delivered to all Common Holders at least three Business Day prior to the date of each rescheduled meeting.

**Section 6.7 Voting.**

(a) Except as otherwise provided by Law, the Charter or these Bylaws, Common Holders holding shares of Common Stock shall vote together as a single class. Each Common Holder shall be entitled to one vote for each share of Common Stock held by such Common Holder, in connection with the election of Directors and on all matters to be voted upon by the Stockholders (without prejudice to any consent rights that the holders of any class or portion of any particular class of capital stock have expressly been granted under these Bylaws or the Charter). The percentage of the total votes entitled to be cast by any Common Holder or group of Common Holders with respect to such Common Holder's or group of Common Holders' Common Stock, calculated pursuant to this Section 6.7, is herein referred to as the "Voting Power" of such Common Holder or Common Holders.

(b) At any meeting of the Common Holders, each Common Holder entitled to vote on any matter coming before the meeting shall, as to such matter, have a vote, in person, by telephone or by proxy, equal to the Voting Power of the number of shares of Common Stock held in its name on the relevant record date established pursuant to Section 6.9.

(c) Except as otherwise specified herein, when a quorum is present, the affirmative vote of the holders of a majority of the Voting Power of the capital stock present in person or represented by proxy at a duly called meeting and entitled to vote on the subject matter shall be the act of the Common Holders, unless the question is one upon which by express provisions of Law or the Charter or these Bylaws a different vote is required, in which case such express provision shall govern and control the decision of such question. Where a separate vote by any class of capital stock is required, the affirmative vote of the holders holding at least a majority of the Voting Power of the capital stock of such class present in person or represented by proxy at the meeting of such class shall be the act of such class, unless the question is one upon which by express provisions of Law or the Charter or these Bylaws a different vote is required, in which case such express provision shall govern and control the decision of such question.

(d) Each Stockholder entitled to vote at a meeting of Common Holders or any class of Stockholders or to express consent or dissent to any action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. At each meeting of Common Holders or any class of Stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares of capital stock may be represented or voted under a proxy that have been found to be invalid or irregular.

**Section 6.8 Action Without a Meeting; Telephonic Meetings.**

(a) Any action required to be taken at any annual or special meeting of, or by any vote of, Common Holders or of any class of Stockholders, or any action or vote that may be

taken at any annual or special meeting of such Common Holders or class of Stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the Stockholders who signed the consent or consents, shall be signed by Stockholders holding (i) in the case of any action required to be taken at any annual or special meeting, or by vote, of the Common Holders, not less than a majority of the Voting Power of the outstanding Common Stock (or, with respect to the taking of any action that would require a higher percentage of Common Holders to approve hereunder, such higher percentage of the outstanding Common Stock), or (ii) in the case of any action required to be taken at any meeting of the Stockholders holding a particular class of capital stock, not less than a majority of the shares of capital stock of such class, as applicable. Any such consent or consents shall be delivered to the Company by delivery to the Company's principal place of business, or an Officer or agent of the Company having custody of the book or books in which proceedings of meetings of the Stockholders are recorded. If action is so taken without a meeting by less than unanimous written consent of the Common Holders or of any class of Stockholders, a copy of such written consent shall be delivered promptly to all Common Holders or all Stockholders of such class who have not consented in writing. Any action taken pursuant to such written consent or consents of the Common Holders or any class of Stockholders shall have the same force and effect as if taken by the Stockholders at a meeting of the Common Holders or the Stockholders of such class.

(b) Common Holders may participate in meetings of the Common Holders, and Stockholders of any class may participate in meetings of such class of Stockholders, by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Participation in a telephonic meeting pursuant to this Section 6.8(b) shall constitute presence at such meeting and shall constitute a waiver of any deficiency of notice.

**Section 6.9 Record Date.** For the purpose of determining the Stockholders entitled to notice of or to vote at any meeting of Common Holders or any class of Stockholders or any adjournment thereof, or entitled to receive a payment of any kind, or in order to make a determination of Stockholders for any other proper purpose, the Board of Directors may fix in advance a date as the record date for any such determination of Stockholders, such date in any case to be not more than seventy calendar days prior to the date on which the particular meeting or action requiring such determination of Common Holders is to be held or taken. If no record date is fixed by the Board of Directors, the date on which notices of the meetings are mailed or the date on which the resolution of the Board of Directors declaring such dividend is adopted, as the case may be, shall be the record date. When a determination of the Common Holders has been made as provided in this Section 6.9, such determination shall apply to any adjournment thereof unless the Board of Directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than one hundred twenty calendar days after the date originally fixed.

**Section 6.10 Certain Matters Requiring Approval of the Majority Holders (including at Least Two Common Holders).**

(a) Notwithstanding any other provision of these Bylaws, the Company and the Board of Directors shall not, and shall take all action possible to ensure that each Subsidiary

of the Company shall not, engage in any of the following transactions without the prior approval of the Majority Holders (including at least two Common Holders):

(i) any amendment to the organizational documents of (A) the Company, including the Charter and these Bylaws, or (B) any of the Material Subsidiaries if, in either case, such amendment could reasonably be expected to significantly and adversely impact any Stockholder (including any Stockholder's rights under these Bylaws), the Company or such Material Subsidiary, other than any amendment, but only to the extent necessary, to implement the issuance of (i) Permitted Additional Stock, or (ii) additional series of Class C Preferred Stock;

(ii) the redemption, purchase or other acquisition, directly or indirectly, of any capital stock or other Equity Securities of the Company, other than (A) those shares of capital stock or other Equity Securities of the Company held by any current or former officer, manager, director, consultant or employee of the Company or any of its Subsidiaries or, to the extent applicable, their respective estates, spouses, former spouses or family members, in each case pursuant to any equity subscription agreement, option agreement, members' agreement or similar agreement or benefit of any kind, (B) redemptions, purchases or other acquisitions that are made *pro rata* among the Stockholders holding a particular class of capital stock or other Equity Securities, in each case, to the extent that (1) no Rating Agency has communicated to the Company, after inquiry, that such proposed redemption, purchase or other acquisition is reasonably likely to result in a Credit Downgrade or (2) such proposed redemption, purchase or other acquisition will not result in a reduction of the equity capital of the Company (as determined by the Board of Directors) below the Required Capital Amount, unless approved by a majority of the Independent Directors and (C) redemptions, purchases or other acquisitions of shares of Class C Preferred Stock held by Management Company pursuant to the Charter;

(iii) the payment or other issuance of any dividend on any class of capital stock that is not *pro rata* among all holders of such class of capital stock;

(iv) (a) the declaration of a Bankruptcy (or acquiescence with respect thereto), of the Company or any Material Subsidiary, or the dissolution, liquidation, recapitalization or reorganization in any form of transaction, of the Company;

(b) any dissolution, liquidation, recapitalization or reorganization in any form of transaction of any of the Company's Material Subsidiaries that could reasonably be expected to significantly and adversely impact any Stockholder either directly or indirectly (including any Stockholder's rights under these Bylaws);

(v) authorize or issue any debt securities or any Equity Securities of the Company that (A) rank senior to the Common Stock with respect

to dividends or upon a sale or liquidation of the Company and (B) in the case of any such debt securities, are accorded the same equity treatment by the Ratings Agencies as the Common Stock at the time of the authorization or issuance thereof, provided, however, that any such authorization or issuance required by an order of the Federal Reserve Board shall not require such approval;

(vi) any transaction that results in a Company Sale;

(vii) any merger or consolidation involving the Company or any Subsidiary that requires the approval of the holders of common stock of the Company under the DGCL;

(viii) any change of the Independent Auditor, unless such replacement Independent Auditor is a “Big Four” accounting firm;

(ix) any change in the Company’s Fiscal Year; and

(x) the taking of any other act, or the consummation of any other transaction, involving the Company or any Subsidiary, that (A) requires the approval of the holders of common stock of the Company under the DGCL or (B) the taking of such act or the consummation of such transaction by a corporation with its common stock listed on the New York Stock Exchange would require the approval of the holders of common stock of such corporation under the rules of the New York Stock Exchange.

(b) The Stockholders hereby acknowledge and agree that the determination of the Common Holders as to whether to consent to any of the actions described in this Section 6.10, shall be entitled to be made in the sole discretion of the Common Holders, acting in their own best interests.

(c) Notwithstanding any other provision of these Bylaws, the Company and the Board of Directors shall not, and shall take all action possible to ensure that each Subsidiary of the Company shall not, engage in any of the following transactions without the prior approval of the Majority Holders (including at least two Common Holders) and at least a majority of the Independent Directors:

(i) the declaration of a Bankruptcy (or acquiescence with respect thereto), dissolution (to the fullest extent permitted by Law), liquidation, recapitalization or reorganization in any form of transaction, in each case of the Company or any of its Material Subsidiaries;

(ii) the entering into, amendment or other modification of any transaction (other than any intercompany transaction) with any Affiliate, Stockholder (other than Governmental Entities, except UST in its capacity as a Stockholder, and other than the Class E Preferred Holder) or any of their Affiliates or any Senior Executive Officer (other than, in the case of any Senior Executive Officer, any agreement or arrangement entered into with such Person in connection with and relating to such Person’s employment with the Company or any of its Subsidiaries, including compensation arrangements), if the

value of the consideration provided by the Company and/or any of its Subsidiaries to any such Affiliate, Stockholder or any of their Affiliates or any Senior Executive Officer involves in excess of \$5 million or, if there is no monetary consideration paid or quantifiable value exchanged, if the agreement is otherwise material to the Company and/or any of its Subsidiaries (and in any event any amendment or other modification to any agreement set forth on Exhibit E), unless at least a majority of the Independent Directors determines that such transaction is entered into in the Ordinary Course of Business and is on terms no less favorable to the Company or its Subsidiaries, as applicable, than those that would have been obtained in a comparable transaction by the Company or such Subsidiary, as applicable, with a Person that is not an Affiliate; and

(iii) the incurrence by the Company and its Subsidiaries of Indebtedness (other than intercompany Indebtedness) to the extent that any Rating Agency has communicated to the Company, after inquiry, that such proposed incurrence of Indebtedness is reasonably likely to result in a Credit Downgrade.

**Section 6.11 Liability of Stockholders.** Except as otherwise required by Law or as expressly set forth in the Charter or these Bylaws, the 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 Stockholder or Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Stockholder or Director, whether to the Company, to any of the other Stockholders, to the creditors of the Company or to any other third Person.

**Section 6.12 Blocker Corp Transactions.** Notwithstanding anything in these Bylaws to the contrary, in no event will (i) the merger of the Company (with the Company as the survivor) or a direct wholly owned subsidiary thereof with each of CB FIM, LLC, FIM CB Holdings, LLC, FIM Coinvestor Holdings I, LLC, CB FIM Coinvestors, LLC and CB FIM Coinvestors I, LLC (each a "FIM Blocker Corp") (or an exchange by each such FIM Blocker Corp (with either the Company or a wholly owned subsidiary of the Company) of the FIM Blocker Corp's shares in the Company for new shares in the Company, or a similar exchange transaction) or (ii) the merger of the Company (with the Company as the survivor) or a direct wholly owned subsidiary thereof with Blocker Sub, or an exchange of the outstanding Blocker Preferred for the Class G Preferred Stock, or a similar exchange transaction, in each of cases (i) and (ii) consummated in accordance with Section 2.8 and Section 12.7 of the LLC Agreement in connection with the Issuer's conversion into a Delaware corporation, be prohibited by the Charter or these Bylaws or require any consent of any Stockholder other than the "Approval of Action" dated as of June 30, 2009, which is in full force and effect as of such date.

## **ARTICLE VII**

### **BOARD OF DIRECTORS; OFFICERS**

**Section 7.1 Establishment of Board of Directors.** There is hereby established a board of directors (the "Board of Directors") comprised of natural Persons (the "Directors") having the authority and duties set forth in the Charter and these Bylaws. The size of the Board

of Directors shall initially be nine and shall be adjusted from time to time by a vote of the Majority Holders. The Directors shall be elected at the annual meeting of the Common Holders by a vote of the Majority Holders. Each Director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as provided in the Governance Agreement or this Article VII.

**Section 7.2 General Powers of the Board of Directors.** The property, affairs and business of the Company shall be managed by or under the direction of the Board of Directors, except as otherwise expressly provided in the Charter or these Bylaws. In addition to the powers and authority expressly conferred on it by these Bylaws, the Board of Directors may exercise all such powers of the Company and do all such lawful acts and things as are permitted by the DGCL and the Charter. Each Director shall be a “director” (as such term is defined in the DGCL) of the Company but, notwithstanding the foregoing, to the fullest extent permitted by applicable Law, no Director shall have any rights or powers beyond the rights and powers granted to such Director in the Charter or these Bylaws. Except as such power is delegated pursuant to Section 7.14, no Director acting alone, or with any other Directors, shall have the power to act for or on behalf of, or to bind the Company.

**Section 7.3 Removal of Directors for Cause.**

(a) A Director or the Board of Directors may be removed for Cause by a vote of the Majority Holders.

(b) Subject to the terms of the Governance Agreement, any vacancy occurring in the Board of Directors shall be filled by a vote of the Majority Holders.

(c) Any Director may resign at any time by giving written notice to the members of the Board of Directors and the Chief Executive Officer or the Secretary. The resignation of any Director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 7.4 Meetings.**

(a) Regular meetings of the Board of Directors may be held in Detroit, Michigan, New York, New York or at such other place, within or without the State of Delaware, as shall from time to time be determined by the Board of Directors, but in no event less than (i) four times during any twelve-month period and (ii) once during any three-month period. Special meetings of the Board of Directors may be called by or at the request of the Chief Executive Officer, and in any event shall be called by the Chief Executive Officer upon the written request of any Director. Special meeting notices shall state the purposes of the proposed meeting. Subject to the requirements of Section 2(c) of the Governance Agreement, any observer to the Board of Directors appointed pursuant to and in accordance with the terms of the Governance Agreement shall have the right to attend all meetings of the Board of Directors and all committees thereof and receive all information provided to the members of the Board of Directors in advance of each such meeting in the same manner and at the same time as the members of the Board of Directors or such committee.



(b) Any Director or any member of a committee of the Board of Directors who is present at a meeting shall be conclusively presumed to have waived notice of such meeting except when such Director attends for the express purpose of objecting or abstaining at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such Director shall be conclusively presumed to have assented to any action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless his or her written dissent or abstention to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the Secretary immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to any Director who voted in favor of such action.

**Section 7.5 Notice of Meetings.** Written notice stating the place, day and time of every meeting of the Board of Directors and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed not less than five nor more than thirty calendar days before the date of the meeting (or if sent by facsimile or email, not less than three Business Days before the date of the meeting), in each case to each Director and if applicable, observer, at his or her notice address maintained in the records of the Company by the Secretary. Such further notice shall be given as may be required by Law, but meetings may be held without notice if all the Directors entitled to vote at the meeting are present in person or by telephone or if notice is waived in writing by those not present, either before or after the meeting.

**Section 7.6 Quorum.** Unless otherwise provided by Law, the Charter or these Bylaws, the presence of Directors constituting a majority of the voting authority of the whole Board of Directors shall be necessary to constitute a quorum for the transaction of business; provided, that the presence of at least two Independent Directors shall be required for a quorum to exist. If such quorum is not present within sixty minutes after the time appointed for such meeting, such meeting shall be adjourned and the President or acting Chairman shall reschedule the meeting to be held not fewer than two nor more than ten Business Days thereafter. If such meeting is rescheduled two consecutive times, then those Directors who are present or represented by proxy at the second such rescheduled meeting shall constitute a valid quorum for all purposes hereunder; provided that written notice of any rescheduled meeting shall have been delivered to all Directors at least two Business Days prior to the date of such rescheduled meeting. Notwithstanding any provision to the contrary contained herein, interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee that authorizes any interested party contract or transaction.

**Section 7.7 Voting.** Each Director shall be entitled to cast one vote with respect to each matter brought before the Board of Directors (or any committee of the Board of Directors of which such Director is a member) for approval. Except as otherwise provided by these Bylaws, the DGCL, other Law or the Charter, all policies and other matters to be determined by the Directors shall be determined by a majority vote of the members of the Board of Directors present at a meeting at which a quorum is present.

**Section 7.8 Action Without a Meeting; Telephonic Meetings.**

(a) On any matter requiring an approval or consent of Directors under the Charter, these Bylaws or the DGCL, the Directors may take such action without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by all of the Directors.

(b) Directors may participate in meetings of the Board of Directors by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Participation in a telephonic meeting pursuant to this Section 7.8(b) shall constitute presence at such meeting and shall constitute a waiver of any deficiency of notice.

**Section 7.9 Reserved.**

**Section 7.10 Reserved.**

**Section 7.11 Reserved.**

**Section 7.12 Compensation of Directors; Expense Reimbursement.** Directors that are also Officers of the Company or employees of any of the Stockholders or their Affiliates shall not receive any stated fee for services in their capacity as Directors; provided, however, that nothing herein contained shall be construed to preclude any Director from serving the Company or any Subsidiary in any other capacity and receiving compensation therefor. Directors that are not also Officers of the Company or employees of any of the Stockholders or their Affiliates may receive a stated salary for their services as Directors, in each case as determined from time to time by the Board of Directors. Directors shall be reimbursed by the Company for any reasonable out-of-pocket expenses related to attendance at each regular or special meeting of the Board of Directors subject to the Company's requirements with respect to reporting and documentation of such expenses.

**Section 7.13 Committees of the Board of Directors.**

(a) The Board of Directors may by resolution designate one or more committees, each of which shall be comprised of two or more Directors, and may designate one or more of the Directors as alternate members of any committee, who may, subject to any limitations imposed by the Board of Directors, replace absent or disqualified Directors at any meeting of that committee. At least one Independent Director shall serve on each committee of the Board of Directors. Subject to Section 6.10(c), any decisions to be made by a committee of the Board of Directors shall require the approval of a majority of the votes of such committee of the Board of Directors. To the extent not prohibited by Law or stock exchange listing requirement, any Director or observer appointed pursuant to the Governance Agreement may attend the meetings of any committee of the Board of Directors on which he or she does not serve, as a non-voting observer.

(b) Any committee of the Board of Directors, to the extent provided in any resolution of the Board of Directors, shall have and may exercise all of the authority of the Board of Directors, subject to the limitations set forth in Section 7.13(c) or in the establishment of such

committee. Any committee members may be removed, or any authority granted thereto may be revoked, at any time for any reason by a majority of the Board of Directors subject to the limits on designation of replacement provided above and subject to the limitations in designation for removal from the Board of Directors set out in these Bylaws. Each committee of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided in the Charter, these Bylaws or by a resolution of the Board of Directors designating such committee.

(c) No committee of the Board of Directors shall have the authority of the Board of Directors with respect to any matters (i) subject to the approval rights set forth in Section 6.10, or (ii) otherwise subject to the approval rights of the Common Holders or the Independent Directors.

(d) There is hereby established an audit committee of the Board of Directors (the “Audit Committee”) initially comprised of three Independent Directors consisting of the Independent Directors; provided, however, that if any of the Independent Directors is prohibited from serving on the Audit Committee by any Law or stock exchange listing requirement, then the Audit Committee may be comprised of fewer than three Independent Directors during the period of such prohibition, but in no event less than two Independent Directors. The chairman of the Audit Committee shall be elected by the Board of Directors. The Audit Committee shall have and may exercise the powers, authority and responsibilities that are normally appropriate for the functions of an audit committee. The Audit Committee shall report its actions, findings and reports to the Board of Directors on a regular basis.

(e) There is hereby established the compensation, nominating, and governance committee of the Board of Directors (the “Compensation Committee”) initially comprised of at least three Independent Directors, none of which may be Officers or employees of the Company. The Compensation Committee shall have and may exercise the powers and authority delegated or granted to it by the Board of Directors and/or by any incentive compensation plan for employees of the Company.

**Section 7.14 Delegation of Authority.** The Board of Directors may, from time to time (acting in any applicable case with any required consent under the Charter or these Bylaws), delegate to any Person (including any Stockholder, Officer or Director) such authority and powers to act on behalf of the Company as it shall deem advisable in its discretion, except with respect to any matters (a) subject to the approval rights set forth in Section 6.10, and (b) otherwise subject to the approval rights of the Common Holders or the Independent Directors. Any delegation pursuant to this Section 7.14 may be revoked at any time and for any reason or no reason by the Board of Directors.

**Section 7.15 Officers.**

(a) The officers of the Company (the “Officers”) shall consist of a Chief Executive Officer, a Chief Financial Officer, one or more Presidents, a Secretary and such other Officers as may be appointed in accordance with the terms of these Bylaws. One Person may hold, and perform the duties of, any two or more of such offices.

(b) All Officers shall be appointed by a majority of the members of the Board of Directors. Any Officer may be removed, with or without cause, at any time by the Board of Directors.

(c) No Officer shall have any rights or powers beyond the rights and powers granted to such Officers in these Bylaws or by action of the Board of Directors. The Chief Executive Officer, Presidents, Chief Financial Officer and Secretary shall have the following duties and responsibilities:

(i) Chief Executive Officer. The Chief Executive Officer of the Company (the “Chief Executive Officer”) shall be a member of the Board of Directors and shall also perform such duties as may be assigned to them from time to time by the Board of Directors. Subject to the direction of the Board of Directors, he or she shall have, and exercise, direct charge of, and general supervision over, the business and affairs of the Company. He or she shall from time to time report to the Board of Directors all matters within his or her knowledge that the interest of the Company may require to be brought to its notice, and shall also have such other powers and perform such other duties as may be specifically assigned to him or her from time to time by the Board of Directors. The Chief Executive Officer shall see that all resolutions and orders of the Board of Directors are carried into effect, and in connection with the foregoing, shall be authorized to delegate to any President and the other Officers such of his or her powers and such of his or her duties as the Board of Directors may deem to be advisable.

(ii) Presidents. The Presidents of the Company (each a “President”) shall perform such duties as may be assigned to them from time to time by the Board of Directors or as may be designated by the Chief Executive Officer. Each President shall have the right, subject to the approval of the Board of Directors pursuant to Section 7.15(b) and following consultation with the Chief Executive Officer, to nominate the Officers who will report to such President or to any Person to whom such President delegates his or her authority.

(iii) Chief Financial Officer. The Chief Financial Officer of the Company (the “Chief Financial Officer”) shall have the custody of the Company’s funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all monies and other valuable effects in the name and to the credit of the Company, in such depositories as may be designated by the Board of Directors or by any Officer authorized by the Board of Directors to make such designation. The Chief Financial Officer shall exercise such powers and perform such duties as generally pertain or are necessarily incident to his or her office and shall perform such other duties as may be specifically assigned to him or her from time to time by the Board of Directors or the Chief Executive Officer. The Chief Financial Officer shall have the right, subject to the approval of the Board of Directors pursuant to Section 7.15(b) and following consultation with the Chief Executive Officer, to nominate the Officers who will report to him or her or to any Person to whom the Chief Financial Officer delegates his or her authority.

(iv) Secretary. The Secretary of the Company (the “Secretary”) shall attend all meetings of the Stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for any committee when required. He or she shall give, or cause to be given, notice of all meetings of the Stockholders and, when

necessary, of the Board of Directors. The Secretary shall exercise such powers and perform such duties as generally pertain or are necessarily incident to his or her office, and he or she shall perform such other duties as may be assigned to him or her from time to time by the Board of Directors or the Chief Executive Officer. To the greatest extent possible, the Secretary shall vote, or cause to be voted, all of the Equity Securities of any Subsidiary of the Company as directed by the Board of Directors.

**Section 7.16 Standard of Care; Fiduciary Duties; Liability of Directors and Officers.**

(a) Any Director or Officer, in the performance of such Director's or Officer's duties, shall be entitled to rely in good faith on the provisions of the Charter and these Bylaws and on opinions, reports or statements (including financial statements, books of account any other financial information, opinions, reports or statements as to the value or amount of the assets, liabilities, profits or losses of the Company and its Subsidiaries) of the following other Persons or groups: (i) one or more Officers or employees of the Company or any of its Subsidiaries, (ii) any legal counsel, certified public accountants or other Person employed or engaged by the Board of Directors or the Company or any of its Subsidiaries, or (iii) any other Person who has been selected with reasonable care by or on behalf of such Director, Officer or the Company or any of its Subsidiaries, in each case as to matters which such relying Person reasonably believes to be within such other Person's professional or expert competence. The preceding sentence shall in no way limit any Person's right to rely on information to the extent provided in Section 141 of the DGCL.

(b) On any matter involving a conflict of interest not provided for in these Bylaws, each Director and Officer shall be guided by its reasonable judgment as to the best interests of the Company and its Subsidiaries and shall take such actions as are determined by such Person to be necessary or appropriate to ameliorate such conflict of interest.

(c) The Directors and the Officers, in the performance of their duties as such, shall owe to the Company and its Stockholders duties of loyalty and due care of the type owed under Law by directors and officers of a business corporation incorporated under the DGCL.

(d) Except as required by the DGCL, no individual who is a Stockholder or an Officer, or any combination of the foregoing, shall be personally liable under any judgment of a court, or in any other manner, for any debt, obligation or liability of the Company, whether that liability or obligation arises in contract, tort or otherwise solely by reason of being a Director or an Officer or any combination of the foregoing.

(e) No Director or Officer shall be liable to the Company or any Stockholder for any act or omission (including any breach of duty (fiduciary or otherwise)), including any mistake of fact or error in judgment taken, suffered or made by such Person if such Person acted in good faith and in a manner such Person reasonably believed to be in or not opposed to the best interests of the Company and which act or omission was within the scope of authority granted to such Person; provided that such act or omission did not constitute fraud, willful misconduct, bad faith or gross negligence in the conduct of such Person's office.

(f) No Director shall be liable to the Company or any Stockholder for monetary damages for breach of fiduciary duty as a Director; provided that the foregoing shall not eliminate or limit the liability of a Director: (i) for any breach of such Director's duty of loyalty to the Company or its Stockholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of Law; or (iii) for any transaction from which such Director derived an improper personal benefit.

## **ARTICLE VIII** **TRANSFER OF SHARES OF STOCK**

**Section 8.1 Void Transfers.** To the greatest extent permitted by the DGCL and other Law, any Transfer by any Stockholder of any shares of capital stock or other interest in the Company in contravention of the Charter or these Bylaws shall be void and ineffective and shall not bind or be recognized by the Company or any other Person. In the event of any Transfer in contravention of the Charter or these Bylaws, to the greatest extent permitted by the DGCL and other Law, the purported Transferee shall have no right to any profits, losses or dividends of the Company or any other rights of a Stockholder.

**Section 8.2 Transfer of Certain Shares of Capital Stock by GM to the U.S. Treasury.** Notwithstanding anything to the contrary in the Charter or these Bylaws, the terms of this Article VIII and the other provisions of the Charter and these Bylaws that operate as restrictions or limitations on Transfers of shares of capital stock (including Section 6.10) or that give non-transferring Stockholders rights in connection with Transfers of shares of capital stock, shall not apply to any Transfer of shares of capital stock by GM or any of its Affiliates or the GM Trust to the U.S. Department of the Treasury or its designee (including any trust or trustee), and GM and its Affiliates and the GM Trust shall be permitted to Transfer any such shares of capital stock to the U.S. Department of the Treasury or such designee.

## **ARTICLE IX** **DISSOLUTION**

**Section 9.1 In General.** The Company shall dissolve and its affairs shall be wound up upon the first to occur of the following: (a) the approval of the Majority Holders (including at least two Common Holders); (b) at any time there are no Stockholders of the Company; or (c) the entry of a decree of judicial dissolution under Section 285 of the DGCL.

**Section 9.2 Liquidation and Termination.** On the dissolution of the Company, the Board of Directors shall act as liquidator or (in its sole discretion) may appoint one or more representatives, Stockholders or other Persons as liquidator(s). The liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the DGCL. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidators shall continue to operate the Company with all of the power and authority of the Board of Directors. The steps to be accomplished by the liquidators are as follows:

(a) the liquidators shall pay, satisfy or discharge from the Company funds all of the debts, liabilities and obligations of the Company (including all expenses incurred in

liquidation) or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine);

(b) after payment or provision for payment of all of the Company's liabilities has been made in accordance with Section 9.2(a), all remaining assets of the Company shall be distributed to the Stockholders, subject to the DGCL, in accordance with the procedures set forth in the Charter, these Bylaws and the DGCL.

**Section 9.3 Filing of Certificate of Dissolution.** Immediately following the completion of the distribution of the Company's assets as provided herein, the Board of Directors (or such other Person or Persons as the DGCL may require or permit) shall file a certificate of dissolution with the Secretary of State of the State of Delaware, cancel any other filings made pursuant to the Charter or these Bylaws that are required to be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of the Charter and these Bylaws until it is terminated pursuant to this Section 9.3.

**Section 9.4 Reasonable Time for Winding Up.** A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 9.2 to minimize any losses otherwise attendant upon such winding up.

**Section 9.5 Antitrust Laws.** Notwithstanding any other provision in the Charter or these Bylaws, in the event that any Antitrust Law is applicable to any Stockholder by reason of the fact that any assets of the Company shall be distributed to such Stockholder in connection with the winding up of the Company, such distribution shall not be consummated until such time as the applicable waiting periods (and extensions thereof) under such Antitrust Law have expired or otherwise been terminated with respect to each such Stockholder.

**Section 9.6 Other Remedies.** Nothing in this Article IX shall limit any Stockholder's right to enforce any provision of the Charter or these Bylaws by an action at Law or equity, nor shall an election to dissolve the Company pursuant to this Article IX relieve any Stockholder of any liability for any prior or subsequent violation of any provision of the Charter or these Bylaws or another document referred to herein.

**ARTICLE X**  
**OTHER AGREEMENTS**

**Section 10.1 Transactions with Affiliates.**

(a) The Company shall conduct, and shall cause each of its Subsidiaries to conduct, all transactions with its Affiliates (other than Subsidiaries of the Company), Stockholders (other than the Class E Preferred Holder) and their respective Affiliates, current or former officers or directors, or any of their respective family members on terms that are fair and reasonable and no less favorable to the Company or such Subsidiary than it would obtain in a comparable arm's-length transaction with a Person that is not an Affiliate, a Stockholder, an Affiliate of a Stockholder, a current or former officer or director, or a family member and in compliance with all Laws, it being understood and agreed that (i) all Transaction Documents (including the Project Agreements), (ii) all agreements or arrangements in effect as of the Effective Date by the Company and its Subsidiaries, on the one hand, and GM and its Subsidiaries, on the other hand, set forth on Exhibit E and (iii) all transactions approved by (A) the Majority Holders (including at least two Common Holders), as applicable, or (B) the Independent Directors pursuant to Section 6.10(c)(ii), in each case, as required by the Charter or these Bylaws, as applicable, shall each be deemed to be in compliance with this Section 10.1(a). Subject to the terms of the Charter and these Bylaws and any documents referred to herein, neither the Company nor any of its Subsidiaries shall be required to purchase products, services or components from any Stockholder, but may seek quotes for the supply of products, services or components in its Ordinary Course of Business.

(b) The Class E Preferred Holder and, subject to Section 6.10(c)(ii) and Section 10.1(a), the Common Holders and Class A Preferred Holders (and Affiliates of, and Persons who are otherwise related to, such Stockholders) shall have the right to contract and otherwise deal with the Company with respect to the sale, purchase or lease of real and/or personal property, the rendition of services, the lending of money and for other purposes in arm's-length transactions, and to receive the purchase price, costs, fees, commissions, interest, compensation and other forms of consideration in connection therewith, without being subject to claims for self-dealing.

**Section 10.2 Public Offering.**

(a) In addition to the other rights of the Board of Directors or the Stockholders to require the Issuer to consummate an initial Public Offering, each of (i) the Majority Holders (including at least two Common Holders) and (ii) holders representing greater than 50% of the outstanding Common Stock on a Fully-Diluted Basis (the "Fully-Diluted Majority Holders"), with the consent of a majority of the Independent Directors (which shall take into account market conditions and tax and regulatory capital considerations) shall have the right, but not the obligation, to require the Issuer to consummate an initial Public Offering. Such right shall be exercisable by the Fully-Diluted Majority Holders at any time; provided that in connection with any such Public Offering, the UST (to the extent it then holds Class F-2 Preferred Stock) shall be obligated to convert such amount of Convertible Securities as may be



necessary so that immediately prior to such Public Offering, the UST holds greater than 50% of the outstanding Common Stock; provided further, that the UST shall be entitled to participate in such Public Offering on a priority basis to the extent necessary to reduce the amount of Common Stock held by UST below 50% of the outstanding Common Stock immediately following such Public Offering. Thereafter, UST shall be entitled to participate on a pro rata basis with other holders of Common Stock.

(b) Subject to Section 10.2(a), in the event that the Board of Directors, the Majority Holders (including at least two Common Holders) or the Fully-Diluted Majority Holders, as applicable, approve an initial Public Offering and sale of securities of the Issuer (including a sale of Equity Securities, debt securities, income deposit securities or securities of any other kind or combination) pursuant to a Public Offering, then each Stockholder (other than the Class F-2 Preferred Holder and the Class E Preferred Holder) and Director shall take all necessary or desirable actions required or deemed advisable by the Board of Directors or such Stockholders, as applicable, in connection with the consummation of such Public Offering, and enter into such agreement or agreements as are necessary to preserve the rights and obligations of the Stockholders hereunder as in effect immediately prior to the consummation of such initial Public Offering. Notwithstanding anything to the contrary contained herein, in the case of a Public Offering that is required pursuant to Section 10.2(a), none of the Directors shall have any duty to the Stockholders to independently evaluate or approve any such action but merely to act in any necessary or desirable fashion to accommodate the implementation of such offering as determined by those persons requiring registration.

(c) Subject to Section 10.2(a), in the event that, subject to the provisions of Section 10.2(b), the Board of Directors, the Majority Holders (including at least two Common Holders) or the Fully-Diluted Majority Holders, as applicable, so determine, each Stockholder (other than the Class F-2 Preferred Holder and the Class E Preferred Holder) who pursuant to the terms of the Charter or these Bylaws has any right to vote upon or consent to such transaction shall be deemed to have consented to and, if required under the Charter, these Bylaws or Law, shall vote in favor of a recapitalization, reorganization, conversion, contribution and/or exchange of such Stockholder's capital stock into securities that the Board of Directors, the Majority Holders (including at least two Common Holders) or the Fully-Diluted Majority Holders, as applicable, find acceptable and shall take all necessary or desirable actions required or deemed advisable by the Board of Directors, the Majority Holders (including at least two Common Holders) or the Fully-Diluted Majority Holders, as applicable, in connection with the consummation of such recapitalization, reorganization, conversion, contribution and/or exchange; provided that, if in any such recapitalization, reorganization, conversion, contribution and/or exchange, the Issuer provides for each holder of capital stock to receive cash, securities of the Issuer or other consideration in exchange for or in satisfaction of such holder's capital stock, then (i) all holders of the same class or type of capital stock in the Company shall receive the same form and proportionate share of consideration as all other holders of such class or type of interests, and (ii) any consideration payable or otherwise deliverable to the Stockholders in such recapitalization, reorganization, conversion, contribution and/or exchange shall be valued by the Board of Directors, the Majority Holders (including at least two Common Holders) or the Fully-Diluted Majority Holders, as applicable, in its or their, as applicable, reasonable discretion (which determination shall be binding, as a matter of contract, on each Stockholder pursuant to these Bylaws) and shall be distributed among the Stockholders according to the respective class

of capital stock of the Stockholders in the Company as in effect immediately prior to the consummation of such recapitalization, reorganization, conversion, contribution and/or exchange as if such consideration were received by the Company and an amount equal to the value thereof were distributed to the Stockholders in accordance with the terms of Section 5.1.

### **Section 10.3 Preemptive Rights.**

(a) The Company shall not issue, sell or exchange, agree to issue, sell or exchange, or reserve or set aside for issuance, sale or exchange, any Preemptive Securities (as defined below) of the Company to any Person unless, in each case, the Company shall have first offered to sell to each Common Holder and the holders of any Class F-2 Preferred Stock (each a "Preemptive Holder") such Preemptive Holder's Preemptive Share of the Preemptive Securities, at a price and on such other terms as shall have been specified by the Company in writing delivered to each such Preemptive Holder (the "Preemptive Offer"), which Preemptive Offer shall by its terms remain open and irrevocable for a period of at least ten calendar days from the date it is delivered by the Company (the "Preemptive Offer Period"). Each Preemptive Holder may elect to purchase all or any portion of such Preemptive Holder's Preemptive Share of the Preemptive Securities as specified in the Preemptive Offer at the price and upon the terms specified therein by delivering written notice of such election to the Company as soon as practical but in any event within the Preemptive Offer Period; provided that if the Company is issuing Preemptive Securities together as a unit with any other Securities, then any Preemptive Holder who elects to purchase the Preemptive Securities pursuant to this Section 10.3 must purchase the same proportionate mix of all of such securities. Notwithstanding anything to the contrary set forth in the Charter or these Bylaws, a Preemptive Holder may assign all or any portion of its right to acquire Preemptive Securities to its direct or indirect equityholders, and upon any such assignment, each such equityholder shall be deemed a Preemptive Holder for the purposes of this Section 10.3.

"Preemptive Securities" means, as applicable, (i) Common Stock or other common equity securities of the Company or other securities of the Company that vote together with the Common Stock, (ii) any securities directly or indirectly convertible into or exchangeable for Common Stock or other common equity securities of the Company or other securities of the Company that vote together with the Common Stock, (iii) any rights or options directly or indirectly to subscribe for or to purchase Common Stock or other common equity securities of the Company or other securities of the Company that vote together with the Common Stock or to subscribe for or to purchase any securities directly or indirectly convertible into or exchangeable for Common Stock or other common equity securities of the Company, or (iv) any share appreciation rights, phantom share rights, or other similar rights to the extent related to Common Stock or other securities of the Company that vote together with the Common Stock, or (v) any Preemptive Securities issued or issuable with respect to the securities referred to in clauses (i) through (iv) above in connection with a combination of shares, recapitalization, merger, consolidation, conversion, or other reorganization.

(b) Each Preemptive Holder's "Preemptive Share" of Preemptive Securities shall be determined as follows: the total number of Preemptive Securities, multiplied by a fraction, (i) the numerator of which is the number of shares of Common Stock then held, directly or indirectly, by such Preemptive Holder on a Fully-Diluted Basis, and (ii) the denominator of

which is the number of shares of Common Stock then held by all Preemptive Holders (including such Preemptive Holder) on a Fully-Diluted Basis.

(c) Upon the expiration of the Preemptive Offer Period, the Company shall be entitled to sell such Preemptive Securities which the Preemptive Holders have not elected to purchase for a period ending on the later to occur of (i) one hundred twenty calendar days following the expiration of the Preemptive Offer Period, or (ii) if a definitive agreement to Transfer the Preemptive Securities is entered into by the Company within such one hundred twenty calendar day period, the date on which all applicable approvals and consents of Governmental Entities and other Persons with respect to such proposed Transfer have been obtained and any applicable waiting periods under Law have expired or been terminated, in each case on terms and conditions not materially more favorable to the purchasers thereof than those offered to the Preemptive Holders. Any Preemptive Securities to be sold by the Company following the expiration of such period must be reoffered to the Preemptive Holders pursuant to the terms of this Section 10.3 if any such agreement to Transfer is terminated.

(d) The provisions of this Section 10.3 shall not apply to the following issuances of Preemptive Securities:

(i) Preemptive Securities issued to or for the benefit of employees, officers, directors and other service providers of or to the Company or any of its Subsidiaries in accordance with the terms hereof or any applicable incentive plan of the Company;

(ii) securities issued by the Company in connection with a Public Offering;

(iii) securities issued as consideration in acquisitions or commercial borrowings or leasing;

(iv) securities issued upon conversion of convertible or exchangeable securities of the Company or any of its Subsidiaries that were outstanding on June 30, 2009 or were not issued in violation of this Section 10.3; and,

(v) a subdivision of shares of capital stock (including any stock dividend or stock split), any combination of shares of capital stock (including any reverse stock split) or any recapitalization, reorganization, reclassification or conversion of the Company or any of its Subsidiaries.

(e) The preemptive rights granted in this Section 10.3 shall terminate upon the earlier to occur of the consummation of a Qualified Public Offering and a Company Sale.

(f) Notwithstanding the procedural requirements of Sections 10.3(a) and (c) above, with respect to any issuance of Preemptive Securities to UST in connection with the Supervisory Capital Assessment Program, in the event that the Company determines that it is necessary or advisable, the Company may complete a transaction covered by Section 10.3(a) above prior to making a Preemptive Offer to Preemptive Holders, provided that the Company (x) shall make the Preemptive Offer to Preemptive Holders promptly following completion of such transaction

and (y) Preemptive Holders shall have no less than 10 calendar days to consider any such Preemptive Offer.

**Section 10.4 Registration Rights of Certain Common Holders.** The Common Holders shall have those registration rights attached hereto as Exhibit F. Exercise of such registration rights shall be subject to the priority allocation to the UST provided for in Section 10.2(a). Such exhibit is hereby incorporated into and made part of these Bylaws as if it were set forth fully herein.

## **ARTICLE XI** **CONFIDENTIALITY**

**Section 11.1 Non-Disclosure.** Each Stockholder agrees that it will use, and will cause each of its Affiliates, and each of its and their respective partners, members, managers, stockholders, directors, officers, employees and agents (collectively, “Agents”) to use, its commercially reasonable efforts to maintain the confidentiality of all Confidential Information disclosed to it by the Company by limiting internal disclosure of any such information to those Persons who have an actual need to know such information in connection with the business of the Company or such Stockholder’s investment in the Company and will not, without the prior written consent of the Company, use such information other than in connection with the business of the Company or such Stockholder’s investment in the Company.

**Section 11.2 Exceptions.** Notwithstanding Section 11.1, a Stockholder, its Affiliates and their Agents may disclose any Confidential Information: (a) to any Governmental Entity in connection with applications for approval of the transactions contemplated hereby and the other Transaction Documents (or, in the case of any regulated Affiliate of a Stockholder, in connection with audits by the applicable Governmental Entities), (b) to financial institutions in connection with financings of the transactions contemplated hereby, (c) in the case of any Stockholder, (i) to a *bona fide* potential Transferee if such Stockholder desires to undertake any Transfer of its capital stock permitted by these Bylaws, (ii) to its stockholders, limited partners, members, trust beneficiaries or other equityholders, as the case may be, all materials made available to such Stockholder pursuant to the terms of these Bylaws and (iii) to its indirect stockholders, limited partners, members, trust beneficiaries or other equityholders, as the case may be, so long as the Confidential Information disclosed to such Persons is limited to the materials delivered to such party pursuant to Section 4.4(a), provided that (A) in the case of subclauses (i), (ii) and (iii) of this clause (c), prior to the disclosure of any Confidential Information, such Person shall execute an agreement containing substantially the terms set forth in Section 11.1 and this Section 11.2, and (B) in the case of clauses (ii) and (iii) above, the disclosure of Confidential Information relating to commercial transactions or commercial relationships of the Company and its Subsidiaries shall be strictly limited to such Persons who have an actual need to know such information in connection with the administration of their equity interest in such Stockholder, (d) to any rating or similar agency in connection with its analysis or review of the Company or any of its Subsidiaries, (e) in the case of the GM Trust, between such trust and its trustee and Agents, and (f) to any other Person if such party becomes compelled by Law (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand, mandatory provision

of Law, regulation or stock exchange rule) to disclose any of the Confidential Information. In addition, each Stockholder may report to its stockholders, limited partners, members, trust beneficiaries or other equityholders, as the case may be, the general status of such Stockholder's investment in the Company (without disclosing specific Confidential Information). A disclosing Stockholder shall be responsible for a breach by any third Person to whom such disclosing Stockholder discloses Confidential Information in accordance with the terms of subclauses (c)(ii) and (c)(iii) of this Section 11.2. In the case of clause (f) above, the disclosing party shall (i) provide the other parties hereto with prompt written notice of such requirement so that such non-disclosing parties may seek a protective order or other appropriate remedy or waive compliance with the terms of this Article XI and (ii) take such reasonable legally available steps as the non-disclosing parties may reasonably request to resist or narrow such requirement (at the expense of the non-disclosing parties). In the event that such protective order or remedy is not obtained, or that the non-disclosing parties waive compliance with the terms hereof, the disclosing party agrees to furnish only that portion of the Confidential Information that it is advised by counsel is required to be furnished, and to exercise its commercially reasonable efforts to obtain assurance that confidential treatment shall be accorded such Confidential Information.

## **ARTICLE XII**

### **MISCELLANEOUS PROVISIONS**

**Section 12.1 Amendments.** Except as otherwise expressly provided herein, including in Section 3.2, these Bylaws may only be amended, modified or waived by the Board of Directors with the prior written approval of the Majority Holders; provided, however, that:

(i) any provision of these Bylaws that provides for an approval right of the Majority Holders (including Section 6.10) or any other specific class of holders of capital stock may only be amended, modified or waived with the prior written approval of the Majority Holders or such other specific class of holders;

(ii) if any such amendment, modification or waiver would adversely affect in any material respect any Stockholder or group of Stockholders who have comparable rights under the Charter or these Bylaws disproportionately to the other Stockholders having such comparable rights (it being understood no amendment entered into in connection with the compliance by the Company with its commitments to the UST for purposes of the Company's participation in the Troubled Asset Relief Program (including those set forth in the Governance Agreement) shall be deemed to adversely affect in any material respect any Stockholder or Stockholders, including the Class F-2 Preferred Holders), such amendment, modification, or waiver shall also require the written consent of the Stockholder(s) so adversely affected;

(iii) any amendment that would require any Stockholder to contribute or loan additional funds to the Company or impose personal liability upon any Stockholder shall not be effective against such Stockholder without its prior written consent;

(iv) no alteration, repeal or amendment, whether by merger, consolidation, combination, reclassification or otherwise, of Exhibit F shall be permitted without the consent of Eligible Holders (as defined in Exhibit F) holding a majority of the then outstanding Registrable

Securities (as defined in Exhibit F) then held by the Eligible Holders; provided, that, no such alternation, repeal or amendment shall be effective against an Eligible Holder without such Eligible Holder's consent if such alternation, repeal or amendment reduces or limits (other than in an immaterial respect) the rights of such Eligible Holder or otherwise disadvantages (other than in an immaterial respect) such Eligible Holder;

(v) for so long as the GM Trust holds at least 2.5% of the then-outstanding Common Stock, the written consent of the GM Trust shall be required for any amendment, modification or waiver of Section 4.4(e) in a manner adverse to the GM Trust;

(vi) no alteration, repeal or amendment, whether by merger, consolidation, combination, reclassification or otherwise, of the definition of "Blocker Sub" contained in these Bylaws shall be permitted if such action would amend, alter or otherwise affect the rights of any Stockholder in any manner materially adverse to such Stockholder without the prior written approval of each such affected Stockholder; and

(vii) no alteration, repeal or amendment, whether by merger, consolidation, combination, reclassification or otherwise, of the preceding provisos (i) through this proviso (v) shall be made without the prior written approval of the threshold of Stockholders specified in such proviso or those specific Stockholders relevant to each such proviso. Amendment of this provision (v) shall require the approval of all Stockholders.

**Section 12.2 Remedies.** Each Stockholder shall have all rights and remedies set forth in the Charter and these Bylaws and all rights and remedies that such Person has been granted at any time under any other agreement or contract and all of the rights that such Person has under any Law. Any Person having any rights under any provision of the Charter and these Bylaws or any other agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security) to recover damages by reason of any breach of any provision of the Charter or these Bylaws and to exercise all other rights granted by Law. Each Stockholder, on behalf of itself, its Affiliates, successors and assigns, if any, hereby specifically renounces, waives and forfeits all rights to seek, bring or maintain any action in any court of law or equity against the Treasury arising in connection with these Bylaws or the transactions contemplated hereunder, except in its commercial capacity as a stockholder of the Company and participant in the transactions contemplated hereunder.

**Section 12.3 Notice Addresses and Notices.** All notices, demands, financial reports, other reports and other communications to be given or delivered under or by reason of the provisions of these Bylaws shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) sent by facsimile to the recipient (with hard copy sent to the recipient by reputable overnight courier service (charges prepaid) that same day if sent by facsimile before 5:00 p.m. New York time on a Business Day, and otherwise on the next Business Day, or (c) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid). Such notices, demands and other communications shall be sent to the notice address for such recipient set forth on the Stock Register, or in the Company's books and records, or to such other notice address or to the attention of such other person as the recipient party has specified by prior written notice to the sending party. Any

notice to the Board of Directors or the Company shall be deemed given if received by the Board of Directors at the principal office of the Company designated pursuant to Section 2.2(b).

**Section 12.4 Reserved.**

**Section 12.5 Survival.** The provisions of Article XI and Section 12.5 shall survive and continue in full force in accordance with its terms, notwithstanding any dissolution of the Company.

**Section 12.6 Creditors.** Except to the extent that a creditor of a Stockholder, the Company or any of its Affiliates becomes a Stockholder hereunder, none of the provisions of these Bylaws shall be for the benefit of or enforceable by any creditors of the Stockholders, the Company or any of its Affiliates (other than Indemnified Persons), and no creditor who makes a loan to any Stockholder, the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Company profits, losses, dividends, capital or property other than as a secured creditor.

**Section 12.7 Indemnification and Reimbursement for Payments on Behalf of a Stockholder.** If the Company is required by Law to make any payment to a Governmental Entity that is specifically attributable to a Stockholder, then such Stockholder other than Blocker Sub shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). A Stockholders obligation to indemnify the Company under this Section 12.7 shall survive the termination, dissolution, liquidation and winding up of the Company, and for purposes of this Section 12.7, the Company shall be treated as continuing in existence. The Company may pursue and enforce all rights and remedies it may have against each Stockholder under this Section 12.7, including instituting a lawsuit to collect such indemnification, with interest calculated at a floating rate equal to the prime rate as published from time to time in *The Wall Street Journal*, plus one percentage point (1%) *per annum* (but not in excess of the highest rate *per annum* permitted by Law), compounded annually.

**Section 12.8 Strict Construction.** The Company and the Stockholders as of the date hereof have participated collectively in the negotiation and drafting these Bylaws; accordingly, if any ambiguity or question of intent or interpretation arises, then it is the intent of the Company and the Stockholders as of the date hereof that these Bylaws shall be construed as if drafted collectively by such parties, and it is the intent of such parties that no presumption or burden of proof shall arise favoring or disfavoring any of such parties by virtue of the authorship of any provisions of these Bylaws.

**FORMS OF WAIVERS****ANNEX B-1****FORM OF WAIVER FOR THE COMPANY**

In consideration for the benefits that it will receive as a result of its or its Affiliate's participation in the United States Department of the Treasury's Automotive Industry Financing Program and/or any other economic stabilization program implemented by the Department of the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the "*EESA*") or any other related law or regulation thereunder in existence either prior to or subsequent to the date of this letter (any such program, including the Automotive Industry Financing Program, a "*Program*"), GMAC Inc. (together with its subsidiaries and affiliates, the "*Company*") hereby voluntarily waives any claim against the United States for any changes to compensation or benefits of the Company's employees that are required to comply with any Program or related laws and regulations (whether or not in existence as of the date hereof), as implemented by any guidance or regulation thereunder, including the rules set forth in 31 CFR Part 30, or any other guidance or regulations under the EESA and the requirements of the Securities Purchase and Exchange Agreement by and among GMAC Inc., GMAC Capital Trust I and the United States Department of the Treasury entered into on or about December 30, 2009, as amended (the "*Limitations*").

The Company acknowledges that the aforementioned laws, regulations and Limitations may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called "golden parachute" agreements), whether or not in writing, that the Company may have with its employees or in which such employees may participate as the regulations and Limitations relate to the period the United States holds any equity or debt securities of the Company acquired through a Program, including without limitation the Automotive Industry Financing Program, or for any other period applicable under such Program or Limitations, as the case may be.

This waiver includes all claims the Company may have under the laws of the United States or any state (whether or not in existence as of the date hereof) related to the requirements imposed by the aforementioned laws, regulations and Limitations, including without limitation a claim for any compensation or other payments or benefits the Company's employees would otherwise receive, any challenge to the process by which the aforementioned laws, regulations or Limitations are or were adopted and any tort or constitutional claim about the effect of these laws, regulations or Limitations on the Company's employment relationship with its employees.

GMAC Inc.

By: \_\_\_\_\_  
 Name:  
 Title:

Date: December \_\_\_\_, 2009



**ANNEX B-2**

**FORM OF WAIVER OF SEO TO INVESTOR**

In consideration for the benefits I will receive as a result of the participation of GMAC Inc. (together with its subsidiaries and affiliates, the “*Company*”) in the United States Department of the Treasury’s Automotive Industry Financing Program and/or any other economic stabilization program implemented by the Department of the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the “*EESA*”) or any other related law or regulation thereunder in existence either prior to or subsequent to the date of this letter from me (any such program, including the Automotive Industry Financing Program, a “*Program*”), I hereby voluntarily waive any claim against the United States or my employer for any changes to my compensation or benefits that are required to comply with any Program or related laws and regulations (whether or not in existence as of the date hereof), as implemented by any guidance or regulation thereunder, including the rules set forth in 31 CFR Part 30, or any other guidance or regulations under the EESA and the requirements of the Securities Purchase and Exchange Agreement by and among GMAC Inc., GMAC Capital Trust I and the United States Department of the Treasury entered into on or about December 30, 2009, as amended (the “*Limitations*”).

I acknowledge that the aforementioned laws, regulations and Limitations may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called “golden parachute” agreements), whether or not in writing, that I may have with the Company or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Company acquired through a Program, including without limitation the Automotive Industry Financing Program, or for any other period applicable under such Program or Limitations, as the case may be.

This waiver includes all claims I may have under the laws of the United States or any state (whether or not in existence as of the date hereof) related to the requirements imposed by the aforementioned laws, regulations and Limitations, including without limitation a claim for any compensation or other payments or benefits I would otherwise receive, any challenge to the process by which the aforementioned laws, regulations or Limitations are or were adopted and any tort or constitutional claim about the effect of these laws, regulations or Limitations on my employment relationship.

**Intending to be legally bound, I have executed this Waiver  
as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.**

\_\_\_\_\_  
Name:

### ANNEX B-3

#### **FORM OF CONSENT AND WAIVER OF SEO TO THE COMPANY**

In consideration for the benefits I will receive as a result of the participation of GMAC Inc. (together with its subsidiaries and affiliates, the “*Company*”) in the United States Department of the Treasury’s Automotive Industry Financing Program and/or any other economic stabilization program implemented by the Department of the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the “*EESA*”) or any other related law or regulation thereunder in existence either prior to or subsequent to the date of this letter from me (any such program, including the Automotive Industry Financing Program, a “*Program*”), I hereby voluntarily consent to and waive any claim against any of the Company, the Company’s Board of Directors (or similar governing body), any individual member of the Company’s Board of Directors (or similar governing body) and the Company’s officers, employees, representatives and agents for any changes to my compensation or benefits that are required to comply with any Program or related laws and regulations (whether or not in existence as of the date hereof), as implemented by any guidance or regulation thereunder, including the rules set forth in 31 CFR Part 30, or any other guidance or regulations under the EESA and the requirements of the Securities Purchase and Exchange Agreement by and among GMAC Inc., GMAC Capital Trust I and the United States Department of the Treasury entered into on or about December 30, 2009, as amended (the “*Limitations*”).

I acknowledge that the aforementioned laws, regulations and Limitations may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called “golden parachute” agreements), whether or not in writing, that I may have with the Company or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Company acquired through a Program, including without limitation the Automotive Industry Financing Program, or for any other period applicable under such Program or Limitations, as the case may be.

This waiver includes all claims I may have under the laws of the United States or any state (whether or not in existence as of the date hereof) related to the requirements imposed by the aforementioned laws, regulations and Limitations, including without limitation a claim for any compensation or other payments or benefits I would otherwise receive, any challenge to the process by which the aforementioned laws, regulations or Limitations are or were adopted and any tort or constitutional claim about the effect of these laws, regulations or Limitations on my employment relationship.

I agree that, in the event and to the extent that the Compensation Committee of the Board of Directors of the Company or similar governing body (the “*Committee*”) reasonably determines that any compensatory payment and benefit provided to me, including any bonus or incentive compensation based on materially inaccurate financial statements or performance criteria, would cause the Company to fail to be in compliance with the terms and conditions of any laws, regulations or the Limitations (such payment or benefit, an “*Excess Payment*”), upon notification from the Company, I shall promptly repay such Excess Payment to the Company. In addition, I agree that the Company shall have the right to postpone any such payment or benefit for a reasonable period of time to enable the Committee to determine whether such payment or benefit would constitute an Excess Payment.

I understand that any determination by the Committee as to whether or not, including the manner in which, a payment or benefit needs to be modified, terminated or repaid in order for the Company to be in compliance with Section 111 of the EESA and/or the aforementioned laws, regulations or Limitations shall be final, conclusive and binding. I further understand that the Company is relying on this letter from me in connection with its participation in a Program.

**Intending to be legally bound, I have executed this Consent and Waiver  
as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.**

\_\_\_\_\_  
Name:

**ANNEX B-4**

**FORM OF WAIVER OF SENIOR OR SECTION 4.11 EMPLOYEES TO INVESTOR**

In consideration for the benefits I will receive as a result of the participation of GMAC Inc. (together with its subsidiaries and affiliates, the “*Company*”) in the United States Department of the Treasury’s Automotive Industry Financing Program and/or any other economic stabilization program implemented by the Department of the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the “*EESA*”) or any other related law or regulation thereunder in existence either prior to or subsequent to the date of this letter from me (any such program, including the Automotive Industry Financing Program, a “*Program*”), I hereby voluntarily waive any claim against the United States or my employer for any failure to pay or accrue any bonus or incentive compensation or other compensation as a result of compliance with any Program or related laws and regulations (whether or not in existence as of the date hereof), as implemented by any guidance or regulation thereunder, including the rules set forth in 31 CFR Part 30, or any other guidance or regulations under the EESA and the requirements of the Securities Purchase and Exchange Agreement by and among GMAC Inc., GMAC Capital Trust I and the United States Department of the Treasury entered into on or about December 30, 2009, as amended (the “*Limitations*”).

I acknowledge that the aforementioned laws, regulations and Limitations may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called “golden parachute” agreements), whether or not in writing, that I may have with the Company or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Company acquired through a Program, including without limitation the Automotive Industry Financing Program, or for any other period applicable under such Program or Limitations, as the case may be.

This waiver includes all claims I may have under the laws of the United States or any state (whether or not in existence as of the date hereof) related to the requirements imposed by the aforementioned laws, regulations and Limitations, including without limitation a claim for any compensation or other payments or benefits I would otherwise receive, any challenge to the process by which the aforementioned laws, regulations or Limitations are or were adopted and any tort or constitutional claim about the effect of these laws, regulations or Limitations on my employment relationship.

**Intending to be legally bound, I have executed this Waiver  
as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.**

\_\_\_\_\_  
Name:

## ANNEX B-5

### FORM OF CONSENT AND WAIVER OF SENIOR OR SECTION 4.11 EMPLOYEES TO THE COMPANY

In consideration for the benefits I will receive as a result of the participation of GMAC Inc. (together with its subsidiaries and affiliates, the “*Company*”) in the United States Department of the Treasury’s Automotive Industry Financing Program and/or any other economic stabilization program implemented by the Department of the Treasury under the Emergency Economic Stabilization Act of 2008 (as amended, supplemented, or otherwise modified, the “*EESA*”) or any other related law or regulation thereunder in existence either prior to or subsequent to the date of this letter from me (any such program, including the Automotive Industry Financing Program, a “*Program*”), I hereby voluntarily consent to and waive any claim against any of the Company, the Company’s Board of Directors (or similar governing body), any individual member of the Company’s Board of Directors (or similar governing body) and the Company’s officers, employees, representatives and agents for any failure to pay or accrue any bonus or incentive compensation or other compensation as a result of compliance with any Program or related laws and regulations (whether or not in existence as of the date hereof), as implemented by any guidance or regulation thereunder, including the rules set forth in 31 CFR Part 30, or any other guidance or regulations under the EESA and the requirements of the Securities Purchase and Exchange Agreement by and among GMAC Inc., GMAC Capital Trust I and the United States Department of the Treasury entered into on or about December 30, 2009, as amended (the “*Limitations*”).

I acknowledge that the aforementioned laws, regulations and Limitations may require modification of the compensation, bonus, incentive and other benefit plans, arrangements, policies and agreements (including so-called “golden parachute” agreements), whether or not in writing, that I may have with the Company or in which I may participate as they relate to the period the United States holds any equity or debt securities of the Company acquired through a Program, including without limitation the Automotive Industry Financing Program, or for any other period applicable under such Program or Limitations, as the case may be.

This waiver includes all claims I may have under the laws of the United States or any state (whether or not in existence as of the date hereof) related to the requirements imposed by the aforementioned laws, regulations and Limitations, including without limitation a claim for any compensation or other payments or benefits I would otherwise receive, any challenge to the process by which the aforementioned laws, regulations or Limitations are or were adopted and any tort or constitutional claim about the effect of these laws, regulations or Limitations on my employment relationship.

I agree that, in the event and to the extent that the Compensation Committee of the Board of Directors of the Company or similar governing body (the “*Committee*”) reasonably determines that any compensatory payment and benefit provided to me would cause the Company to fail to be in compliance with the terms and conditions of any laws, regulations or the Limitations (such payment or benefit, an “*Excess Payment*”), upon notification from the Company, I shall promptly repay such Excess Payment to the Company. In addition, I agree that the Company shall have the right to postpone any such payment or benefit for a reasonable

period of time to enable the Committee to determine whether such payment or benefit would constitute an Excess Payment.

I understand that any determination by the Committee as to whether or not, including the manner in which, a payment or benefit needs to be modified, terminated or repaid in order for the Company to be in compliance with Section 111 of the EESA and/or the aforementioned laws, regulations or Limitations shall be final, conclusive and binding. I further understand that the Company is relying on this letter from me in connection with its participation in a Program.

**Intending to be legally bound, I have executed this Consent and Waiver  
as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.**

\_\_\_\_\_  
Name:

**FORM OF COMPANY COUNSEL OPINION**

(a) The Company and each Significant Subsidiary has been duly formed and is validly existing as a corporation in good standing under the laws of the state of its formation.

(b) The shares of Series F-2 Preferred Stock have been duly and validly authorized, and, when issued and delivered pursuant to the Purchase Agreement, the shares of Series F-2 Preferred Stock will be duly and validly issued, will not be issued in violation of any preemptive rights (except that the Series F-2 Preferred Stock shall and are required to be offered to the holders of the Company's Common Stock in accordance with Section 3.1 of the Securities Purchase Agreement in accordance with the Company's Bylaws), and will rank *pari passu* with or senior to all other series or classes of preferred stock of the Company issued on the Closing Date with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Company.

(c) The Warrants have been duly authorized and, when executed and delivered as contemplated by the Purchase Agreement, will constitute a valid and legally binding obligation of the Company enforceable against Company in accordance with their terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity.

(d) The shares of Common Stock issuable upon conversion of the Series F-2 Preferred Stock have been duly authorized and reserved for issuance upon conversion of the Series F-2 Preferred Stock and when so issued pursuant to the terms of the Series F-2 Preferred Stock will be duly and validly issued and will not be issued in violation of any preemptive rights.

(e) The Company has the requisite power and authority to execute and deliver the Purchase Agreement and to carry out its obligations thereunder (which includes the issuance of the Series F-2 Preferred Stock and the Common Stock underlying the Series F-2 Preferred Stock).

(f) The Company has the requisite power and authority to execute and deliver the Warrants and to carry out its obligations thereunder (which includes the sale of the Warrants and the Trust Preferred Securities and the Series F-2 Preferred Stock underlying the Warrants).

(g) The execution, delivery and performance of the Operative Documents, as applicable, by the Company and the consummation by the Company of the transactions contemplated thereby (a) will not result in any violation of the charter or bylaws of the Company, the charter and bylaws of any Significant Subsidiary, the Declaration or the Certificate of Trust and (b) will not conflict with, or result in a breach of any of the terms or provisions of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the creation or imposition of any lien, charge and encumbrance upon any assets or properties of the Company or any Significant Subsidiary under, (A) any agreement, indenture, mortgage or instrument that the Company or any Significant

Subsidiary is a party to or by which it may be bound or to which any of its assets or properties may be subject, or (B) any existing applicable law, rule or administrative regulation of any court or governmental agency or authority having jurisdiction over the Company or any Significant Subsidiary or any of their respective assets or properties, except in case of (b), where any such violation, conflict, breach, default, lien, charge or encumbrance, would not have a material adverse effect on the assets, properties, business, results of operations or financial condition of the Company and its subsidiaries, taken as whole.

(h) the Purchase Agreement has been duly authorized, executed and delivered by the Company;

(i) the Declaration has been duly authorized, executed and delivered by the Company and duly executed and delivered by the Administrative Trustees;

(j) each of the Guarantee and the Indenture has been duly authorized, executed and delivered by the Company and, assuming it has been duly authorized, executed and delivered by the Guarantee Trustee and the Indenture Trustee, respectively, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity;

(k) the Debentures have been duly authorized and executed by the Company and delivered to the Indenture Trustee for authentication in accordance with the Indenture and, when authenticated in accordance with the provisions of the Indenture and delivered to the Trust against payment therefor, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity;

(l) no consent, approval, authorization or order of any court or governmental authority is required for the issuance and sale of the Common Securities, the Trust Preferred Securities or the Debentures, the execution and delivery of and compliance with the Operative Documents by the Company or the consummation of the transactions contemplated by the Operative Documents, except such approvals (specified in such opinion) as have been obtained;

(m) to the knowledge of such counsel, there is no action, suit or proceeding before or by any government, governmental instrumentality, arbitrator or court, domestic or foreign, now pending or threatened against or affecting the Issuer Trust or the Company or any Company Subsidiary that could adversely affect the consummation of the transactions contemplated by the Operative Documents or could have a Material Adverse Effect;

(n) the Company is duly registered as a bank holding company under the Bank Holding Company Act and the regulations thereunder of the Federal Reserve Board, and the deposit accounts of the Company's banking subsidiary are insured by the FDIC to the fullest extent permitted by law and the rules and regulations of the FDIC, and no proceeding for the termination of such insurance are pending or, to such counsel's knowledge, threatened;



(o) the Company is not and, immediately following consummation of the transactions contemplated hereby and the application of the net proceeds therefrom, the Company will not be, an “investment company” or an entity “controlled” by an “investment company”; the Issuer Trust is not, and, following the issuance of the Trust Preferred Securities and the consummation of the transactions contemplated by the Operative Documents and the application of the proceeds therefrom, the Issuer Trust will not be, an “investment company” or an entity “controlled” by an “investment company,” in each case within the meaning of the Investment Company Act.

(p) assuming (a) the accuracy of the representations and warranties, and compliance with the agreements contained in the Purchase Agreement and (b) that the Purchased Securities are sold in a manner contemplated by, and in accordance with the Purchase Agreement and the Declaration, it is not necessary in connection with (w) the offer, sale and delivery of the Trust Preferred Securities by the Issuer Trust to the Investor, (x) the offer, sale and delivery of the Trust Preferred Securities by the Issuer Trust to the Company, (y) the offer, sale and delivery of the Series F-2 Preferred Stock by the Company to the Investor, and (z) the offer, sale and delivery of the Warrants by the Company to the Investor, to register any of the Securities under the Securities Act or to require qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

(q) The Purchase Agreement is a valid and binding obligation of the Company and the Issuer Trust enforceable against the Company and the Issuer Trust in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors’ rights generally and general equitable principles, regardless of whether such enforceability is considered in a proceeding at law or in equity; *provided, however*, such counsel need express no opinion with respect to Section 4.5(g) or the severability provisions of the Purchase Agreement insofar as Section 4.5(g) is concerned.

**FORM OF TAX COUNSEL OPINION**

(i) the Issuer Trust will be classified for United States federal income tax purposes as a grantor trust and not as an association or a publicly traded partnership taxable as a corporation; and

(ii) for United States federal income tax purposes, the Debentures will constitute indebtedness of the Company.

**FORM OF DELAWARE COUNSEL TRUST OPINION**

(i) The Issuer Trust has been duly created and is validly existing in good standing as a statutory trust under the Delaware Statutory Trust Act.

(ii) Under the Delaware Statutory Trust Act and the Declaration, the Issuer Trust has the power and authority (a) to own its properties (including, without limitation, purchasing and holding the Debentures) and conduct its business, (b) to execute, deliver and perform its obligations under each of the Agreements to which it is a party, and (c) to issue and perform its obligations under the Trust Preferred Securities and the Common Securities, all as described in the Declaration.

(iii) The Declaration constitutes a valid and binding obligation of the Company and the Issuer Trustees, enforceable against the Company and the Issuer Trustees in accordance with its terms.

(iv) Under the Delaware Statutory Trust Act and the Declaration, (a) the execution and delivery by the Issuer Trust of the Agreements to which it is a party, and the performance by the Issuer Trust of its obligations thereunder, have been duly authorized by all necessary trust action on the part of the Issuer Trust, and (b) the Company has the authority to execute and deliver the Purchase Agreement on behalf of the Issuer Trust.

(v) The Trust Preferred Securities (a) are represented by the Trust Preferred Securities Certificate, which is substantially similar to the form of certificate attached as Exhibit A-1 to the Declaration and is an acceptable form of certificate to evidence ownership of the applicable Trust Preferred Securities, (b) have been duly authorized by the Declaration, and (c) once duly and validly issued in accordance with the Declaration and delivered to and paid for pursuant to the Purchase Agreement, will represent valid and fully paid and, subject to the qualifications set forth in paragraph (viii) below, non-assessable undivided beneficial interests in the assets of the Issuer Trust and will entitle the holders of the Trust Preferred Securities (each, a “Preferred Securityholder” and collectively, the “Preferred Securityholders”) to the benefits of the Declaration.

(vi) The Common Securities (a) have been duly authorized by the Declaration, and (b) once duly and validly issued in accordance with the Declaration, will represent valid and fully paid undivided beneficial interests in the assets of the Issuer Trust.

(vii) The Preferred Securityholders, as beneficial owners (within the meaning of the Delaware Statutory Trust Act, the “Beneficial Owners”) of the Trust, will be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware, except that the Preferred Securityholders may be obligated to (a) provide indemnity and/or security in connection with and pay taxes or governmental charges arising from transfers or exchanges of certificates representing Trust Preferred Securities and the issuance of replacement certificates representing Trust Preferred Securities to the extent provided in the Declaration, and (b) provide security or

indemnity in connection with requests of or directions to the Institutional Trustee to exercise its rights and powers under the Declaration.

(viii) Under the Delaware Statutory Trust Act and the Declaration, the issuance of the Trust Preferred Securities is not subject to preemptive rights.

(ix) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory agency of the State of Delaware is required for the issuance and sale of the Trust Preferred Securities or the consummation by the Issuer Trust of the transactions contemplated by the Agreements to which it is a party other than the filing of the Certificate of Trust.

(x) The (a) issuance and sale by the Issuer Trust of the Trust Preferred Securities and the Common Securities and (b) execution, delivery and performance by the Issuer Trust of the Agreements to which it is a party and the consummation of the transactions contemplated thereunder, do not conflict with or result in a breach or violation of any of the terms or provisions of the Certificate of Trust or the Declaration or any law, rule or regulation of the State of Delaware applicable to the Issuer Trust.

**FORM OF DELAWARE TRUSTEE COUNSEL OPINION**

(i) BNY Mellon Trust of Delaware is a duly incorporated and validly existing in good standing as a banking corporation with trust powers under the laws of the State of Delaware and has the necessary corporate power and authority to execute, deliver and perform its obligations under the Declaration (including to act as the Delaware Trustee thereunder).

(ii) The Declaration has been duly authorized, executed and delivered by BNY Mellon Trust of Delaware.

(iii) Neither the execution and delivery of the Declaration by BNY Mellon Trust of Delaware nor the performance by BNY Mellon Trust of Delaware of its obligations thereunder (i) conflicts with or constitutes a breach of the certificate of incorporation or by-laws of BNY Mellon Trust of Delaware, or (ii) violates any existing law, governmental rule or regulation of the State of Delaware or the United States of America governing the trust powers of BNY Mellon Trust of Delaware.

(iv) Neither the execution and delivery by BNY Mellon Trust of Delaware of the Declaration, nor the compliance by BNY Mellon Trust of Delaware with the terms thereof, nor the consummation by BNY Mellon Trust of Delaware of any of the transactions contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action with respect to any governmental or regulatory authority or agency under the laws of the State of Delaware or the United States of America governing the trust powers of BNY Mellon Trust of Delaware, except for the filing of the Certificate of Trust with the Secretary of State.

**FORM OF THE INSTITUTIONAL TRUSTEE, THE GUARANTEE TRUSTEE AND  
THE INDENTURE TRUSTEE COUNSEL OPINION**

(i) The Bank of New York Mellon is a banking corporation duly incorporated, validly existing and in good standing under the laws of the State of New York and has the necessary power and authority to execute, deliver and perform its obligations under the Agreements to which it is a party.

(ii) Each of the Agreements to which The Bank of New York Mellon is a party has been duly executed and delivered by The Bank of New York Mellon.

(iii) The execution and delivery by The Bank of New York Mellon of the Agreements to which it is a party and the performance by The Bank of New York Mellon of its obligations thereunder have been duly authorized by all necessary action of The Bank of New York Mellon and do not conflict with or result in a violation of (i) the Articles or the By-laws, (ii) any existing law, rule or regulation of the State of Delaware applicable to the banking or trust powers of The Bank of New York Mellon, or (iii) any existing law, rule or regulation of the United States of America applicable to the banking or trust activities conducted by The Bank of New York Mellon.

(iv) Neither the execution or delivery by The Bank of New York Mellon of the Agreements to which it is a party, nor the compliance by The Bank of New York Mellon with the terms thereof, nor the consummation by The Bank of New York Mellon of any of the transactions contemplated thereby, requires the consent or approval of, the giving of notice to, the registration with, or the taking of any other action with respect to (i) any governmental or regulatory authority or agency under the laws of the State of Delaware having jurisdiction over the banking or trust powers The Bank of New York Mellon, or (ii) any governmental or regulatory authority or agency of the United States of America having jurisdiction over the banking or trust activities conducted by The Bank of New York Mellon.

(v) The Debentures and the Trust Preferred Securities have been duly authenticated and delivered by The Bank of New York Mellon.]

**ANNEX D**

**FORM OF TRUST PREFERRED WARRANT**

[SEE ATTACHED]

## WARRANT TO PURCHASE TRUST PREFERRED SECURITIES

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.

### WARRANT to purchase

#### **Trust Preferred Securities Issued by GMAC Capital Trust I from GMAC Inc.**

Issue Date: December 30, 2009

1. Definitions. Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated.

“*Board of Directors*” means the board of directors of the Company, including any duly authorized committee thereof.

“*business day*” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

“*Charter*” means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

“*Company*” means the Person whose name, corporate or other organizational form and jurisdiction of organization is set forth in Item 1 of Schedule A hereto.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Exercise Price*” means the amount set forth in Item 2 of Schedule A hereto.

“*Expiration Time*” has the meaning set forth in Section 3.



“*Issue Date*” means the date set forth in Item 3 of Schedule A hereto.

“*Liquidation Preference*” means the amount set forth in Item 4 of Schedule A hereto.

“*Original Warrantholder*” means the United States Department of the Treasury. Any actions specified to be taken by the Original Warrantholder hereunder may only be taken by such Person and not by any other Warrantholder.

“*Person*” has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

“*Purchase Agreement*” means the Securities Purchase Agreement – Standard Terms incorporated into the Letter Agreement, dated as of the date set forth in Item 6 of Schedule A hereto, as amended from time to time, between the Company, the Trust and the United States Department of the Treasury (the “*Letter Agreement*”), including all annexes and schedules thereto.

“*Regulatory Approvals*” with respect to the Warrantholder, means, to the extent applicable and required to permit the Warrantholder to exercise this Warrant for Trust Preferred Securities and to own such Trust Preferred Securities without the Warrantholder being in violation of applicable law, rule or regulation, the receipt of any necessary approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Trust*” means GMAC Capital Trust I.

“*Trust Preferred Securities*” means the trust preferred securities of GMAC Capital Trust I set forth in Item 5 of Schedule A hereto.

“*Units*” has the meaning set forth in Section 2.

“*Warrant*” means this Warrant, issued pursuant to the Purchase Agreement.

“*Warrantholder*” has the meaning set forth in Section 2.

2. Number of Units; Exercise Price. This certifies that, for value received, the United States Department of the Treasury or its permitted assigns (the “*Warrantholder*”) is entitled, upon the terms and subject to the conditions hereinafter set forth, to acquire from the Company, in whole or in part, after the receipt of all applicable Regulatory Approvals, if any, up to an aggregate of the number of fully paid and nonassessable trust preferred securities issued by GMAC Capital Trust I set forth in Item 7 of Schedule A hereto (the “*Units*”), at a purchase price per trust preferred security equal to the Exercise Price.

3. Exercise of Warrant; Term. Subject to Section 2, to the extent permitted by applicable laws and regulations, the right to purchase the Units represented by this Warrant is exercisable, in whole or in part by the Warrantholder, at any time or from time to time after the execution and delivery of this Warrant by the Company on the date hereof, but in no event later than 5:00 p.m., New York City time on the tenth anniversary of the Issue Date (the “*Expiration Time*”), by (A) the surrender of this Warrant and Notice of Exercise annexed hereto, duly completed and executed on behalf of the Warrantholder, at the principal executive office of the Company located at the address set forth in Item 8 of Schedule A hereto (or such other office or agency of the Company in the United States as it may designate by notice in writing to the Warrantholder at the address of the Warrantholder appearing on the books of the Company), and (B) payment of the Exercise Price for the Units thereby purchased, by having the Company withhold, from the Trust Preferred Securities that would otherwise be delivered to the Warrantholder upon such exercise, Trust Preferred Securities eligible for purchase by the Warrantholder upon exercise of the Warrant with an aggregate Liquidation Preference equal in value to the aggregate Exercise Price as to which this Warrant is so exercised.

If the Warrantholder does not exercise this Warrant in its entirety, the Warrantholder will be entitled to receive from the Company within a reasonable time, and in any event not exceeding three business days, a new warrant in substantially identical form for the purchase of that number of Units equal to the difference between the number of Units subject to this Warrant and the number of Units as to which this Warrant is so exercised. Notwithstanding anything in this Warrant to the contrary, the Warrantholder hereby acknowledges and agrees that its exercise of this Warrant for Units is subject to the condition that the Warrantholder will have first received any applicable Regulatory Approvals.

4. Issuance of Units; Authorization. Certificates for Units sold to the Warrantholder upon exercise of this Warrant will be issued in such name or names as the Warrantholder may designate and will be delivered to such named Person or Persons within a reasonable time, not to exceed three business days after the date on which this Warrant has been duly exercised in accordance with the terms of this Warrant. The Company hereby represents and warrants that any Units sold to the Warrantholder upon the exercise of this Warrant in accordance with the provisions of Section 3 will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by the Warrantholder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that such Units will be deemed to have been sold to the Warrantholder as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Trust may then be closed or certificates representing such Units may not be actually delivered on such date. The Company will at all times retain ownership of and keep available, solely for the purpose of providing for the exercise of this Warrant, the aggregate number of Units for which this Warrant may be exercised at any time. The Company will use reasonable best efforts to ensure that the Units may be sold to the Warrantholder without violation of any applicable law or regulation or of any requirement of any securities exchange on which the Units are listed or traded.

5. No Rights as Holders; Transfer Books. This Warrant does not entitle the Warrantholder to any voting or other rights as a holder of Trust Preferred Securities, prior to the date of exercise hereof.

6. Charges, Taxes and Expenses. Issuance of certificates for Units to the Warrantholder upon the exercise of this Warrant shall be made without charge to the Warrantholder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company.

7. Transfer/Assignment.

(A) Subject to compliance with clause (B) of this Section 7, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 3. All expenses (other than stock transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 7 shall be paid by the Company.

(B) The transfer of the Warrant and the Units issued upon exercise of the Warrant are subject to the restrictions set forth in Section 4.4 of the Purchase Agreement. If and for so long as required by the Purchase Agreement, this Warrant shall contain the legends as set forth in Section 4.2(a) of the Purchase Agreement.

8. Exchange and Registry of Warrant. This Warrant is exchangeable, upon the surrender hereof by the Warrantholder to the Company, for a new warrant or warrants of like tenor and representing the right to purchase the same aggregate number of Units. The Company shall maintain a registry showing the name and address of the Warrantholder as the registered holder of this Warrant. This Warrant may be surrendered for exchange or exercise in accordance with its terms, at the office of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

9. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in the case of any such loss, theft or destruction, upon receipt of a bond, indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company shall make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same aggregate number of Units provided for in such lost, stolen, destroyed or mutilated Warrant.

10. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

11. Rule 144 Information. The Company covenants that it will use its reasonable best efforts to timely file (or cause to be timely filed) all reports and other documents required to be filed by it or the Trust under the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC thereunder (or, if the Company or the Trust is not required to file such reports, it will, upon the request of any Warrantholder, make publicly available such information as necessary to permit sales pursuant to Rule 144 under the Securities Act), and it will use reasonable best efforts to take such further action as any Warrantholder may reasonably request, in each case to the extent required from time to time to enable such holder to, if permitted by the terms of this Warrant and the Purchase Agreement, sell this Warrant without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 under the Securities Act, as such rule may be amended from time to time, or (B) any successor rule or regulation hereafter adopted by the SEC. Upon the written request of any Warrantholder, the Company will deliver to such Warrantholder a written statement that it has complied with such requirements.

12. RESERVED.

13. No Impairment. The Company will not, by amendment of its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

14. Governing Law. This Warrant will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the Company and the Warrantholder agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia for any civil action, suit or proceeding arising out of or relating to this Warrant or the transactions contemplated hereby, and (b) that notice may be served upon the Company at the address in Section 17 below and upon the Warrantholder at the address for the Warrantholder set forth in the registry maintained by the Company pursuant to Section 8 hereof. To the extent permitted by applicable law, each of the Company and the Warrantholder hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to the Warrant or the transactions contemplated hereby or thereby.

15. Binding Effect. This Warrant shall be binding upon any successors or assigns of the Company.

16. Amendments. This Warrant may be amended and the observance of any term of this Warrant may be waived only with the written consent of the Company and the Warrantholder.

17. Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the

date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered as set forth in Item 9 of Schedule A hereto, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

18. Entire Agreement. This Warrant, the forms attached hereto and Schedule A hereto (the terms of which are incorporated by reference herein), and the Letter Agreement (including all documents incorporated therein), contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or undertakings with respect thereto.

*[Remainder of page intentionally left blank]*

**[Form of Notice of Exercise]**

Date: \_\_\_\_\_

**TO: GMAC INC.**

RE: Election to Purchase Trust Preferred Securities of GMAC Capital Trust I

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby agrees to purchase the number of Trust Preferred Securities set forth below covered by such Warrant. The undersigned, in accordance with Section 3 of the Warrant, hereby agrees to pay the aggregate Exercise Price for such Trust Preferred Securities by having the Company withhold Trust Preferred Securities in the manner set forth in Section 3(B) of the Warrant. A new warrant evidencing the remaining Trust Preferred Securities covered by such Warrant, but not yet subscribed for and purchased, if any, should be issued in the name set forth below.

Number of Trust Preferred Securities \_\_\_\_\_

Aggregate Exercise Price: \_\_\_\_\_

Holder: \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by a duly authorized officer.

Dated: **December** \_\_\_\_, **2009**

**COMPANY: GMAC INC.**

By: \_\_\_\_\_  
Name:  
Title:

**Attest:**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Warrant]*

**FORM OF SERIES F-2 WARRANT**

[SEE ATTACHED]



## WARRANT TO PURCHASE PREFERRED STOCK

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. THIS INSTRUMENT IS ISSUED SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER PROVISIONS OF A SECURITIES PURCHASE AGREEMENT BETWEEN THE ISSUER OF THESE SECURITIES AND THE INVESTOR REFERRED TO THEREIN, A COPY OF WHICH IS ON FILE WITH THE ISSUER. THE SECURITIES REPRESENTED BY THIS INSTRUMENT MAY NOT BE SOLD OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE WITH SAID AGREEMENT. ANY SALE OR OTHER TRANSFER NOT IN COMPLIANCE WITH SAID AGREEMENT WILL BE VOID.

### WARRANT to purchase

#### Shares of Mandatorily Convertible Preferred Stock of GMAC Inc.

Issue Date: December 30, 2009

1. Definitions. Unless the context otherwise requires, when used herein the following terms shall have the meanings indicated.

“*Board of Directors*” means the board of directors of the Company, including any duly authorized committee thereof.

“*business day*” means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

“*Charter*” means, with respect to any Person, its certificate or articles of incorporation, articles of association, or similar organizational document.

“*Company*” means the Person whose name, corporate or other organizational form and jurisdiction of organization is set forth in Item 1 of Schedule A hereto.

“*Convertible Preferred Stock*” means the shares of mandatorily convertible preferred stock set forth in Item 5 of Schedule A hereto.

“*Exchange Act*” means the Securities Exchange Act of 1934, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Exercise Price*” means the amount set forth in Item 2 of Schedule A hereto.

“*Expiration Time*” has the meaning set forth in Section 3.

“*Issue Date*” means the date set forth in Item 3 of Schedule A hereto.

“*Original Warrantholder*” means the United States Department of the Treasury. Any actions specified to be taken by the Original Warrantholder hereunder may only be taken by such Person and not by any other Warrantholder.

“*Person*” has the meaning given to it in Section 3(a)(9) of the Exchange Act and as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act.

“*Purchase Agreement*” means the Securities Purchase and Exchange Agreement, dated as of the date set forth in Item 6 of Schedule A hereto, as amended from time to time, between the Company, GMAC Capital Trust I and the United States Department of the Treasury, including all annexes and schedules thereto.

“*Regulatory Approvals*” with respect to the Warrantholder, means, to the extent applicable and required to permit the Warrantholder to exercise this Warrant for Convertible Preferred Stock and to own such Convertible Preferred Stock without the Warrantholder being in violation of applicable law, rule or regulation, the receipt of any necessary approvals and authorizations of, filings and registrations with, notifications to, or expiration or termination of any applicable waiting period under, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

“*SEC*” means the U.S. Securities and Exchange Commission.

“*Securities Act*” means the Securities Act of 1933, as amended, or any successor statute, and the rules and regulations promulgated thereunder.

“*Shares*” has the meaning set forth in Section 2.

“*Warrant*” means this Warrant, issued pursuant to the Purchase Agreement.

“*Warrantholder*” has the meaning set forth in Section 2.

2. Number of Shares; Exercise Price. This certifies that, for value received, the United States Department of the Treasury or its permitted assigns (the “*Warrantholder*”) is entitled, upon the terms and subject to the conditions hereinafter set forth, to acquire from the Company, in whole or in part, after the receipt of all applicable Regulatory Approvals, if any, up to an aggregate of the number of fully paid and nonassessable shares of mandatorily convertible preferred stock set forth in Item 7 of Schedule A hereto (the “*Shares*”), at a purchase price per share equal to the Exercise Price.

3. Exercise of Warrant; Term. Subject to Section 2, to the extent permitted by applicable laws and regulations, the right to purchase the Shares represented by this Warrant is exercisable, in whole or in part by the Warrantholder, at any time or from time to time after the execution and delivery of this Warrant by the Company on the date hereof, but in no event later than 5:00 p.m., New York City time on the tenth anniversary of the Issue Date (the “*Expiration*”).

*Time*”), by (A) the surrender of this Warrant and Notice of Exercise annexed hereto, duly completed and executed on behalf of the Warrantholder, at the principal executive office of the Company located at the address set forth in Item 8 of Schedule A hereto (or such other office or agency of the Company in the United States as it may designate by notice in writing to the Warrantholder at the address of the Warrantholder appearing on the books of the Company), and (B) payment of the Exercise Price for the Shares thereby purchased, by having the Company withhold, from the shares of Convertible Preferred Stock that would otherwise be delivered to the Warrantholder upon such exercise, shares of Convertible Preferred Stock issuable upon exercise of the Warrant with an aggregate liquidation amount equal in value to the aggregate Exercise Price as to which this Warrant is so exercised.

If the Warrantholder does not exercise this Warrant in its entirety, the Warrantholder will be entitled to receive from the Company within a reasonable time, and in any event not exceeding three business days, a new warrant in substantially identical form for the purchase of that number of Shares equal to the difference between the number of Shares subject to this Warrant and the number of Shares as to which this Warrant is so exercised. Notwithstanding anything in this Warrant to the contrary, the Warrantholder hereby acknowledges and agrees that its exercise of this Warrant for Shares is subject to the condition that the Warrantholder will have first received any applicable Regulatory Approvals.

4. Issuance of Shares; Authorization. Certificates for Shares issued upon exercise of this Warrant will be issued in such name or names as the Warrantholder may designate and will be delivered to such named Person or Persons within a reasonable time, not to exceed three business days after the date on which this Warrant has been duly exercised in accordance with the terms of this Warrant. The Company hereby represents and warrants that any Shares issued upon the exercise of this Warrant in accordance with the provisions of Section 3 will be duly and validly authorized and issued, fully paid and nonassessable and free from all taxes, liens and charges (other than liens or charges created by the Warrantholder, income and franchise taxes incurred in connection with the exercise of the Warrant or taxes in respect of any transfer occurring contemporaneously therewith). The Company agrees that the Shares so issued will be deemed to have been issued to the Warrantholder as of the close of business on the date on which this Warrant and payment of the Exercise Price are delivered to the Company in accordance with the terms of this Warrant, notwithstanding that the stock transfer books of the Company may then be closed or certificates representing such Shares may not be actually delivered on such date. The Company will at all times reserve and keep available, out of its authorized but unissued capital stock, solely for the purpose of providing for the exercise of this Warrant, the aggregate number of shares of Convertible Preferred Stock then issuable upon exercise of this Warrant at any time. The Company will use reasonable best efforts to ensure that the Shares may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange on which the Shares are listed or traded.

5. No Rights as Stockholders; Transfer Books. This Warrant does not entitle the Warrantholder to any voting rights or other rights as a stockholder of the Company prior to the date of exercise hereof. The Company will at no time close its transfer books against transfer of this Warrant in any manner which interferes with the timely exercise of this Warrant.

6. Charges, Taxes and Expenses. Issuance of certificates for Shares to the Warrantholder upon the exercise of this Warrant shall be made without charge to the Warrantholder for any issue or transfer tax or other incidental expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company.

7. Transfer/Assignment.

(A) Subject to compliance with clause (B) of this Section 7, this Warrant and all rights hereunder are transferable, in whole or in part, upon the books of the Company by the registered holder hereof in person or by duly authorized attorney, and a new warrant shall be made and delivered by the Company, of the same tenor and date as this Warrant but registered in the name of one or more transferees, upon surrender of this Warrant, duly endorsed, to the office or agency of the Company described in Section 3. All expenses (other than stock transfer taxes) and other charges payable in connection with the preparation, execution and delivery of the new warrants pursuant to this Section 7 shall be paid by the Company.

(B) The transfer of the Warrant and the Shares issued upon exercise of the Warrant are subject to the restrictions set forth in Section 4.4 of the Purchase Agreement. If and for so long as required by the Purchase Agreement, this Warrant shall contain the legends as set forth in Section 4.2(a) of the Purchase Agreement.

8. Exchange and Registry of Warrant. This Warrant is exchangeable, upon the surrender hereof by the Warrantholder to the Company, for a new warrant or warrants of like tenor and representing the right to purchase the same aggregate number of Shares. The Company shall maintain a registry showing the name and address of the Warrantholder as the registered holder of this Warrant. This Warrant may be surrendered for exchange or exercise in accordance with its terms, at the office of the Company, and the Company shall be entitled to rely in all respects, prior to written notice to the contrary, upon such registry.

9. Loss, Theft, Destruction or Mutilation of Warrant. Upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and in the case of any such loss, theft or destruction, upon receipt of a bond, indemnity or security reasonably satisfactory to the Company, or, in the case of any such mutilation, upon surrender and cancellation of this Warrant, the Company shall make and deliver, in lieu of such lost, stolen, destroyed or mutilated Warrant, a new Warrant of like tenor and representing the right to purchase the same aggregate number of Shares provided for in such lost, stolen, destroyed or mutilated Warrant.

10. Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a business day, then such action may be taken or such right may be exercised on the next succeeding day that is a business day.

11. Rule 144 Information. The Company covenants that it will use its reasonable best efforts to timely file all reports and other documents required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations promulgated by the SEC thereunder (or, if the Company is not required to file such reports, it will, upon the request of any

Warrantholder, make publicly available such information as necessary to permit sales pursuant to Rule 144 under the Securities Act), and it will use reasonable best efforts to take such further action as any Warrantholder may reasonably request, in each case to the extent required from time to time to enable such holder to, if permitted by the terms of this Warrant and the Purchase Agreement, sell this Warrant without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 under the Securities Act, as such rule may be amended from time to time, or (B) any successor rule or regulation hereafter adopted by the SEC. Upon the written request of any Warrantholder, the Company will deliver to such Warrantholder a written statement that it has complied with such requirements.

12. Adjustments and Other Rights. For so long as the Original Warrantholder holds this Warrant or any portion thereof, if any event occurs that, in the good faith judgment of the Board of Directors of the Company, would require adjustment of the Exercise Price or number of Shares into which this Warrant is exercisable in order to fairly and adequately protect the purchase rights of the Warrants in accordance with the essential intent and principles of the Purchase Agreement and this Warrant, then the Board of Directors shall make such adjustments in the application of such provisions, in accordance with such essential intent and principles, as shall be reasonably necessary, in the good faith opinion of the Board of Directors, to protect such purchase rights as aforesaid.

Whenever the Exercise Price or the number of Shares into which this Warrant is exercisable shall be adjusted as provided in this Section 12, the Company shall forthwith file at the principal office of the Company a statement showing in reasonable detail the facts requiring such adjustment and the Exercise Price that shall be in effect and the number of Shares into which this Warrant shall be exercisable after such adjustment, and the Company shall also cause a copy of such statement to be sent by mail, first class postage prepaid, to each Warrantholder at the address appearing in the Company's records.

13. No Impairment. The Company will not, by amendment of its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but will at all times in good faith assist in the carrying out of all the provisions of this Warrant and in taking of all such action as may be necessary or appropriate in order to protect the rights of the Warrantholder.

14. Governing Law. This Warrant will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of New York applicable to contracts made and to be performed entirely within such State. Each of the Company and the Warrantholder agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the District of Columbia for any civil action, suit or proceeding arising out of or relating to this Warrant or the transactions contemplated hereby, and (b) that notice may be served upon the Company at the address in Section 17 below and upon the Warrantholder at the address for the Warrantholder set forth in the registry maintained by the Company pursuant to Section 8 hereof. To the extent permitted by applicable law, each of the Company and the Warrantholder hereby

unconditionally waives trial by jury in any civil legal action or proceeding relating to the Warrant or the transactions contemplated hereby or thereby.

15. Binding Effect. This Warrant shall be binding upon any successors or assigns of the Company.

16. Amendments. This Warrant may be amended and the observance of any term of this Warrant may be waived only with the written consent of the Company and the Warrantholder.

17. Notices. Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices hereunder shall be delivered as set forth in Item 9 of Schedule A hereto, or pursuant to such other instructions as may be designated in writing by the party to receive such notice.

18. Entire Agreement. This Warrant, the forms attached hereto and Schedule A hereto (the terms of which are incorporated by reference herein), and the Purchase Agreement (including all documents incorporated therein), contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior and contemporaneous arrangements or undertakings with respect thereto.

*[Remainder of page intentionally left blank]*

**[Form of Notice of Exercise]**

Date: \_\_\_\_\_

**TO: GMAC INC.**

RE: Election to Purchase Convertible Preferred Stock

The undersigned, pursuant to the provisions set forth in the attached Warrant, hereby agrees to subscribe for and purchase the number of Convertible Preferred Shares set forth below covered by such Warrant. The undersigned, in accordance with Section 3 of the Warrant, hereby agrees to pay the aggregate Exercise Price for such Convertible Preferred Shares in the manner set forth in Section 3(B) of the Warrant. A new warrant evidencing the remaining Convertible Preferred Shares covered by such Warrant, but not yet subscribed for and purchased, if any, should be issued in the name set forth below.

Number of Convertible Preferred Shares \_\_\_\_\_

Aggregate Exercise Price: \_\_\_\_\_

Holder: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by a duly authorized officer.

Dated: December \_\_, 2009

**COMPANY: GMAC INC.**

By: \_\_\_\_\_  
Name:  
Title:

**Attest:**

By: \_\_\_\_\_  
Name:  
Title:

**[Signature Page to Warrant]**



**[SCHEDULES REDACTED]**

**AMENDMENT NO. 1**

---

This AMENDMENT NO. 1 (this "Amendment"), dated as of January 29, 2010, to the Securities Purchase and Exchange Agreement (the "Agreement"), by and among the United States Department of the Treasury ("Treasury"), GMAC Capital Trust I (the "Trust"), and GMAC Inc., a Delaware corporation ("GMAC").

WHEREAS, Section 5.3 of the Agreement provides for the amendment of the Agreement in accordance with the terms set forth therein; and

WHEREAS, the parties hereto desire to amend the Agreement as set forth below;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Section 1.1 Definitions; References. Unless otherwise specifically defined herein, each term used herein shall have the meaning assigned to such term in the Agreement. Each reference to "hereof," "herein," "hereunder," "hereby" and "this Agreement" shall, from and after the date hereof, refer to the Agreement as amended by this Amendment.

**ARTICLE II**  
**AMENDMENTS TO AGREEMENT**

Section 2.1 Amendments to Agreement. The Agreement shall be amended as follows:

- (a) Section 4.5(a)(i) of the Agreement is hereby amended by striking the reference to "within 30 days of the Closing Date" in the first sentence thereof and replacing it with "by March 15, 2010."

ARTICLE III  
MISCELLANEOUS

Section 3.1 No Further Amendment. Except as expressly amended hereby, the Agreement is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the Agreement or any of the documents referred to therein.

Section 3.2 Effect of Amendment. This Amendment shall form a part of the Agreement for all purposes, and each party thereto and hereto shall be bound hereby. From and after the execution of this Amendment by the parties hereto, any reference to the Agreement shall be deemed a reference to the Agreement as amended hereby.

Section 3.3 Governing Law. Section 5.5 of the Agreement shall apply to this Amendment *mutatis mutandis*.

Section 3.4 Separability Clause. Section 5.9 of the Agreement shall apply to this Amendment *mutatis mutandis*.

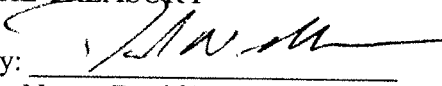
Section 3.5 Counterparts. This Amendment may be simultaneously executed in one or more counterparts, and all such counterparts executed and delivered, each as an original, shall constitute one and the same instrument.

Section 3.6 Headings. The descriptive headings of the several Articles of this Amendment were formulated, used and inserted in this Amendment for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

UNITED STATES DEPARTMENT OF  
THE TREASURY

By: 

Name: David N. Miller

Title: Acting Chief Investment Officer

GMAC INC.

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

Name:

Title:

GMAC CAPITAL TRUST I

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

Name:

Title:

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

UNITED STATES DEPARTMENT OF  
THE TREASURY

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC.

By: C. L. Quenneville  
Name: C. L. Quenneville  
Title: Secretary

GMAC CAPITAL TRUST I

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

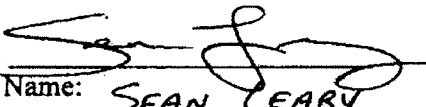
UNITED STATES DEPARTMENT OF  
THE TREASURY

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC.

By: \_\_\_\_\_  
Name:  
Title:

GMAC CAPITAL TRUST I

By:   
Name: SEAN LEARY  
Title: ADMINISTRATIVE TRUSTEE

## AMENDMENT NO. 2

---

This AMENDMENT NO. 2 (this "Amendment"), dated as of March 15, 2010, to the Securities Purchase and Exchange Agreement, by and among the United States Department of the Treasury ("Treasury"), GMAC Capital Trust I (the "Trust"), and GMAC Inc., a Delaware corporation ("GMAC"), dated as of December 30, 2009, as amended on January 29, 2010 (the "Agreement").

WHEREAS, Section 5.3 of the Agreement provides for the amendment of the Agreement in accordance with the terms set forth therein; and

WHEREAS, the parties hereto desire to further amend the Agreement as set forth below;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 Definitions; References. Unless otherwise specifically defined herein, each term used herein shall have the meaning assigned to such term in the Agreement. Each reference to "hereof," "herein," "hereunder," "hereby" and "this Agreement" shall, from and after the date hereof, refer to the Agreement as amended by this Amendment.

### ARTICLE II AMENDMENTS TO AGREEMENT

Section 2.1 Amendments to Agreement. The Agreement shall be amended as follows:

- (a) Section 4.5(a)(i) of the Agreement is hereby amended by striking the reference to "March 15, 2010" in the first sentence thereof and replacing it with "by March 22, 2010."

ARTICLE III  
MISCELLANEOUS

Section 3.1 No Further Amendment. Except as expressly amended hereby, the Agreement is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the Agreement or any of the documents referred to therein.

Section 3.2 Effect of Amendment. This Amendment shall form a part of the Agreement for all purposes, and each party thereto and hereto shall be bound hereby. From and after the execution of this Amendment by the parties hereto, any reference to the Agreement shall be deemed a reference to the Agreement as amended hereby.

Section 3.3 Governing Law. Section 5.5 of the Agreement shall apply to this Amendment *mutatis mutandis*.

Section 3.4 Separability Clause. Section 5.9 of the Agreement shall apply to this Amendment *mutatis mutandis*.

Section 3.5 Counterparts. This Amendment may be simultaneously executed in one or more counterparts, and all such counterparts executed and delivered, each as an original, shall constitute one and the same instrument.

Section 3.6 Headings. The descriptive headings of the several Articles of this Amendment were formulated, used and inserted in this Amendment for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

[Signature Page Follows]



IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

UNITED STATES DEPARTMENT OF  
THE TREASURY

By: 

Name: **David N. Miller**  
Title: **Acting Chief Investment Officer**

GMAC INC.

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

Name:  
Title:

GMAC CAPITAL TRUST I

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

Name:  
Title:

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

UNITED STATES DEPARTMENT OF  
THE TREASURY

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC.

By: Cathy L. Queneville  
Name: Cathy L. Queneville  
Title: Secretary

GMAC CAPITAL TRUST I

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.


UNITED STATES DEPARTMENT OF  
THE TREASURY

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC.

By: \_\_\_\_\_  
Name:  
Title:

GMAC CAPITAL TRUST I

By:  \_\_\_\_\_  
Name: Christopher A. Halmy  
Title: Administrative Trustee

**AMENDMENT NO. 3**

---

This AMENDMENT NO. 3 (this "Amendment"), dated as of June 14, 2010, to the Securities Purchase and Exchange Agreement, dated as of December 30, 2009 and amended on January 29, 2010 and March 15, 2010, (the "Agreement"), by and among the United States Department of the Treasury ("Investor"), GMAC Capital Trust I (the "Trust"), and Ally Financial Inc., f/k/a GMAC Inc., a Delaware corporation ("Company").

WHEREAS, Section 5.3 of the Agreement provides for the amendment of the Agreement in accordance with the terms set forth therein; and

WHEREAS, the parties hereto desire to amend Sections 4.10(a), 4.11(h)(i), and 4.15 of the Agreement as outlined below;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto do hereby agree as follows:

**ARTICLE I**

**AMENDMENTS TO AGREEMENT**

Section 1.1 Amendments to Agreement. The Agreement shall be amended as follows:

- (a) In the last sentence of Section 4.10(a):
  - 1. The text "the Senior Executive Office of the Company" is stricken and replaced with the following: "the Company's chief executive officer, chief financial officer, or any person(s) acting in similar capacity(ies)".
  - 2. The text "senior Executive's" is stricken and replaced with "such person's"
- (b) The text of Section 4.11(h)(i) is stricken in its entirety and replaced with the word "Reserved".
- (c) The text of Section 4.15 is stricken in its entirety and replaced with the following text:

"The Company and its Affiliates shall take all necessary action to ensure that they participate in the United States Department of the Treasury's Home Affordable Mortgage Program ("HAMP") of the Making Home Affordable ("MHA") program. Investor acknowledges that the Company's Affiliate, GMAC Mortgage, LLC, has executed the Commitment to Purchase Financial Instrument and Servicer Participation Agreement, dated as of April 14, 2009 (the "SPA"), with Fannie Mae (acting as the United States Department of the Treasury's fiscal agent). In addition, if the Company or any of its Affiliates owns a residential mortgage loan that is

serviced by a non-affiliated mortgage servicer, and (A) the Company or such Affiliate does not own the mortgage servicing rights (“MSRs”) with respect to such mortgage loan, then the Company or such Affiliate shall consent to any HAMP modification request made by the related mortgage servicer (but only to the extent such servicer is already a HAMP-participating servicer) or (B) the Company or such Affiliate does own the MSRs with respect to such mortgage loan, then the Company or such Affiliate shall either (1) require the related unaffiliated servicer to participate in HAMP with respect to such mortgage loans (which may be satisfied by such unaffiliated servicer executing an assignment and assumption agreement in accordance with the SPA) or (2) transfer the servicing of such mortgage loan to a HAMP-participating servicer (which may be the Company or any of its Affiliates).”

## ARTICLE II

### MISCELLANEOUS

Section 2.1 No Further Amendment. Except as expressly amended hereby, the Agreement is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Amendment is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the Agreement or any of the documents referred to therein.

Section 2.2 Effect of Amendment. This Amendment shall form a part of the Agreement for all purposes, and each party thereto and hereto shall be bound hereby. From and after the execution of this Amendment by the parties hereto, any reference to the Agreement shall be deemed a reference to the Agreement as amended hereby.

Section 2.3 Governing Law. Section 5.5 of the Agreement shall apply to this Amendment mutatis mutandis.

Section 2.4 Separability Clause. Section 5.9 of the Agreement shall apply to this Amendment mutatis mutandis.

Section 2.5 Counterparts. This Amendment may be simultaneously executed in one or more counterparts, and all such counterparts executed and delivered, each as an original, shall constitute one and the same instrument.

Section 2.6 Headings. The descriptive headings of the several Articles of this Amendment were formulated, used and inserted in this Amendment for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

UNITED STATES DEPARTMENT OF  
THE TREASURY

By: 

Name: David N. Miller  
Title: Chief Investment Officer

ALLY FINANCIAL INC.

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

Name:  
Title:

GMAC CAPITAL TRUST I

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

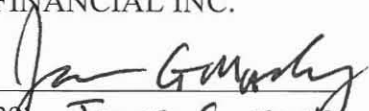
Name:  
Title:

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

UNITED STATES DEPARTMENT OF  
THE TREASURY

By: \_\_\_\_\_  
Name: David N. Miller  
Title: Chief Investment Officer

ALLY FINANCIAL INC.

By:  \_\_\_\_\_  
Name: James G. Mackey  
Title: Chief Financial Officer

GMAC CAPITAL TRUST I

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, Treasury, the Trust and GMAC have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

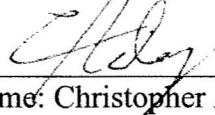
UNITED STATES DEPARTMENT OF  
THE TREASURY

By: \_\_\_\_\_  
Name: David N. Miller  
Title: Chief Investment Officer

ALLY FINANCIAL INC.

By: \_\_\_\_\_  
Name:  
Title:

GMAC CAPITAL TRUST I

By:  \_\_\_\_\_  
Name: Christopher A. Halmy  
Title: Administrative Trustee



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AMENDED AND RESTATED DECLARATION  
OF TRUST  
GMAC CAPITAL TRUST I  
Dated as of December 30, 2009

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<u>Section of Trust Indenture Act of 1939, as amended</u>	<u>Section of Declaration</u>
§ 310	2.1(c)
(b)	5.3(c), 5.3(d)
§ 311 (a)	2.2(b)
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(c)	3.6(d)
§ 317	Section 2.1(c)
(b)	2.1(c)

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\* This Cross-Reference Table does not constitute part of the Declaration and shall not affect the interpretation of any of its terms or provisions.

**AMENDED AND RESTATED**

**DECLARATION OF TRUST**

**OF**

**GMAC Capital Trust I**

December 30, 2009

AMENDED AND RESTATED DECLARATION OF TRUST (“Declaration”) dated and effective as of December 30, 2009, by the Trustees (as defined herein), the Sponsor (as defined herein) and by the holders, from time to time, of undivided beneficial interests in the Trust to be issued pursuant to this Declaration;

WHEREAS, the Trustees and the Sponsor established GMAC Capital Trust I (the “Trust”), a trust under the Statutory Trust Act (as defined herein) pursuant to a Declaration of Trust dated as of December 22, 2009 (the “Original Declaration”) and a Certificate of Trust filed with the Secretary of State of the State of Delaware on December 22, 2009, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and acquiring certain Debentures of the Debenture Issuer;

WHEREAS, as of the date hereof, no interests in the Trust have been issued;

WHEREAS, all of the Trustees and the Sponsor, by this Declaration, amend and restate each and every term and provision of the Original Declaration; and

NOW, THEREFORE, it being the intention of the parties hereto to continue the Trust as a statutory trust under the Statutory Trust Act and that this Declaration constitute the governing instrument of such statutory trust, the Trustees declare that all assets contributed to the Trust will be held in trust for the benefit of the holders, from time to time, of the securities representing undivided beneficial interests in the assets of the Trust issued hereunder, subject to the provisions of this Declaration.

**ARTICLE I  
INTERPRETATION AND DEFINITIONS**

Section 1.1 Definitions.

Unless the context otherwise requires:

- (a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Declaration has the same meaning throughout;
- (c) all references to “the Declaration” or “this Declaration” are to this Declaration as modified, supplemented or amended from time to time;

(d) all references in this Declaration to Articles and Sections and Annexes and Exhibits are to Articles and Sections of and Annexes and Exhibits to this Declaration unless otherwise specified;

(e) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and

(f) a reference to the singular includes the plural and vice versa.

“10% in liquidation amount of the Securities” means, except as provided in the terms of the Trust Preferred Securities or (subject to Section 2.1(a)) by the Trust Indenture Act, Holders of outstanding Securities voting together as a single class or, as the context may require, Holders of outstanding Trust Preferred Securities or Holders of outstanding Common Securities voting separately as a class, who are the record owners of an aggregate liquidation amount representing 10% or more of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“Administrative Trustee” has the meaning specified in Section 5.1(b).

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, whether through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person, excluding any employee benefit plan or related trust; provided that (i) the Trust shall not be deemed to be an Affiliate of the Sponsor and (ii) the United States Department of the Treasury shall not be deemed to be an Affiliate of the Sponsor for purposes hereof.

“Authorized Officer” of a Person means any Person that is authorized to bind such Person.

“Book Entry Interest” means a beneficial interest in a Global Certificate, ownership and transfers of which shall be maintained and made through book entries by a Clearing Agency as described in Section 9.4.

“Business Day” means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of New York generally are authorized or required by law or other governmental action to close.

“Certificate” means a Common Security Certificate or a Trust Preferred Security Certificate.

“Change in 1940 Act Law” has the meaning set forth in Annex I hereto.

“Clearing Agency” means an organization registered as a “Clearing Agency” pursuant to Section 17A of the Exchange Act that is acting as depository for the Trust Preferred Securities and in whose name or in the name of a nominee of that organization shall be registered one or

more Global Certificates and which shall undertake to effect book entry transfers and pledges of the Trust Preferred Securities.

“Clearing Agency Participant” means a broker, dealer, bank, other financial institution or other Person for whom from time to time the Clearing Agency effects book entry transfers and pledges of securities deposited with the Clearing Agency.

“Closing Date” means December 30, 2009.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any successor legislation.

“Commission” means the Securities and Exchange Commission.

“Common Securities” has the meaning specified in Section 7.1.

“Common Security Certificate” means a definitive certificate in fully registered form representing a Common Security substantially in the form of Exhibit A-2.

“Company Indemnified Person” means (a) any Administrative Trustee; (b) any Affiliate of any Administrative Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Administrative Trustee; or (d) any officer, employee or agent of the Trust or its Affiliates.

“Control,” “Controlled” or “Controlling” means, with respect to any Person, any circumstance in which such Person is directly or indirectly controlled by another Person by virtue of the latter Person having the power to (i) elect, or cause the election of (whether by way of voting capital stock, by contract, trust or otherwise), the majority of the members of the board of directors or a similar governing body of the first Person, or (ii) direct (whether by way of voting capital stock, by contract, trust or otherwise) the affairs and policies of such Person.

“Corporate Trust Office” means the office of the Institutional Trustee at which the corporate trust business of the Institutional Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Declaration is located at 101 Barclay Street-8W, New York, New York 10286.

“Covered Person” means (a) any officer, director, shareholder, partner, member, representative, employee or agent of (i) the Trust or (ii) the Trust’s Affiliates; and (b) any Holder of Securities.

“Debenture Issuer” means GMAC in its capacity as issuer of the Debentures under the Indenture.

“Debenture Trustee” means The Bank of New York Mellon, as trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

“Debentures” means the series of Debentures to be issued by the Debenture Issuer under the Indenture to be held by the Institutional Trustee, a specimen certificate for such series of Debentures being Exhibit B.



“Default” in respect of the Securities means a Default (as defined in the Indenture) has occurred and is continuing in respect of the Debentures.

“Definitive Trust Preferred Security Certificates” has the meaning set forth in Section 9.4.

“Delaware Trustee” has the meaning set forth in Section 5.2.

“Distribution” has the meaning set forth in Section 6.1.

“DTC” means The Depository Trust Company, the initial Clearing Agency.

“ERISA” has the meaning specified in Section 9.2(c).

“Exchange” has the meaning set forth in Section 6.2(a).

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation.

“Fiduciary Indemnified Person” has the meaning set forth in Section 10.4(b).

“Fiscal Year” has the meaning set forth in Section 11.1.

“Global Certificate” has the meaning set forth in Section 9.4.

“GMAC” means GMAC Inc., a Delaware corporation.

“Guarantee Agreement” means the guarantee agreement dated as of December 30, 2009, of GMAC, as Guarantor in respect of the Trust Preferred Securities.

“Holder” means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Statutory Trust Act.

“Indemnified Person” means a Company Indemnified Person or a Fiduciary Indemnified Person.

“Indenture” means the Indenture dated as of December 30, 2009, as amended or supplemented from time to time, between the Debenture Issuer and the Debenture Trustee, pursuant to which the Debentures are to be issued.

“Institutional Trustee” means the Trustee meeting the eligibility requirements set forth in Section 5.3.

“Institutional Trustee Account” has the meaning set forth in Section 3.8(c).

“Investment Company” means an investment company as defined in the Investment Company Act.

“Investment Company Act” means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

“Investment Company Event” has the meaning set forth in Annex I hereto.

“Legal Action” has the meaning set forth in Section 3.6(g).

“Liquidation Amount” means, with respect to Trust Preferred Securities or Common Securities, the liquidation amount per Trust Preferred Security or Common Security, respectively, as set forth in Annex I hereto.

“Majority in liquidation amount of the Securities” means, except as provided in the terms of the Trust Preferred Securities or (subject to Section 2.1(a)) by the Trust Indenture Act, Holder(s) of outstanding Securities voting together as a single class or, as the context may require, Holders of outstanding Trust Preferred Securities or Holders of outstanding Common Securities voting separately as a class, who are the record owners of an aggregate liquidation amount representing more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Securities of the relevant class.

“Ministerial Action” has the meaning set forth in Annex I hereto.

“Officers’ Certificate” means, with respect to any Person, a certificate signed by two Authorized Officers of such Person, *provided* that only one Authorized Officer of the Trust is required to sign on behalf of the Trust any Officers’ Certificate delivered pursuant to Section 2.5 of this Declaration. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Declaration shall include:

(a) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers’ Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer’s opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

“Paying Agent” has the meaning specified in Section 3.8(h).

“Payment Amount” has the meaning specified in Section 6.1.

“Person” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

“Private Placement Legend” has the meaning specified in Section 9.1(b).

“Purchase Agreement” means the Securities Purchase and Exchange Agreement dated December 30, 2009, by and among the United States Department of the Treasury, GMAC and the Trust.

“Quorum” means any one Administrative Trustee or, if there is only one Administrative Trustee, such Administrative Trustee.

“Regulatory Capital Event” has the meaning set forth in Annex I hereto.

“Related Party” means, with respect to the Sponsor, any direct or indirect wholly owned subsidiary of the Sponsor or any other Person that owns, directly or indirectly, 100% of the outstanding voting securities of the Sponsor.

“Responsible Officer” means, with respect to the Institutional Trustee, any officer within the Corporate Trust Office of the Institutional Trustee with direct responsibility for the administration of this Declaration and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Rule 3a-7” means Rule 3a-7 under the Investment Company Act.

“Securities” means the Common Securities and the Trust Preferred Securities.

“Securities Act” means the Securities Act of 1933, as amended from time to time, or any successor legislation.

“Security Registrar” has the meaning set forth in Section 9.2(a).

“Special Event” has the meaning set forth in Annex I hereto.

“Sponsor” means GMAC or any successor entity in a merger, consolidation or amalgamation, in its capacity as sponsor of the Trust.

“Sponsor Affiliated Holder” has the meaning set forth in Section 6.2(a).

“Statutory Trust Act” means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code §3801 et seq., as it may be amended from time to time, or any successor legislation.

“Successor Delaware Trustee” has the meaning set forth in Section 5.6(b).

“Successor Entity” has the meaning set forth in Section 3.15(b).

“Successor Institutional Trustee” has the meaning set forth in Section 5.6(b).

“Successor Securities” has the meaning set forth in Section 3.15(b).

“Super Majority” has the meaning set forth in Section 2.6(a)(ii).

“Similar Laws” has the meaning specified in Section 9.2(c).

“Tax Event” has the meaning set forth in Annex I hereto.

“Transfer Certification” has the meaning set forth in Section 9.2(b).

“Transfer Opinion” has the meaning set forth in Section 9.2(b).

“Treasury Regulations” means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Trust Preferred Securities” has the meaning specified in Section 7.1.

“Trust Preferred Security Beneficial Owner” means, with respect to a Book Entry Interest, a Person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Clearing Agency, or on the books of a Person maintaining an account with such Clearing Agency (directly as a Clearing Agency Participant or as an indirect participant, in each case in accordance with the rules of such Clearing Agency).

“Trust Preferred Security Certificate” means a certificate representing a Trust Preferred Security substantially in the form of Exhibit A-1.

“Trustee” or “Trustees” means each Person who has signed this Declaration as a trustee, so long as such Person shall continue in office in accordance with the terms hereof, and all other Persons who may from time to time be duly appointed, qualified and serving as Trustees in accordance with the provisions hereof, and references herein to a Trustee or the Trustees shall refer to such Person or Persons solely in their capacity as trustees hereunder.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation.

“U.S. Government” means any of (i) the federal government of the United States of America, (ii) any instrumentality or agency of the federal government of the United States of America and (iii) any Person wholly-owned by, or the sole beneficiary of which is, the federal government of the United States of America or any instrumentality or agency thereof.

## **ARTICLE II TRUST INDENTURE ACT**

### **Section 2.1 Trust Indenture Act; Application.**

(a) Except as otherwise expressly provided herein, the Trust Indenture Act shall apply as a matter of contract to this Declaration for purposes of interpretation, construction and defining the rights and obligations hereunder, and this Declaration, the Sponsor and the Institutional Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this Declaration were qualified under that Act on the date of this Declaration; *provided, however*, that Securities held by the U.S. Government shall not be disregarded under the terms of the final paragraph of § 316(a) of the Trust Indenture Act. Upon and following qualification as an indenture under the Trust Indenture

Act, this Declaration shall be subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration and shall, to the extent applicable, be governed by such provisions, subject to any applicable exemptive order issued by the Commission, including any such order addressing the final paragraph of § 316(a) of the Trust Indenture Act.

(b) The Institutional Trustee shall be the only Trustee that is a Trustee for the purposes of the Trust Indenture Act.

(c) If and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties required to be imposed by §§ 310 to 317, inclusive, of the Trust Indenture Act, and such duties are not expressly excluded by this Declaration as permitted by the Trust Indenture Act, such imposed duties shall control.

(d) The application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

#### Section 2.2 Lists of Holders of Securities.

(a) Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide the Institutional Trustee (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Institutional Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, *provided* that neither the Sponsor nor the Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Institutional Trustee by the Sponsor and the Administrative Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Institutional Trustee. The Institutional Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in the capacity as Paying Agent (if acting in such capacity), *provided* that the Institutional Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Institutional Trustee shall comply with its obligations under §§ 311(a), 311(b) and 312(b) of the Trust Indenture Act.

#### Section 2.3 Reports by the Institutional Trustee.

Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the Closing Date), the Institutional Trustee shall provide to the Holders of the Trust Preferred Securities such reports as are required by § 313(a) of the Trust Indenture Act, if any, in the form and in the manner provided by § 313 of the Trust Indenture Act. The Institutional Trustee shall also comply with the other requirements of § 313 of the Trust Indenture Act.

#### Section 2.4 Reports to Institutional Trustee.

Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Institutional Trustee such documents, reports and information as required by § 314(a) of the Trust Indenture Act (if any) and the compliance certificate required by § 314(a)(4) of the Trust Indenture Act in the form, in the manner and at the times required by § 314 of the Trust Indenture Act, but, with respect to the compliance certificate, no later than 120 days after each calendar year. The Sponsor shall notify the Institutional Trustee when any Trust Preferred Securities are listed on any stock exchange.

#### Section 2.5 Evidence of Compliance with Conditions Precedent.

Each of the Sponsor and the Administrative Trustees on behalf of the Trust shall provide to the Institutional Trustee such evidence of compliance with any conditions precedent provided for in this Declaration that relate to any of the matters set forth in § 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to § 314(c)(1) of the Trust Indenture Act may be given in the form of an Officers' Certificate.

#### Section 2.6 Defaults; Waiver.

(a) The Holders of a Majority in liquidation amount of Trust Preferred Securities may, by vote, on behalf of the Holders of all of the Trust Preferred Securities, waive any past Default in respect of the Trust Preferred Securities and its consequences, *provided* that if the underlying Default under the Indenture:

(i) is not waivable under the Indenture, the Default under the Declaration shall also not be waivable; or

(ii) is waivable only with the consent of holders of more than a majority in principal amount of the Debentures (a "Super Majority") affected thereby, only the Holders of at least the proportion in aggregate liquidation amount of the Trust Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding may waive such Default in respect of the Trust Preferred Securities under the Declaration.

The foregoing provisions of this Section 2.6(a) shall be in lieu of § 316(a)(1)(B) of the Trust Indenture Act and such § 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Upon such waiver, any such default shall cease to exist, and any Default with respect to the Trust Preferred Securities arising therefrom shall be deemed to have been cured, for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or a Default with respect to the Trust Preferred Securities or impair any right consequent thereon. Any waiver by the Holders of the Trust Preferred Securities of a Default with respect to the Trust Preferred Securities shall also be deemed to constitute a waiver by the Holders of the Common Securities of any such Default with respect to the Common Securities for all purposes of this Declaration without any further act, vote, or consent of the Holders of the Common Securities.

(b) The Holders of a Majority in liquidation amount of the Common Securities may, by vote on behalf of the Holders of all of the Common Securities, waive any past Default with respect to the Common Securities and its consequences, *provided* that if the underlying Default under the Indenture:

(i) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Default under the Declaration as provided in this Section 2.6(b), the Default under the Declaration shall also not be waivable; or

(ii) is waivable only with the consent of a Super Majority, except where the Holders of the Common Securities are deemed to have waived such Default under the Declaration as provided in this Section 2.6(b), only the Holders of at least the proportion in aggregate liquidation amount of the Common Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding may waive such Default in respect of the Common Securities under the Declaration;

*provided, further* each Holder of Common Securities will be deemed to have waived any such Default and all Defaults with respect to the Common Securities and its consequences until all Defaults with respect to the Trust Preferred Securities have been cured, waived or otherwise eliminated, and until such Defaults with respect to the Trust Preferred Securities have been so cured, waived or otherwise eliminated, the Institutional Trustee will be deemed to be acting solely on behalf of the Holders of the Trust Preferred Securities and only the Holders of the Trust Preferred Securities will have the right to direct the Institutional Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.6(b) shall be in lieu of §§ 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such §§ 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.6(b), upon the waiver of a Default by the Holders of a Majority in liquidation amount of the Common Securities, any such default shall cease to exist and any Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Default with respect to the Common Securities or impair any right consequent thereon.

(c) A waiver of a Default under the Indenture by the Institutional Trustee at the direction of the Holders of the Trust Preferred Securities, constitutes a waiver of the corresponding Default under this Declaration. The foregoing provisions of this Section 2.6(c) shall be in lieu of § 316(a)(1)(B) of the Trust Indenture Act and such § 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

#### Section 2.7 Default; Notice.

(a) The Institutional Trustee shall, within 90 days after the occurrence of a Default, transmit by mail, first class postage prepaid, to the Holders of the Securities, notices of (i) all defaults with respect to the Securities actually known to a Responsible Officer of the Institutional Trustee, unless such defaults have been cured before the giving of such notice (the term “defaults” for the purposes of this Section 2.7(a) being hereby defined to be a Default as defined in the Indenture, not including any periods of grace provided for therein and irrespective of the

giving of any notice provided therein) and (ii) any notice of default received from the Indenture Trustee with respect to the Debentures, which notice from the Institutional Trustee to the Holders shall state that a Default under the Indenture also constitutes a Default with respect to the Securities; *provided* that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Debentures or in the payment of any sinking fund installment established for the Debentures, the Institutional Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Institutional Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

(b) The Institutional Trustee shall not be deemed to have knowledge of any default except:

(i) a default under Sections 5.7(b) and 5.7(c) of the Indenture; or

(ii) any default as to which the Institutional Trustee shall have received written notice or of which a Responsible Officer of the Institutional Trustee charged with the administration of this Declaration shall have actual knowledge.

### **ARTICLE III ORGANIZATION**

#### Section 3.1 Name.

The Trust continued hereby shall be known as “GMAC Capital Trust I,” as such name may be modified from time to time by the Administrative Trustees following written notice to the Institutional Trustee, the Delaware Trustee and the Holders of Securities. The Trust’s activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

#### Section 3.2 Office.

The address of the principal office of the Trust is c/o GMAC Inc., 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000. On 10 Business Days written notice to the Institutional Trustee, the Delaware Trustee and the Holders of Securities, the Administrative Trustees may designate another principal office.

#### Section 3.3 Purpose.

The exclusive purposes and functions of the Trust are (a) to issue and sell the Trust Preferred Securities, (b) to issue and sell the Common Securities, (c) to acquire the Debentures from the Debenture Issuer, and (d) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise take any action or undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.



Section 3.4 Authority.

Subject to the limitations provided in this Declaration and to the specific duties of the Institutional Trustee, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Institutional Trustee on behalf of the Trust in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

Section 3.5 Title to Property of the Trust.

Except as provided in Section 3.8 with respect to the Debentures and the Institutional Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

Section 3.6 Powers and Duties of the Administrative Trustees.

The Administrative Trustees shall have the exclusive power, duty and authority to cause the Trust to engage in the following activities, if and as applicable (and subject, as applicable, to the terms and conditions of the Purchase Agreement):

(a) to issue the Trust Preferred Securities as described in the Purchase Agreement and in accordance with this Declaration and to issue and sell the Common Securities in accordance with this Declaration; *provided, however*, that the Trust may issue no more than one series of Trust Preferred Securities and no more than one series of Common Securities, and, *provided further*, that there shall be no interests in the Trust other than the Securities, and the issuance of Securities shall be limited to a simultaneous issuance of both Trust Preferred Securities and Common Securities on the Closing Date;

(b) in connection with the issuance of the Trust Preferred Securities, at the direction of the Sponsor, to:

(i) execute and file with the Commission on behalf of the Trust a registration statement on Form S-3 or on another appropriate form, or a registration statement under Rule 462(b) of the Securities Act, in each case prepared by the Sponsor, including any pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Trust Preferred Securities;

(ii) execute and file any documents prepared by the Sponsor, or take any acts as determined by the Sponsor to be necessary in order to qualify or register all or part of the Trust Preferred Securities in any State in which the Sponsor has determined to qualify or register such Trust Preferred Securities for sale;

(iii) execute and file an application, prepared by the Sponsor, to the New York Stock Exchange or any other national stock exchange for listing upon notice of issuance of any Trust Preferred Securities; and

(iv) execute and file with the Commission on behalf of the Trust a registration statement on Form 8-A, prepared by the Sponsor, including any pre-effective or post-effective amendments thereto, relating to the registration of the Trust Preferred Securities under Section 12(b) of the Exchange Act.

(c) to acquire the Debentures as described in the Purchase Agreement; *provided, however,* that the Administrative Trustees shall cause legal title to the Debentures to be held of record in the name of the Institutional Trustee for the benefit of the Holders of the Trust Preferred Securities and the Holders of Common Securities;

(d) to give the Sponsor and the Institutional Trustee prompt written notice of the occurrence of a Special Event, provided that the Administrative Trustees shall consult with the Sponsor and the Institutional Trustee before taking or refraining from taking any Ministerial Action in relation to a Special Event;

(e) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of § 316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Trust Preferred Securities and Holders of Common Securities as to such actions and applicable record dates;

(f) to take all actions and perform such duties as may be required of the Administrative Trustees pursuant to the terms of the Securities;

(g) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust (“Legal Action”), unless pursuant to Section 3.8(e), the Institutional Trustee has the exclusive power to bring such Legal Action;

(h) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and pay reasonable compensation for such services;

(i) to cause the Trust to comply with the Trust’s obligations under the Trust Indenture Act;

(j) to give the certificate required by § 314(a)(4) of the Trust Indenture Act to the Institutional Trustee, which certificate may be executed by any Administrative Trustee;

(k) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;

(l) to act as, or appoint another Person to act as, registrar and transfer agent for the Securities;

(m) to give prompt written notice to the Holders of the Securities of any notice received from the Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Indenture;

(n) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Trust Preferred Securities or to enable the Trust to effect the purposes for which the Trust was created;

(o) to take any action, not inconsistent with this Declaration or with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.6, including, but not limited to:

(i) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(ii) causing the Trust to be classified for United States federal income tax purposes as a grantor trust; and

(iii) cooperating with the Debenture Issuer to ensure that the Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes;

*provided* that any such action does not adversely affect the interests of Holders;

(p) to take all action necessary to cause all applicable tax returns and tax information reports that are required to be filed with respect to the Trust to be duly prepared and filed by the Administrative Trustees, on behalf of the Trust; and

(q) to execute all documents or instruments (including the Purchase Agreement), perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing.

The Administrative Trustees must exercise the powers set forth in this Section 3.6 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Administrative Trustees shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.3.

Subject to this Section 3.6, the Administrative Trustees shall have none of the powers or the authority of the Institutional Trustee set forth in Section 3.8.

Any expenses incurred by the Administrative Trustees pursuant to this Section 3.6 shall be reimbursed by the Debenture Issuer.

### Section 3.7 Prohibition of Actions by the Trust and the Trustees.

(a) The Trust shall not, and the Trustees (including the Institutional Trustee) shall not cause the Trust to, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not:

(i) invest any proceeds received by the Trust from holding the Debentures, but shall promptly distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;

(ii) acquire any assets other than as expressly provided herein;

(iii) possess Trust property for other than a Trust purpose;

(iv) make any loans or incur any indebtedness;

(v) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;

(vi) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or

(vii) other than as provided in this Declaration or Annex I, (A) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (B) waive any past default that is waivable under the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Debentures shall be due and payable or (D) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required unless the Trust shall have obtained an opinion of nationally recognized independent tax counsel experienced in such matters to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes.

### Section 3.8 Powers and Duties of the Institutional Trustee.

(a) The legal title to the Debentures shall be owned by and held of record in the name of the Institutional Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Institutional Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Institutional Trustee in accordance with Section 5.6. Such vesting and cessation of title shall be effective whether or not conveying documents with regard to the Debentures have been executed and delivered.

(b) The Institutional Trustee shall not transfer its right, title and interest in the Debentures to the Administrative Trustees or to the Delaware Trustee (if the Institutional Trustee does not also act as Delaware Trustee).

(c) The Institutional Trustee shall:

(i) establish and maintain a segregated non-interest bearing trust account (the "Institutional Trustee Account") in the name of and under the exclusive control of the Institutional Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Institutional Trustee, deposit such funds into the Institutional Trustee Account and make payments to the Holders of the Trust Preferred Securities and Holders of the Common Securities from the Institutional Trustee Account in accordance with Section 6.1. Funds in the Institutional Trustee Account shall be held uninvested until disbursed in accordance with this Declaration. The Institutional Trustee Account shall be

an account that is maintained with a banking institution the rating on whose long-term unsecured indebtedness assigned by a “nationally recognized statistical rating organization,” as that term is defined for purposes of Rule 436(g)(2) under the Securities Act, is at least equal to the rating assigned to the Trust Preferred Securities by a nationally recognized statistical rating organization;

(ii) engage in such ministerial activities as shall be necessary or appropriate to effect the redemption of the Trust Preferred Securities and the Common Securities to the extent the Debentures are redeemed or mature and to effect the Exchange of Trust Preferred Securities and Common Securities for Debentures to the extent the Sponsor or a Sponsor Affiliated Holder elects to effect such Exchange pursuant to Section 6.2 hereof; and

(iii) upon written notice of distribution issued by the Administrative Trustees in accordance with the terms of the Securities, engage in such ministerial activities as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities pursuant to the terms of the Securities.

(d) The Institutional Trustee shall take all actions and perform such duties as may be specifically required of the Institutional Trustee pursuant to the terms of the Securities.

(e) Subject to Section 2.6, the Institutional Trustee shall take any Legal Action which arises out of or in connection with a Default of which a Responsible Officer of the Institutional Trustee has actual knowledge or the Institutional Trustee’s duties and obligations under this Declaration or the Trust Indenture Act.

(f) The Institutional Trustee shall not resign as a Trustee unless either:

(i) the Trust has been completely liquidated and the proceeds of the liquidation distributed to the Holders of Securities, pursuant to the terms of the Securities; or

(ii) a Successor Institutional Trustee has been appointed and has accepted that appointment in accordance with Section 5.6.

(g) The Institutional Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Debentures under the Indenture and, if a Default actually known to a Responsible Officer of the Institutional Trustee occurs and is continuing, the Institutional Trustee shall, for the benefit of Holders of the Securities, enforce its rights as holder of the Debentures subject to the rights of the Holders pursuant to the terms of such Securities, this Declaration, the Statutory Trust Act and the Trust Indenture Act.

(h) The Institutional Trustee may authorize one or more Persons (each, a “Paying Agent”) to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all Securities and any such Paying Agent shall comply with § 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Institutional Trustee at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Institutional Trustee.

(i) Subject to this Section 3.8, the Institutional Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 3.6.

The Institutional Trustee must exercise the powers set forth in this Section 3.8 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.3, and the Institutional Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.3.

Section 3.9 Certain Duties and Responsibilities of the Institutional Trustee.

(a) The Institutional Trustee, before the occurrence of any Default and after the curing of all Defaults that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration and no implied covenants shall be read into this Declaration against the Institutional Trustee. In case a Default has occurred (that has not been cured or waived pursuant to Section 2.6) of which a Responsible Officer of the Institutional Trustee has actual knowledge, the Institutional Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in the exercise of such rights and powers, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) No provision of this Declaration shall be construed to relieve the Institutional Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) prior to the occurrence of a Default and after the curing or waiving of all such Defaults that may have occurred:

(A) the duties and obligations of the Institutional Trustee shall be determined solely by the express provisions of this Declaration and the Institutional Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration, and no implied covenants or obligations shall be read into this Declaration against the Institutional Trustee; and

(B) in the absence of willful misconduct on the part of the Institutional Trustee, the Institutional Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Institutional Trustee and conforming to the requirements of this Declaration; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Institutional Trustee, the Institutional Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Declaration (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(ii) the Institutional Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Institutional Trustee, unless it shall be proved that the Institutional Trustee was negligent in ascertaining the pertinent facts;

(iii) the Institutional Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Institutional Trustee, or exercising any trust or power conferred upon the Institutional Trustee under this Declaration;

(iv) no provision of this Declaration shall require the Institutional Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Declaration or indemnity reasonably satisfactory to the Institutional Trustee against such risk or liability is not reasonably assured to it;

(v) the Institutional Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Institutional Trustee Account shall be to deal with such property in a similar manner as the Institutional Trustee deals with similar property for its own account, subject to the protections and limitations on liability afforded to the Institutional Trustee under this Declaration and the Trust Indenture Act;

(vi) the Institutional Trustee shall have no duty or liability for or with respect to the value, genuineness, existence or sufficiency of the Debentures or the payment of any taxes or assessments levied thereon or in connection therewith;

(vii) the Institutional Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Sponsor. Money held by the Institutional Trustee need not be segregated from other funds held by it except in relation to the Institutional Trustee Account maintained by the Institutional Trustee pursuant to Section 3.8(c)(i) and except to the extent otherwise required by law; and

(viii) the Institutional Trustee shall not be responsible for monitoring the compliance by the Administrative Trustees or the Sponsor with their respective duties under this Declaration, nor shall the Institutional Trustee be liable for any default or misconduct of the Administrative Trustees or the Sponsor.

#### Section 3.10 Certain Rights of Institutional Trustee.

(a) Subject to the provisions of Section 3.9:

(i) the Institutional Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(ii) any direction or act of the Sponsor or the Administrative Trustees contemplated by this Declaration shall be sufficiently evidenced by an Officers' Certificate;

(iii) whenever in the administration of this Declaration, the Institutional Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Institutional Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Sponsor or the Administrative Trustees;

(iv) the Institutional Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or registration thereof;

(v) the Institutional Trustee may consult with counsel or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion, such counsel may be counsel to the Sponsor or any of its Affiliates, and may include any of its employees. The Institutional Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(vi) the Institutional Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holder, unless such Holder shall have provided to the Institutional Trustee security and indemnity, reasonably satisfactory to the Institutional Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Institutional Trustee's agents, nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Institutional Trustee, *provided* that nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Institutional Trustee, upon the occurrence of a Default, of its obligation to exercise the rights and powers vested in it by this Declaration;

(vii) the Institutional Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Institutional Trustee, in its discretion and after prior consultation with the Sponsor, may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Sponsor and shall incur no liability of any kind by reason of such inquiry or investigation;

(viii) the Institutional Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Institutional Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(ix) the rights, privileges, protections, immunities and benefits given to the Institutional Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Institutional Trustee in each of its capacities hereunder, and each



agent, custodian and other Person employed to act hereunder by the Institutional Trustee and appointed with due care by it;

(x) any action taken by the Institutional Trustee or its agents hereunder shall bind the Trust and the Holders of the Securities, and the signature of the Institutional Trustee or its agents alone shall be sufficient and effective to perform any such action and no third party shall be required to inquire as to the authority of the Institutional Trustee to so act or as to its compliance with any of the terms and provisions of this Declaration, both of which shall be conclusively evidenced by the Institutional Trustee's or its agent's taking such action;

(xi) whenever in the administration of this Declaration the Institutional Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Institutional Trustee (i) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities as would be entitled to direct the Institutional Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in or accordance with such instructions;

(xii) except as otherwise expressly provided by this Declaration, the Institutional Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration;

(xiii) in no event shall the Institutional Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Institutional Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(xiv) in no event shall the Institutional Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Declaration arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of third-party utilities, communications or computer (software or hardware) services.

(b) No provision of this Declaration shall be deemed to impose any duty or obligation on the Institutional Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it, in any jurisdiction in which it shall be illegal, or in which the Institutional Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts, or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Institutional Trustee shall be construed to be a duty.

### Section 3.11 Delaware Trustee.

The Delaware Trustee is appointed to serve as the trustee of the Trust in the State of Delaware for the sole purpose of satisfying the requirement of Section 3807(a) of the Statutory Trust Act that the Trust have at least one trustee with a principal place of business in the State of Delaware. It is understood and agreed by the parties hereto that the Delaware Trustee shall have none of the duties or liabilities of the Administrative Trustees or the Institutional Trustee. The duties of the Delaware Trustee shall be limited to (i) accepting legal process served on the Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Delaware Secretary of State which the Delaware Trustee is required to execute under Section 3811 of the Statutory Trust Act. To the extent that, at law or in equity, the Delaware Trustee has duties (including fiduciary duties) and liabilities relating thereto to the Trust or the Holders, it is hereby understood and agreed by the other parties hereto that such duties and liabilities are replaced by the duties and liabilities of the Delaware Trustee expressly set forth in this Declaration. The Delaware Trustee shall have no liability for the acts or omissions of the Administrative Trustees or the Institutional Trustee. The Delaware Trustee shall be entitled to all of the same rights, protections, indemnities and immunities under this Declaration and with respect to the Trust as the Institutional Trustee.

### Section 3.12 Execution of Documents.

Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Statutory Trust Act, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.6; *provided* that the registration statement referred to in Section 3.6(b)(i), including any amendments thereto, shall be signed by all of the Administrative Trustees.

### Section 3.13 Not Responsible for Recitals or Issuance of Securities.

The recitals contained in this Declaration and the Securities shall be taken as the statements of the Sponsor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration or the Securities.

### Section 3.14 Duration of Trust.

The Trust, unless dissolved and terminated pursuant to the provisions of Article VIII hereof, shall have existence for fifty-five (55) years from the Closing Date.

### Section 3.15 Mergers.

(a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any corporation or other body, except as described in Section 3.15(b) and (c).

(b) The Trust may, with the consent of the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Institutional Trustee, consolidate, amalgamate, merge with or into, or be replaced by a trust organized as such under the laws of any State; *provided that*:

(i) such successor entity (the “Successor Entity”) either:

(A) expressly assumes all of the obligations of the Trust under the Securities; or

(B) substitutes for the Securities other securities having substantially the same terms as the Trust Preferred Securities (the “Successor Securities”) so long as the Successor Securities rank the same as the Trust Preferred Securities rank with respect to Distributions and payments upon liquidation, redemption and otherwise;

(ii) the Debenture Issuer expressly acknowledges a trustee of the Successor Entity that possesses the same powers and duties as the Institutional Trustee in its capacity as the Holder of the Debentures;

(iii) the Trust Preferred Securities or any Successor Securities are listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Trust Preferred Securities are then listed or quoted;

(iv) such merger, consolidation, amalgamation or replacement does not cause the Trust Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;

(v) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of such Holders’ interests in the new entity as a result of such merger, consolidation, amalgamation or replacement);

(vi) such Successor Entity has a purpose substantially identical to that of the Trust;

(vii) prior to such merger, consolidation, amalgamation or replacement, the Trust has received an opinion of a nationally recognized independent counsel to the Trust experienced in such matters to the effect that:

(A) such merger, consolidation, amalgamation or replacement does not adversely affect the rights, preferences and privileges of the Holders of the Securities (including any Successor Securities) in any material respect (other than with respect to any dilution of the Holders’ interest in the new entity); and

(B) following such merger, consolidation, amalgamation or replacement, neither the Trust nor the Successor Entity will be required to register as an Investment Company; and

(C) following such merger, consolidation, amalgamation or replacement, the Trust (or the Successor Entity) will continue to be classified as a grantor trust for United States federal income tax purposes; and

(viii) the Sponsor guarantees the obligations of such Successor Entity under the Successor Securities at least to the extent provided by the Guarantee Agreement.

(c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it, if in the opinion of a nationally recognized independent tax counsel experienced in such matters, such consolidation, amalgamation, merger or replacement would cause the Trust or the Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

#### **ARTICLE IV SPONSOR**

##### **Section 4.1 Sponsor's Purchase of Common Securities.**

On the Closing Date, the Sponsor will purchase all of the Common Securities issued by the Trust at the same time as the Trust Preferred Securities are issued.

##### **Section 4.2 Responsibilities of the Sponsor.**

In connection with the issue of the Trust Preferred Securities, the Sponsor shall have the exclusive right to engage in the following activities, if and as applicable (and subject, as applicable, to the terms and conditions of the Purchase Agreement):

(a) to prepare for filing by the Trust with the Commission a registration statement on Form S-3 or on another appropriate form, or a registration statement under Rule 462(b) of the Securities Act, including any pre-effective or post-effective amendments thereto, relating to the registration under the Securities Act of the Trust Preferred Securities;

(b) to determine the States in which to take appropriate action to qualify or register for sale all or part of the Trust Preferred Securities and to do any and all such acts, other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Sponsor deems necessary or advisable in order to comply with the applicable laws of any such States;

(c) to prepare for filing by the Trust an application to the New York Stock Exchange or any other national stock exchange for listing upon notice of issuance of any Trust Preferred Securities;

(d) to negotiate the terms of the Purchase Agreement and other related agreements providing for the sale of the Trust Preferred Securities. The Sponsor shall have the authority to execute and deliver the Purchase Agreement on behalf of the Trust;

(e) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A, including any pre-effective or post-effective amendments thereto, relating to the registration of the Trust Preferred Securities under Section 12(b) of the Exchange Act, including any amendments thereto; and

(f) to otherwise carry out and perform the provisions of the Purchase Agreement providing for, among other things, the issuance of the Trust Preferred Securities.

## **ARTICLE V TRUSTEES**

### Section 5.1 Number of Trustees; U.S. Person.

The number of Trustees initially shall be four (4), and:

(a) at any time before the issuance of any Securities, the Sponsor may, by written instrument, increase or decrease the number of Trustees;

(b) after the issuance of any Securities, the number of Trustees may be increased or decreased by vote of the Holders of a majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities or by written consent, *provided, however*, that the number of Trustees shall in no event be less than two (2); *provided further* that (1) one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, shall be an entity which has its principal place of business in the State of Delaware (the “Delaware Trustee”); (2) there shall be at least one Trustee who is an employee or officer of, or is affiliated with the Sponsor (a “Administrative Trustee”); and (3) one Trustee shall be the Institutional Trustee, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements; and

(c) no Person shall serve as a Trustee unless such Person is a “United States person” within the meaning of Section 7701(a)(30) of the Code.

### Section 5.2 Delaware Trustee.

If required by the Statutory Trust Act, the Delaware Trustee shall be:

(a) a natural person who is a resident of the State of Delaware; or

(b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law,

*provided* that if the Institutional Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Institutional Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application.

Section 5.3 Institutional Trustee; Eligibility.

(a) There shall at all times be one Trustee that shall act as Institutional Trustee which shall:

(i) not be an Affiliate of the Sponsor;

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this Section 5.3(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published; and

(iii) if the Trust is excluded from the definition of an Investment Company solely by means of Rule 3a-7 and to the extent Rule 3a-7 requires a trustee having certain qualifications to hold title to the “eligible assets” of the Trust, the Institutional Trustee shall possess those qualifications.

(b) If at any time the Institutional Trustee shall cease to be eligible to so act under Section 5.3(a), the Institutional Trustee shall immediately resign in the manner and with the effect set forth in Section 5.6(c).

(c) If the Institutional Trustee has or shall acquire any “conflicting interest” within the meaning of § 310(b) of the Trust Indenture Act, the Institutional Trustee and the Holders of the Common Securities (as if such Holders were the obligor referred to in § 310(b) of the Trust Indenture Act) shall in all respects comply with the provisions of § 310(b) of the Trust Indenture Act, subject to the penultimate paragraph thereof.

(d) The Guarantee Agreement shall be deemed to be specifically described in this Declaration for purposes of clause (i) of the first proviso contained in § 310(b) of the Trust Indenture Act.

(e) The initial Institutional Trustee shall be as set forth in Section 5.5 hereof.

Section 5.4 Qualifications of Administrative Trustees and Delaware Trustee Generally.

Each Administrative Trustee and the Delaware Trustee (unless the Institutional Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

Section 5.5 Initial Trustees; Additional Powers of Administrative Trustees.

(a) The initial Administrative Trustees shall be:

Christopher Halmy  
Sean Leary

The initial Delaware Trustee shall be:

BNY Mellon Trust of Delaware  
100 White Clay Center  
Suite 102  
Newark, DE 19711  
Attn: Corporate Trust Department

The initial Institutional Trustee shall be:

The Bank of New York Mellon  
101 Barclay Street-8W  
New York, New York 10286

(b) Except as expressly set forth in this Declaration and except if a meeting of the Administrative Trustees is called with respect to any matter over which the Administrative Trustees have power to act, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee.

(c) Unless otherwise determined by the Administrative Trustees, and except as otherwise required by the Statutory Trust Act or applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents which the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 3.6, *provided* that any registration statement referred to in Section 3.6(b)(i), including any amendments thereto, shall be signed by all of the Administrative Trustees; and

(d) a Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.6.

Section 5.6 Appointment, Removal and Resignation of Trustees.

(a) Subject to Section 5.6(b), Trustees may be appointed or removed without cause at any time:

(i) until the issuance of any Securities, by written instrument executed by the Sponsor; and

(ii) in the case of the Administrative Trustees, after the issuance of any Securities, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class by written consent or at a meeting of the Holders of the Common Securities;

(iii) in the case of the Institutional Trustee and the Delaware Trustee, unless a Default shall have occurred and be continuing after the issuance of any Securities, by a vote of

the Holders of a Majority in liquidation amount of the Common Securities voting as a class by written consent or at a meeting of the Holders of the Common Securities; and

(iv) in the case of the Institutional Trustee and the Delaware Trustee, if a Default shall have occurred and be continuing after the issuance of the Securities, by a vote of the Holders of a Majority in liquidation amount of the Trust Preferred Securities voting as a class by written consent or at a meeting of the Holders of the Trust Preferred Securities.

(b) (i) The Trustee that acts as Institutional Trustee shall not be removed in accordance with Section 5.6(a) until a successor Trustee possessing the qualifications to act as Institutional Trustee under Section 5.3 (a “Successor Institutional Trustee”) has been appointed and has accepted such appointment by written instrument executed by such Successor Institutional Trustee and delivered to the Administrative Trustees and the Sponsor; and

(ii) the Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.6(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.2 and 5.4 (a “Successor Delaware Trustee”) has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Administrative Trustees and the Sponsor.

(c) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Sponsor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; *provided, however*, that:

(i) No such resignation of the Trustee that acts as the Institutional Trustee shall be effective:

(A) until a Successor Institutional Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Institutional Trustee and delivered to the Trust, the Sponsor and the resigning Institutional Trustee; or

(B) until the assets of the Trust have been completely liquidated and the proceeds thereof distributed to the holders of the Securities; and

(ii) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Sponsor and the resigning Delaware Trustee.

(d) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Delaware Trustee or Successor Institutional Trustee as the case may be if the Institutional Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.6.

(e) If no Successor Institutional Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.6 within 60 days after



delivery to the Sponsor and the Trust of an instrument of resignation, the resigning Institutional Trustee or Delaware Trustee, as applicable, may petition any court of competent jurisdiction at the expense of the Sponsor for appointment of a Successor Institutional Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Institutional Trustee or Successor Delaware Trustee, as the case may be.

(f) No Institutional Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Institutional Trustee or Successor Delaware Trustee, as the case may be.

#### Section 5.7 Vacancies among Trustees.

If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.1, or if the number of Trustees is increased pursuant to Section 5.1, a vacancy shall occur. A resolution certifying the existence of such vacancy by the Administrative Trustees or, if there are more than two, a majority of the Administrative Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.6.

#### Section 5.8 Effect of Vacancies.

The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of a Administrative Trustee in accordance with Section 5.6, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Declaration.

#### Section 5.9 Meetings.

If there is more than one Administrative Trustee, meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any in-person meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 48 hours before such meeting. Notice of any telephonic meetings of the Administrative Trustees or any committee thereof shall be hand delivered or otherwise delivered in writing (including by facsimile, with a hard copy by overnight courier) not less than 24 hours before a meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence (whether in person or by telephone) of a Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where a Administrative Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, *provided*

that a Quorum is present, or without a meeting by the unanimous written consent of the Administrative Trustees. In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee.

Section 5.10 Delegation of Power.

(a) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.6, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing;

(b) the Administrative Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein; and

(c) any delegation of power by a Administrative Trustee under Section 3.6(g) (and Section 3.6(o) insofar as it applies to Section 3.6(g)) or by the Institutional Trustee under Section 3.8(e) shall be to a “United States person” (as defined under Section 7701(a)(30) of the Code).

Section 5.11 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Institutional Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Institutional Trustee or the Delaware Trustee, as the case may be, shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Institutional Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Institutional Trustee or the Delaware Trustee, as the case may be, hereunder, *provided* such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

## **ARTICLE VI DISTRIBUTIONS; EXCHANGES**

Section 6.1 Distributions.

Holders shall receive Distributions (as defined herein) in accordance with the applicable terms of the relevant Holder’s Securities. Distributions shall be made on the Trust Preferred Securities and the Common Securities in accordance with the preferences set forth in their respective terms. If and to the extent that the Debenture Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Interest (as defined in the Indenture)), premium and/or principal on the Debentures held by the Institutional Trustee (the amount of any such payment being a “Payment Amount”), the Institutional Trustee shall and is directed to make a distribution (a “Distribution”) of the Payment Amount to Holders.

Section 6.2 Exchanges.

(a) If at any time the Sponsor or any of its Affiliates (in any such case, a “Sponsor Affiliated Holder”) is the Holder of any Trust Preferred Securities or is a Trust Preferred Security Beneficial Owner, such Sponsor Affiliated Holder shall have the right to deliver to the Institutional Trustee all or such portion of its Trust Preferred Securities as it elects and, subject to the terms of the Indenture, receive, in exchange therefor, Debentures having an aggregate principal amount equal to the aggregate Liquidation Amount of the Trust Preferred Securities exchanged therefor (such an exchange being referred to herein as an “Exchange”). Such election (i) shall be exercisable, and shall be effective on any Business Day, *provided* that such Business Day is not a record date or any date falling between a record date and a date on which the related Distribution is payable, by such Sponsor Affiliated Holder delivering to the Institutional Trustee a written notice of such election specifying the aggregate Liquidation Amount of Trust Preferred Securities with respect to which such election is being made and the date on which such Exchange shall occur, which date shall be not less than three (3) Business Days after the date of receipt by the Institutional Trustee of such election notice and (ii) shall be conditioned upon such Sponsor Affiliated Holder having delivered or caused to be delivered to the Institutional Trustee or its designee the Trust Preferred Securities which are the subject of such election by 10:00 a.m. New York City time, on the date on which such Exchange is to occur. After the Exchange, such Trust Preferred Securities shall be cancelled and shall no longer be deemed to be outstanding and all rights of the Sponsor Affiliated Holder with respect to such Trust Preferred Securities shall cease. So long as the Trust Preferred Securities are in book-entry-only form, the delivery and the cancellation of the Trust Preferred Securities pursuant to this Section 6.2 shall be made in accordance with the customary procedures of the Clearing Agency for the Trust Preferred Securities.

(b) In the case of an Exchange described in Section 6.2(a), the Trust shall, at the written request of the Sponsor, on the date of such Exchange, exchange Debentures having a principal amount equal to a proportional amount of the aggregate Liquidation Amount of the outstanding Common Securities, such proportional amount determined by multiplying the aggregate Liquidation Amount of the outstanding Common Securities by the ratio of the aggregate Liquidation Amount of the Trust Preferred Securities exchanged pursuant to Section 6.2(a) to the aggregate Liquidation Amount of the Trust Preferred Securities outstanding immediately prior to such Exchange, for such proportional amount of Common Securities held by the Sponsor (which contemporaneously shall be cancelled and no longer be deemed to be outstanding); *provided*, that the Sponsor delivers or causes to be delivered to the Institutional Trustee or its designee the required amount of Common Securities to be exchanged by 10:00 a.m., New York City time, on the date on which such Exchange is to occur.

**ARTICLE VII**  
**ISSUANCE OF SECURITIES**

Section 7.1 General Provisions Regarding Securities.

(a) The Administrative Trustees shall on behalf of the Trust issue one class of preferred securities representing undivided beneficial interests in the assets of the Trust having such terms as are set forth in Annex I (the “Trust Preferred Securities”) and one class of common securities representing undivided beneficial interests in the assets of the Trust having such terms

as are set forth in Annex I (the “Common Securities”). The Trust shall issue no securities or other interests in the assets of the Trust other than the Trust Preferred Securities and the Common Securities.

(b) The Certificates shall be signed on behalf of the Trust by a Administrative Trustee. Such signature shall be the manual signature of any present or any future Administrative Trustee. In case any Administrative Trustee of the Trust who shall have signed any of the Securities shall cease to be such Administrative Trustee before the Certificates so signed shall be delivered by the Trust, such Certificates nevertheless may be delivered as though the person who signed such Certificates had not ceased to be such Administrative Trustee; and any Certificate may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, shall be the Administrative Trustees of the Trust, although at the date of the execution and delivery of the Declaration any such person was not such a Administrative Trustee. Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Administrative Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation of any stock exchange on which Securities may be listed, or to conform to usage.

(c) Any cash consideration received by the Trust for the issuance of the Securities shall constitute a contribution to the capital of the Trust and shall not constitute a loan to the Trust.

(d) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable.

(e) Every Person, by virtue of having become a Holder or a Trust Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

## **ARTICLE VIII DISSOLUTION; TERMINATION OF TRUST**

### **Section 8.1 Dissolution of Trust.**

- (a) The Trust shall dissolve:
- (i) upon the bankruptcy of any Holder of the Common Securities or the Sponsor;
  - (ii) upon the filing of a certificate of dissolution or its equivalent with respect to the Sponsor or the revocation of the Sponsor’s charter and the expiration of 90 days after the date of revocation without a reinstatement thereof;
  - (iii) upon the entry of a decree of judicial dissolution of any Holder of the Common Securities, the Sponsor or the Trust;

(iv) Subject to obtaining any required regulatory approval, when all of the Securities have been called for redemption;

(v) Subject to obtaining any required regulatory approval, upon the call for the Exchange of all of the then-outstanding Trust Preferred Securities pursuant to Section 6.2;

(vi) Subject to obtaining any required regulatory approval, when the Trust shall have been dissolved in accordance with the terms of the Securities upon election by the Sponsor of its right to terminate the Trust and distribute all of the Debentures to the Holders of Securities in exchange for all of the Securities;

(vii) before the issuance of any Securities, with the consent of all of the Administrative Trustees and the Sponsor; or

(viii) upon the expiration of the term of the Trust set forth in Section 3.14.

(b) As soon as is practicable after the occurrence of an event referred to in Section 8.1(a), and after satisfaction of the claims and obligations of the Trust as required by applicable law, including Section 3808 of the Statutory Trust Act, and subject to the terms set forth in Annex I, the Delaware Trustee, when notified in writing of the completion of the winding up of the Trust in accordance with the Statutory Trust Act, shall terminate the Trust by filing, at the expense of the Sponsor, a certificate of cancellation with the Secretary of State of the State of Delaware.

(c) The provisions of Section 3.9, Section 3.10 and Article X shall survive the termination of the Trust.

## **ARTICLE IX TRANSFER OF INTERESTS**

### **Section 9.1 Transfer of Securities.**

(a) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. Any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

(b) Subject to this Article IX, all Certificates or other instruments representing the Trust Preferred Securities will bear a legend substantially to the following effect (the "Private Placement Legend"):

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE

SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS (X) A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (Y) AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE DEBENTURE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

All Certificates or other instruments representing the Trust Preferred Securities will also bear a legend substantially to the following effect:

ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (I) NO PORTION OF THE ASSETS USED BY IT TO ACQUIRE AND HOLD THE SECURITY CONSTITUTES ASSETS OF ANY “EMPLOYEE BENEFIT PLAN” SUBJECT TO SECTION 406 OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), ANY PLAN, ACCOUNT OR OTHER ARRANGEMENT SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, “SIMILAR LAWS”), OR ANY ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH EMPLOYEE BENEFIT PLAN OR OTHER PLAN, ACCOUNT OR ARRANGEMENT OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

(c) Subject to this Article IX, the Sponsor and any Related Party may only transfer Common Securities to the Sponsor or a Related Party of the Sponsor; *provided* that any such transfer is subject to the condition precedent that the transferor obtain the written opinion of nationally recognized independent counsel experienced in such matters that such transfer would not cause more than an insubstantial risk that:

(i) the Trust would not be classified for United States federal income tax purposes as a grantor trust; and

(ii) the Trust would be an Investment Company or the transferee would become an Investment Company.

#### Section 9.2 Transfer of Certificates.

(a) The Trust shall cause to be kept at the Corporate Trust Office of the Institutional Trustee a register in which, subject to such reasonable regulations as it may prescribe, the Trust shall provide for the registration of Trust Preferred Securities and of transfers of Trust Preferred Securities. The Institutional Trustee is hereby appointed "Security Registrar" for the purpose of registering Trust Preferred Securities and transfers of Trust Preferred Securities as herein provided. The Security Registrar shall provide for the registration of Certificates and of transfers of Certificates, which will be effected without charge but only upon payment (with such indemnity as the Security Registrar may require) in respect of any tax or other government charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Certificate, the Security Registrar shall cause one or more new Certificates to be issued in the name of the designated transferee or transferees. Every Certificate surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Security Registrar duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Certificate surrendered for registration of transfer shall be canceled by the Security Registrar. A transferee of a Certificate shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Certificate. By acceptance of a Certificate, each transferee shall be deemed to have agreed to be bound by this Declaration.

(b) In the event that any Trust Preferred Securities (i) become registered under the Securities Act or (ii) are eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), the Administrative Trustees shall cause to be issued, in accordance with Section 9.2(a) above, new Certificates or other instruments representing such Trust Preferred Securities, which shall not contain the Private Placement Legend. Securities shall be freely transferable, subject to compliance with this Article IX and the Securities Act. Subject to the last sentence of this Section 9.2(b), if a Certificate representing a Trust Preferred Security bears a Private Placement Legend, such Trust Preferred Security (x) may be transferred to a Person or Persons who take delivery thereof in the form of a Certificate bearing a Private Placement Legend only if the Security Registrar receives (A) an appropriately completed certificate of transfer in the form attached hereto as Exhibit D and (B) if applicable, a certificate substantially in the form attached hereto as Exhibit E (each such certificate, a "Transfer Certification"); and (y) may be transferred to a Person or Persons who take delivery thereof in the form of a Certificate not bearing a Private Placement Legend or may be exchanged for a Certificate not bearing a Private Placement Legend only if the Security Registrar has previously received an opinion of counsel in form reasonably acceptable to the Sponsor to the effect that the Trust Preferred Securities are eligible to be transferred without restriction (a "Transfer Opinion"). The Institutional Trustee and the Security Registrar shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer or exchange imposed under this Declaration or under applicable law with respect to any transfer or exchange of any interest in any Security (including any transfers

between or among Clearing Agency Participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Declaration, and to examine the same to determine substantial compliance as to form with the express requirements hereof. At such time as the Debenture Issuer shall determine, in accordance with applicable law, that the Trust Preferred Securities are no longer required to bear the Private Placement Legend, then: (x) the Sponsor shall deliver to the Institutional Trustee a Transfer Opinion; (y) the Security Registrar shall cause to be issued, in accordance with Section 9.2(a) above, new Certificates or other instruments representing such Trust Preferred Securities, which shall not contain the Private Placement Legend; and (z) no Transfer Certification shall be required as a condition to any subsequent transfer of the Trust Preferred Securities.

(c) Before registering for transfer or exchange any Trust Preferred Securities, the Securities Registrar may require an Opinion of Counsel or other evidence satisfactory to it (which may include a certificate from such purchaser or Holder) that either (i) no portion of the assets used by such purchaser or Holder to acquire and hold the Trust Preferred Securities constitutes assets of any “employee benefit plan” subject to Section 406 of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), any plan, account or other arrangement subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, “Similar Laws”), or any entity whose underlying assets are considered to include “plan assets” of any such employee benefit plan or other plan, account or arrangement or (ii) the purchase and holding of the Trust Preferred Securities will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or section 4975 of the Code or a violation under any applicable similar law.

### Section 9.3 Deemed Security Holders.

The Trustees and the Security Registrar may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust shall have actual or other notice thereof.

### Section 9.4 Book Entry Interests.

The Trust Preferred Securities, on original issuance, will be issued in the form of definitive, fully registered Trust Preferred Security Certificates (the “Definitive Trust Preferred Security Certificates”). The Trust Preferred Securities may, upon the instruction of the Sponsor, be issued in the form of one or more, fully registered, global Trust Preferred Security Certificates (each a “Global Certificate”), to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Trust. Such Global Certificates shall initially be registered on the books and records of the Trust in the name of Cede & Co., the nominee of DTC, and no Trust Preferred Security Beneficial Owner will receive a definitive Trust Preferred Security Certificate representing such Trust Preferred Security Beneficial Owner’s interests in such Global Certificates, except as provided in Section 9.7. If the Trust Preferred Securities are held as



Global Certificates, then unless and until Definitive Trust Preferred Security Certificates shall have been issued to the Trust Preferred Security Beneficial Owners pursuant to Section 9.7:

- (a) the provisions of this Section 9.4 shall be in full force and effect;
- (b) the Trust and the Trustees shall be entitled to deal with the Clearing Agency for all purposes of this Declaration (including the payment of Distributions on the Global Certificates and receiving approvals, votes or consents hereunder) as the Holder of the Trust Preferred Securities and the sole holder of the Global Certificates and shall have no obligation to the Trust Preferred Security Beneficial Owners;
- (c) to the extent that the provisions of this Section 9.4 conflict with any other provisions of this Declaration, the provisions of this Section 9.4 shall control; and
- (d) the rights of the Trust Preferred Security Beneficial Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Trust Preferred Security Beneficial Owners and the Clearing Agency and/or the Clearing Agency Participants and the Clearing Agency shall receive and transmit payments of Distributions on the Global Certificates to such Clearing Agency Participants. DTC will make book entry transfers among the Clearing Agency Participants.

Section 9.5 Notices to Clearing Agency.

While the Trust Preferred Securities are in the form of Definitive Trust Preferred Security Certificates, all notices and communications to the Trust Preferred Security Holders shall be made at the respective addresses of the Holders set forth on the books and records of the Trust. If the Trust Preferred Securities are held as Global Certificates, whenever a notice or other communication to the Trust Preferred Security Holders is required under this Declaration, the Administrative Trustees shall give all such notices and communications specified herein to be given to the Trust Preferred Security Holders to the Clearing Agency, and shall have no notice obligations to the Trust Preferred Security Beneficial Owners.

Section 9.6 Appointment of Successor Clearing Agency.

If any Clearing Agency elects to discontinue its services as a securities depository with respect to the Trust Preferred Securities, the Administrative Trustees may, in their sole discretion, appoint a successor Clearing Agency with respect to such Trust Preferred Securities.

Section 9.7 Definitive Trust Preferred Security Certificates.

If, following the issuance of Global Certificates:

- (a) a Clearing Agency elects to discontinue its services as a securities depository with respect to the Trust Preferred Securities and a successor Clearing Agency is not appointed within 90 days after such discontinuance pursuant to Section 9.6; or
- (b) the Administrative Trustees elect after consultation with the Sponsor and subject to the procedures of the Clearing Agency to terminate the book entry system through the Clearing Agency with respect to the Trust Preferred Securities,

then:

(c) Definitive Trust Preferred Security Certificates shall be prepared by the Administrative Trustees on behalf of the Trust with respect to such Trust Preferred Securities; and

(d) upon surrender of the Global Certificates by the Clearing Agency, accompanied by registration instructions, the Administrative Trustees and the Security Registrar shall cause Definitive Certificates to be delivered to Trust Preferred Security Beneficial Owners in accordance with the instructions of the Clearing Agency. Neither the Trustees nor the Trust nor the Security Registrar shall be liable for any delay in delivery of such instructions and each of them may conclusively rely on and shall be protected in relying on, said instructions of the Clearing Agency. The Definitive Trust Preferred Security Certificates shall be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements as the Administrative Trustees may deem appropriate, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which Trust Preferred Securities may be listed, or to conform to usage.

Section 9.8 Mutilated, Destroyed, Lost or Stolen Certificates.

If:

(a) any mutilated Certificates should be surrendered to the Security Registrar, or if the Security Registrar shall receive evidence to its satisfaction of the destruction, loss or theft of any Certificate; and

(b) there shall be delivered to the Security Registrar such security or indemnity as may be required by them to keep each of them harmless, then, in the absence of notice that such Certificate shall have been acquired by a bona fide purchaser, any Administrative Trustee on behalf of the Trust shall execute and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like denomination. In connection with the issuance of any new Certificate under this Section 9.8, the Administrative Trustees and the Security Registrar may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection therewith. Any duplicate Certificate issued pursuant to this Section shall constitute conclusive evidence of an ownership interest in the relevant Securities, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

**ARTICLE X**  
**LIMITATION OF LIABILITY OF HOLDERS OF**  
**SECURITIES, TRUSTEES OR OTHERS**

Section 10.1 Liability.

(a) Except as expressly set forth in this Declaration, the Guarantee Agreement and the terms of the Securities, the Sponsor shall not be:

(i) personally liable for the return of any portion of the capital contributions (or any return thereon) of the Holders of the Securities which shall be made solely from assets of the Trust; and

(ii) required to pay to the Trust or to any Holder of Securities any deficit upon dissolution of the Trust or otherwise.

(b) The Holder of the Common Securities shall be liable for all of the debts and obligations of the Trust (other than with respect to the Securities) to the extent not satisfied out of the Trust's assets.

(c) Pursuant to § 3803(a) of the Statutory Trust Act, the Holders of the Trust Preferred Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

#### Section 10.2 Exculpation.

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Trust and upon such information, opinions, reports or statements presented to the Trust by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who, if selected by such Person, has been selected with reasonable care by such Person, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders of Securities might properly be paid.

#### Section 10.3 Fiduciary Duty.

(a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict or eliminate the duties and liabilities of an Indemnified Person otherwise existing at law or in equity (other than the duties imposed on the Institutional Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(b) Unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between any Covered Persons; or

(ii) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

(iii) the Indemnified Person shall resolve such conflict of interest, take such action or provide such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith by the Indemnified Person, the resolution, action or term so made, taken or provided by the Indemnified Person shall not constitute a breach of this Declaration or any other agreement contemplated herein or of any duty or obligation of the Indemnified Person at law or in equity or otherwise.

(c) Whenever in this Declaration an Indemnified Person is permitted or required to make a decision:

(i) in its “discretion” or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its “good faith” or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

#### Section 10.4 Indemnification.

(a) (i) The Debenture Issuer shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Company Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(ii) The Debenture Issuer shall indemnify, to the full extent permitted by law, any Company Indemnified Person who was or is a party or is threatened to be made a party to

any threatened, pending or completed action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Company Indemnified Person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Company Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such Court of Chancery or such other court shall deem proper.

(iii) To the extent that a Company Indemnified Person shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a), or in defense of any claim, issue or matter therein, he shall be indemnified, to the full extent permitted by law, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(iv) Any indemnification under paragraphs (i) and (ii) of this Section 10.4(a) (unless ordered by a court) shall be made by the Debenture Issuer only as authorized in the specific case upon a determination that indemnification of the Company Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Administrative Trustees by a majority vote of a quorum consisting of such Administrative Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion, or (3) by the Common Security Holder of the Trust.

(v) Expenses (including attorneys' fees) incurred by a Company Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 10.4(a) shall be paid by the Debenture Issuer in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Company Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Debenture Issuer as authorized in this Section 10.4(a). Notwithstanding the foregoing, no advance shall be made by the Debenture Issuer if a determination is reasonably and promptly made (i) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (iii) the Common Security Holder of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the Common Security Holder at the time such determination is made, such Company Indemnified Person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Trust, or, with respect to any criminal proceeding, that such Company Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the

Administrative Trustees, independent legal counsel or Common Security Holder reasonably determine that such person deliberately breached his duty to the Trust or its Common or Trust Preferred Security Holders.

(vi) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 10.4(a) shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors of the Debenture Issuer or Trust Preferred Security Holders of the Trust or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 10.4(a) shall be deemed to be provided by a contract between the Debenture Issuer and each Company Indemnified Person who serves in such capacity at any time while this Section 10.4(a) is in effect. Any repeal or modification of this Section 10.4(a) shall not affect any rights or obligations then existing.

(vii) The Debenture Issuer may purchase and maintain insurance on behalf of any person who is or was a Company Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Debenture Issuer would have the power to indemnify him against such liability under the provisions of this Section 10.4(a).

(viii) For purposes of this Section 10.4(a), references to “the Trust” 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, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 10.4(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(ix) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 10.4(a) shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Company Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person.

(b) The Debenture Issuer agrees to indemnify the (i) Institutional Trustee, (ii) the Delaware Trustee, (iii) any Affiliate of the Institutional Trustee and the Delaware Trustee, and (iv) any officers, directors, shareholders, members, partners, employees, representatives, custodians, nominees or agents of the Institutional Trustee and the Delaware Trustee (each of the Persons in (i) through (iv) being referred to as a “Fiduciary Indemnified Person”) for, and to hold each Fiduciary Indemnified Person harmless against, any and all loss, liability, claim, damage or expense incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration or the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against or investigating any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The obligation to indemnify as set forth in this Section 10.4(b) shall survive the resignation or removal of the Institutional Trustee or the Delaware Trustee, as the case may be, and the termination of this Declaration. The Debenture Issuer agrees to pay the

Institutional Trustee and the Delaware Trustee from time to time such compensation for all services rendered by the Institutional Trustee and the Delaware Trustee hereunder as may be mutually agreed upon in writing by the Debenture Issuer and the Institutional Trustee or the Delaware Trustee, as the case may be, and, except as otherwise expressly provided therein or herein, to reimburse the Institutional Trustee and the Delaware Trustee upon its or their request for all reasonable expenses (including reasonable counsel fees and expenses), disbursements and advances incurred or made by the Institutional Trustee or the Delaware Trustee, as the case may be, in accordance with the provisions of this Declaration, except any such expense, disbursement or advance as may be attributable to its or their negligence, bad faith or willful misconduct. The provisions of this sentence shall survive the resignation or removal of the Delaware Trustee or the Institutional Trustee or the termination of this Declaration.

#### Section 10.5 Outside Businesses.

Any Covered Person, the Sponsor, the Delaware Trustee and the Institutional Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom, and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. No Covered Person, the Sponsor, the Delaware Trustee, or the Institutional Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Sponsor, the Delaware Trustee and the Institutional Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Institutional Trustee may engage or be interested in any financial or other transaction with the Sponsor or any Affiliate of the Sponsor, or may act as depository for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Sponsor or its Affiliates.

### **ARTICLE XI ACCOUNTING**

#### Section 11.1 Fiscal Year.

The fiscal year (“Fiscal Year”) of the Trust shall be the calendar year, or such other year as is required by the Code.

#### Section 11.2 Certain Accounting Matters.

(a) At all times during the existence of the Trust, the Administrative Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year of the

Trust by a firm of independent certified public accountants selected by the Administrative Trustees.

(b) The Administrative Trustees shall cause to be prepared and delivered to each of the Holders of Securities, to the extent, if any, required by the Trust Indenture Act, within 90 days after the end of each Fiscal Year of the Trust, annual financial statements of the Trust, including a balance sheet of the Trust as of the end of such Fiscal Year, and the related statements of income or loss;

(c) The Administrative Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a later date, the Administrative Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

(d) The Administrative Trustees shall cause to be duly prepared and filed with the appropriate taxing authority, an annual United States federal income tax return, on a Form 1041 or such other form required by United States federal income tax law, and any other annual income tax returns required to be filed by the Administrative Trustees on behalf of the Trust with any state or local taxing authority.

### Section 11.3 Banking.

The Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; *provided, however*, that all payments of funds in respect of the Debentures held by the Institutional Trustee shall be made directly to the Institutional Trustee Account and no other funds of the Trust shall be deposited in the Institutional Trustee Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; *provided, however*, that the Institutional Trustee shall designate the signatories for the Institutional Trustee Account.

### Section 11.4 Withholding.

The Trust and the Administrative Trustees shall comply with all withholding requirements under United States federal, state and local law. The Trust shall request, and the Holders shall provide to the Trust, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Trust to assist it in determining the extent of, and in fulfilling, its withholding obligations. The Administrative Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Trust may reduce subsequent Distributions by the amount of such withholding.



**ARTICLE XII**  
**AMENDMENTS AND MEETINGS**

Section 12.1 Amendments.

(a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may only be amended by a written instrument approved and executed by:

(i) the Administrative Trustees (or, if there are more than two Administrative Trustees a majority of the Administrative Trustees);

(ii) if the amendment affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee; and

(iii) if the amendment affects the rights, powers, duties, obligations or immunities of the Delaware Trustee, the Delaware Trustee;

(b) no amendment shall be made, and any such purported amendment shall be void and ineffective:

(i) unless, in the case of any proposed amendment, the Institutional Trustee shall have first received an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities);

(ii) unless, in the case of any proposed amendment which affects the rights, powers, duties, obligations or immunities of the Institutional Trustee, the Institutional Trustee shall have first received:

(A) an Officers' Certificate from each of the Trust and the Sponsor that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(B) an opinion of counsel (who may be counsel to the Sponsor or the Trust) that such amendment is permitted by, and conforms to, the terms of this Declaration (including the terms of the Securities); and

(iii) to the extent the result of such amendment would be to:

(A) cause the Trust to fail to continue to be classified for purposes of United States federal income taxation as a grantor trust;

(B) reduce or otherwise adversely affect the powers of the Institutional Trustee in contravention of the Trust Indenture Act; or

(C) cause the Trust to be deemed to be an Investment Company required to be registered under the Investment Company Act;

(c) at such time after the Trust has issued any Securities that remain outstanding, any amendment that would adversely affect the rights, privileges or preferences of any Holder of Securities may be effected only with such additional requirements as may be set forth in the terms of such Securities;

(d) Section 9.1(c) and this Section 12.1 shall not be amended without the consent of all of the Holders of the Securities;

(e) Article IV shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities; and;

(f) the rights of the Holders of the Common Securities under Article V to increase or decrease the number of, and appoint and remove Trustees shall not be amended without the consent of the Holders of a Majority in liquidation amount of the Common Securities; and

(g) subject to Section 12.1(c), this Declaration may be amended without the consent of the Holders of the Securities to:

(i) cure any ambiguity or manifest error;

(ii) correct or supplement any provision in this Declaration that may be defective or inconsistent with any other provision of this Declaration;

(iii) add to the covenants, restrictions or obligations of the Sponsor;

(iv) to conform to any change in Rule 3a-7 or written change in interpretation or application of Rule 3a-7 by any legislative body, court, government agency or regulatory authority which amendment does not have a material adverse effect on the right, preferences or privileges of the Holders; and

(v) to modify, eliminate and add to any provision of the Declaration to such extent as may be reasonably necessary to effectuate any of the foregoing or to otherwise comply with applicable law.

#### Section 12.2 Meetings of the Holders of Securities; Action by Written Consent.

(a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Trust Preferred Securities are listed or admitted for trading. The Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of Securities representing at least 10% in liquidation amount of such class of Securities. Such direction shall be given by delivering to the Administrative Trustees one or more calls in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Security Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

(b) Except to the extent otherwise provided in the terms of the Securities, the following provisions shall apply to meetings of Holders of Securities:

(i) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least 7 days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Trust Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum amount of Securities in liquidation amount that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Administrative Trustees may specify that any written ballot submitted to the Security Holder for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrative Trustees;

(ii) each Holder of a Security may authorize any Person to act for it by proxy on all matters in which a Holder of Securities is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the Holder of Securities executing it. Except as otherwise provided herein, all matters relating to the giving, voting or validity of proxies shall be governed by the General Corporation Law of the State of Delaware relating to proxies, and judicial interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(iii) each meeting of the Holders of the Securities shall be conducted by the Administrative Trustees or by such other Person that the Administrative Trustees may designate; and

(iv) unless the Statutory Trust Act, this Declaration, the terms of the Securities, the Trust Indenture Act or the listing rules of any stock exchange on which the Trust Preferred Securities are then listed or trading, otherwise provides, the Administrative Trustees, in their sole discretion, shall establish all other provisions relating to meetings of Holders of Securities, including notice of the time, place or purpose of any meeting at which any matter is to be voted on by any Holders of Securities, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any such right to vote.

**ARTICLE XIII**  
**REPRESENTATIONS OF INSTITUTIONAL TRUSTEE**  
**AND DELAWARE TRUSTEE**

Section 13.1 Representations and Warranties of Institutional Trustee.

The Trustee that acts as initial Institutional Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Institutional Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Institutional Trustee's acceptance of its appointment as Institutional Trustee that:

(a) the Institutional Trustee is a banking corporation or association with trust powers, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, this Declaration;

(b) the execution, delivery and performance by the Institutional Trustee of the Declaration has been duly authorized by all necessary corporate action on the part of the Institutional Trustee. The Declaration has been duly executed and delivered by the Institutional Trustee, and it constitutes a legal, valid and binding obligation of the Institutional Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law);

(c) the execution, delivery and performance of the Declaration by the Institutional Trustee does not conflict with or constitute a breach of the Articles of Organization or By-laws of the Institutional Trustee; and

(d) no consent, approval or authorization of, or registration with or notice to, any State or Federal banking authority is required for the execution, delivery or performance by the Institutional Trustee, of the Declaration.

Section 13.2 Representations and Warranties of Delaware Trustee.

The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Sponsor at the date of this Declaration, and each Successor Delaware Trustee represents and warrants to the Trust and the Sponsor at the time of the Successor Delaware Trustee's acceptance of its appointment as Delaware Trustee that:

(a) The Delaware Trustee is a banking corporation or association with trust powers, duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, with trust power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration.

(b) The Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and the Declaration. The Declaration under Delaware law constitutes a legal, valid and binding obligation of the Delaware Trustee, enforceable against it in accordance with

its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(c) No consent, approval or authorization of, or registration with or notice to, any State or Federal banking authority is required for the execution, delivery or performance by the Delaware Trustee, of the Declaration.

(d) The Delaware Trustee is an entity which maintains its principal place of business in the State of Delaware.

#### **ARTICLE XIV MISCELLANEOUS**

##### Section 14.1 Notices.

Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices shall be delivered, telecopied or sent by a recognized next day courier service, as set forth below, or pursuant to such other instructions as may be designated by the Trust, the Trustees or the Holders:

(a) if given to the Trust, in care of the Administrative Trustees at the Trust's mailing address set forth below (or such other address as the Trust may give notice of to the Holders of the Securities and the Institutional Trustee):

GMAC Capital Trust I  
c/o GMAC Inc.  
200 Renaissance Center  
P.O. Box  
Detroit, Michigan 48265-2000  
Attention: General Counsel

(b) if given to the Delaware Trustee, at the mailing address set forth below (or such other address as Delaware Trustee may give notice of to the Holders of the Securities):

BNY Mellon Trust of Delaware  
100 White Clay Center  
Suite 102  
Newark, DE 19711  
Attention: Corporate Trust Department

(c) if given to the Institutional Trustee, at the mailing address set forth below (or such other address as the Institutional Trustee may give notice of to the Holders of the Securities and the Sponsor):

The Bank of New York Mellon  
101 Barclay Street-8W  
New York, New York 10286  
Attention: Corporate Trust Administration

(d) if given to the Holder of the Common Securities, at the mailing address of the Sponsor set forth below (or such other address as the Holder of the Common Securities may give notice of to the Trust and the Institutional Trustee):

GMAC Inc.  
200 Renaissance Center  
P.O. Box  
Detroit, Michigan 48265-2000  
Attention: General Counsel

(e) if given to any other Holder, at the address set forth on the books and records of the Trust.

Section 14.2 Governing Law; Waiver of Trial by Jury.

THIS DECLARATION SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. EACH OF THE PARTIES HERETO AGREES (A) TO SUBMIT TO THE NON-EXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE UNITED STATES COURT OF FEDERAL CLAIMS FOR ANY AND ALL CIVIL ACTIONS, SUITS OR PROCEEDINGS ARISING OUT OF OR RELATING OF THIS DECLARATION OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, AND (B) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW THAT NOTICE MAY BE SERVED UPON THE TRUST, THE TRUSTEES AND THE HOLDERS AT THE ADDRESSES AND IN THE MANNER SET FORTH IN SECTION 14.1 AND, IF APPLICABLE, TO CERTAIN HOLDERS IN ACCORDANCE WITH FEDERAL LAW. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY CIVIL LEGAL ACTION OR PROCEEDING RELATING TO THIS INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 14.3 Intention of the Parties.

It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

Section 14.4 Headings.

Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

Section 14.5 Successors and Assigns.

Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Sponsor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

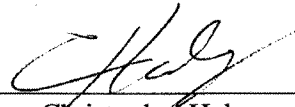
Section 14.6 Partial Enforceability.

If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 14.7 Counterparts.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page of this Indenture by facsimile or electronic (including PDF) transmission shall be effective as delivery of a manually executed counterpart thereof.

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

  
\_\_\_\_\_  
Name: Christopher Halmy  
Title: Administrative Trustee

\_\_\_\_\_  
Name: Sean Leary  
Title: Administrative Trustee

BNY MELLON TRUST OF DELAWARE,  
as Delaware Trustee

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON, as  
Institutional Trustee

By: \_\_\_\_\_  
Name:  
Title:

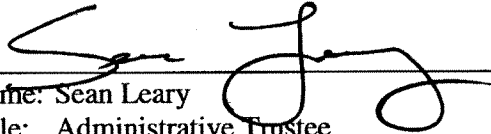
GMAC INC., as Sponsor

By: \_\_\_\_\_  
Name: Cathy L. Quenneville  
Title: Secretary



IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

\_\_\_\_\_  
Name: Christopher Halmy  
Title: Administrative Trustee

  
\_\_\_\_\_  
Name: Sean Leary  
Title: Administrative Trustee

BNY MELLON TRUST OF DELAWARE,  
as Delaware Trustee

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON, as  
Institutional Trustee

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC., as Sponsor

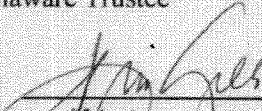
By: \_\_\_\_\_  
Name: Cathy L. Quenneville  
Title: Secretary

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

\_\_\_\_\_  
Name:  
Title: Administrative Trustee

\_\_\_\_\_  
Name:  
Title: Administrative Trustee

BNY MELLON TRUST OF DELAWARE,  
as Delaware Trustee

By:   
Name: **Kristine K. Gullo**  
Title: **Vice President**

THE BANK OF NEW YORK MELLON, as  
Institutional Trustee

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC., as Sponsor

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

\_\_\_\_\_  
Name:  
Title: Administrative Trustee

\_\_\_\_\_  
Name:  
Title: Administrative Trustee

BNY MELLON TRUST OF DELAWARE,  
as Delaware Trustee

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON, as  
Institutional Trustee

By:   
Name: **GIOVANNI BARRIS**  
Title: **VICE PRESIDENT**

GMAC INC., as Sponsor

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed as of the day and year first above written.

\_\_\_\_\_  
Name: Christopher Halmy  
Title: Administrative Trustee

\_\_\_\_\_  
Name: Sean Leary  
Title: Administrative Trustee

BNY MELLON TRUST OF DELAWARE,  
as Delaware Trustee

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON, as  
Institutional Trustee

By: \_\_\_\_\_  
Name:  
Title:

GMAC INC., as Sponsor

By: Cathy L. Quenneville  
Name: Cathy L. Quenneville  
Title: Secretary

## ANNEX I

### TERMS OF 8.0% TRUST PREFERRED SECURITIES 8.0% COMMON SECURITIES

Pursuant to Section 7.1 of the Amended and Restated Declaration of Trust, dated as of December 30, 2009 (as amended from time to time, the “Declaration”), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Trust Preferred Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration):

#### 1. Designation and Number.

(a) Trust Preferred Securities. 2,667,000 Trust Preferred Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of TWO BILLION SIX HUNDRED SIXTY SEVEN MILLION DOLLARS (\$2,667,000,000), and a liquidation amount with respect to the assets of the Trust of \$1,000 per security, are hereby designated for the purposes of identification only as “8.0% Trust Preferred Securities” (the “Trust Preferred Securities”). The Trust Preferred Security Certificates evidencing the Trust Preferred Securities shall be substantially in the form of Exhibit A-1 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange on which the Trust Preferred Securities are listed.

(b) Common Securities. Eighty thousand ten (80,010) Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of EIGHTY MILLION TEN THOUSAND DOLLARS (\$80,010,000), and a liquidation amount with respect to the assets of the Trust of \$1,000 per common security, are hereby designated for the purposes of identification only as “8.0% Common Securities” (the “Common Securities”). The Common Security Certificates evidencing the Common Securities shall be substantially in the form of Exhibit A-2 to the Declaration, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

#### 2. Distributions.

(a) Distributions payable on each Security will be fixed at a rate per annum of 8.0% (the “Coupon Rate”) of the stated liquidation amount per Security, such rate being the rate of interest payable on the Debentures to be held by the Institutional Trustee. Distributions in arrears beyond the first date such Distributions are payable (or would be payable, if not for any Extension Period (as defined below) or default by the Debenture Issuer on the Debentures) will accumulate at the rate of interest payable on the Debentures, compounded quarterly (to the extent permitted by applicable law). The term “Distributions” as used herein includes such cash distributions and any such interest payable unless otherwise stated. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Institutional Trustee and to the extent the Institutional Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full

quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed in a partial month in such period.

(b) Distributions on the Securities will be cumulative, will accrue from and including December 30, 2009, and will be payable quarterly in arrears, on February 15, May 15, August 15 and November 15 of each year, commencing on February 15, 2010. When, as and if available for payment, Distributions will be made by the Institutional Trustee, except as otherwise described below. The Debenture Issuer has the right under the Indenture to defer payments of interest on the Debentures by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each an “Extension Period”), during which Extension Period no interest shall be due and payable on the Debentures, *provided*, that no Extension Period may extend beyond the date of maturity of the Debentures. As a consequence of the Debenture Issuer’s extension of the interest payment period, quarterly Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accumulate to the extent and in the amount that interest accrues and compounds on the underlying Debentures. In the event that the Debenture Issuer exercises its right to extend the interest payment period, then (a) the Debenture Issuer and any subsidiary of the Debenture Issuer (other than a subsidiary that is a depository institution or a subsidiary thereof) will not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Debenture Issuer’s capital stock or make any guarantee payment with respect thereto (other than (i) redemptions, purchases or other acquisitions of shares of capital stock of the Debenture Issuer in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Debenture Issuer or any of its subsidiaries of record ownership in capital stock of the Debenture Issuer for the beneficial ownership of any other persons (other than the Debenture Issuer or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of the Debenture Issuer’s capital stock for any other class or series of the Debenture Issuer’s capital stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to or on the Closing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for capital stock of the Debenture Issuer, (iv) distributions by any wholly-owned subsidiary of the Debenture Issuer, (v) redemptions of securities held by the Debenture Issuer or any wholly-owned subsidiary of the Debenture Issuer, and (vi) unpaid tax distributions to holders of membership interests of GMAC LLC pursuant to Section 4(b) of GMAC LLC’s Plan of Conversion, dated June 30, 2009), and (b) the Debenture Issuer and any subsidiary of the Debenture Issuer (other than a subsidiary that is a depository institution, or a subsidiary thereof) shall not make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities or guarantees issued by the Debenture Issuer which rank *pari passu* with or junior to the Securities (“Junior Subordinated Indebtedness”) (other than (i) redemptions, purchases or other acquisitions of Junior Subordinated Indebtedness in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Debenture Issuer or any of its subsidiaries of record ownership in Junior Subordinated Indebtedness for the beneficial ownership of any other persons (other than the Debenture Issuer or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of Junior Subordinated Indebtedness for any other class or series of Junior Subordinated Indebtedness, (iv) redemptions of securities held by the Debenture Issuer or any wholly-owned

subsidiary of the Debenture Issuer and (v) any payment of interest on Junior Subordinated Indebtedness paid *pro rata* with interest paid on the Debentures such that the respective amounts of such payments made shall bear the same ratio to each other as all accrued but unpaid interest per like-amount of Debentures and all Junior Subordinated Indebtedness bear to each other). The foregoing restrictions, however, will not apply to (i) any stock dividends paid by the Debenture Issuer where the dividend stock is the same stock as that on which the dividend is being paid or (ii) dividends or distributions by or other transactions solely among the Debenture Issuer and any wholly-owned subsidiary of the Debenture Issuer or solely among wholly-owned subsidiaries of the Debenture Issuer. For the avoidance of doubt, the Trust shall have the right to make partial Distributions during an Extension Period if a corresponding payment of interest is made on the Debentures. Prior to the termination of any such Extension Period, the Debenture Issuer may further extend such Extension Period; *provided*, that such Extension Period, together with all such previous and further extensions thereof, may not exceed 20 consecutive quarters; *provided further*, that no Extension Period may extend beyond the maturity of the Debentures. Payments of deferred Distributions and accrued interest thereon will be payable to Holders as they appear on the books and records of the Trust on the record date immediately preceding the end of the Extension Period. Upon the termination of any Extension Period and the payment of all amounts then due, the Debenture Issuer may commence a new Extension Period, subject to the above requirements. The Administrative Trustees will give notice to each Holder of any Extension Period upon their receipt of notice thereof from the Debenture Issuer.

(c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust at the close of business on the relevant record dates. While the Trust Preferred Securities are in definitive, fully-registered form, subject to the rules of any securities exchange on which the Trust Preferred Securities are listed, the relevant record dates shall be 15 days prior to the relevant payment dates or such other record date fixed by the Administrative Trustee that is not more than 60 nor less than 10 days prior to such relevant payment dates (each a “Distribution Record Date”), which payment dates shall correspond to the interest payment dates on the Debentures. If the Trust Preferred Securities shall be in book-entry only form, the relevant record dates shall be one Business Day prior to the relevant payment dates, which payment dates shall correspond to the interest payment dates on the Debentures. Subject to any applicable laws and regulations and the provisions of the Declaration, each such payment in respect of the Trust Preferred Securities will be made in accordance with the procedures of The Depository Trust Company (“DTC”). The relevant record dates for the Common Securities shall be the same record date as for the Trust Preferred Securities. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Debenture Issuer having failed to make a payment under the Debentures, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. Any day that is a Distribution Record Date shall be a Distribution Record Date whether or not such day is a Business Day.

(d) In the event that there is any money or other property, held by or for the Trust that is not accounted for hereunder, such property shall be distributed Pro Rata (as defined herein) among the Holders of the Securities.

### 3. Liquidation Distribution Upon Dissolution.

(a) In the event of any voluntary or involuntary dissolution, of the Trust, the Holders of the Securities will be entitled to receive out of the assets of the Trust available for distribution to Holders of Securities after satisfaction of claims and obligations of the Trust pursuant to applicable law, distributions in an amount equal to the aggregate of the stated liquidation amount per Security plus accrued and unpaid Distributions thereon to the date of payment (such amount being the “Liquidation Distribution”), unless, in connection with the winding-up, Debentures in an aggregate principal amount equal to the aggregate stated liquidation amount, with an interest rate equal to the Coupon Rate, and bearing accrued and unpaid interest in an amount equal to the accumulated and unpaid Distributions on, such Securities outstanding at such time, have been distributed on a Pro Rata basis to the Holders of the Securities in exchange for such Securities. Prior to any such Liquidation Distribution, the Debenture Issuer will obtain any required regulatory approval.

(b) If, upon any such dissolution, the Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis.

### 4. Redemption and Distribution.

(a) Upon the repayment of the Debentures in whole or in part, whether at maturity or upon redemption (either at the option of the Debenture Issuer or pursuant to a Special Event as described below or while Trust Preferred Securities are held by the U.S. Government in connection with assistance provided to the Debenture Issuer under the Troubled Asset Relief Program or any similar or related U.S. Government program, subject to consultation with the Board of Governors of the Federal Reserve System (the “Federal Reserve”), the proceeds from such repayment or payment shall be simultaneously applied to redeem Securities having an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so repaid or redeemed at a redemption price equal to the liquidation amount per Security plus an amount equal to accrued and unpaid Distributions thereon at the date of the redemption, payable in cash (the “Redemption Price”). Holders shall be given not less than 30 nor more than 60 days’ notice of such redemption. Prior to any such redemption, the Debenture Issuer will obtain any required regulatory approval.

(b) If fewer than all the outstanding Securities are to be so redeemed, the Securities will be redeemed Pro Rata and the Trust Preferred Securities to be redeemed will be as described in Section 4(e)(ii) below.

(c) Subject to obtaining any required regulatory approval, if, at any time, a Tax Event, an Investment Company Event or a Regulatory Capital Event (each as defined below, and each a “Special Event”) shall occur and be continuing, the Debenture Issuer shall have the right, upon not less than 30 nor more than 60 days’ notice, to redeem the Debentures, in whole or in



part, for cash within 90 days following the occurrence of such Special Event, and, following such redemption, Securities with an aggregate liquidation amount equal to the aggregate principal amount of the Debentures so redeemed shall be redeemed by the Trust at the Redemption Price on a Pro Rata basis; *provided, however*, that if at the time there is available to the Debenture Issuer or the Trust the opportunity to eliminate, within such 90-day period, the Special Event by taking some ministerial action, such as filing a form or making an election or pursuing some other similar reasonable measure that will have no adverse effect on the Trust (a “Ministerial Action”), the Debenture Issuer or the holders of the Trust Preferred Securities or the Debentures, then the Debenture Issuer or the Trust will pursue such measure in lieu of redemption.

“Tax Event” means that the Administrative Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a “Tax Event Opinion”) to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder), of the United States or any political subdivision or taxing authority thereof or therein or (b) any amendment to, or change in, an interpretation or application of such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination or administrative pronouncement on or after December 30, 2009), in either case after December 30, 2009, there is more than an insubstantial risk that (i) the Trust would be subject to United States federal income tax with respect to interest accrued or received on the Debentures, (ii) the Trust would be subject to more than a de minimis amount of other taxes, duties or other governmental charges, or (iii) interest payable to the Trust on the Debentures would not be deductible, in whole or in part, by the Debenture Issuer for United States federal income tax purposes.

“Investment Company Event” means that the Administrative Trustees shall have received an opinion of a nationally recognized independent counsel experienced in practice under the Investment Company Act to the effect that, as a result of the occurrence of a change in law or regulation or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a “Change in 1940 Act Law”), there is a more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after December 30, 2009.

“Regulatory Capital Event” means a determination by the Debenture Issuer, based on an opinion of counsel experienced in such matters (who may be an employee of the Debenture Issuer or any of its affiliates), that, as a result of (a) any amendment to, clarification of or change (including any announced prospective change) in applicable laws or regulations or official interpretations thereof or policies with respect thereto or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment, clarification, change, pronouncement or decision is announced or is effective after December 30, 2009, there is more than an insubstantial risk that the Trust Preferred Securities will no longer constitute Tier I Capital of the Debenture Issuer or any bank holding company of which the Debenture Issuer is a subsidiary (or its equivalent) for purposes of the capital adequacy guidelines or policies of the Federal Reserve or its successor as the Debenture Issuer’s primary federal banking regulator, provided, however, that the distribution of the Securities in connection with the liquidation of the Trust shall not in and of itself constitute a Regulatory

Capital Event unless such liquidation shall have occurred in connection with a Tax Event or an Investment Company Event.

On and from the date fixed by the Administrative Trustees for any distribution of the Debentures and dissolution of the Trust: (i) the Securities will no longer be deemed to be outstanding, (ii) if any Global Securities have been issued, DTC or its nominee (or any successor Clearing Agency or its nominee), as the record Holder of the Trust Preferred Securities, will receive a registered global certificate or certificates representing the Debentures to be delivered upon such distribution and (iii) any certificates representing Securities, except for certificates representing Trust Preferred Securities held by DTC or its nominee (or any successor Clearing Agency or its nominee), will be deemed to represent beneficial interests in the Debentures having an aggregate principal amount equal to the aggregate stated liquidation amount of, with an interest rate identical to the Coupon Rate of, and accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such certificates are presented to the Debenture Issuer or its agent for transfer or reissue.

(d) The Trust may not redeem fewer than all the outstanding Securities unless all accumulated and unpaid Distributions have been paid on all Securities for all quarterly Distribution periods terminating on or before the date of redemption.

(e) Redemption or Distribution procedures will be as follows:

(i) Notice of any redemption of, or notice of distribution of Debentures in exchange for the Securities (a “Redemption/Distribution Notice”) will be given by the Trust by mail to the Institutional Trustee and the Delaware Trustee and to each Holder of the Securities to be redeemed or exchanged not fewer than 30 nor more than 60 days before the date fixed for redemption or exchange thereof which, in the case of a redemption, will be the date fixed for redemption of the Debentures. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this Section 4(e)(i), a Redemption/Distribution Notice shall be deemed to be given on the day such notice is first mailed by first-class mail, postage prepaid, to the Holders of the Securities. Each Redemption/Distribution Notice shall be addressed to the Holders of the Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the Redemption/Distribution Notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(ii) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Trust Preferred Securities, it being understood that, in respect of Trust Preferred Securities registered in the name of and held of record by DTC or its nominee (or any successor Clearing Agency or its nominee), the distribution of the proceeds of such redemption will be made to each Clearing Agency Participant (or Person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(iii) If Securities are to be redeemed and the Trust gives a Redemption/Distribution Notice, which notice may only be issued if the Debentures are redeemed as set out in this Section 4 (which notice will be irrevocable), then (A) while the Trust

Preferred Securities are in book-entry only form, with respect to the Trust Preferred Securities, by 12:00 noon, New York City time, on the redemption date, *provided* that the Debenture Issuer has paid to the Institutional Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Institutional Trustee will deposit irrevocably with DTC or its nominee (or successor Clearing Agency or its nominee) funds sufficient to pay the applicable Redemption Price with respect to the Trust Preferred Securities and will give DTC (or any successor Clearing Agency) irrevocable instructions and authority to pay the Redemption Price to the Holders of the Trust Preferred Securities, and (B) with respect to Trust Preferred Securities issued in definitive form and Common Securities, *provided*, that the Debenture Issuer has paid the Institutional Trustee a sufficient amount of cash in connection with the related redemption or maturity of the Debentures, the Institutional Trustee will pay the relevant Redemption Price to the Holders of such Securities by check mailed to the address of the relevant Holder appearing on the books and records of the Trust on the redemption date. If a Redemption/Distribution Notice shall have been given and funds deposited as required, if applicable, then immediately prior to the close of business on the date of such deposit, or on the redemption date, as applicable, distributions will cease to accrue on the Securities so called for redemption and all rights of the Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without interest on such Redemption Price. Neither the Administrative Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption. If any date fixed for redemption of Securities is not a Business Day, then payment of the Redemption Price payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid either by the Institutional Trustee or by the Sponsor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue from the original redemption date to the actual date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the Redemption Price.

(iv) Redemption/Distribution Notices shall be sent by the Administrative Trustees on behalf of the Trust to (A) in respect of the Trust Preferred Securities, DTC or its nominee (or any successor Clearing Agency or its nominee) if the Global Certificates have been issued or, if Definitive Trust Preferred Security Certificates have been issued, to the Holder thereof and (B) in respect of the Common Securities to the Holder thereof.

(v) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Debenture Issuer or its affiliates may at any time and from time to time purchase outstanding Trust Preferred Securities by tender, in the open market or by private agreement.

## 5. Voting Rights — Trust Preferred Securities.

(a) Except as provided under Sections 5(b), 5(c) and 7 and as otherwise required by law and the Declaration, the Holders of the Trust Preferred Securities will have no voting rights.

(b) So long as any Trust Preferred Securities are outstanding, the vote or consent of the Holders of a Majority in aggregate liquidation amount of the Trust Preferred Securities, voting separately as a class, shall be necessary for effecting or validating:

(i) Any authorization or issuance of equity securities of the Trust ranking senior to the Trust Preferred Securities with respect to either or both the payment of distributions and/or the distribution of assets on any liquidation, dissolution or winding up of the Issuer;

(ii) Any amendment, alteration or repeal of any provision of the Indenture or Declaration (including, unless no vote on such merger or consolidation is required by Section 5(b)(iii) below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) so as to adversely affect the rights, preferences, privileges or voting powers of the Trust Preferred Securities; or

(iii) Any consummation of a binding exchange or reclassification involving the Trust Preferred Securities, unless in each case (x) the Trust Preferred Securities remain outstanding or, in the case of any such merger or consolidation with respect to which the Debenture Issuer is not the surviving or resulting entity, are converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such units remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Trust Preferred Securities immediately prior to such consummation, taken as a whole;

(c) Subject to the requirements set forth in this paragraph, the Holders of a Majority in aggregate liquidation amount of the Trust Preferred Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including the right to direct the Institutional Trustee, as holder of the Debentures, to (i) direct the time, method and place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past Default (as defined in the Indenture) that is waivable under Section 5.6 of the Indenture, (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required; *provided* that, where a consent or action under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of Debentures affected thereby (a “Super Majority”), the Institutional Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Trust Preferred Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding; *provided, further*, that the Institutional Trustee shall have the right to refrain from following any such direction that violates the Declaration or conflicts with any applicable rule of law or would involve it in personal liability against which indemnity would, in the opinion of the Institutional Trustee, not be adequate, and the Institutional Trustee may take any other action deemed proper by it that is not inconsistent with such direction. The Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred

Securities. Except with respect to directing the time, method and place of conducting a proceeding for a remedy available to the Institutional Trustee, the Institutional Trustee, as holder of the Debentures, shall not take any of the actions described in clauses (i), (ii), (iii) or (iv) above unless the Institutional Trustee has obtained an opinion of a nationally recognized independent tax counsel experienced in such matters to the effect that as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes. If the Institutional Trustee fails to enforce its rights under the Debentures, any Holder of Trust Preferred Securities may directly institute a legal proceeding against the Debenture Issuer to enforce the Institutional Trustee's rights under the Debentures without first instituting a legal proceeding against the Institutional Trustee or any other Person or entity. If a Default under the Declaration has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal (or premium, if any) on the Debentures on the date such interest or principal (or premium, if any) is otherwise payable (or in the case of redemption, on the redemption date), then a holder of Trust Preferred Securities may also directly institute a proceeding for enforcement of payment to such holder (a "Direct Action") of the principal of or interest (or premium, if any) on the Debentures having a principal amount equal to the aggregate liquidation amount of the Trust Preferred Securities of such holder on or after the respective due date specified or provided for in the Debentures without first (i) directing the Institutional Trustee to enforce the terms of the Debentures or (ii) instituting a legal proceeding directly against the Debenture Issuer to enforce the Institutional Trustee's rights under the Debentures. Except as provided in the preceding sentence, the Holders of Trust Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Debentures. In connection with such Direct Action, the Debenture Issuer will be subrogated to the rights of such Holder of Trust Preferred Securities under the Declaration to the extent of any payment made by the Debenture Issuer to such holder of Trust Preferred Securities in such Direct Action.

Any required approval or direction of Holders of Trust Preferred Securities may be given at a separate meeting of Holders of Trust Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Trust Preferred Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Trust Preferred Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Trust Preferred Securities will be required for the Trust to redeem and cancel Trust Preferred Securities or to distribute the Debentures in accordance with this Declaration and the terms of the Securities.

Notwithstanding that Holders of Trust Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Trust Preferred Securities that are owned by the Sponsor or any Affiliate of the Sponsor shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding; *provided, however*, that the U.S. Government shall not be an Affiliate of the Sponsor for purposes of this

provision and shall be entitled to vote or consent under the circumstances described above while it is a Holder of Trust Preferred Securities.

6. Voting Rights — Common Securities.

(a) Except as provided under Sections 6(b), 6(c) and 7 and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with and subject to Article V of the Declaration, to vote to appoint, remove or replace any Trustee or to increase or decrease the number of Trustees.

(c) Subject to Section 2.6 of the Declaration and only after the Default with respect to the Trust Preferred Securities has been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Institutional Trustee, or direct the exercise of any trust or power conferred upon the Institutional Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waiving any past Default (as defined in the Indenture) that is waivable under Section 5.6 of the Indenture, or (iii) exercising any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, *provided* that, where a consent or action under the Indenture would require the consent or act of the Holders of a Super Majority of the Debentures affected thereby, the Institutional Trustee may only give such consent or take such action at the written direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding; *provided, further*, that the Institutional Trustee shall have the right to refrain from following any such direction that violates the Declaration or conflicts with any applicable rule of law or would involve it in personal liability against which indemnity would, in the opinion of the Institutional Trustee, not be adequate, and the Institutional Trustee may take any other action deemed proper by it that is not inconsistent with such direction. Pursuant to this Section 6(c), the Institutional Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Trust Preferred Securities. Other than with respect to directing the time, method and place of conducting any proceeding for any remedy available to the Institutional Trustee or the Debenture Trustee as set forth above, the Institutional Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Institutional Trustee has obtained an opinion of nationally recognized tax counsel experienced in such matters to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action. If the Institutional Trustee fails to enforce its rights under the Declaration, any Holder of Common Securities may institute a legal proceeding directly against any Person to enforce the Institutional Trustee's rights under the Declaration, without first instituting a legal proceeding against the Institutional Trustee or any other Person.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the

Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote, or of any matter upon which action by written consent of such Holders is to be taken, to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting or the date by which such action is to be taken, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote or of such matter upon which written consent is sought and (iii) instructions for the delivery of proxies or consents.

No vote or consent of the Holders of the Common Securities will be required for the Trust to redeem and cancel Common Securities or to distribute the Debentures in accordance with the Declaration and the terms of the Securities.

7. Amendments to Declaration and Indenture.

(a) In addition to any requirements under Section 12.1 of the Declaration, if any proposed amendment to the Declaration provides for, or the Administrative Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or special rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.1 of the Declaration, then the Holders of outstanding Securities as a class, will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in liquidation amount of the Securities, voting together as a single class; *provided, however*, if any amendment or proposal referred to in clause (i) above would adversely affect only the Trust Preferred Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of a Majority in liquidation amount of such class of Securities.

(b) In the event the consent of the Institutional Trustee as the holder of the Debentures is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Institutional Trustee shall request the written direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by a Majority in liquidation amount of the Securities voting or consenting together as a single class; *provided, however*, that where a consent under the Indenture would require the consent of a Super Majority, the Institutional Trustee may only give such consent at the direction of the Holders of at least the proportion in liquidation amount of the Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding; *provided, further*, that the Institutional Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this Section 7(b) unless the Institutional Trustee has obtained an opinion of nationally recognized tax counsel experienced in such matters to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

8. Pro Rata.

A reference in these terms of the Securities to any payment, distribution or treatment as being “Pro Rata” shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, in relation to a payment, a Default under the Declaration has occurred and is continuing, in which case any funds available to make such payment shall be paid first to each Holder of the Trust Preferred Securities pro rata according to the aggregate liquidation amount of Trust Preferred Securities held by the relevant Holder relative to the aggregate liquidation amount of all Trust Preferred Securities outstanding, and only after satisfaction of all amounts owed to the Holders of the Trust Preferred Securities, to each Holder of Common Securities pro rata according to the aggregate liquidation amount of Common Securities held by the relevant Holder relative to the aggregate liquidation amount of all Common Securities outstanding.

9. Ranking.

The Trust Preferred Securities rank *pari passu* and payment thereon shall be made Pro Rata with the Common Securities except that, where a Default (as defined in the Indenture) occurs and is continuing under the Indenture in respect of the Debentures held by the Institutional Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Trust Preferred Securities.

10. Listing.

The Trust Preferred Securities will not initially be listed on any exchange. In the event that the Holder of the Common Securities determines to list the Trust Preferred Securities on an exchange, the Administrative Trustees shall use their best efforts to cause the Trust Preferred Securities to be so listed.

11. Acceptance of Securities Guarantee and Indenture.

Each Holder of Trust Preferred Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Guarantee Agreement, including the subordination provisions therein and to the provisions of the Indenture.

12. No Preemptive Rights.

The Holders of the Securities shall have no preemptive rights to subscribe for any additional securities.

13. Miscellaneous.

These terms constitute a part of the Declaration.

The Sponsor will provide a copy of the Declaration or the Guarantee Agreement, and the Indenture to a Holder without charge on written request to the Sponsor at its principal place of business.



**EXHIBIT A-1**  
**FORM OF TRUST PREFERRED SECURITY CERTIFICATE**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS (X) A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (Y) AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE DEBENTURE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THE DEBENTURES WERE ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. GMAC, INC. (THE "COMPANY") WILL, BEGINNING NO LATER THAN TEN (10) DAYS AFTER THE ISSUE DATE, PROMPTLY PROVIDE TO HOLDERS OF SECURITIES, UPON WRITTEN REQUEST, THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE, AND THE YIELD TO MATURITY WITH RESPECT TO THE DEBENTURES. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT GMAC INC., 200 RENAISSANCE CENTER, P.O. BOX 200, DETROIT, MICHIGAN 48265-2000, ATTENTION: CHIEF FINANCIAL OFFICER.

ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (I) NO PORTION OF THE ASSETS USED BY IT TO ACQUIRE AND HOLD THE SECURITY CONSTITUTES

ASSETS OF ANY "EMPLOYEE BENEFIT PLAN" SUBJECT TO SECTION 406 OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), ANY PLAN, ACCOUNT OR OTHER ARRANGEMENT SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR ANY ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH EMPLOYEE BENEFIT PLAN OR OTHER PLAN, ACCOUNT OR ARRANGEMENT OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

Certificate Number

Number of Trust Preferred Securities

CUSIP NO. \_\_\_\_\_

Aggregate liquidation amount:

\$ \_\_\_\_\_

Certificate Evidencing Trust Preferred Securities

of

GMAC Capital Trust I

8.0% Trust Preferred Securities

(Liquidation Amount \$1,000 per Trust Preferred Security)

GMAC Capital Trust I, a statutory trust formed under the laws of the State of Delaware (the “Trust”), hereby certifies that \_\_\_\_\_ (the “Holder”) is the registered owner of \_\_\_\_\_ (\_\_\_\_\_) preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 8.0% Trust Preferred Securities (the “Trust Preferred Securities”). The Trust Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Trust Preferred Securities are set forth in, and this certificate and the Trust Preferred Securities represented hereby are issued and shall in all respects be subject to, the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of December 30, 2009, as the same may be amended from time to time (the “Declaration”), including the designation of the terms of the Trust Preferred Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Guarantee Agreement to the extent provided therein. The Sponsor will provide a copy of the Declaration, the Guarantee Agreement and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

The Holder of this certificate, by accepting this certificate, is deemed to have (i) agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) and (ii) agreed to the terms of the Guarantee Agreement, including that the Guarantee Agreement is (A) subordinate and junior in right of payment to all other liabilities of GMAC, (B) *pari passu* with the most senior preferred or preference stock now or hereafter issued by GMAC and with any guarantee now or hereafter issued by GMAC with respect to preferred or preference stock of GMAC’s affiliates and (C) senior to GMAC’s common stock.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Trust Preferred Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

GMAC Capital Trust I

By: \_\_\_\_\_  
Name:  
Title: Administrative Trustee

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Trust Preferred Security Certificate to:

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(Insert assignee's social security or tax identification number)

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(Insert address and zip code of assignee)

and irrevocably appoints \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ agent to transfer this Trust Preferred Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Sign exactly as your name appears on the other side of this Trust Preferred Security Certificate)

**EXHIBIT A-2**

**FORM OF COMMON SECURITY CERTIFICATE**

TRANSFER OF THIS CERTIFICATE  
IS SUBJECT TO THE CONDITIONS  
SET FORTH IN THE DECLARATION  
REFERRED TO BELOW

Certificate Number

Number of Common Securities

Certificate Evidencing Common Securities

of

GMAC Capital Trust I

8.0% Common Securities (Liquidation Amount \$1,000 per Common Security)

GMAC Capital Trust I, a statutory trust formed under the laws of the State of Delaware (the "Trust"), hereby certifies that GMAC Inc., a Delaware corporation (the "Holder"), is the registered owner of \_\_\_\_\_ (\_\_\_\_) common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the 8.0% Common Securities (the "Common Securities"). The Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer and satisfaction of the other conditions set forth in the Declaration (as defined below), including, without limitation, Section 9.1 thereof. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust dated as of December 30, 2009, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common Securities as set forth in Annex I thereto. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Sponsor will provide a copy of the Declaration and the Indenture to a Holder without charge upon written request to the Sponsor at its principal place of business.

Upon receipt of this certificate, the Holder is bound by the Declaration and is entitled to the benefits thereunder.

The Holder of this certificate, by accepting this certificate, is deemed to have agreed to the terms of the Indenture and the Debentures, including that the Debentures are subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) as and to the extent provided in the Indenture.

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Debentures.

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_\_\_ day of \_\_\_\_,  
\_\_\_\_\_.

GMAC Capital Trust I

By: \_\_\_\_\_  
Name:  
Title: Administrative Trustee

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers this Common Security Certificate to:

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(Insert assignee's social security or tax identification number)

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(Insert address and zip code of assignee)

and irrevocably appoints \_\_\_\_\_

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\_\_\_\_\_ agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Common Security Certificate)



**EXHIBIT B**  
**SPECIMEN OF DEBENTURE**

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS (X) A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (Y) AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (I) NO PORTION OF THE ASSETS USED BY IT TO ACQUIRE AND HOLD THE SECURITY CONSTITUTES ASSETS OF ANY "EMPLOYEE BENEFIT PLAN" SUBJECT TO SECTION 406 OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), ANY PLAN, ACCOUNT OR OTHER ARRANGEMENT SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, "SIMILAR LAWS"), OR ANY ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH EMPLOYEE BENEFIT PLAN OR OTHER PLAN, ACCOUNT OR ARRANGEMENT OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

THIS SECURITY WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”), FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. GMAC, INC. (THE “COMPANY”) WILL, BEGINNING NO LATER THAN TEN (10) DAYS AFTER THE ISSUE DATE, PROMPTLY PROVIDE TO HOLDERS OF SECURITIES, UPON WRITTEN REQUEST, THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY WITH RESPECT TO THE SECURITIES. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT GMAC INC., 200 RENAISSANCE CENTER, P.O. BOX 200, DETROIT, MICHIGAN 48265-2000, ATTENTION: CHIEF FINANCIAL OFFICER.

No. \_\_\_

\$ \_\_\_\_\_

**GMAC INC.**

**8.0% JUNIOR SUBORDINATED  
DEFERRABLE INTEREST DEBENTURE  
DUE February 15, 2040**

GMAC INC., a Delaware corporation (the “Company”, which term includes any successor corporation under the Indenture, dated as of December 30, 2009, between the Company and The Bank of New York Mellon (as trustee), for value received, hereby promises to pay to The Bank of New York Mellon, as Institutional Trustee of GMAC Capital Trust I (the “Trust”), pursuant to that certain Amended and Restated Declaration of Trust, dated as of December 30, 2009, or registered assigns, the principal sum of \_\_\_ dollars (\$\_\_\_) on February 15, 2040, and to pay interest on said principal sum from December 30, 2009, or from the most recent interest payment date (each such date, an “Interest Payment Date”) to which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on February 15, May 15, August 15 and November 15 of each year commencing February 15, 2010, at a rate of 8.0% per annum, until the principal hereof shall have become due and payable, and on any overdue principal and premium, if any, and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded quarterly. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months. In the event that an amount of interest is payable for any period shorter than a full quarterly period, interest will be computed on the basis of the actual number of days elapsed in a partial month in such period. In the event that any date on which interest is payable on this Security is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. The interest installment so payable, and

punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities, as defined in said Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be (a) while this Security is held by the Institutional Trustee of the Trust or is represented by a Global Security, the close of business on the Business Day next preceding such Interest Payment Date, or (b) if pursuant to the provisions of the Indenture this Security is not in book-entry form, 15 days prior to such Interest Payment Date or such other record date fixed by the Administrative Trustee that is not more than 60 nor less than 10 days prior to such Interest Payment Date. Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered Holders on such regular record date and may be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted interest, notice whereof shall be given to the registered Holders of this series of Securities not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. The principal of (and premium, if any) and the interest on this Security shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the Holder of this Security is the Institutional Trustee of a GMAC Trust, the payment of the principal of (and premium, if any) and interest on this Security will be made at such place and to such account as may be designated by such Institutional Trustee.

This Security is not a deposit or savings account. This Security is not insured by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by, such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness of the Company, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Security shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Security are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed.

Dated: \_\_\_\_\_, 2009

GMAC INC.

By: \_\_\_\_\_  
Name: [       ]  
Title: [       ]

Attest:

By: \_\_\_\_\_  
Name: [       ]  
Title: Assistant Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series of Securities described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

(REVERSE OF SECURITY)

**GMAC INC.**

**8.0% JUNIOR SUBORDINATED  
DEFERRABLE INTEREST DEBENTURE  
DUE FEBRUARY 15, 2040**

This Security is one of a duly authorized issue of securities of the Company (herein sometimes referred to as the “Securities”), specified in the Indenture, all issued or to be issued in one or more series under and pursuant to an Indenture dated as of December 30, 2009 (the “Indenture”), duly executed and delivered between the Company and The Bank of New York Mellon, as trustee (the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Indenture. This series of Securities is limited in aggregate principal amount to \$\_\_\_.

The Company shall have the right to redeem this Security, in whole or in part, (i) while 8.0% Trust Preferred Securities of the Trust (the “Trust Preferred Securities”) or this Security are held by the U.S. Government in connection with assistance provided to the Company under the Troubled Asset Relief Program or any similar or related U.S. Government program, subject to consultation with the Federal Reserve; (ii) at the option of the Company without premium or penalty, at any time on or after December 30, 2014 (an “Optional Redemption”); or (iii) any time in certain circumstances upon the occurrence of a Tax Event, an Investment Company Event or a Regulatory Capital Event (each as defined below, and each a “Special Event”), at a redemption price equal to 100% of the principal amount thereof, plus any accrued and unpaid interest to the date of such redemption (the “Optional Redemption Price”). Any redemption pursuant to this paragraph will be made at the Optional Redemption Price upon not less than 30 days nor more than 60 days notice, and with respect to a redemption upon a Special Event, within 90 days following the occurrence of such Special Event; *provided, however*, that if at the time there is available to the Company or the Trust the opportunity to eliminate, within such 90 day period, the Special Event by taking some ministerial action, such as filing a form or making an election or pursuing some other similar reasonable measure that will have no adverse effect on the Trust, the Company or the holders of the Trust Preferred Securities or the Securities, then the Company or the Trust will pursue such measure in lieu of redemption. If the Securities of this series are only partially redeemed by the Company pursuant to an Optional Redemption, such Securities will be redeemed pro rata or by lot or by any other method utilized by the Trustee; *provided that* if, at the time of redemption, the Securities of this series are registered as a Global Security, the Depositary (as defined herein) shall determine the principal amount of such Securities held by each Security Beneficial Owner to be redeemed in accordance with its procedures.

“Tax Event” means that the Administrative Trustees shall have received an opinion of a nationally recognized independent tax counsel experienced in such matters (a “Tax Event Opinion”) to the effect that, as a result of (a) any amendment to, or change (including any announced prospective change) in, the laws (or any regulations thereunder), of the United States or any political subdivision or taxing authority thereof or therein or (b) any amendment to, or

change in, an interpretation or application of such laws or regulations by any legislative body, court, governmental agency or regulatory authority (including the enactment of any legislation and the publication of any judicial decision or regulatory determination or administrative pronouncement on or after December 30, 2009), in either case after December 30, 2009 there is more than an insubstantial risk that (i) the Trust would be subject to United States federal income tax with respect to interest accrued or received on the Securities of this series, (ii) the Trust would be subject to more than a de minimis amount of other taxes, duties or other governmental charges, or (iii) interest payable to the Trust on the Securities of this series would not be deductible, in whole or in part, by the Company for United States federal income tax purposes.

“Investment Company Event” means that the Administrative Trustees shall have received an opinion of a nationally recognized independent counsel experienced in practice under the Investment Company Act to the effect that, as a result of the occurrence of a change in law or regulation or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a “Change in 1940 Act Law”), there is a more than an insubstantial risk that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after December 30, 2009.

“Regulatory Capital Event” means a determination by the Company, based on an opinion of counsel experienced in such matters (who may be an employee of the Company or any of its affiliates), that, as a result of (a) any amendment to, clarification of or change (including any announced prospective change) in applicable laws or regulations or official interpretations thereof or policies with respect thereto or (b) any official administrative pronouncement or judicial decision interpreting or applying such laws or regulations, which amendment, clarification, change, pronouncement or decision is announced or is effective after December 30, 2009, there is more than an insubstantial risk that the Trust Preferred Securities will no longer constitute Tier I Capital of the Company or any bank holding company of which the Company is a subsidiary (or its equivalent) for purposes of the capital adequacy guidelines or policies of the Board of Governors of the Federal Reserve System or its successor as the Company’s primary federal banking regulator, *provided, however*, that the distribution of the Debentures in connection with the liquidation of the Trust shall not in and of itself constitute a Regulatory Capital Event unless such liquidation shall have occurred in connection with a Tax Event or an Investment Company Event.

Any redemption of the Securities of this series, in whole or in part, prior to the stated maturity date is subject to the prior concurrence or approval of the Federal Reserve or the staff thereof, (i) if such concurrence or approval is then required in order for securities such as the Securities of this series to qualify as tier 1 capital of a bank holding company under applicable capital adequacy guidelines, regulations, policies, or published interpretations of the Federal Reserve, or (ii) if the Federal Reserve or its staff has informed the Company that it must obtain such approval before redeeming the Securities.

In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.



In case an Event of Default, as defined in the Indenture, with respect to the Securities of this series shall have occurred and be continuing, the principal of all the Securities of this series may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities of each series affected at the time Outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of such series under the Indenture; *provided, however*, that no such supplemental indenture shall modify certain provisions of the Indenture, as set forth in the Indenture, without the consent of the Holders of each Security then outstanding and affected thereby including, without limitation, to: (i) extend the fixed maturity of any Securities of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or modify the provisions of the Indenture with respect to the subordination of the Securities in a manner adverse to the Holders, or (ii) reduce the aforesaid percentage of Securities, the Holders of which are required to consent to any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of the Indenture or certain defaults thereunder and their consequences) provided for in the Indenture. The Indenture also contains provisions permitting the Holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding affected thereby, on behalf of all of the Holders of the Securities of such series, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series. Any such consent or waiver by the registered Holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Security and of any Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Security. In determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture or hereunder, Securities owned by the U.S. Government shall not be deemed to be Securities owned by an Affiliate of the Company.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Security at the time and place and at the rate and in the money herein prescribed.

So long as no Event of Default, as defined in the Indenture, shall have occurred and be continuing, the Company shall have the right at any time during the term of the Securities of this

series and from time to time to extend the interest payment period of such Securities for up to 20 consecutive quarters (an “Extended Interest Payment Period”), at the end of which period the Company shall pay all interest then accrued and unpaid (together with interest thereon at the rate specified for the Securities of this series to the extent that payment of such interest is enforceable under applicable law); *provided*, that no such Extended Interest Payment Period shall extend beyond the maturity of such Securities; and *provided further* that during any such Extended Interest Payment Period (a) the Company and any subsidiary of the Company (other than a subsidiary of the Company that is a depository institution, or a subsidiary thereof) shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company’s capital stock or make any guarantee payment with respect thereto (other than (i) redemptions, purchases or other acquisitions of shares of capital stock of the Company in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Company or any of its subsidiaries of record ownership in capital stock of the Company for the beneficial ownership of any other persons (other than the Company or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of the Company’s capital stock for any other class or series of the Company’s capital stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to or on the original issue date of the Securities of this series or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for capital stock of the Company, (iv) distributions by or among any wholly-owned subsidiary of the Company, (v) redemptions of securities held by the Company or any wholly-owned subsidiary of the Company, and (vi) unpaid tax distributions to holders of membership interests of GMAC LLC pursuant to Section 4(b) of GMAC LLC’s Plan of Conversion, dated June 30, 2009), and (b) the Company and any subsidiary of the Company (other than a subsidiary of the Company that is a depository institution, or a subsidiary thereof) shall not make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities or guarantees issued by the Company which rank *pari passu* with or junior to the Securities (“Junior Subordinated Indebtedness”) (other than (i) redemptions, purchases or other acquisitions of Junior Subordinated Indebtedness in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Company or any of its subsidiaries of record ownership in Junior Subordinated Indebtedness for the beneficial ownership of any other persons (other than the Company or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of Junior Subordinated Indebtedness for any other class or series of Junior Subordinated Indebtedness, (iv) redemptions of securities held by the Company or any wholly-owned subsidiary of the Company and (v) any payment of interest on Junior Subordinated Indebtedness paid *pro rata* with interest paid on the Securities of this series such that the respective amounts of such payments made shall bear the same ratio to each other as all accrued but unpaid interest per like-amount of such Securities and all Junior Subordinated Indebtedness bear to each other); *provided, however*, the restrictions in the foregoing clauses (a) and (b) will not apply to (i) any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid or (ii) dividends or distributions by or other transactions solely among the Company and any wholly-owned subsidiary of the Company or solely among wholly-owned subsidiaries of the Company. For the avoidance of doubt, the Company shall have the right to make partial payments of interest on any Interest Payment Date during an Extended Interest Payment Period. Before the termination of any such

Extended Interest Payment Period, the Company may further extend such Extended Interest Payment Period, *provided* that such Extended Interest Payment Period together with all such further extensions thereof shall not exceed 20 consecutive quarters and shall not extend beyond the maturity of the Securities of this series. At the termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest and any additional amounts then due, the Company may commence a new Extended Interest Payment Period.

As provided in the Indenture and subject to certain limitations therein set forth, this Security is transferable by the registered Holder hereof on the Security Register of the Company, upon surrender of this Security for registration of transfer at the office or agency of the Trustee in the City and State of New York accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of authorized denominations and for the same aggregate principal amount and series will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Security, the Company, the Trustee, any paying agent and the Security Registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Security shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal hereof and premium, if any, and interest due hereon and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

If issued as a Global Security, this Global Security is exchangeable for Securities of this series in definitive form only under certain limited circumstances set forth in the Indenture. Securities of this series so issued are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series so issued are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.

All terms used in this Security shall have the meanings assigned to them in the Officer's Certificate. All other terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

**EXHIBIT D**

[FORM OF CERTIFICATE TO BE DELIVERED UPON  
TRANSFER OF PREFERRED SECURITIES]

GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Facsimile: (313) 656-6214  
Attention: General Counsel

The Bank of New York Mellon  
101 Barclay Street — 8W  
New York, New York 10286  
Attention: Corporate Trust Administration

Re: 8.0% Trust Preferred Securities, liquidation amount \$1,000 per preferred security (the “Securities”) CUSIP # [\_\_\_\_\_]

Reference is hereby made to that certain Amended and Restated Declaration of Trust, dated as of December 30, 2009 (the “ARDT”), among GMAC Inc., the administrative trustees named therein, BNY Mellon Trust of Delaware, as Delaware Trustee, and The Bank of New York Mellon, as Institutional Trustee (the “Institutional Trustee”). Capitalized terms used but not defined herein shall have the meanings set forth in the ARDT.

This certificate relates to \$\_\_\_\_\_ aggregate liquidation amount of Securities held in definitive form by the undersigned.

The undersigned, \_\_\_\_\_ (transferor), hereby requests that the Security Registrar register a transfer of a Security or Securities to \_\_\_\_\_ (transferee).

In connection with such transfer of the Security or Securities, the undersigned confirms that such Securities are being transferred in accordance with their terms:

**CHECK ONE BOX BELOW:**

- to GMAC Inc. or any subsidiary thereof; or
- to a “qualified institutional buyer” within the meaning of Rule 144A (“Rule 144A”) under the Securities Act of 1933, as amended (the “Securities Act”) and in compliance with Rule 144A or (B) an institutional “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act;
- pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Security Registrar will refuse to register the transfer of any of the Securities referenced in this certificate.

\_\_\_\_\_  
Signature

Signature Guarantee: \_\_\_\_\_

(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

TO BE COMPLETED BY PURCHASER IF THE SECOND BOX ABOVE IS CHECKED.

The undersigned represents and warrants that: *(initial applicable statement)*

\_\_\_\_\_ it and any account for which it is acting is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended (“Rule 144A”), (ii) it exercises sole investment discretion with respect to each such account, and (iii) it is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

\_\_\_\_\_ it is an institutional “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act purchasing for its own account or for the account of such an “accredited investor”, and it is acquiring the Securities for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, and it has such knowledge and experience in financial and business matters as to be capable of evaluation the merits and risks of its investment in the Securities, and it and any account for which it is acting is able to bear the economic risks of the investment.

[Name of Transferee]

By: \_\_\_\_\_  
Name:<sup>2</sup>  
Date:

<sup>2</sup> To be signed by an executive officer.

**EXHIBIT E**

[FORM OF CERTIFICATE TO BE DELIVERED  
IN CONNECTION WITH TRANSFERS PURSUANT TO RULE 144A]

GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Facsimile: (313) 656-6214  
Attention: General Counsel

The Bank of New York Mellon  
101 Barclay Street — 8W  
New York, New York 10286  
Attention: Corporate Trust Administration

Re: 8.0% Trust Preferred Securities, liquidation amount \$1,000 per preferred security (the  
“Securities”) CUSIP # [\_\_\_\_\_]

Ladies and Gentlemen:

In connection with our proposed sale of \$[\_\_\_\_\_] aggregate liquidation amount of the Securities (the “Subject Securities”), we hereby certify that such transfer is being effected pursuant to and in accordance with Rule 144A (“Rule 144A”) under the United States Securities Act of 1933, as amended, and, accordingly, we hereby further certify that the Subject Securities are being transferred to a person that we reasonably believe is purchasing the Subject Securities for its own account, or for one or more accounts with respect to which such person exercises sole investment discretion, and such person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Subject Securities are being transferred in compliance with any applicable securities laws of any state of the United States.

The Bank of New York Mellon and GMAC Inc. are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: \_\_\_\_\_  
Name:<sup>3</sup>

<sup>3</sup> To be signed by an authorized signatory.

---

GMAC INC.

TO

THE BANK OF NEW YORK MELLON  
*Trustee*

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INDENTURE

Dated as of December 30, 2009

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Providing for the issuance of Junior Subordinated Debt Securities

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GMAC Inc.

Reconciliation and tie between Trust Indenture Act and  
Indenture, dated as of December 30, 2009

Trust Indenture Act Section	Indenture Section
§ 310 (b)	6.8, 6.10(d)(1)
§ 311 (a)	6.13
(b)	6.13
§ 312 (b)	7.2
(c)	7.2
§ 313 (a)	7.3
§ 316 (a)	1.7(a), 1.7(b)

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NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

INDENTURE, dated as of December 30, 2009, between GMAC INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the “Company”), having its principal office at 200 Renaissance Center, P.O. Box 200, Detroit, Michigan 48265-2000, and THE BANK OF NEW YORK MELLON, a New York banking corporation duly organized and existing under the laws of the State of New York, as Trustee (herein called the “Trustee”).

#### RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured junior subordinated debentures, notes or other evidences of indebtedness (herein called the “Securities”), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof, as follows:

#### ARTICLE I

##### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

###### Section 1.1 *Definitions.*

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation; and
- (4) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

Certain terms, used principally in Article Six, are defined in that Article.

“Act” when used with respect to any Holder, has the meaning specified in Section 1.4.

“Additional Interest” has the meaning specified in Section 3.10(d).

“Administrative Trustees” has the meaning set forth in the Declaration of the applicable GMAC Trust.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, whether through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person, excluding any employee benefit plan or related trust; provided that (i) no GMAC Trust to which Securities have been issued shall be deemed to be an Affiliate of the Company and (ii) the United States Department of the Treasury shall not be deemed to be an Affiliate of the Company for purposes hereof.

“Authenticating Agent” means any Person authorized by the Trustee to act on behalf of the Trustee to authenticate Securities.

“Board of Directors” means either the board of directors of the Company or any duly authorized committee of that board.

“Board Resolution” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors or by a duly authorized committee of the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“Book Entry Interest” means a beneficial interest in a Global Security, ownership and transfers of which shall be maintained and made through book entries by the Depository.

“Business Day” means any day except Saturday, Sunday or any other day on which banking institutions in the State of New York generally are authorized or required by law or other governmental action to close.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Common Securities” means undivided beneficial common interests in the assets of a GMAC Trust which rank, except upon the occurrence and continuation of an Event of Default, *pari passu* with Trust Preferred Securities issued by such GMAC Trust.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor corporation.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by the Chief Executive Officer, the Chairman of the Board, the Chief Administrative Officer, any Vice Chairman, the Chief Financial Officer, the Controller, the Chief Accounting Officer, the Treasurer, any Assistant Treasurer, or a member of the Funding



Committee of the Company, and by its General Counsel and Corporate Secretary, or any Assistant Secretary of the Company, and delivered to the Trustee.

“Compounded Interest” has the meaning specified in Section 13.1.

“Control,” “Controlled” or “Controlling” means, with respect to any Person, any circumstance in which such Person is directly or indirectly controlled by another Person by virtue of the latter Person having the power to (i) elect, or cause the election of (whether by way of voting capital stock, by contract, trust or otherwise), the majority of the members of the board of directors or a similar governing body of the first Person, or (ii) direct (whether by way of voting capital stock, by contract, trust or otherwise) the affairs and policies of such Person.

“Corporate Trust Office” means the office of the Trustee in the City of New York, New York at which at any particular time its corporate trust business shall be principally administered, which at the date hereof is located at 101 Barclay Street — 8W, New York, New York 10286 or such other address as the Trustee may designate from time to time by notice to the Holders and the Company.

“Coupon Rate” has the meaning specified in Section 3.10(a).

“Covenant Defeasance” has the meaning specified in Section 4.3.

“Declaration” means, with respect to a GMAC Trust, the amended and restated declaration of trust or any other governing instrument of such GMAC Trust.

“Default” has the meaning specified in Section 5.7.

“Defaulted Interest” has the meaning specified in Section 3.7(b).

“Defeasance” has the meaning specified in Section 4.2.

“Deferred Interest” has the meaning specified in Section 13.1.

“Delaware Trustee” has the meaning specified in the Declaration of the applicable GMAC Trust.

“Depositary” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depositary for such Securities as contemplated by Section 3.1.

“Direct Action” has the meaning specified in Section 15.1.

“Dissolution Event” means, with respect to a GMAC Trust, that as a result of the occurrence and continuation of an event set forth in the Declaration of that GMAC Trust, such GMAC Trust is to be dissolved in accordance with its Declaration.

“Distributions” on Trust Securities of a GMAC Trust has the meaning set forth in the Declaration of such GMAC Trust.

“Event of Default” has the meaning specified in Section 5.1.

“Exchange Act” means the Securities Exchange Act of 1934 as amended from time to time, and any successor legislation.

“Extended Interest Payment Period” has the meaning specified in Section 13.1.

“Federal Reserve” means either or both of the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of Chicago, or its successor as the Company’s primary federal banking regulator.

“Floating or Adjustable Rate Provision” means a formula or provision, specified in a Board Resolution or an indenture supplemental hereto, providing for the determination, whether pursuant to objective factors or pursuant to the sole discretion of any Person (including the Company), and periodic adjustment of the interest rate per annum borne by a Floating or Adjustable Rate Security.

“Floating or Adjustable Rate Security” means any Security which provides for interest to be payable thereon at a rate per annum that may vary from time to time over the term thereof in accordance with a Floating or Adjustable Rate Provision.

“Global Security” means a Security that evidences all or part of the Securities of any series and is authenticated and delivered to, and registered in the name of, the Depository for such Securities or a nominee thereof.

“GMAC Trust” means GMAC Capital Trust I, a Delaware statutory trust, or any similar trust created for the purpose of issuing Trust Preferred Securities in connection with the issuance of Securities under this Indenture.

“Holder” means a Person in whose name a Security is registered in the Security Register.

“Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Securities established as contemplated by Section 3.1.

“Institutional Trustee” has the meaning set forth in the Declaration of the applicable GMAC Trust.

“Interest Payment Date,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“Maturity,” when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“Non Book-Entry Trust Preferred Securities” has the meaning specified in Section 3.12(a)(ii).

“Officers’ Certificate” means a certificate signed by the Chief Executive Officer, the Chairman of the Board, the Chief Administrative Officer, any Vice Chairman, the Chief Financial Officer, the Controller, the Chief Accounting Officer, the Treasurer, any Assistant Treasurer, or a member of the Funding Committee of the Company, and by its General Counsel and Corporate Secretary, or any Assistant Secretary of the Company, and delivered to the Trustee. The officer signing an Officers’ Certificate pursuant to Section 10.4 shall be the principal executive, financial or accounting officer of the Issuer or the Company, as the case may be.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for the Company.

“Outstanding,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; *provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to Section 3.6, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company;

*provided* that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or (subject to Section 1.7) any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding; *provided, however*, that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded and *provided, further*, that Securities held by the Institutional Trustee for the benefit of the holders of the Trust Securities shall not be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

“Paying Agent” means any Person authorized by the Company to pay the principal of (or premium, if any) or interest on any Securities on behalf of the Company.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment,” when used with respect to the Securities of any series, means the place or places where the principal of (and premium, if any) and interest on the Securities of that series are payable as specified as contemplated by Section 3.1.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“Private Placement Legend” has the meaning set forth in Section 2.2.

“Redemption Date,” when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

“Redemption Option Date” means, with respect to a series of Securities, the date specified as contemplated by Section 3.1 on or after which, from time to time, the Company, at its option, may redeem such series of Securities in whole or in part.

“Redemption Price,” when used with respect to any Security to be redeemed, means such percentage of the principal amount of such Security that is specified pursuant to Section 3.1 plus any accrued and unpaid interest thereon to the date of redemption.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified as such pursuant to Section 3.1.

“Responsible Officer” means, with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee having direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer’s knowledge of and familiarity with the particular subject.

“Securities” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Securities Act” means the Securities Act of 1933, as amended from time to time, or any successor legislation.

“Security Beneficial Owner” means, with respect to a Book Entry Interest, a person who is the beneficial owner of such Book Entry Interest, as reflected on the books of the Depository, or on the books of a Person maintaining an account with such Depository (directly as a Depository participant or as an indirect participant, in each case in accordance with the rules of the Depository).

“Security Register” and “Security Registrar” have the respective meanings specified in Section 3.5(a).

“Senior Indebtedness” means with respect to the Company the principal, premium, if any, and interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) on and of all indebtedness and obligations in respect of (i) (A) indebtedness of the Company for money borrowed and (B) indebtedness evidenced by securities, notes, debentures, bonds or other similar instruments issued by the Company, including, without limitation, all indebtedness (whether now or hereafter outstanding) issued under the subordinated debt indenture, dated as of December 31, 2008, between the Company and The Bank of New York Mellon, as trustee, as the same may be amended, modified or supplemented from time to time; (ii) all capital lease obligations of the Company; (iii) all obligations of the Company issued or assumed as the deferred purchase price of property, all conditional sale obligations of the Company and all obligations of the Company under any conditional sale or title retention agreement; (iv) all obligations, contingent or otherwise, of the Company in respect of any letters of credit, banker’s acceptance, security purchase facilities and similar credit transactions; (v) all obligations of the Company in respect of interest rate swap, cap or other agreements, interest rate future or options contracts, currency swap agreements, currency future or option contracts and other similar agreements; (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons for the payment of which the Company is responsible or liable as obligor, guarantor or otherwise (“guarantees”); and (vii) all obligations of the type referred to in clauses (i) through (vi) of other Persons secured by any lien on any property or asset of the Company (whether or not such obligation is assumed by the Company), except that Senior Indebtedness does not include obligations in respect of (1) any indebtedness issued under this Indenture; (2) any guarantee entered into by the Company in respect of any preferred securities, capital securities or preference stock of a GMAC Trust; (3) any accounts payable or other liabilities to trade creditors (including guarantees thereof or instruments evidencing such liabilities) or (4) any indebtedness or any guarantee that is by its terms subordinated to, or ranks equally with, the Securities and the issuance of which, in the case of this clause (4) only, (x) has received the concurrence or approval of the Federal Reserve or its staff or (y) does not at the time of issuance prevent the Securities from qualifying for tier 1 capital treatment (irrespective of any limits on the amount of the Company’s tier 1 capital) under applicable capital adequacy guidelines, regulations, policies, published interpretations, or any applicable concurrence or approval of the Federal Reserve or its staff.

“Special Event,” with respect to a GMAC Trust, has the meaning specified in the Declaration of such GMAC Trust.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

“Stated Maturity,” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“TARP” means the Troubled Asset Relief Program established under Section 101 of the Emergency Economic Stabilization Act of 2008.

“Transfer Certification” has the meaning set forth in Section 3.5(h).

“Transfer Opinion” has the meaning set forth in Section 3.5(h).

“Trust Indenture Act” means the Trust Indenture Act of 1939, as in force at the date as of which this instrument was executed, except as provided in Section 9.5.

“Trust Preferred Securities” means undivided beneficial preferred interests in the assets of a GMAC Trust which rank, except upon the occurrence and continuation of an Event of Default, *pari passu* with Common Securities issued by such GMAC Trust.

“Trust Preferred Security Certificate” has the meaning specified in the Declaration of the applicable GMAC Trust.

“Trust Securities” means Common Securities and Trust Preferred Securities of any GMAC Trust.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

“U.S. Government” means any of (i) the federal government of the United States of America, (ii) any instrumentality or agency of the federal government of the United States of America and (iii) any Person wholly-owned by, or the sole beneficiary of which is, the federal government of the United States of America or any instrumentality or agency thereof.

“U.S. Government Obligations” has the meaning specified in Section 4.4.

## Section 1.2 *Compliance Certificates and Opinions.*

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officers’ Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the Officers’ Certificate required by Section 10.4) shall include,

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

### Section 1.3 *Form of Documents Delivered to Trustee.*

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

### Section 1.4 *Acts of Holders; Record Dates.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders shall be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

#### Section 1.5 *Notices, Etc., to Trustee and Company.*

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration; *provided, however*, that such instrument will be considered properly given if submitted in an electronic format acceptable to the Trustee, or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company; *provided, however*, that such instrument will be considered properly given if submitted in an electronic format acceptable to the Company.

#### Section 1.6 *Notice to Holders; Waiver.*

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of



such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

#### Section 1.7 *Trust Indenture Act.*

(a) Except as otherwise expressly provided herein, the Trust Indenture Act shall apply as a matter of contract to this Indenture for purposes of interpretation, construction and defining the rights and obligations hereunder, and this Indenture, the Company and the Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this Indenture were qualified under that Act on the date of this Indenture; *provided, however*, that Securities held by the U.S. Government shall not be disregarded under the terms of the final paragraph of Section 316(a) of the Trust Indenture Act.

(b) Upon and following qualification of this Indenture as an indenture under the Trust Indenture Act, this Indenture shall be subject to the provisions of the Trust Indenture Act that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions, subject to any applicable exemptive order issued by the Commission, including any such order addressing the final paragraph of Section 316(a) of the Trust Indenture Act.

#### Section 1.8 *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

#### Section 1.9 *Successors and Assigns.*

(a) Neither this Indenture nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the successor or assignee agrees in writing to perform the Company's obligations hereunder.

(b) This Indenture shall be binding upon and shall inure to the benefit of any successor or permitted assign of the Company and the Trustee.

#### Section 1.10 *Separability Clause.*

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

Section 1.11 *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Indebtedness, the Holders, and, to the extent expressly provided in Section 5.2, 5.6, 9.2 and 15.1, the holders of the Trust Preferred Securities or Trust Securities, as applicable, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12 *Governing Law; Submission to Jurisdiction.*

**This Indenture and the Securities shall be governed by, and construed and interpreted in accordance with the laws of the State of New York, and all rights and remedies shall be governed by such laws without regard for the principles of its conflict of laws. Each of the parties hereto agrees (a) to submit to the exclusive jurisdiction and venue of the United States District Court for the Southern District of New York and the United States Court of Federal Claims for any and all civil actions, suits or proceedings arising out of or relating to this Indenture or the transactions contemplated hereby or thereby, and (b) that notice may be served upon (i) the Company at the address and in the manner set forth for notices to the Company in Section 1.15 and (ii) the United States Department of the Treasury in accordance with federal law. To the extent permitted by applicable law, each of the parties hereto hereby unconditionally waives trial by jury in any civil legal action or proceeding relating to this Indenture or the transactions contemplated hereby or thereby.**

Section 1.13 *Legal Holidays.*

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, *provided* that no interest shall accrue for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

Section 1.14 *Tax Characterization.*

The Company, the Trustee and each Holder of a Security (by acceptance thereof) agrees to treat the Securities as debt instruments for United States federal, state and local income and franchise tax purposes and agrees not to take any contrary position before any taxing authority or on any tax return unless otherwise required by law.

Section 1.15 *Notices.*

Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the

second Business Day following the date of dispatch if delivered by a recognized next day courier service. All notices shall be delivered, telecopied or sent by a recognized next day courier service, as set forth below, or pursuant to such other instructions as may be designated by the Trustee, the Company or the Holders:

(a) If given to the Trustee, at the Trustee's mailing address set forth below (or such other address as the Trustee may give notice of to the Holders and the Company):

The Bank of New York Mellon  
101 Barclay Street – 8W  
New York, New York 10286  
Attention: Corporate Trust Administration

(b) If given to the Company, at the Company's mailing address set forth below (or such other address as the Company may give notice of to the Holders and the Trustee):

GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Attention: General Counsel

(c) If given to any Holder, at the address set forth on the books and records of the Company.

## ARTICLE II SECURITY FORMS

### Section 2.1 *Forms Generally.*

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depository therefor or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of such Securities. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities.

The Trustee's certificates of authentication shall be in substantially the form set forth in this Article.

The definitive Securities may be produced in any manner as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

Section 2.2 *Form of Face of Security.*

*[If the Security is to be a Global Security, insert:* This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository. This Security is exchangeable for Securities registered in the name of a person other than the Depository or its nominee only in the limited circumstances described in the Indenture, and no transfer of this Security (other than a transfer of this Security as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in limited circumstances.

Unless this Security is presented by an authorized representative of The Depository Trust Company (55 Water Street, New York, New York) to the issuer or its agent for registration of transfer, exchange or payment, and any Security issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment hereon is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.]

*[If the Security is issued pursuant to an exemption from registration under the Securities Act, insert a legend substantially to the following effect (the "Private Placement Legend"), unless the Company shall determine, in accordance with applicable law, that such legend is inapplicable. If a Security that includes such legend (i) becomes registered under the Securities Act or (ii) is eligible to be transferred without restriction in accordance with Rule 144 or another exemption from registration under the Securities Act (other than Rule 144A), it shall be exchanged upon surrender in accordance with Section 3.5 at the option of the Holder for a Security that does not include such legend:*

THE SECURITIES REPRESENTED BY THIS INSTRUMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE TRANSFERRED, SOLD OR OTHERWISE DISPOSED OF EXCEPT WHILE A REGISTRATION STATEMENT RELATING THERETO IS IN EFFECT UNDER SUCH ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER SUCH ACT OR SUCH LAWS. EACH PURCHASER OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT IS NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. ANY TRANSFEREE OF THE SECURITIES REPRESENTED BY THIS INSTRUMENT BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT IT IS (X) A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) OR (Y) AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THE SECURITIES REPRESENTED BY THIS INSTRUMENT EXCEPT (A) PURSUANT TO A REGISTRATION STATEMENT WHICH IS THEN EFFECTIVE UNDER THE SECURITIES ACT, (B) FOR SO LONG AS THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT

REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) TO THE ISSUER OR (D) PURSUANT TO ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THE SECURITIES REPRESENTED BY THIS INSTRUMENT ARE TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.]

ANY PURCHASER OR HOLDER OF THIS SECURITY OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED BY ITS PURCHASE AND HOLDING THEREOF THAT EITHER (I) NO PORTION OF THE ASSETS USED BY IT TO ACQUIRE AND HOLD THE SECURITY CONSTITUTES ASSETS OF ANY “EMPLOYEE BENEFIT PLAN” SUBJECT TO SECTION 406 OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), ANY PLAN, ACCOUNT OR OTHER ARRANGEMENT SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), OR PROVISIONS UNDER ANY FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE (COLLECTIVELY, “SIMILAR LAWS”), OR ANY ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH EMPLOYEE BENEFIT PLAN OR OTHER PLAN, ACCOUNT OR ARRANGEMENT OR (II) THE PURCHASE AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAW.

*[If the security is issued with original issue discount, insert: THIS SECURITY WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”), FOR PURPOSES OF SECTIONS 1272, 1273, AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. GMAC, INC. (THE “COMPANY”) WILL, BEGINNING NO LATER THAN TEN (10) DAYS AFTER THE ISSUE DATE, PROMPTLY PROVIDE TO HOLDERS OF SECURITIES, UPON WRITTEN REQUEST, THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY WITH RESPECT TO THE SECURITIES. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT GMAC INC., 200 RENAISSANCE CENTER, P.O. BOX 200, DETROIT, MICHIGAN 48265-2000, ATTENTION: CHIEF FINANCIAL OFFICER.]*

No. \_\_\_\_\_

GMAC INC.

*[Insert title of series of Security]*

GMAC INC., a Delaware corporation (the “Company,” which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_ or registered assigns, the principal sum of \_\_\_\_\_

dollars (\$ \_\_\_\_\_) on \_\_\_\_\_, \_\_\_\_, and to pay interest on said principal sum from, \_\_\_\_, or from the most recent interest payment date (each such date, an "Interest Payment Date") to which interest has been paid or duly provided for, [quarterly] [(subject to deferral as set forth herein)] in arrears on \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_] of each year commencing [\_\_\_\_\_, \_\_\_\_], at [*If the Security is to bear interest at a fixed rate, insert -a rate of \_\_\_% per annum,*] [*If the Security is a Floating or Adjustable Rate Security, insert a rate of \_\_\_% per annum [computed-determined]*] in accordance with the [insert defined name of Floating or Adjustable Rate Provision] set forth below] until the principal hereof shall have become due and payable, and on any overdue principal and premium, if any, and (without duplication and to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the same rate per annum compounded [quarterly]. The amount of interest payable on any Interest Payment Date shall be computed on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly period for which interest is payable, interest will be computed on the basis of the actual number of days elapsed in a partial month in such period. In the event that any date on which interest is payable on this Security is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date. The interest installment so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities, as defined in said Indenture) is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the Business Day next preceding such Interest Payment Date, [*if pursuant to the provisions of the Indenture the Securities are no longer represented by a Global Security:* which shall be the close of business on the \_\_\_ Business Day next preceding such Interest Payment Date or such other record date fixed by the Administrative Trustee that is not more than 60 nor less than 10 days prior to such Interest Payment Date.] Any such interest installment not punctually paid or duly provided for shall forthwith cease to be payable to the registered Holders on such regular record date and may be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a special record date to be fixed by the Trustee for the payment of such defaulted interest, notice whereof shall be given to the registered Holders of this series of Securities not less than 10 days prior to such special record date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Payments on this Global Security will be made to the Depository Trust Company, or to a successor Depository. [*If pursuant to the provisions of the Indenture the Securities are no longer represented by a Global Security:* The principal of (and premium, if any) and the interest on this Security shall be payable at the office or agency of the Trustee maintained for that purpose in any coin or currency of the United States of America that at the time of payment is legal tender for payment of public and private debts; *provided, however,* that payment of interest may be made at the option of the Company by check mailed to the registered Holder at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the Holder of this Security is the Institutional Trustee of a GMAC Trust, the payment of the principal of (and premium, if any)

and interest on this Security will be made at such place and to such account as may be designated by such Institutional Trustee.]

**This Security is not a deposit or savings account. This Security is not insured by the Federal Deposit Insurance Corporation or any other governmental agency or instrumentality.**

*[At this point in the Security Form of any series of Floating or Adjustable Rate Securities, the text of the Floating or Adjustable Rate Provision relating thereto should be inserted.]*

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by, such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, hereby waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Indebtedness of the Company, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

This Security shall not be entitled to any benefit under the Indenture hereinafter referred to, be valid or become obligatory for any purpose until the Certificate of Authentication hereon shall have been signed by or on behalf of the Trustee.

The provisions of this Security are continued on the reverse side hereof and such continued provisions shall for all purposes have the same effect as though fully set forth at this place.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed.

Dated: \_\_\_\_\_

GMAC INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Section 2.3 *Form of Reverse of Security.*

This Security is one of a duly authorized issue of securities of the Company (herein sometimes referred to as the “Securities”), specified in the Indenture, all issued or to be issued in one or more series under and pursuant to an Indenture dated as of December 30, 2009 (the “Indenture”), duly executed and delivered between the Company and The Bank of New York Mellon, as trustee (the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities. By the terms of the Indenture, the Securities are issuable in series that may vary as to amount, date of maturity, rate of interest and in other respects as provided in the Indenture. This series of Securities is limited in aggregate principal amount to \$ \_\_\_\_\_.

Because of the occurrence and continuation of a Special Event, in certain circumstances, this Security may become due and payable at [*specify redemption prices*] % of the principal amount thereof, together with any interest accrued thereon (the “Redemption Price”). The Redemption Price shall be paid prior to 12:00 noon, New York City time, on the date of such redemption or at such earlier time as the Company determines. The Company shall have the right to redeem this Security at the option of the Company, [without premium or penalty,] in whole or in part at any time on or after [\_\_\_\_\_, \_\_\_\_\_] (an “Optional Redemption”), or at any time in certain circumstances upon the occurrence of a Special Event at a redemption price equal to [*specify redemption prices*] % of the principal amount thereof, plus any accrued but unpaid interest to the date of such redemption (the “Optional Redemption Price”). Any redemption pursuant to this paragraph will be made upon not less than 30 days nor more than 60 days notice, at the Optional Redemption Price. If the Securities of this series are only partially redeemed by the Company pursuant to an Optional Redemption, such Securities will be redeemed *pro rata* or by lot or by any other method utilized by the Trustee; *provided* that if, at the time of redemption, the Securities of this series are registered as a Global Security, the Depository shall determine the principal amount of such Securities held by each Security Beneficial Owner to be redeemed in accordance with its procedures.

Any redemption of the Securities of this series, in whole or in part, prior to the stated maturity date is subject to the prior concurrence or approval of the Federal Reserve or the staff thereof, (i) if such concurrence or approval is then required in order for securities such as the Securities of this series to qualify as tier 1 capital of a bank holding company under applicable capital adequacy guidelines, regulations, policies, or published interpretations of the Federal Reserve, or (ii) if the Federal Reserve or its staff has informed the Company that it must obtain such approval before redeeming the Securities.

[The Securities of this series are subject to redemption upon not less than 30 days’ nor, more than 60 days’ notice by mail, (1) on \_\_\_\_\_ in any year commencing with the year \_\_\_\_ and ending with the year \_\_\_\_ through operation of the sinking fund for this series at a Redemption Price of \_\_\_, (2) at any time [on or after \_\_\_\_\_, \_\_\_, as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [on or before \_\_\_, \_\_\_, and if redeemed during the 12-month period beginning \_\_\_\_\_ of the years indicated, and thereafter at a Redemption Price equal to \_\_\_% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but



interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[Notwithstanding the foregoing, the Company may not, prior to \_\_\_\_, redeem any Securities of this series as contemplated by Clause (2) of the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of monies borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than \_\_\_\_% per annum.]

[The sinking fund for this series provides for the redemption on \_\_\_\_\_ in each year beginning with the year \_\_\_\_\_ and ending with the year \_\_\_\_\_ of [not less than] \$ \_\_\_\_\_ (“mandatory sinking fund”) and not more than \$ \_\_\_\_\_ aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [mandatory] sinking fund payments may be credited against subsequent [mandatory] sinking fund payments otherwise required to be made in the [inverse] order in which they become due.]

In the event of redemption of this Security in part only, a new Security or Securities of this series for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

In case an Event of Default, as defined in the Indenture, with respect to the Securities of this series shall have occurred and be continuing, the principal of all the Securities of this series may be declared, and upon such declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the Holders of not less than a majority in aggregate principal amount of the Securities of each series affected at the time Outstanding, as defined in the Indenture, to execute supplemental indentures for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Securities of such series under the Indenture; *provided, however*, that no such supplemental indenture shall modify certain provisions of the Indenture, as set forth in the Indenture, without the consent of the Holders of each Security then outstanding and affected thereby including, without limitation, to: (i) extend the fixed maturity of any Securities of any series, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or modify the provisions of the Indenture with respect to the subordination of the Securities in a manner adverse to the Holders, or (ii) reduce the aforesaid percentage of Securities, the Holders of which are required to consent to any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of the Indenture or certain defaults thereunder and their consequences) provided for in the Indenture. The Indenture also contains provisions permitting

the Holders of a majority in aggregate principal amount of the Securities of any series at the time outstanding affected thereby, on behalf of all of the Holders of the Securities of such series, to waive any past default in the performance of any of the covenants contained in the Indenture, or established pursuant to the Indenture with respect to such series, and its consequences, except a default in the payment of the principal of or premium, if any, or interest on any of the Securities of such series. Any such consent or waiver by the registered Holder of this Security (unless revoked as provided in the Indenture) shall be conclusive and binding upon such Holder and upon all future Holders and owners of this Security and of any Security issued in exchange herefor or in place hereof (whether by registration of transfer or otherwise), irrespective of whether or not any notation of such consent or waiver is made upon this Security. In determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture or hereunder, Securities owned by the U.S. Government shall not be deemed to be Securities owned by an Affiliate of the Company.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Security at the time and place and at the rate and in the money herein prescribed.

So long as no Event of Default shall have occurred and be continuing, the Company shall have the right at any time during the term of the Securities of this series and from time to time to extend the interest payment period of such Securities for up to 20 consecutive quarters (an "Extended Interest Payment Period"), at the end of which period the Company shall pay all interest then accrued and unpaid (together with interest thereon at the rate specified for the Securities of this series to the extent that payment of such interest is enforceable under applicable law); *provided*, that no such Extended Interest Payment Period shall extend beyond the maturity of such Securities; and *provided further* that during any such Extended Interest Payment Period (a) the Company and any subsidiary of the Company (other than a subsidiary of the Company that is a depository institution, or a subsidiary thereof) shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock or make any guarantee payment with respect thereto (other than (i) redemptions, purchases or other acquisitions of shares of capital stock of the Company in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Company or any of its subsidiaries of record ownership in capital stock of the Company for the beneficial ownership of any other persons (other than the Company or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of the Company's capital stock for any other class or series of the Company's capital stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to or on the original issue date of the Securities of this series or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for capital stock of the Company, (iv) distributions by or among any wholly-owned subsidiary of the Company, (v) redemptions of securities held by the Company or any wholly-owned subsidiary of the Company, and (vi) unpaid tax distributions to holders of membership interests of GMAC LLC pursuant to Section 4(b) of GMAC LLC's Plan of Conversion, dated June 30, 2009), and (b) the Company and any subsidiary of the Company (other than a subsidiary of the Company that is a depository

institution, or a subsidiary thereof) shall not make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities or guarantees issued by the Company which rank *pari passu* with or junior to the Securities (“Junior Subordinated Indebtedness”) (other than (i) redemptions, purchases or other acquisitions of Junior Subordinated Indebtedness in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Company or any of its subsidiaries of record ownership in Junior Subordinated Indebtedness for the beneficial ownership of any other persons (other than the Company or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of Junior Subordinated Indebtedness for any other class or series of Junior Subordinated Indebtedness, (iv) redemptions of securities held by the Company or any wholly-owned subsidiary of the Company and (v) any payment of interest on Junior Subordinated Indebtedness paid *pro rata* with interest paid on the Securities of this series such that the respective amounts of such payments made shall bear the same ratio to each other as all accrued but unpaid interest per like-amount of such Securities and all Junior Subordinated Indebtedness bear to each other). The foregoing restrictions, however, will not apply to (i) any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid or (ii) dividends or distributions by or other transactions solely among the Company and any wholly-owned subsidiary of the Company or solely among wholly-owned subsidiaries of the Company. For the avoidance of doubt, the Company shall have the right to make partial payments of interest on any Interest Payment Date during an Extended Interest Payment Period. Before the termination of any such Extended Interest Payment Period, the Company may further extend such Extended Interest Payment Period, *provided* that such Extended Interest Payment Period together with all such further extensions thereof shall not exceed 20 consecutive quarters and shall not extend beyond the maturity of the Securities of this series. At the termination of any such Extended Interest Payment Period and upon the payment of all accrued and unpaid interest and any additional amounts then due, the Company may commence a new Extended Interest Payment Period.

As provided in the Indenture and subject to certain limitations therein set forth, this Security is transferable by the registered Holder hereof on the Security Register of the Company, upon surrender of this Security for registration of transfer at the office or agency of the Trustee in the City and State of New York accompanied by a written instrument or instruments of transfer in form satisfactory to the Company or the Trustee duly executed by the registered Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of authorized denominations and for the same aggregate principal amount and series will be issued to the designated transferee or transferees. No service charge will be made for any such transfer, but the Company or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge payable in relation thereto.

Prior to due presentment for registration of transfer of this Security, the Company, the Trustee, any paying agent and the Security Registrar may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Security shall be overdue and notwithstanding any notice of ownership or writing hereon made by anyone other than the Security Registrar) for the purpose of receiving payment of or on account of the principal hereof and premium, if any, and interest due hereon and for all other purposes, and neither the Company

nor the Trustee nor any paying agent nor any Security Registrar shall be affected by any notice to the contrary.

No recourse shall be had for the payment of the principal of or the interest on this Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture, against any incorporator, stockholder, officer or director, past, present or future, as such, of the Company or of any predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issuance hereof, expressly waived and released.

[The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.] [This Global Security is exchangeable for Securities of this series in definitive form only under certain limited circumstances set forth in the Indenture. Securities of this series so issued are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.] As provided in the Indenture and subject to certain limitations [herein and] therein set forth, Securities of this series [so issued] are exchangeable for a like aggregate principal amount of Securities of this series of a different authorized denomination, as requested by the Holder surrendering the same.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

Section 2.4 *Form of Trustee's Certificate of Authentication.*

#### CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series of Securities described in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

#### ARTICLE III THE SECURITIES

Section 3.1 *Amount Unlimited; Issuable in Series.*

(a) The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

(b) The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

(1) the title of the Securities of the series (which shall distinguish the Securities of the series from all Securities of any other series);

(2) the date or dates on which the principal of the Securities of the series is payable, and, if applicable to the series, the terms of any sinking fund obligations with respect to such series;

(3) the rate or rates at which the Securities of the series shall bear interest or the Floating or Adjustable Rate Provision, pursuant to which such rates shall be determined, the date or dates from which any such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for the interest payable on any Interest Payment Date (if such Interest Payment Dates or Regular Record Dates differ from those provided herein);

(4) the place or places where the principal of (and any premium, if any) and interest on Securities of the series shall be payable;

(5) in addition to the redemption rights provided herein (including the Redemption Option Date for the series), the period or periods within which and the price or prices at which any Securities of the series may be redeemed, in whole or in part, at the option of the Company;

(6) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;

(7) any other defaults applicable with respect to the Securities of the series in addition to those provided in Section 5.7(a) through (f);

(8) any other covenant or warranty included for the benefit of Securities of the series in addition to (and not inconsistent with) those included in this Indenture for the benefit of Securities of all series, or any other covenant or warranty included for the benefit of Securities of the series in lieu of any covenant or warranty included in this Indenture for the benefit of Securities of all series, or any provision that any covenant or warranty included in this Indenture for the benefit of Securities of all series shall not be for the benefit of Securities of the series, or any combination of such covenants, warranties or provisions;

(9) the subordination terms of the Securities of the series;

(10) the provisions of this Indenture, if any, that shall not apply to the series;  
and

(11) any other terms of the series (which additional terms shall not be inconsistent with the provisions of this Indenture).

(c) All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution and set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

(d) If any of the terms of the Securities of a series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the Securities of such series.

### Section 3.2 *Denominations.*

The Securities of each series shall be issuable in registered form without coupons and in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such provisions with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

### Section 3.3 *Execution, Authentication, Delivery and Dating.*

(a) The Securities shall be executed on behalf of the Company by its Chief Executive Officer, its Chairman of the Board, its Chief Administrative Officer, any Vice Chairman, its Chief Financial Officer, its Controller, its Chief Accounting Officer, its Treasurer or any Assistant Treasurer, attested by (x) its Corporate Secretary or (y) one of its Assistant Secretaries. The signature of any of these officers on the Securities may be manual or facsimile.

(b) Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established in or pursuant to one or more Board Resolutions as permitted by Sections 2.1 and 3.1, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be given, at the time of the initial delivery by the Company of Securities of such series to the Trustee for authentication, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel stating,

(1) if the form of such Securities has been established by or pursuant to Board Resolution as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities have been established by or pursuant to Board Resolution as permitted by Section 3.1, that such terms have been established in conformity with the provisions of this Indenture; and

(3) that such Securities, when authenticated and delivered by or on behalf of the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or affecting the enforcement or creditors' rights and to general equity principles.

(d) If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

(e) Each Security shall be dated the date of its authentication.

(f) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture.

#### Section 3.4 *Temporary Securities.*

(a) Pending the preparation of definitive Securities of any series, the Company may execute, and upon receipt of a Company Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the directors or officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for Securities of that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like aggregate principal amount of definitive Securities of the same series and of like tenor of authorized denominations. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

Section 3.5 *Registration, Registration of Transfer and Exchange.*

(a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the “Security Register”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities, or of Securities of a particular series, and of transfers of Securities or of Securities of such series. The Trustee is hereby appointed “Security Registrar” for the purpose of registering Securities and transfers of Securities as herein provided.

(b) Subject to Section 3.11, upon surrender for registration of transfer of any Security of any series at the office or agency of the Company in a Place of Payment for Securities of that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of like tenor of the same series, of any authorized denominations and of a like aggregate principal amount.

(c) Subject to Section 3.11, at the option of the Holder, Securities of any series may be exchanged for other Securities of like tenor of the same series, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

(e) Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(f) No service charge shall be made for any registration of transfer or exchange of Securities, but the Company or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities.

(g) The Company shall not be required (i) to issue, register the transfer of or exchange any Security of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of such series selected for redemption under Section 11.3 and ending at the close of business on the day of such mailing, or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

(h) Subject to this Section 3.5, Securities shall be freely transferable, subject to compliance with the Securities Act. Subject to the last sentence of this subsection (h), if a



Security bears a Private Placement Legend, such Security (x) may be transferred to a Person or Persons who take delivery thereof in the form of a Security bearing a Private Placement Legend only if the Security Registrar receives (A) an appropriately completed certificate of transfer in the form attached hereto as Exhibit A and (B) if applicable, a certificate substantially in the form attached hereto as Exhibit B (each, a “Transfer Certification”); and (y) may be transferred to a Person or Persons who take delivery thereof in the form of a Security not bearing a Private Placement Legend, or may be exchanged for a Certificate not bearing a Private Placement Legend, only if the Security Registrar has previously received an opinion of counsel in form reasonably acceptable to the Company to the effect that the Securities of the same series are eligible to be transferred without restriction (a “Transfer Opinion”). The Trustee and the Security Registrar shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer or exchange imposed under this Indenture or under applicable law with respect to any transfer or exchange of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof. At such time as the Company shall determine, in accordance with applicable law, that the Securities are no longer required to bear the Private Placement Legend, the Company shall deliver to the Trustee a Transfer Opinion, and no Transfer Certification shall be required as a condition to any subsequent transfer of any Security.

Section 3.6 *Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount as such destroyed, lost or stolen Security and bearing a number not contemporaneously outstanding.

(c) In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security of any series issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

(f) The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 3.7 *Payment of Interest; Interest Rights Preserved.*

(a) Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

(b) Interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (other than pursuant to an Extended Interest Payment Period) (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).

(2) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee in its sole discretion.

(c) Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

(d) For the purposes of determining the Holders who are entitled to participate in any distribution on the Securities in respect of which a Regular Record Date or a Special Record Date is not otherwise provided for in this Indenture, or for the purpose of any other action (unless provided for pursuant to Section 3.1), the Company may from time to time fix a date, not more than 90 days prior to the date of the payment of distribution or other action, as the case may be, as a record date for the determination of the identity of the Holders of record for such purposes.

#### Section 3.8 *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any) and (subject to Section 3.7) interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

#### Section 3.9 *Cancellation.*

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. Unless otherwise directed by a Company Order, delivery of which must be delivered in a timely manner to prevent such disposition, all cancelled Securities held by the Trustee shall be disposed of by it in its customary manner, and the Trustee, upon receipt of a written request of the Company, shall deliver a certificate of such disposal to the Company.

#### Section 3.10 *Interest.*

(a) Each Security will bear interest at the rate established for the series of Securities of which such Security is a part pursuant to Section 3.1 (the "Coupon Rate") from and including the original date of issuance of such Security until the principal thereof becomes due and

payable, and on any overdue principal and (to the extent that payment of such interest is enforceable under applicable law) on any overdue installment of interest at the Coupon Rate, compounded quarterly, payable (subject to the provisions of Article IV) quarterly in arrears on February 15, May 15, August 15 and November 15 of each year (or in such other periodic installments on such other dates established as payment dates for the series of Securities of which such Security is a part pursuant to Section 3.1) (each, an "Interest Payment Date") commencing on the date established for the series of Securities of which such Security is a part pursuant to Section 3.1, to the Person in whose name such Security or any Predecessor Security is registered, at the close of business on the Regular Record Date for such interest installment, which, in respect of any Securities of which the Institutional Trustee of any GMAC Trust is the Holder or a Global Security, shall be the close of business on the Business Day next preceding that Interest Payment Date. Notwithstanding the foregoing sentence, if the Trust Preferred Securities of a GMAC Trust are no longer in book-entry only form or, except if the Securities originally issued to such GMAC Trust are held by the Institutional Trustee of such GMAC Trust, the Securities of any series are not represented by a Global Security, the Company may select a Regular Record Date for such interest installment on such series of Securities which shall be any date more than 14 days but less than 60 days before an Interest Payment Date.

(b) The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months and will include the first day but exclude the last day of such period. Except as provided in the following sentence, the amount of interest payable for any period shorter than a full quarterly period for which interest is computed, will be computed on the basis of the actual number of days elapsed in a partial month in such period. In the event that any date on which interest is payable on the Securities of any series is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day that is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(c) If the Securities of a series are established as a series of Floating or Adjustable Rate Securities pursuant to Section 3.1, then this Section 3.10(b) shall not apply and the Floating or Adjustable Rate Provisions, together with any additional terms established in the applicable Board Resolution or supplemental indenture, shall govern such series.

(d) If, at any time while the Institutional Trustee of a GMAC Trust is the Holder of Securities of any series, such GMAC Trust or such Institutional Trustee is required to pay any taxes, duties, assessments or governmental charges of whatever nature (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, the Company will pay as additional interest ("Additional Interest") on the Securities of such series, such additional amounts as shall be required so that the net amounts received and retained by such GMAC Trust and/or such Institutional Trustee, as the case may be, after paying such taxes, duties, assessments or other governmental charges will be equal to the amounts such GMAC Trust and/or such Institutional Trustee, as the case may be, would have received had no such taxes, duties, assessments or other government charges been imposed.

Section 3.11 *Form and Payment.*

Except as provided in Section 3.12, the Securities of each series shall be issued in fully registered certificated form without interest coupons. Principal and interest on the Securities issued in certificated form will be payable, the transfer of such Securities will be registrable, and such Securities will be exchangeable, for Securities of the same series bearing identical terms and provisions at the office or agency of the Trustee; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the Holders of such Securities at such address as shall appear in the Security Register. Notwithstanding the foregoing, so long as the Holder of all Securities of any series is the Institutional Trustee of any GMAC Trust, the payment of the principal of and interest (including Compounded Interest and Additional Interest, if any) on Securities of such series will be made at such place and to such account as may be designated by the Institutional Trustee.

Section 3.12 *Global Securities.*

(a) In connection with a Dissolution Event with respect to any GMAC Trust,

(i) the Securities in non book-entry certificated form held by such GMAC Trust, or its Institutional Trustee, will be presented to the Trustee by the Institutional Trustee of such GMAC Trust in exchange for a Global Security in an aggregate principal amount equal to the aggregate principal amount of all outstanding Securities of the series issued to such GMAC Trust, to be registered in the name of the Depository, or its nominee, and delivered by the Trustee to the Depository for crediting to the accounts of its participants pursuant to the instructions of the Administrative Trustees of the relevant GMAC Trust. The Company upon any such presentation shall execute a Global Security in such aggregate principal amount and deliver the same to the Trustee for authentication and delivery in accordance with this Indenture. Payments on any Securities issued as a Global Security will be made to the Depository; and

(ii) if any Trust Preferred Securities of such GMAC Trust are held in non book-entry certificated form, the Securities in non book-entry certificated form held by such GMAC Trust, or its Institutional Trustee, may be presented to the Trustee by the Institutional Trustee of such GMAC Trust and any Trust Preferred Security Certificate which represents Trust Preferred Securities of such GMAC Trust other than Trust Preferred Securities held by the Depository or its nominee (“Non Book-Entry Trust Preferred Securities”) will be deemed to represent Securities presented to the Trustee by such Institutional Trustee having an aggregate principal amount equal to the aggregate liquidation amount of the Non Book-Entry Trust Preferred Securities until such Trust Preferred Security Certificates are presented to the Security Registrar for transfer or reissuance at which time such Trust Preferred Security Certificates will be cancelled and a Security, registered in the name of the holder of the Trust Preferred Security Certificate or the transferee of the holder of such Trust Preferred Security Certificate, as the case may be, with an aggregate principal amount equal to the aggregate liquidation amount of the Trust Preferred Security Certificate cancelled, will be executed by the Company and delivered to the Trustee for authentication and delivery in accordance with this Indenture. On issue of such Securities, Securities with an equivalent aggregate principal amount that were presented by the Institutional Trustee to the Trustee will be deemed to have been cancelled.

(b) A Global Security may be transferred, in whole but not in part, only to another nominee of the Depositary, or to a successor Depositary selected or approved by the Company or to a nominee of such successor Depositary.

(c) If at any time the Depositary notifies the Company that it is unwilling or unable to continue as Depositary for any series of Securities or if at any time the Depositary for such series shall no longer be registered or in good standing under the Exchange Act, or other applicable statute or regulation, and a successor Depositary for such series is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such condition, as the case may be, the Company will execute, and, subject to this Article III, the Trustee, upon written notice from the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security. In addition, the Company may at any time determine that the Securities of any series shall no longer be represented by a Global Security, subject to the procedures of the Depositary. In such event the Company will execute and, subject to Section 3.5, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver the Securities of such series in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the Global Security for such series in exchange for such Global Security. Upon the exchange of the Global Security for such Securities in definitive registered form without coupons, in authorized denominations, the Global Security shall be cancelled by the Trustee. Such Securities in definitive registered form issued in exchange for the Global Security shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. The Trustee shall deliver such Securities to the Depositary, for delivery to the Persons in whose names such Securities are so registered.

#### Section 3.13 *CUSIP Numbers.*

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

### ARTICLE IV SATISFACTION AND DISCHARGE; DEFEASANCE

#### Section 4.1 *Satisfaction and Discharge of Indenture.*

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been mutilated, destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.3) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company, and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, the Company's obligation to pay the expenses of any GMAC Trust under Section 10.6, and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 4.2 and the last paragraph of Section 10.3 shall survive.

#### Section 4.2 *Defeasance and Discharge.*

The following provisions shall apply to the Securities of each series unless specifically otherwise provided in a Board Resolution, Officers' Certificate or indenture supplemental hereto provided pursuant to Section 3.1. In addition to discharge of this Indenture pursuant to Sections 4.1 and 4.3, in the case of any series of Securities with respect to which an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest, as certified pursuant to subparagraph (a) of Section 4.4, can be determined at the time of making the deposit referred to

in such subparagraph (a), the Company shall be deemed to have paid and discharged the entire indebtedness on all the Securities of such a series as provided in this Section on and after the date the conditions set forth in Section 4.4 are satisfied, and the provisions of this Indenture with respect to the Securities of such series shall no longer be in effect (except as to (i) rights of registration of transfer and exchange of Securities of such series, (ii) substitution of mutilated, defaced, destroyed, lost or stolen Securities of such series, (iii) rights of Holders of Securities of such series to receive, solely from the trust fund described in subparagraph (a) of Section 4.4, payments of principal thereof and interest, if any, thereon upon the original stated due dates therefor (but not upon acceleration), and remaining rights of the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (iv) the rights, obligations, duties and immunities of the Trustee hereunder, (v) this Section 4.2, (vi) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (vii) the Company's obligation to pay the expenses of any GMAC Trust under Section 10.6) (hereinafter called "Defeasance"), and the Trustee at the cost and expense of the Company, shall execute proper instruments acknowledging the same.

#### Section 4.3 *Covenant Defeasance.*

In the case of any series of Securities with respect to which an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest, as certified pursuant to subparagraph (a) of Section 4.4 can be determined at the time of making the deposit referred to in such subparagraph (a), (i) the Company shall be released from its obligations under any covenants specified in or pursuant to this Indenture (except as to (A) rights of registration of transfer and exchange of Securities of such series, (B) substitution of mutilated, defaced, destroyed, lost or stolen Securities of such series, (C) rights of Holders of Securities of such series to receive, from the Company pursuant to Section 10.1, payments of principal thereof and interest, if any, thereon upon the original stated due dates therefor (but not upon acceleration), the Holders of Securities of such series to receive mandatory sinking fund payments, if any, (D) the rights, obligations, duties and immunities of the Trustee hereunder, (E) the rights of the Holders of Securities of such series as beneficiaries hereof with respect to the property so deposited with the Trustee payable to all or any of them and (F) the Company's obligation to pay the expenses of any GMAC Trust under Section 10.6), and (ii) the occurrence of any event specified in Sections 5.7(e) (with respect to any of the covenants specified in or pursuant to this Indenture) and 5.7(f) shall be deemed not to be or result in a Default, in each case with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 4.4 are satisfied (hereinafter called "Covenant Defeasance"), and the Trustee, at the cost and expense of the Company, shall execute proper instruments acknowledging the same. For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant (to the extent so specified in the case of Section 5.7(e)), whether directly or indirectly by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of such series shall be unaffected thereby.



Section 4.4 *Conditions to Defeasance or Covenant Defeasance.*

The following shall be the conditions to application of either Section 4.2 or 4.3 to the Outstanding Securities:

(a) with reference to Section 4.2 or 4.3, the Company has irrevocably deposited or caused to be irrevocably deposited with the Trustee as funds in trust, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Securities of such series (i) cash in an amount, (ii) direct obligations of the United States of America, backed by its full faith and credit (“U.S. Government Obligations”), maturing as to principal and interest, if any, at such times and in such amounts as will insure the availability of cash, or (iii) a combination of (i) and (ii), in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, (A) the principal of and interest, if any, on all Securities of such series on each date that such principal or interest, if any, is due and payable, and (B) any mandatory sinking fund payments on the dates on which such payments are due and payable in accordance with the terms of this Indenture and the Securities of such series;

(b) in the case of Defeasance under Section 4.2, the Company has delivered to the Trustee an Opinion of Counsel based on the fact that (x) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (y) since the date hereof, there has been a change in the applicable United States federal income tax law, in either case to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for United States federal income tax purposes as a result of such deposit, Defeasance and discharge and will be subject to United States federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit, Defeasance and discharge had not occurred;

(c) in the case of Covenant Defeasance under Section 4.3, the Company has delivered to the Trustee an Opinion of Counsel to the effect that, and such opinion shall confirm that, the Holders of the Securities of such series will not recognize income, gain or loss for United States federal income tax purposes as a result of such deposit and Covenant Defeasance and will be subject to United States federal income tax on the same amount and in the same manner and at the same times, as would have been the case if such deposit and Covenant Defeasance had not occurred;

(d) such Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any agreement or instrument to which the Company is a party or by which it is bound; and

(e) the Company shall have delivered to the Trustee an Officers’ Certificate and an Opinion of Counsel, each stating that all conditions precedent contemplated by this provision have been complied with.

Section 4.5 *Application of Trust Money.*

Subject to the provisions of the last paragraph of Section 10.3, all money and U.S. Government Obligations deposited with the Trustee pursuant to Section 4.4 shall be held in trust,

and such money and all money from such U.S. Government Obligations shall be applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money and U.S. Government Obligations has been deposited with the Trustee. All money or U.S. Government Obligations deposited with the Trustee under Section 4.1 or Section 4.4 shall not be subject to the claims of the holders of Senior Indebtedness under Article XIV.

Section 4.6 *Indemnity for U.S. Government Obligations.*

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 4.4 or the principal or interest received in respect of such obligations other than any such tax, fee or other charge that by law is for the account of the Holders of Outstanding Securities.

Section 4.7 *Reinstatement.*

If the Trustee is unable to apply any money or U.S. Government Obligations in accordance with Section 4.4 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 4.4, until such time as the Trustee or Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with Section 4.4; *provided* that, if the Company has made any payment of principal or interest on the Securities of any series because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE V  
REMEDIES

Section 5.1 *Events of Default.*

The term "Event of Default" as used in this Indenture with respect to Securities of any series shall mean one of the following described events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) failure to pay in full interest accrued upon any Security of that series upon the conclusion of a period consisting of 20 consecutive quarters, commencing with the earliest quarter for which interest (including Deferred Interest) has not been paid in full, and continuance of such failure to pay for a period of 30 days;

(b) the entry by a court having jurisdiction in the premises of a decree or order for relief in respect of the Company in an involuntary case under the Federal bankruptcy code, as

now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, assignee, custodian, trustee or sequestrator (or similar official) of the Company or for substantially all of its property, or ordering the winding-up or liquidation of its affairs and such decree or order shall remain unstayed and in effect for a period of 90 consecutive days; or

(c) the commencement by the Company of a voluntary case under the Federal bankruptcy code, as now or hereafter constituted, or any other applicable Federal or State bankruptcy, insolvency or other similar law now or hereafter in effect, or the consent by the Company to the entry of an order for relief in an involuntary case under any such law, or the consent by the Company to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian or sequestrator (or similar official) of the Company or for substantially all of its property, or the making by it of an assignment for the benefit of creditors.

#### Section 5.2 *Acceleration of Maturity.*

(a) If any one or more of the above described Events of Default shall occur with respect to Securities of any series at the time Outstanding, then, and in each and every such case, during the continuance of such Event of Default, the Trustee or the Holders of 25% or more in principal amount of the Securities of such series then Outstanding may declare the principal amount of all the Securities of such series then Outstanding, if not then due and payable, to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by such Holders), and upon any such declaration the principal amount and the accrued interest (including any Additional Interest) on the Securities of such series shall become and be immediately due and payable, anything in this Indenture or in the Securities of such series contained to the contrary notwithstanding, *provided* that if, upon an Event of Default, the Trustee or the Holders of 25% or more in principal amount of the Securities of that series then Outstanding fail to declare the principal amount of all the Securities of such series then Outstanding to be immediately due and payable, the holders of at least 25% in aggregate liquidation amount of the corresponding series of Trust Preferred Securities then Outstanding shall have such right by a notice in writing to the Company and the Trustee; and upon any such declaration such principal amount of and the accrued interest (including any Additional Interest) on all the Securities of such series then Outstanding shall become immediately due and payable. Payment of principal and interest (including any Additional Interest) on such Securities shall remain subordinated to the extent provided in Article XIV notwithstanding that such amount shall become immediately due and payable as herein provided. This provision, however, is subject to the condition that, if at any time after the principal of all the Securities of such series shall have been so declared to be due and payable, all arrears of interest, if any, upon all the Securities of such series (with interest, to the extent that interest thereon shall be legally enforceable, on any overdue installment of interest at the rate borne by the Securities of such series) and all amounts owing the Trustee and any predecessor trustee hereunder under Section 6.7 and all other sums payable under this Indenture (except the principal of the Securities of such series which would not be due and payable were it not for such declaration) shall be paid by the Company, and every other Default under this Indenture, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, shall have been made good to the reasonable satisfaction of the Trustee or of the Holders of a majority in principal amount of the Securities of such series then Outstanding, or

provision deemed by the Trustee or by such Holders to be adequate therefor shall have been made, then and in every such case the Holders of a majority in principal amount of the Securities of such series then Outstanding may, on behalf of the Holders of all the Securities of such series, waive the Event of Default by reason of which the principal of the Securities of such series shall have been so declared to be due and payable and may rescind and annul such declaration and its consequences, *provided* that, if the Holders of at least a majority in principal amount of the Securities of such series then Outstanding fails to rescind and annul such declaration and its consequences, the holders of a majority in aggregate liquidation amount of the related series of Trust Preferred Securities then outstanding shall have such right by written notice to the Company and the Trustee, subject to the satisfaction of the conditions set forth in this sentence; but no such waiver, rescission or annulment shall extend to or affect any subsequent Default or impair any right consequent thereon. Any declaration by the Trustee pursuant to this Section 5.2 shall be by written notice to the Company, and any declaration or waiver by the Holders of Securities of any series or by the holders of Trust Securities of any series pursuant to this Section 5.2 shall be by written notice to the Company and the Trustee.

Section 5.3 *Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) If the Company shall fail for a period of 30 days to pay any installment of interest on the Securities of any series that is due and payable or shall fail to pay the principal of and premium, if any, on any of the Securities of such series when and as the same shall become due and payable, whether at maturity, or by call for redemption (otherwise than pursuant to a sinking fund) by declaration as authorized by this Indenture, or otherwise, or shall fail for a period of 30 days to make any sinking fund payment as to a series of Securities, then, upon demand of the Trustee, the Company will pay to the Trustee for the benefit of the Holders of Securities of such series then Outstanding the whole amount which then shall have become due and payable on any such Security, with interest on the overdue principal and premium, if any, and (so far as the same may be legally enforceable) on the overdue installments of interest at the rate borne by the Securities of such series, and all amounts owing the Trustee and any predecessor trustee hereunder under Section 6.7.

(b) In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor upon the Securities of such series, and collect the moneys adjudged or decreed to be payable out of the property of the Company or any other obligor upon the Securities of such series, wherever situated, in the manner provided by law. Every recovery of judgment in any such action or other proceeding, subject to the payment to the Trustee of all amounts owing the Trustee and any predecessor trustee hereunder under Section 6.7, shall be for the ratable benefit of the Holders of such series of Securities which shall be the subject of such action or proceeding. All rights of action upon or under any of the Securities or this Indenture may be enforced by the Trustee without the possession of any of the Securities and without the production of any thereof at any trial or any proceeding relative thereto.

(c) If a Default, of which a Responsible Officer of the Trustee has actual knowledge, with respect to any series of Securities occurs and is continuing, the Trustee may in its discretion

proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture, or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 5.4 *Trustee to File Claims As Attorney-In-Fact.*

The Trustee is hereby appointed, and each and every Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have appointed the Trustee, the true and lawful attorney-in-fact of such Holder, with authority to make or file (whether or not the Company shall be in default in respect of the payment of the principal of, or interest on, any of the Securities), in its own name and as trustee of an express trust or otherwise as it shall deem advisable, in any receivership, insolvency, liquidation, bankruptcy, reorganization, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or to their respective creditors or property, any and all claims, proofs of claim, proofs of debt, petitions, consents, other papers and documents and amendments of any thereof, as may be necessary or advisable in order to have the claims of the Trustee and any predecessor trustee hereunder and of the Holders of the Securities allowed in any such proceeding and to collect and receive any moneys or other property payable or deliverable on any such claim, and to execute and deliver any and all other papers and documents and to do and perform any and all other acts and things, as it may deem necessary or advisable in order to enforce in any such proceeding any of the claims of the Trustee and any predecessor trustee hereunder and of any of such Holders in respect of any of the Securities; and any receiver, assignee, trustee, custodian or debtor in any such proceeding is hereby authorized, and each and every taker or Holder of the Securities, by receiving and holding the same, shall be conclusively deemed to have authorized any such receiver, assignee, trustee, custodian or debtor, to make any such payment or delivery only to or on the order of the Trustee, and to pay to the Trustee any amount due it and any predecessor trustee hereunder under Section 6.7; *provided, however*, that nothing herein contained shall be deemed to authorize or empower the Trustee to consent to or accept or adopt, on behalf of any Holder of Securities, any plan of reorganization or readjustment of the Company affecting the Securities or the rights of any Holder thereof, or to authorize or empower the Trustee to vote in respect of the claim of any Holder of any Securities in any such proceeding.

Section 5.5 *Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to a series of Securities under this Article V shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such money or property on account of principal or any premium or interest (including Additional Interest), upon presentation of the several Securities, and the notation thereon of the payment, if only partially paid, and upon surrender thereof, if fully paid:

First: To the payment of all amounts due to the Trustee and any predecessor trustee hereunder under Section 6.7.

Second: Subject to Article XIV, in case the principal of the Outstanding Securities of such series shall not have become due and be unpaid, to the payment of

interest on the Securities of such series, in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by such Securities, such payments to be made ratably to the Persons entitled thereto.

Third: Subject to Article XIV, in case the principal of the Outstanding Securities of such series shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon the Securities of such series for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by the Securities of such series, and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon the Securities of such series, then to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Security of such series over any other Security of such series, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest.

Fourth: The balance, if any, to the Person or Persons entitled thereto.

#### Section 5.6 *Control by Holders; Waiver of Past Default.*

(a) The Holders of a majority in principal amount of the Outstanding Securities of any series may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee hereunder, or of exercising any trust or power hereby conferred upon the Trustee with respect to the Securities of such series; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if the Trustee being advised by counsel determines that the action so directed may not lawfully be taken or would be unduly prejudicial to Holders not joining in such direction or would involve the Trustee in personal liability.

(b) Prior to any declaration accelerating the maturity of the Securities of any series, the Holders of a majority in aggregate principal amount of such series of Outstanding Securities may on behalf of the Holders of all of the Securities of such series waive any past default hereunder and its consequences except a default not theretofore cured in the payment of interest (including any Additional Interest) or any premium on or the principal of the Securities of such series or in respect of any covenant or provision hereof which under Article IX cannot be modified or waived without the consent of the Holder of each Outstanding Security of each series affected thereby; *provided, however*, that if the Securities of such series are held by a GMAC Trust or a trustee of such trust, such waiver or modification to such waiver shall not be effective until the holders of Trust Securities representing a majority in liquidation preference of Trust Securities of the applicable GMAC Trust shall have consented to such waiver or modification to such waiver; *provided further*, that if the consent of the Holder of each Outstanding Security is required, such waiver shall not be effective until each holder of the Trust Securities of the applicable GMAC Trust shall have consented to such waiver. Upon any such waiver the Company, the Trustee and the Holders of the Securities of such series shall be restored to their former positions and rights hereunder, respectively, but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. Whenever any

default hereunder shall have been waived as permitted by this Section 5.6, said default shall for all purposes of the Securities of such series and this Indenture cease to exist, and any Default or Event of Default arising therefrom shall be deemed to have been cured and to be not continuing.

Section 5.7 *Limitation on Suits; Default.*

No Holder of any Security of any series shall have any right to institute any action, suit or proceeding at law or in equity for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder, in each case with respect to a Default with respect to such series of Securities, unless such Holder previously shall have given to the Trustee written notice of the happening of one or more of the Defaults herein specified with respect to such series of Securities, and unless also the Holders of 25% or more in principal amount of the Securities of such series then Outstanding shall have requested the Trustee in writing to take action in respect of the matter complained of, and unless also there shall have been offered to the Trustee security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee, for 60 days after receipt of such notification, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and such notification, request and offer of indemnity are hereby declared in every such case to be conditions precedent to any such action, suit or proceeding by any Holder of any Security of such series; it being understood and intended that no one or more of the Holders of Securities of such series shall have any right in any manner whatsoever by his or their action to enforce any right hereunder, except in the manner herein provided, and that every action, suit or proceeding at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of all Holders of the Outstanding Securities of such series; *provided, however*, that nothing contained in this Indenture or in the Securities of such series shall affect or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, and premium, if any, and interest on the Securities of such series to the respective Holders of such Securities at the respective due dates in such Securities stated, or affect or impair the right, which is also absolute and unconditional, of such Holders to institute suit to enforce the payment thereof.

The following events shall constitute a “Default” with respect to any series of Securities under this Indenture:

- (a) an Event of Default with respect to such series specified in Section 5.1; or
- (b) the failure of the Company to pay any installment of interest on any Security of such series, when and as the same shall become payable, which failure shall have continued unremedied for a period of 30 days, it being understood that the occurrence of an Extended Interest Payment Period in accordance with the terms of such Security will not constitute such a default; or
- (c) the failure of the Company to pay the principal of (and premium, if any, on) any Security of such series, when and as the same shall become payable, whether at maturity as therein expressed, by call for redemption (otherwise than pursuant to a sinking fund), by declaration as authorized by this Indenture or otherwise, whether or not permitted by Article XIV; or

(d) the failure of the Company to pay a sinking fund installment, if any, when and as the same shall become payable by the terms of a Security of such series, which failure shall have continued unremedied for a period of 30 days, whether or not permitted by Article XIV; or

(e) the failure of the Company, subject to the provisions of Section 8.1, to observe and perform any other of the covenants or agreements on the part of the Company contained in this Indenture (including any indenture supplemental hereto) (other than a covenant or agreement which has been expressly included in this Indenture solely for the benefit of a series of Securities other than that series), which failure shall not have been remedied for a period of 90 days after written notice shall have been given to the Company by the Trustee or shall have been given to the Company and the Trustee by Holders of 25% or more in aggregate principal amount of the Securities of such series then Outstanding, specifying such failure and requiring the Company to remedy the same; or

(f) in the event Securities of a series are issued and sold to a GMAC Trust or a trustee of such trust in connection with the issuance of Trust Securities by such GMAC Trust, such GMAC Trust shall have voluntarily or involuntarily dissolved, wound up its business or otherwise terminated its existence except in connection with (i) the distribution of Securities to holders of Trust Securities in liquidation of their interests in such GMAC Trust, (ii) the redemption of all of the outstanding Trust Securities of such GMAC Trust or (iii) mergers, consolidations or amalgamations permitted by the Declaration of such GMAC Trust; or

(g) any other Default provided with respect to Securities of that series.

#### Section 5.8 *Costs and Attorneys' Fees in Legal Proceedings.*

All parties to this Indenture and the Holders of the Securities agree that the court may in its discretion require, in any action, suit or proceeding for the enforcement of any right or remedy under this Indenture, or in any action, suit or proceeding against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such action, suit or proceeding of an undertaking to pay the costs of such action, suit or proceeding, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such action, suit or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided, however*, that the provisions of this Section 5.8 shall not apply to any action, suit or proceeding instituted by the Trustee, to any action, suit or proceeding instituted by any one or more Holders of Securities holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any action, suit or proceeding instituted by any Holder of Securities for the enforcement of the payment of the principal of or premium, if any, or the interest on, any of the Securities, on or after the respective due dates expressed in such Securities.

#### Section 5.9 *Remedies Cumulative.*

Except as provided in the last sentence of Section 3.6, no remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities of any series is intended to be exclusive of any other remedy or remedies, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of the Trustee or of any Holder of the Securities of any



series to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or an acquiescence therein; and every power and remedy given by this Article V to the Trustee and to the Holders, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Holders, as the case may be. In case the Trustee or any Holder of Securities shall have proceeded to enforce any right under this Indenture and the proceedings for the enforcement thereof shall have been discontinued or abandoned because of waiver or for any other reason or shall have been adjudicated adversely to the Trustee or to such Holder, then and in every such case the Company, the Trustee and the Holders shall severally and respectively be restored to their former positions and rights hereunder and thereafter all rights, remedies and powers of the Trustee and the Holders shall continue as though no such proceedings had been instituted, except as to any matters so waived or adjudicated.

Section 5.10 *Waiver of Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no law had been enacted.

ARTICLE VI  
THE TRUSTEE

Section 6.1 *Certain Duties and Responsibilities.*

(a) Except during the continuance of a Default;

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) In case a Default with respect to any series of Securities, of which a Responsible Officer of the Trustee has actual knowledge, has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of

care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this subsection shall not be construed to limit the effect of subsection (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series determined as provided in Section 5.6, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such series; and

(4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or indemnity, reasonably satisfactory to it, against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

#### Section 6.2 *Notice of Defaults.*

Within 90 days after the occurrence of any Default hereunder with respect to Securities of any series, the Trustee shall transmit by mail to all Holders of Securities of such series, as their names and addresses appear in the Security Register, notice of such Default hereunder actually known to a Responsible Officer of the Trustee, unless such Default shall have been cured or waived; *provided* that, except in the case of a Default in the payment of the principal of (or premium, if any) or interest on any Security of such series or in the payment of any sinking fund installment with respect to Securities of such series, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities of such series; and *provided, further*, that in the case of any Default of the character specified in Section 5.7(e) with respect to Securities of such series, no such notice to Holders shall be given until at least 30 days after the occurrence thereof.

Section 6.3 *Certain Rights of Trustee.*

Subject to the provisions of Section 6.1:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate;

(d) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity, reasonably satisfactory to it, against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Securities, other than (1) an Event of Default under Section 5.1(a) if such an Event of Default shall have occurred; (2) a Default under Section 5.7(b) or 5.7(c) if such a Default shall have occurred; or (3) any Default as to which the Trustee shall have received

written notice (which notice shall have been given to the Trustee at the Corporate Trust Office of the Trustee by the Company or by any Holder of the relevant Securities and which is in fact such a Default) or of which a Responsible Officer shall have actual knowledge;

(i) the Trustee shall not be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(j) the Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of third-party utilities, communications or computer (software or hardware) services;

(k) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder by the Trustee and appointed with due care by it;

(l) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(m) the permissive rights of the Trustee enumerated herein shall not be construed as duties; and

(n) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

#### Section 6.4 *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee or any Authenticating Agent assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee or any Authenticating Agent shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

#### Section 6.5 *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Sections 6.8 and 6.13, may otherwise deal with the

Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 6.6 *Money Held in Trust.*

Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

Section 6.7 *Compensation and Reimbursement.*

(a) The Company agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents, nominees, custodians and counsel), except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence, bad faith or willful misconduct; and

(3) to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the trust hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of Holders of particular Securities. The obligations of the Company under this Section shall survive the removal or resignation of the Trustee and the satisfaction, discharge or termination of this Indenture.

(c) Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs any expenses or renders any services after the occurrence of an Event of Default specified in Section 5.1(b) or Section 5.1(c), such expenses and the compensation for such services are intended to constitute expenses of administration under the United States Bankruptcy Code (Title 11 of the United States Code) or any similar federal or state law for the relief of debtors.

Section 6.8 *Disqualification; Conflicting Interests.*

The Trustee shall be subject to the provisions of Section 310(b) of the Trust Indenture Act during the period of time provided for therein. In determining whether the Trustee has a

conflicting interest as defined in Section 310(b) of the Trust Indenture Act with respect to the Securities of any series, there shall be excluded for purposes of the conflicting interest provisions of such Section 310(b) the Securities of every other series issued under this Indenture. Nothing herein shall prevent the Trustee from filing with the Commission the application referred to in the second to last paragraph of Section 310(b) of the Trust Indenture Act.

Section 6.9 *Corporate Trustee Required; Eligibility.*

There shall at all times be a Trustee hereunder which shall be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by Federal or State authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of said supervision or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 6.10 *Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 6.11.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 6.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 310(b) of the Trust Indenture Act after written request therefor by the Company or by any Holder who has been a *bona fide* Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 6.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(3) the Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public

officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Company, by a Board Resolution, may remove the Trustee with respect to all Securities, or (ii) subject to Section 5.8, any Holder who has been a *bona fide* Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 6.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 6.11, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 6.11, any Holder who has been a *bona fide* Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

(f) The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to all Holders of Securities of such series as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

#### Section 6.11 *Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to the Securities of all series for which it is the Trustee hereunder, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

(e) The Trustee shall not be liable for the acts or omissions to act of any successor Trustee.

#### Section 6.12 *Merger, Conversion, Consolidation or Succession to Business.*

Any corporation or association into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or association resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or association to which all or substantially all of the corporate trust business of the Trustee may be sold or otherwise transferred, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act, *provided* such corporation shall be otherwise qualified and eligible under this Article. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the



Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 6.13 *Preferential Collection of Claims Against Company.*

The Trustee shall comply with the Trust Indenture Act Section 311(a), excluding any creditor relationship listed in the Trust Indenture Act Section 311(b). A Trustee who has resigned or been removed shall be subject to the Trust Indenture Act Section 311(a) to the extent indicated therein.

Section 6.14 *Appointment of Authenticating Agent.*

(a) At any time when any of the Securities remain Outstanding the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

(b) Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, *provided* such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be

acceptable to the Company and shall give notice of such appointment by first-class mail, postage prepaid, to all Holders of Securities of the series with respect to which such Authenticating Agent will serve, as their names and addresses appear in the Security Register. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

(e) If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon an alternative certificate of authentication in the following form:

This is one of the Securities of the series designated herein referred to in the within-mentioned Indenture.

THE BANK OF NEW YORK MELLON,  
As Trustee

By: \_\_\_\_\_  
As Authenticating Agent

By: \_\_\_\_\_  
Authorized Officer

Dated: \_\_\_\_\_

ARTICLE VII  
HOLDERS LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 7.1 *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee:

(a) semi-annually not more than 15 days after each Regular Record Date a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of such series as of the preceding March 1 or September 1, or as of such Regular Record Date, as the case may be, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished; and *provided, further* that the Company

shall not be obligated to furnish such list at any time the list does not differ from the most recent list given to the Trustee by the Company;

*provided* that if and so long as the Trustee shall be the Security Registrar for such series, such list shall not be required to be furnished.

*Section 7.2 Preservation of Information; Communications to Holders.*

Holders may communicate pursuant to the Trust Indenture Act Section 312(b) with other Holders with respect to their rights under this Indenture and the Securities. The Company, the Trustee, the Registrar and any other person shall have the protection of the Trust Indenture Act Section 312(c).

*Section 7.3 Reports by Trustee.*

Within 60 days after May 15 of each year commencing with the year 2010, the Trustee shall provide to the Holders of Securities such reports as are required by Section 313(a) of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Trustee shall also comply with the other requirements of Section 313 of the Trust Indenture Act. The Company will notify the Trustee when any such Securities are listed on any securities exchange.

*Section 7.4 Reports by Company.*

The Company shall:

(1) file with the Trustee, within 15 days after the Company is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of said Sections, then it shall file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to all Holders, as their names and addresses appear in the Security Register, within 30 days after the filing thereof with the Trustee, such

summaries of any information, documents and reports required to be filed by the Company pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such reports shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

*Section 7.5 Officers' Certificate as to Events of Default.*

The Company shall deliver to the Trustee, as soon as practicable and in any event within five days after the Company becomes aware of the occurrence of any Default or Event of Default or an event which, with notice or the lapse of time or both, would constitute a Default or an Event of Default, an Officers' Certificate setting forth the details of such event, Default or Event of Default and the action which the Company proposes to take with respect thereto.

ARTICLE VIII  
CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

*Section 8.1 Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other corporation or convey, transfer or lease its properties and assets substantially as an entirety to any Person, unless:

(1) the Person formed by such consolidation (if other than the Company) or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of (and premium, if any) and interest on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(2) immediately after giving effect to such transaction, no Default, and no event which, after notice or lapse of time or both, would become a Default, shall have happened and be continuing; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

*Section 8.2 Successor Corporation Substituted.*

Upon any consolidation of the Company with, or merger of the Company into, any other corporation or any conveyance, transfer or lease of the properties and assets of the Company

substantially as an entirety in accordance with Section 8.1, the successor corporation formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE IX  
SUPPLEMENTAL INDENTURES

Section 9.1 *Supplemental Indentures Without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another corporation to the Company and the assumption by any such successor of the covenants of the Company contained herein and in the Securities, pursuant to Article VIII; or

(2) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of one or more specified series) or to surrender any right or power herein conferred upon the Company; or

(3) to add any additional Defaults; or

(4) to change or eliminate any of the provisions of this Indenture, *provided* that any such change or elimination (i) shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision or (ii) shall not apply to any Outstanding Securities; or

(5) to secure the Securities; or

(6) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1; or

(7) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11(b); or

(8) to cure any ambiguity or manifest error, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make

any other provisions with respect to matters or questions arising under this Indenture, *provided* such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect; or

(9) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act; *provided* such action shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

#### Section 9.2 *Supplemental Indentures with Consent of Holders.*

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; *provided* that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon (including any change in the Floating or Adjustable Rate Provision pursuant to which such rate is determined that would reduce that rate for any period) or any premium payable upon the redemption thereof, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or modify the provisions of this Indenture with respect to the subordination of the Securities in a manner adverse to the Holders, or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(3) modify any of the provisions of this Section or Section 5.6, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; *provided* that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section or the deletion of this proviso, in accordance with the requirements of Sections 6.11(b) and 9.1(8), or

(4) remove or impair the rights of any Holder of Securities to bring a Direct Action in certain circumstances, as provided in Section 15.1;

*provided, further*, that if the Securities of such series are held by a GMAC Trust or a trustee of such trust, such supplemental indenture shall not be effective until the holders of a majority in liquidation preference of Trust Securities of the applicable GMAC Trust shall have consented to such supplemental indenture; *provided, further*, that if the consent of the Holder of each Outstanding Securities is required, such supplemental indenture shall not be effective until each holder of the Trust Securities of the applicable GMAC Trust shall have consented to such supplemental indenture.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

#### Section 9.3 *Execution of Supplemental Indentures.*

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be given, in addition to the documents required by Section 1.2, and (subject to Section 6.1) shall be fully protected in relying upon, an Opinion of Counsel and an Officers' Certificate stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

#### Section 9.4 *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby to the extent provided therein.

#### Section 9.5 *Conformity with Trust Indenture Act.*

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

#### Section 9.6 *Reference in Securities to Supplemental Indentures.*

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture

may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

## ARTICLE X COVENANTS

### Section 10.1 *Payment of Principal, Premium and Interest.*

The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on the Securities of that series in accordance with the terms of the Securities of such series and this Indenture, and will duly comply with all other terms, agreements and conditions contained in, or made in the Indenture for the benefit of, the Securities of such series.

### Section 10.2 *Maintenance of Office or Agency.*

The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

### Section 10.3 *Money for Securities Payments to Be Held in Trust.*

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of (and premium, if any) or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal (and premium, if any) or interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, prior to each due date of the principal of (and premium, if any) or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay the principal (and premium, if any) or interest so becoming due, such sum to be held in trust for the benefit of



the Persons entitled to such principal, premium or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will:

(1) hold all sums held by it for the payment of the principal of (and premium, if any) or interest on Securities of that series in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment of principal (and premium, if any) or interest on the Securities of that series; and

(3) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of (and premium, if any) or interest on any Security of any series and remaining unclaimed for two years after such principal (and premium, if any) or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided* that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

#### Section 10.4 *Statement by Officers as to Default.*

The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate stating whether or not to the

best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture, and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

Section 10.5 *Covenants as to GMAC Trusts.*

For so long as any Trust Securities of a GMAC Trust remain outstanding, the Company will (i) maintain 100% direct or indirect ownership of the Common Securities of such GMAC Trust; provided, however, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities, (ii) not voluntarily dissolve, wind up or terminate such GMAC Trust, except in connection with a distribution of Securities upon a Special Event, and in connection with certain mergers, consolidations or amalgamations permitted by the Declaration of such GMAC Trust, (iii) timely perform its duties as Sponsor of the applicable GMAC Trust, (iv) use its reasonable efforts to cause such GMAC Trust to (a) remain a statutory trust, except in connection with (I) the distribution of Securities to holders of Trust Securities in liquidation of their interests in such GMAC Trust, (II) the redemption of all of the outstanding Trust Securities of such GMAC Trust, or (III) mergers, consolidations or amalgamations permitted by the Declaration of such GMAC Trust, and (b) otherwise continue to be classified as a grantor trust for United States federal income tax purposes and (v) not knowingly take any action that would cause such GMAC Trust to not be classified as a grantor trust for United States federal income tax purposes.

Section 10.6 *Payment of Expenses.*

(a) In connection with the sale and issuance of each series of Securities to the Institutional Trustee of a GMAC Trust and in connection with the offering and sale of Trust Securities by such GMAC Trust, the Company, in its capacity as borrower with respect to such Securities, shall:

(i) pay all costs and expenses relating to the offering, sale and issuance of such Securities, including any commissions to any underwriters engaged by the Company in connection with such offering, sale and issuance and compensation of the Trustee under this Indenture in accordance with the provisions of Section 6.7;

(ii) pay all costs and expenses of such GMAC Trust (including, but not limited to, costs and expenses relating to the organization of the trust, the offering, sale and issuance of the Trust Securities of such GMAC Trust (including any commissions to any underwriters engaged by the Company in connection therewith), the fees and expenses of the Institutional Trustee, the Administrative Trustees and the Delaware Trustee of such GMAC Trust, the costs and expenses relating to the operation, maintenance and dissolution of such GMAC Trust and the enforcement by such Institutional Trustee of the rights of the holders of the Trust Preferred Securities of such GMAC Trust, including, without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing, and disposition of assets of such GMAC Trust);

(iii) be primarily liable for any indemnification obligations arising with respect to the Declaration of such GMAC Trust; and

(iv) pay any and all taxes (other than United States withholding taxes in respect of amounts paid on the Securities held by such GMAC Trust) and all liabilities, costs and expenses with respect to such taxes of such GMAC Trust.

(b) Upon termination of this Indenture or any series of Securities or the removal or resignation of the Trustee pursuant to Section 6.10, the Company shall pay to the Trustee all amounts accrued and owing to the Trustee to the date of such termination, removal or resignation. Upon termination of the Declaration of any GMAC Trust or the removal or resignation of the Delaware Trustee or the Institutional Trustee, as the case may be, pursuant to Section 5.6 of the Declaration of such GMAC Trust, the Company shall pay to such Delaware Trustee or such Institutional Trustee, as the case may be, all amounts accrued and owing to such Delaware Trustee or such Institutional Trustee, as the case may be, to the date of such termination, removal or resignation.

#### Section 10.7 *Listing on an Exchange.*

If Securities of any series are to be issued as a Global Security in connection with the distribution of such Securities to the holders of the Trust Preferred Securities of a GMAC Trust upon a Dissolution Event with respect to such GMAC Trust and the Trust Preferred Securities are listed on the New York Stock Exchange, Inc. or on any other national securities exchange, the Company will use its best efforts to list such series of Securities on the New York Stock Exchange, Inc. or on such other securities exchange as the Trust Preferred Securities of such GMAC Trust are then listed. The Company will promptly notify the Trustee in writing of any Securities that will be listed on or delisted from any securities exchange.

#### Section 10.8 *Future Issuance of Securities under this Indenture.*

Any Securities issued under this Indenture shall (x) be issued with the concurrence or approval of the Federal Reserve or its staff or (y) qualify at the time of issuance for tier 1 capital treatment (irrespective of any limits on the amount of the Company's tier 1 capital) under applicable capital adequacy guidelines, regulations, policies, published interpretations or any applicable concurrence or approval of the Federal Reserve or its staff.

### ARTICLE XI REDEMPTION OF SECURITIES

#### Section 11.1 *Applicability of Article; Federal Reserve Approval.*

Securities of each series are redeemable before their respective Stated Maturities in accordance with their respective terms and (except as otherwise specified as contemplated by Section 3.1 for Securities of any series) in accordance with this Article. Any redemption of any series of Securities, in whole or in part, prior to their respective Stated Maturities shall be subject to receipt by the Company of the prior concurrence or approval of the Federal Reserve or its staff, (i) if such concurrence or approval is then required in order for securities such as the Securities to qualify as tier 1 capital under applicable capital adequacy guidelines, regulations,

policies, published interpretations, or any applicable concurrence or approval of the Federal Reserve or its staff, or (ii) if the Federal Reserve or its staff has informed the Company that it must obtain such concurrence or approval before redeeming the Securities.

Section 11.2 *Election to Redeem; Notice to Trustee.*

(a) Subject to the provisions of Section 11.2(b) and to the other provisions of this Article XI, except as otherwise may be specified in this Indenture or, with respect to any series of Securities, as otherwise specified as contemplated by Section 3.1 for the Securities of such series, the Company shall have the right to redeem any series of Securities, in whole or in part, at any time on or after the Redemption Option Date for such series at the Redemption Price. The election of the Company to redeem any Securities redeemable at the election of the Company shall be evidenced by a Board Resolution. In case of any redemption at the election of the Company of the Securities of any series, the Company shall, at least 40 days (unless a shorter period is acceptable to the Trustee), but not more than 60 days, prior to the Redemption Date fixed by the Company, notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (b) pursuant to an election of the Company which is subject to a condition provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

(b) If the Trust Preferred Securities are listed on the New York Stock Exchange, Inc. or on any other national securities exchange and a partial redemption of any series of Securities would result in the delisting of the Trust Preferred Securities of the GMAC Trust from any national securities exchange on which the Trust Preferred Securities of such GMAC Trust are then listed, the Company shall not be permitted to effect such partial redemption and may only redeem such series of Securities in whole.

Section 11.3 *Selection by Trustee of Securities to Be Redeemed.*

If less than all the Securities of any series are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series; *provided* that, if at the time of redemption such Securities are registered as a Global Security, the Depositary shall determine, in accordance with its procedures, the principal amount of such Securities held by each Security Beneficial Owner to be redeemed.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

#### Section 11.4 *Notice of Redemption.*

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (1) the Redemption Date,
- (2) the Redemption Price (or if not then ascertainable, the manner of calculation thereof),
- (3) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the particular Securities of such series to be redeemed,
- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and that interest thereon will cease to accrue on and after said date,
- (5) the place or places where such Securities are to be surrendered for payment of the Redemption Price, and
- (6) that the redemption is for a sinking fund, if such is the case.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request and provision of such notice information to the Trustee no less than 10 days prior to the mailing of such redemption notice, by the Trustee in the name and at the expense of the Company.

#### Section 11.5 *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date.

#### Section 11.6 *Securities Payable on Redemption Date.*

(a) Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment

of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; *provided* that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

(b) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

(c) The Redemption Price shall be paid prior to 12:00 noon, New York City time, on the date of such redemption or such earlier time as the Company determines, *provided* that the Company shall deposit with the Trustee an amount sufficient to pay the Redemption Price by 10:00 a.m., New York City time, on the date such Redemption Price is to be paid.

#### Section 11.7 *Securities Redeemed in Part.*

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment for Securities of that series (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series, of like tenor and of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

## ARTICLE XII SINKING FUNDS

#### Section 12.1 *Applicability of Article.*

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.1 for the Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12.2. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of Securities of such series.

## Section 12.2 *Satisfaction of Sinking Fund Payments with Securities.*

Unless the form or terms of any series of Securities shall provide otherwise, the Company (1) may deliver to the Trustee Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such Securities; *provided* that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

## Section 12.3 *Redemption of Securities for Sinking Fund.*

Not less than 60 days prior to each sinking fund payment date for any series of Securities the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 45 days before each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. The Company shall deposit the amount of cash, if any, required for such sinking fund payment with the Trustee in the manner provided in Section 11.5. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

## ARTICLE XIII

### EXTENSION OF INTEREST PAYMENT PERIOD

## Section 13.1 *Extension of Interest Payment Period.*

So long as no Event of Default shall have occurred and be continuing, the Company shall have the right, at any time and from time to time during the term of the Securities of any series, to defer payments of interest by extending the interest payment period of all Securities of such series for a period not exceeding 20 consecutive quarters (the "Extended Interest Payment Period"), during which Extended Interest Payment Period no interest shall be due and payable on Securities of such series; *provided* that no Extended Interest Payment Period may extend beyond the Maturity of such Securities. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 13.1, will bear interest thereon at the Coupon Rate compounded quarterly for each quarter of the Extended Interest Payment Period ("Compounded Interest"). At the end of any Extended Interest Payment Period with respect to any series of Securities, the Company shall pay all interest accrued and unpaid on such Securities, including any Additional Interest and Compounded Interest (together, "Deferred Interest") that shall be payable to the Holders of

Securities of such Series in whose names such Securities are registered in the Security Register on the record date immediately preceding the end of such Extended Interest Payment Period. For the avoidance of doubt, the Company shall have the right to make partial payments of interest on any Interest Payment Date during an Extended Interest Payment Period. Before the termination of any Extended Interest Payment Period, the Company may further extend such period; *provided* that such period, together with all such further extensions thereof, shall not exceed 20 consecutive quarters; and *provided further* that no prepayment of interest during an Extended Interest Payment Period shall allow the Company to extend such Extended Interest Payment Period beyond 20 consecutive quarters. Upon the termination of any Extended Interest Payment Period with respect to any series of Securities and upon the payment of all Deferred Interest then due, the Company may commence a new Extended Interest Payment Period with respect to such series of Securities, subject to the foregoing requirements. No interest on a series of Securities shall be due and payable during an Extended Interest Payment Period with respect thereto, except at the end thereof, *provided* the Company may prepay at any time all or any portion of the interest accrued during any Extended Interest Payment Period.

### Section 13.2 *Notice of Extension.*

(a) If the Institutional Trustee of a GMAC Trust is the only Holder of Securities of a series at the time the Company selects an Extended Interest Payment Period with respect thereto, the Company shall give written notice to the Administrative Trustees and the Institutional Trustee of such GMAC Trust and to the Trustee of its selection of such Extended Interest Payment Period at least one Business Day before the earlier of (i) the next succeeding date on which Distributions on the Trust Securities issued by such GMAC Trust would be payable, if not for such Extended Interest Payment Period, or (ii) the date such GMAC Trust is required to give notice of the record date, or the date such Distributions are payable, to the New York Stock Exchange or other applicable self-regulatory organization or to holders of the Trust Preferred Securities issued by such GMAC Trust, but in any event at least one Business Day before such record date.

(b) If the Institutional Trustee of a GMAC Trust is not the only Holder of Securities of a series at the time the Company selects an Extended Interest Payment Period with respect thereto, the Company shall give written notice to the Holders of Securities of such series, the Administrative Trustees and the Trustee of its selection of such Extended Interest Payment Period at least 10 Business Days before the earlier of (i) the next succeeding Interest Payment Date, or (ii) the date the Company is required to give notice of the record or payment date of such interest payment to the New York Stock Exchange or other applicable self-regulatory organization or to Holders of Securities of such series.

(c) The quarter in which any notice is given pursuant to paragraphs (a) or (b) of this Section 13.2 shall be counted as one of the 20 quarters permitted in the maximum Extended Interest Payment Period with respect to any series of Securities.

(d) Notwithstanding anything else contained in this Indenture, the Company shall be required to give notice to any Person of its selection of an Extended Interest Payment Period no more than 15 Business Days and no less than 5 Business Days before the next succeeding Interest Payment Date of the affected Securities.



### Section 13.3 *Limitation of Transactions.*

If with respect to any series of Securities (i) the Company shall exercise its right to defer payments of interest thereon as provided in Section 13.1 or (ii) there shall have occurred and be continuing any Default, then (a) the Company and any subsidiary of the Company (other than a subsidiary that is a depository institution, or a subsidiary thereof) shall not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock or make any guarantee payment with respect thereto (other than (i) redemptions, purchases or other acquisitions of shares of capital stock of the Company in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Company or any of its subsidiaries of record ownership in capital stock of the Company for the beneficial ownership of any other persons (other than the Company or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of the Company's capital stock for any other class or series of the Company's capital stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to or on the original issue date of the Securities of this series or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for capital stock of the Company, (iv) distributions by or among any wholly-owned subsidiary of the Company, (v) redemptions of securities held by the Company or any wholly-owned subsidiary of the Company, and (vi) unpaid tax distributions to holders of membership interests of GMAC LLC pursuant to Section 4(b) of GMAC LLC's Plan of Conversion, dated June 30, 2009), and (b) the Company and any subsidiary of the Company (other than a subsidiary that is a depository institution, or a subsidiary thereof) shall not make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities or guarantees issued by the Company which rank *pari passu* with or junior to the Securities ("Junior Subordinated Indebtedness") (other than (i) redemptions, purchases or other acquisitions of Junior Subordinated Indebtedness in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Company or any of its subsidiaries of record ownership in Junior Subordinated Indebtedness for the beneficial ownership of any other persons (other than the Company or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of Junior Subordinated Indebtedness for any other class or series of Junior Subordinated Indebtedness, (iv) redemptions of securities held by the Company or any wholly-owned subsidiary of the Company and (v) any payment of interest on Junior Subordinated Indebtedness paid *pro rata* with interest paid on the Securities of such series such that the respective amounts of such payments made shall bear the same ratio to each other as all accrued but unpaid interest per like-amount of such Securities and all Junior Subordinated Indebtedness bear to each other), *provided, however*, the restrictions in the foregoing clauses (a) and (b) will not apply to (i) any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid or (ii) dividends or distributions by or other transactions solely among the Company and any wholly-owned subsidiary of the Company or solely among wholly-owned subsidiaries of the Company.

ARTICLE XIV  
SUBORDINATION OF SECURITIES

Section 14.1 *Agreement to Subordinate.*

(a) The Company covenants and agrees, and each Holder of Securities issued hereunder by such Holder's acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article XIV; and each Holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions.

(b) The payment by the Company of the principal of, premium, if any, and interest on all Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full of all Senior Indebtedness of the Company, whether outstanding at the date of this Indenture or thereafter incurred.

(c) No provision of this Article XIV shall prevent the occurrence of any Default hereunder.

Section 14.2 *Default on Senior Indebtedness.*

(a) In the event and during the continuation of any default by the Company in the payment of principal, premium, interest or any other payment due on any Senior Indebtedness of the Company, as the case may be, or in the event that the maturity of any Senior Indebtedness of the Company, as the case may be, has been accelerated because of a default, then, in either case, no payment shall be made by the Company with respect to the principal (including redemption payments) of, or premium, if any, or interest on, the Securities or to acquire any of the Securities (except sinking fund payments made in Securities acquired by the Company prior to such default):

(b) In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment is segregated and held in trust) when such payment is prohibited by the preceding paragraph of this Section 14.2, before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to, the holders of Senior Indebtedness of the Company or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, ratably according to the aggregate amount remaining unpaid on account of the principal, premium, interest or any other payment due on the Senior Indebtedness held or represented by each, for application to the payment of all Senior Indebtedness of the Company, as the case may be, remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness, but only to the extent that the holders of the Senior Indebtedness (or their representative or representatives or a trustee) notify the Trustee in writing within 90 days of such payment of the amounts then due and owing on the Senior

Indebtedness and only the amounts specified in such notice to the Trustee shall be paid to the holders of Senior Indebtedness.

Section 14.3 *Liquidation; Dissolution; Bankruptcy.*

(a) Upon any payment by the Company or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due upon all Senior Indebtedness of the Company shall first be paid in full, or payment thereof provided for in money in accordance with its terms, before any payment is made by the Company on account of the principal (and premium, if any) or interest on the Securities; and upon any such dissolution or winding-up or liquidation or reorganization, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled to receive, except for the provisions of this Article XIV, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness of the Company (*pro rata* to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Indebtedness may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Indebtedness in full, in money or money's worth, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness, before any payment or distribution is made to the Holders of Securities or to the Trustee.

(b) In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, prohibited by the foregoing, shall be received by the Trustee, by any Holder or by any Paying Agent (or, if the Company is acting as its own Paying Agent, money for any such payment is segregated and held in trust) before all Senior Indebtedness of the Company is paid in full, or provision is made for such payment in money in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of such Senior Indebtedness or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Indebtedness may have been issued, as their respective interests may appear, ratably according to the aggregate amount remaining unpaid on account of the principal, premium, interest or any other payment due on the Senior Indebtedness held or represented by each, as calculated by the Company, for application to the payment of all Senior Indebtedness of the Company, as the case may be, remaining unpaid to the extent necessary to pay such Senior Indebtedness in full in money in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the benefit of the holders of such Senior Indebtedness.

(c) For purposes of this Article XIV, the words "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article

XIV with respect to the Securities to the payment of all Senior Indebtedness of the Company, as the case may be, that may at the time be outstanding, *provided* that (i) such Senior Indebtedness is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and (ii) the rights of the holders of such Senior Indebtedness are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article VIII shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 14.3 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article VIII. Nothing in Section 14.2 or in this Section 14.3 shall apply to claims of, or payments to the Trustee under or pursuant to Section 6.7.

#### Section 14.4 *Subrogation.*

(a) Subject to the payment in full of all Senior Indebtedness of the Company, the rights of the Holders of the Securities shall be subrogated to the rights of the holders of such indebtedness to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Indebtedness until the principal of (and premium, if any) and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Indebtedness of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XIV, and no payment over pursuant to the provisions of this Article XIV to or for the benefit of the holders of such Senior Indebtedness by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than Holders of Senior Indebtedness of the Company, and the holders of the Securities, be deemed to be a payment by the Company to or on account of such Senior Indebtedness. It is understood that the provisions of this Article XIV are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of such Senior Indebtedness on the other hand.

(b) Nothing contained in this Article XIV or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness of the Company, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any) and interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company, as the case may be, other than the holders of Senior Indebtedness of the Company, as the case may be, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under the Indenture, subject to the rights, if any, under this Article XIV of the holders of such Senior Indebtedness in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

(c) Upon any payment or distribution of assets of the Company referred to in this Article XIV, the Trustee, subject to the provisions of Section 6.1, and the Holders of the

Securities shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of Senior Indebtedness and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XIV.

Section 14.5 *Trustee to Effectuate Subordination.*

Each Holder of Securities by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XIV and appoints the Trustee such Holder's attorney-in-fact for any and all such purposes.

Section 14.6 *Notice by the Company.*

The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XIV. Notwithstanding the provisions of this Article XIV or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XIV, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder or holders of Senior Indebtedness or their representative or representatives or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.1 shall be entitled in all respects to assume that no such facts exist; *provided, however*, that if the Trustee shall not have received the notice provided for in this Section 14.6 at least three Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose (including, without limitation, the payment of the principal of (or premium, if any) or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary that may be received by it within three Business Days prior to such date.

The Trustee, subject to the provisions of Section 6.1, shall be entitled to conclusively rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness of the Company, as the case may be (or a trustee on behalf of such holder), to establish that such notice has been given by a holder of such Senior Indebtedness or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of such Senior Indebtedness to participate in any payment or distribution pursuant to this Article XIV, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XIV, and, if such evidence is not furnished, the

Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

*Section 14.7 Rights of the Trustee; Holders of Senior Indebtedness.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XIV in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article XIV, and no implied covenants or obligations with respect to the holders of such Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Indebtedness and, subject to the provisions of Section 6.1, the Trustee shall not be liable to any holder of such Senior Indebtedness if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of such Senior Indebtedness shall be entitled by virtue of this Article XIV or otherwise.

*Section 14.8 Subordination May Not Be Impaired.*

No right of any present or future holder of any Senior Indebtedness of the Company to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company, as the case may be, or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company, as the case may be, with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or otherwise be charged with.

Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Indebtedness of the Company may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the Holders of the Securities and without impairing or releasing the subordination provided in this Article XIV or the obligations hereunder of the Holders of the Securities to the holders of such Senior Indebtedness, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Indebtedness, or otherwise amend or supplement in any manner such Senior Indebtedness or any instrument evidencing the same or any agreement under which such Senior Indebtedness is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Indebtedness; (iii) release any Person liable in any manner for the collection of such Senior Indebtedness; and (iv) exercise or refrain from exercising any rights against the Company, as the case may be, and any other Person.

*Section 14.9 Trustee's Compensation Not Prejudiced.*

Nothing in this Article XIV shall apply to amounts due to the Trustee pursuant to Section 6.7 of this Indenture.

ARTICLE XV  
MISCELLANEOUS

Section 15.1 *Acknowledgement of Rights.*

The Company acknowledges that, with respect to any Securities held by a GMAC Trust or a trustee of such Trust, if the Institutional Trustee of such GMAC Trust fails to enforce its rights under this Indenture as the Holder of the series of Securities held as the assets of such GMAC Trust, any holder of Trust Preferred Securities of such GMAC Trust may institute legal proceedings directly against the Company to enforce such Institutional Trustee's rights under this Indenture without first instituting any legal proceedings against such Institutional Trustee or any other person or entity.

Notwithstanding the foregoing, if a Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest or principal (or premium, if any) on the applicable series of Securities on the date such interest or principal (or premium, if any) is otherwise payable (or in the case of redemption, on the redemption date), the Company acknowledges that a holder of Trust Securities issued by the GMAC Trust which is, or the Institutional Trustee of which is, the Holder of such Securities may directly institute a proceeding for enforcement of payment to such holder of the principal of or interest on (or premium, if any) the applicable series of Securities having a principal amount equal to the aggregate liquidation amount of the Trust Securities of such holder (a "Direct Action") on or after the respective due date specified of such holder on or after the respective due date specified in the applicable series of Securities. Notwithstanding any payments made to such holder of Trust Securities by the Company in connection with a Direct Action, the Company shall remain obligated to pay the principal of or interest on (or premium, if any) the series of Securities held by a GMAC Trust or the Institutional Trustee of a GMAC Trust, and the Company shall be subrogated to the rights of the holder of such Trust Securities to the extent of any payments made by the Company to such holder in any Direct Action.

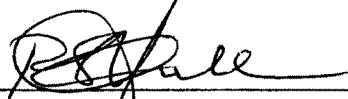
Section 15.2 *Counterparts.*

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed signature page of this Indenture by facsimile or electronic (including PDF) transmission shall be effective as delivery of a manually executed counterpart thereof.

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

GMAC INC.

By:



Name: Robert S. Hull

Title: Executive Vice President and Chief  
Financial Officer

THE BANK OF NEW YORK MELLON

As Trustee

By:

Name:

Title:




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

GMAC INC.

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON  
As Trustee

By:  \_\_\_\_\_  
Name: **GIOVANNI BARRIS**  
Title: **VICE PRESIDENT**

[FORM OF CERTIFICATE TO BE DELIVERED UPON  
TRANSFER OF SECURITIES]

GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Facsimile: (313) 656-6214  
Attention: General Counsel

The Bank of New York Mellon  
101 Barclay Street — 8W  
New York, New York 10286  
Attention: Corporate Trust Administration

Re: \_\_\_\_\_ Junior Subordinated Deferrable Interest Debentures due \_\_\_\_\_ (the  
“Securities”) CUSIP # [\_\_\_\_\_]

Reference is hereby made to that certain indenture dated as of December 30, 2009 (the  
“Indenture”), between GMAC Inc. and The Bank of New York Mellon, as trustee (the  
“Trustee”). Capitalized terms used but not defined herein shall have the meanings set forth in  
the Indenture.

This certificate relates to \$\_\_\_\_\_ principal amount of Securities held in definitive form  
by the undersigned.

The undersigned, \_\_\_\_\_ (transferor), hereby requests the Trustee to  
transfer a Security or Securities to \_\_\_\_\_ (transferee).

In connection with such transfer of the Security or Securities, the undersigned confirms  
that such Securities are being transferred in accordance with their terms:

**CHECK ONE BOX BELOW:**

- to GMAC Inc. or any subsidiary thereof; or
- to a “qualified institutional buyer” within the meaning of Rule 144A (“Rule 144A”) under the Securities Act of 1933, as amended (the “Securities Act”) and in compliance with Rule 144A or (B) an institutional “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act;
- pursuant to an exemption from registration provided by Rule 144 under the Securities Act or any other available exemption from the registration requirements of the Securities Act.

**EXHIBIT A**

Unless one of the boxes is checked, the Security Registrar will refuse to register the transfer of any of the Securities referenced in this certificate.

\_\_\_\_\_  
Signature

Signature Guarantee: \_\_\_\_\_  
(Signature must be guaranteed by a participant in a recognized signature guarantee medallion program)

TO BE COMPLETED BY PURCHASER IF THE SECOND BOX ABOVE IS CHECKED.

The undersigned represents and warrants that: *(initial applicable statement)*

\_\_\_\_\_ it and any account for which it is acting is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended (“Rule 144A”), (ii) it exercises sole investment discretion with respect to each such account, and (iii) it is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A; or

\_\_\_\_\_ it is an institutional “accredited investor” within the meaning of subparagraph (a)(1), (2), (3) or (7) of Rule 501 under the Securities Act purchasing for its own account or for the account of such an “accredited investor”, and it is acquiring the Securities for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, and it has such knowledge and experience in financial and business matters as to be capable of evaluation the merits and risks of its investment in the Securities, and it and any account for which it is acting is able to bear the economic risks of the investment.

[Name of Transferee]

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

Name:<sup>1</sup>

Date:

<sup>1</sup> \_\_\_\_\_  
To be signed by an executive officer.

[FORM OF CERTIFICATE TO BE DELIVERED BY QIBs  
IN CONNECTION WITH TRANSFERS PURSUANT TO RULE 144A]

GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Facsimile: (313) 656-6214  
Attention: General Counsel

The Bank of New York Mellon  
101 Barclay Street — 8W  
New York, New York 10286  
Attention: Corporate Trust Administration

Re: [ ] Junior Subordinated Deferrable Interest Debentures due \_\_\_\_\_ (the  
“Securities”) CUSIP # [\_\_\_\_\_]

Ladies and Gentlemen:

In connection with our proposed sale of \$\_\_\_\_\_ aggregate principal amount at maturity of the Securities (the “Subject Securities”), we hereby certify that such transfer is being effected pursuant to and in accordance with Rule 144A (“Rule 144A”) under the United States Securities Act of 1933, as amended, and, accordingly, we hereby further certify that the Subject Securities are being transferred to a person that we reasonably believe is purchasing the Subject Securities for its own account, or for one or more accounts with respect to which such person exercises sole investment discretion, and such person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and such Subject Securities are being transferred in compliance with any applicable securities laws of any state of the United States.

The Bank of New York Mellon and GMAC Inc. are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

Very truly yours,

[Name of Transferor]

By: \_\_\_\_\_  
Name:<sup>2</sup>  
Date:

<sup>2</sup> To be signed by an authorized signatory.

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TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT

GMAC Inc.

Dated as of December 30, 2009

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## TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT

This GUARANTEE AGREEMENT (the “Guarantee Agreement”), dated as of December 30, 2009, is executed and delivered by GMAC Inc., a Delaware corporation (the “Guarantor”), and The Bank of New York Mellon, as trustee (the “Guarantee Trustee”), for the benefit of the Holders (as defined herein) from time to time of the Trust Preferred Securities (as defined herein) of GMAC Capital Trust I, a Delaware statutory trust (the “Issuer”).

WHEREAS, pursuant to an Amended and Restated Declaration of Trust (the “Declaration”), dated as of December 30, 2009, among the trustees of the Issuer named therein, the Guarantor, as sponsor, and the holders from time to time of undivided beneficial interests in the assets of the Issuer, the Issuer is issuing on the date hereof 2,667,000 preferred securities, having an aggregate liquidation amount of \$2,667,000,000, designated the 8.0% Trust Preferred Securities (the “Trust Preferred Securities”);

WHEREAS, as incentive for the Holders to purchase the Trust Preferred Securities, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth in this Guarantee Agreement, to pay to the Holders the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of Trust Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders.

### ARTICLE I

#### DEFINITIONS AND INTERPRETATION

##### Section 1.1 Definitions and Interpretation.

In this Guarantee Agreement, unless the context otherwise requires:

- (a) Capitalized terms used in this Guarantee Agreement but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;
- (c) all references to “the Guarantee Agreement” or “this Guarantee Agreement” are to this Guarantee Agreement as modified, supplemented or amended from time to time;
- (d) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement, unless otherwise specified;
- (e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement, unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires; and
- (f) a reference to the singular includes the plural and vice versa.



“Authorized Officer” of a Person means any Person that is authorized to bind such Person.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, whether through one or more intermediaries, Controls, is Controlled by or is under common Control with such Person, excluding any employee benefit plan or related trust; provided that (i) the Trust shall not be deemed to be an Affiliate of the Sponsor and (ii) the United States Department of the Treasury shall not be deemed to be an Affiliate of the Sponsor for purposes hereof.

“Business Day” means any day other than a Saturday, Sunday or a day on which banking institutions in the City of New York, New York are permitted or required by any applicable law or regulation to close.

“Closing Date” means December 30, 2009.

“Control,” “Controlled” or “Controlling” means, with respect to any Person, any circumstance in which such Person is directly or indirectly controlled by another Person by virtue of the latter Person having the power to (i) elect, or cause the election of (whether by way of voting capital stock, by contract, trust or otherwise), the majority of the members of the board of directors or a similar governing body of the first Person, or (ii) direct (whether by way of voting capital stock, by contract, trust or otherwise) the affairs and policies of such Person.

“Corporate Trust Office” means the office of the Guarantee Trustee at which the corporate trust business of the Guarantee Trustee shall, at any particular time, be principally administered, which office at the date of execution of this Agreement is located at 101 Barclay Street-8W, New York, New York 10286.

“Covered Person” means any Holder or beneficial owner of Trust Preferred Securities.

“Debentures” means the series of junior subordinated debt securities of the Guarantor designated the 8.0% Junior Subordinated Deferrable Interest Debentures due February 15, 2040 held by the Institutional Trustee (as defined in the Declaration) of the Issuer.

“Event of Default” means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement.

“Guarantee Payments” means the following payments or distributions, without duplication, with respect to the Trust Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accrued and unpaid Distributions (as defined in Annex I to the Declaration) that are required to be paid on the Trust Preferred Securities, to the extent the Issuer has funds available therefor at such time, (ii) the redemption price of \$1,000 per Trust Preferred Security, plus all accrued and unpaid Distributions to the date of redemption (the “Redemption Price”), to the extent that the Issuer has funds available therefor, with respect to any Trust Preferred Securities called for redemption by the Issuer and (iii) upon a voluntary or involuntary dissolution, winding-up or termination of the Issuer (other than in connection with the distribution of Debentures to the Holders in exchange for Trust Preferred Securities as provided in the Declaration or the redemption of all of the Trust Preferred Securities upon the maturity or

redemption of all of the Debentures as provided in the Declaration) the lesser of (a) the aggregate of the liquidation amount of \$1,000 per Trust Preferred Security and all accrued and unpaid Distributions on the Trust Preferred Securities to the date of payment, or (b) the amount of assets of the Issuer remaining for distribution to Holders in liquidation of the Issuer (in either case, the “Liquidation Distribution”).

“Guarantee Trustee” means The Bank of New York Mellon, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

“Holder” shall mean any holder, as registered on the books and records of the Issuer, of any Trust Preferred Securities; *provided, however*, that (subject to Section 2.1(a) hereof) in determining whether the holders of the requisite percentage of Trust Preferred Securities have given any request, notice, consent or waiver hereunder, “Holder” shall not include the Guarantor, any Affiliate of the Guarantor or the Guarantee Trustee.

“Indemnified Person” means the Guarantee Trustee, any Affiliate of the Guarantee Trustee, or any officers, directors, shareholders, members, partners, employees, representatives, nominees, custodians or agents of the Guarantee Trustee.

“Indenture” means the Indenture dated as of December 30, 2009, as amended or supplemented from time to time, among the Guarantor and The Bank of New York Mellon, as trustee, and any indenture supplemental thereto, pursuant to which the Debentures are to be issued to the Institutional Trustee of the Issuer.

“Junior Subordinated Indebtedness” has the meaning provided in Section 6.1.

“List of Holders” has the meaning provided in Section 2.2(a).

“Majority in liquidation amount of Trust Preferred Securities” means, except as provided by the Trust Indenture Act (subject to Section 2.1(a) hereof), a vote by Holder(s), voting separately as a class (which vote may be by written consent), holding Trust Preferred Securities representing more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid Distributions to the date upon which the voting percentages are determined) of all outstanding Trust Preferred Securities.

“Officers’ Certificate” means, with respect to any Person, a certificate signed by two Authorized Officers of such Person. Any Officers’ Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

(a) a statement that each officer signing the Officers’ Certificate has read the covenant or condition and the definitions relating thereto;

(b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers’ Certificate;

(c) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

“Person” means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

“Responsible Officer” means, with respect to the Guarantee Trustee, any officer within the Corporate Trust Office of the Guarantee Trustee with direct responsibility for the administration of this Guarantee Agreement and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

“Successor Guarantee Trustee” means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.1.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended.

“U.S. Government” means any of (i) the federal government of the United States of America, (ii) any instrumentality or agency of the federal government of the United States of America and (iii) any Person wholly-owned by, or the sole beneficiary of which is, the federal government of the United States of America or any instrumentality or agency thereof.

## ARTICLE II

### TRUST INDENTURE ACT

#### Section 2.1 Trust Indenture Act; Application.

(a) Except as otherwise expressly provided herein, the Trust Indenture Act shall apply as a matter of contract to this Guarantee Agreement for purposes of interpretation, construction and defining the rights and obligations hereunder, and this Guarantee Agreement, the Guarantor and the Guarantee Trustee shall be deemed for all purposes hereof to be subject to and governed by the Trust Indenture Act to the same extent as would be the case if this Guarantee Agreement were qualified under that Act on the date of this Guarantee Agreement; *provided, however*, that Trust Preferred Securities held by the U.S. Government shall not be disregarded under the terms of the final paragraph of Section 316(a) of the Trust Indenture Act. Upon and following qualification of this Guarantee Agreement as an indenture under the Trust Indenture Act, this Guarantee Agreement shall be subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions, subject to any applicable exemptive order issued by the Commission, including any such order addressing the final paragraph of Section 316(a) of the Trust Indenture Act.

(b) If and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties required to be imposed by Section 310 to 317, inclusive, of the Trust Indenture Act, and such duties are not expressly excluded by this Guarantee Agreement as permitted by the Trust Indenture Act, such imposed duties shall control. If any provision of this Guarantee Agreement modifies or excludes any provision of the Trust Indenture Act which may be so modified or excluded, such provision shall be deemed to apply to this Guarantee Agreement as so modified or to be excluded, as the case may be.

#### Section 2.2 Lists of Holders of Securities.

(a) The Guarantor shall provide or cause to be provided to the Guarantee Trustee with a list, in such form as the Guarantee Trustee may reasonably request, of the names and addresses of the Holders (“List of Holders”) as of such date, (i) within one Business Day after January 1 and June 30 of each year, and (ii) at any other time within 30 days of receipt by the Guarantor of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Guarantee Trustee; *provided*, that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

(b) The Guarantee Trustee shall comply with its obligations under Sections 311(a), 311(b) and 312(b) of the Trust Indenture Act.

#### Section 2.3 Reports by the Guarantee Trustee.

Within 60 days after May 15 of each year (commencing with the year of the first anniversary of the Closing Date), the Guarantee Trustee shall provide to the Holders such reports as are required by Section 313(a) of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the other requirements of Section 313 of the Trust Indenture Act.

#### Section 2.4 Reports to Guarantee Trustee.

The Guarantor shall provide to the Guarantee Trustee such documents, reports and information as required by Section 314(a) (if any) and the compliance certificate required by Section 314(a)(4) of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act. The Guarantor shall notify the Guarantee Trustee when any Trust Preferred Securities are listed on any stock exchange.

#### Section 2.5 Evidence of Compliance with Conditions Precedent.

The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers’ Certificate.

Section 2.6 Events of Default; Waiver.

The Holders of a Majority in liquidation amount of Trust Preferred Securities may, by vote (which vote may be by written consent), on behalf of the Holders of all of the Trust Preferred Securities, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 2.7 Event of Default; Notice.

(a) The Guarantee Trustee shall, within 90 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default actually known to a Responsible Officer of the Guarantee Trustee, unless such defaults have been cured before the giving of such notice; *provided*, that the Guarantee Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Guarantee Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless either the Guarantee Trustee shall have received written notice, or a Responsible Officer of the Guarantee Trustee charged with the administration of the Declaration shall have obtained actual knowledge.

Section 2.8 Conflicting Interests.

The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### **ARTICLE III**

#### **POWERS, DUTIES AND RIGHTS OF CAPITAL GUARANTEE TRUSTEE**

Section 3.1 Powers and Duties of the Guarantee Trustee.

(a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer its right, title and interest in this Guarantee Agreement to any Person except a Holder exercising his or her rights pursuant to Section 5.4(b) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If an Event of Default actually known to a Responsible Officer of the Guarantee Trustee has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders of the Trust Preferred Securities.

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.6) and is actually known to a Responsible Officer of the Guarantee Trustee, the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(d) No provision of this Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) Prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement, and no implied covenants or obligations shall be read into this Guarantee Agreement against the Guarantee Trustee; and

(B) in the absence of bad faith or willful misconduct on the part of the Guarantee Trustee, the Guarantee Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Guarantee Trustee and conforming to the requirements of this Guarantee Agreement; but in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Guarantee Trustee, the Guarantee Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Guarantee Agreement (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein);

(ii) the Guarantee Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Guarantee Trustee, unless it shall be proved that the Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made;

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of Trust Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee

Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

(iv) no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if the Guarantee Trustee shall have reasonable grounds for believing that the repayment of such funds or liability is not reasonably assured to it under the terms of this Guarantee Agreement or indemnity, reasonably satisfactory to the Guarantee Trustee, against such risk or liability is not reasonably assured to it.

### Section 3.2 Certain Rights of Guarantee Trustee.

(a) Subject to the provisions of Section 3.1:

(i) The Guarantee Trustee may conclusively rely, and shall be fully protected in acting or refraining from acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(ii) Any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

(iii) Whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Guarantor.

(iv) The Guarantee Trustee shall have no duty to see to any recording, filing or registration of any instrument (or any rerecording, refiling or registration thereof).

(v) The Guarantee Trustee may consult with counsel, and the written advice or opinion of such counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion. Such counsel may be counsel to the Guarantor or any of its Affiliates and may include any of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

(vi) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity, reasonably satisfactory to the Guarantee Trustee, against the costs, expenses (including attorneys' fees and expenses and the expenses of the Guarantee Trustee's agents,

nominees or custodians) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided* that, nothing contained in this Section 3.2(a)(vi) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement.

(vii) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion and after prior consultation with the Guarantor, may make such further inquiry or investigation into such facts or matters as it may see fit at the expense of the Guarantor and shall incur no liability of any kind by reason of such inquiry or investigation.

(viii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, nominees, custodians or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

(ix) Any action taken by the Guarantee Trustee or its agents hereunder shall bind the Holders of the Trust Preferred Securities, and the signature of the Guarantee Trustee or its agents alone shall be sufficient and effective to perform any such action. No third party shall be required to inquire as to the authority of the Guarantee Trustee to so act or as to its compliance with any of the terms and provisions of this Guarantee Agreement, both of which shall be conclusively evidenced by the Guarantee Trustee's or its agent's taking such action.

(x) Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (i) may request instructions from the Holders of a Majority in liquidation amount of Trust Preferred Securities, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in conclusively relying on or acting in accordance with such instructions.

(xi) in no event shall the Guarantee Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Guarantee Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(xii) in no event shall the Guarantee Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Guarantee Agreement arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of third-party utilities, communications or computer (software or hardware) services.



(b) No provision of this Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right, power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty.

Section 3.3 Not Responsible for Recitals or Issuance of Guarantee.

The recitals contained in this Guarantee Agreement shall be taken as the statements of the Guarantor, and the Guarantee Trustee does not assume any responsibility for their correctness. The Guarantee Trustee makes no representation as to the validity or sufficiency of this Guarantee Agreement.

## ARTICLE IV

### CAPITAL GUARANTEE TRUSTEE

Section 4.1 Guarantee Trustee; Eligibility.

(a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Securities and Exchange Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least 50 million U.S. dollars (\$50,000,000), and subject to supervision or examination by Federal, State, Territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then, for the purposes of this Section 4.1(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.1(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.2(c).

(c) If the Guarantee Trustee has or shall acquire any “conflicting interest” within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act, subject to the penultimate paragraph thereof.

Section 4.2 Appointment, Removal and Resignation of Guarantee Trustees.

(a) Subject to Section 4.2(b), the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor except if an Event of Default shall have occurred and be continuing.

(b) The Guarantee Trustee shall not be removed in accordance with Section 4.2(a) until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed to office shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.2 within 60 days after delivery to the Guarantor of an instrument of resignation, the resigning Guarantee Trustee may petition any court of competent jurisdiction at the expense of the Guarantor for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

(e) No Guarantee Trustee shall be liable for the acts or omissions to act of any Successor Guarantee Trustee.

(f) Upon termination of this Guarantee Agreement or removal or resignation of the Guarantee Trustee pursuant to this Section 4.2, the Guarantor shall pay to the Guarantee Trustee all amounts accrued and owing to such Guarantee Trustee to the date of such termination, removal or resignation.

**ARTICLE V**

**GUARANTEE**

Section 5.1 Guarantee.

The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofor paid by or on behalf of the Trust), as and when due, regardless of any defense, right of set-off or counterclaim that the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders.

Section 5.2 Waiver of Notice and Demand.

The Guarantor hereby waives notice of acceptance of this Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

Section 5.3 Obligations Not Affected.

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

(a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Trust Preferred Securities to be performed or observed by the Issuer;

(b) the extension of time for the payment by the Issuer of all or any portion of the Distributions, Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Trust Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Trust Preferred Securities;

(c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Trust Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;

(d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;

(e) any invalidity of, or defect or deficiency in, the Trust Preferred Securities;

(f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or

(g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.3 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain consent of, the Guarantor with respect to the happening of any of the foregoing.

#### Section 5.4 Rights of Holders.

(a) The Holders of a Majority in liquidation amount of Trust Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; *provided that*:

(i) Such direction shall not be in conflict with any rule of law or with this Guarantee Agreement;

(ii) The Guarantee Trustee may take any other action deemed proper by the Guarantee Trustee which is not inconsistent with such direction; and

(iii) Subject to the provisions of Section 3.1, the Guarantee Trustee shall have the right to decline to follow any such direction if the Guarantee Trustee in good faith shall, by a Responsible Officer or Officers of the Guarantee Trustee, determine that the proceeding so directed would involve the Guarantee Trustee in personal liability, against which adequate indemnity, in the opinion of the Guarantee Trustee, has not been provided.

(b) If the Guarantee Trustee fails to enforce its rights under this Guarantee Agreement, any Holder may directly institute a legal proceeding against the Guarantor to enforce the Guarantee Trustee's rights under this Guarantee Agreement, without first instituting a legal proceeding against the Issuer, the Guarantee Trustee or any other Person or entity.

(c) A Holder of Trust Preferred Securities may also directly institute a legal proceeding against the Guarantor to enforce such Holder's right to receive payment under this Guarantee Agreement without first (i) directing the Guarantee Trustee to enforce the terms of this Guarantee Agreement or (ii) instituting a legal proceeding directly against the Issuer or any other Person or entity.

#### Section 5.5 Guarantee of Payment.

This Guarantee Agreement creates a guarantee of payment and not of collection.

#### Section 5.6 Subrogation.

The Guarantor shall be subrogated to all (if any) rights of the Holders of Trust Preferred Securities against the Issuer in respect of any amounts paid to such Holders by the Guarantor under this Guarantee Agreement; *provided, however*, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any right that it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

## Section 5.7 Independent Obligations.

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Trust Preferred Securities, and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.3 hereof.

## ARTICLE VI

### LIMITATION OF TRANSACTIONS; SUBORDINATION

#### Section 6.1 Limitation of Transactions.

So long as any Trust Preferred Securities remain outstanding, if there shall have occurred and is continuing any event that would constitute a Default under the Indenture, then (a) the Guarantor and any subsidiary of the Guarantor (other than a subsidiary of the Guarantor that is a depository institution, or a subsidiary thereof) will not declare or pay any dividend on, make any distributions with respect to, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Guarantor's capital stock or make any guarantee payment with respect thereto (other than (i) purchases, redemptions or other acquisitions of shares of capital stock of the Guarantor in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Guarantor or any of its subsidiaries of record ownership in capital stock of the Guarantor for the beneficial ownership of any other persons (other than the Guarantor or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of the Guarantor's capital stock for any other class or series of the Guarantor's capital stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into on or prior to the Closing Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for capital stock of the Guarantor, (iv) distributions by or among any wholly-owned subsidiary of the Guarantor, (v) redemptions of securities held by the Guarantor or any wholly-owned subsidiary of the Guarantor, and (vi) unpaid tax distributions to holders of membership interests of GMAC LLC pursuant to Section 4(b) of GMAC LLC's Plan of Conversion, dated June 30, 2009); and (b) the Guarantor and any subsidiary of the Guarantor (other than a subsidiary of the Guarantor that is a depository institution, or a subsidiary thereof) will not make any payment of interest on or principal of (or premium, if any, on), or repay, repurchase or redeem, any debt securities or guarantees issued by the Guarantor that rank *pari passu* with or junior to the Debentures ("Junior Subordinated Indebtedness") (other than (i) redemptions, purchases or other acquisitions of Junior Subordinated Indebtedness in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice, (ii) the acquisition by the Guarantor or any of its subsidiaries of record ownership in Junior Subordinated Indebtedness for the beneficial ownership of any other persons (other than the Guarantor or any of its subsidiaries), including trustees or custodians, (iii) as a result of an exchange or conversion of any class or series of Junior Subordinated Indebtedness for any other class or series of Junior Subordinated Indebtedness, (iv) redemptions of securities held by the Guarantor or any wholly-owned subsidiary of the Guarantor and (v) any payment of interest on Junior Subordinated Indebtedness paid *pro rata* with interest paid on the Debentures such that the respective amounts of such payments made shall bear the same ratio to

each other as all accrued but unpaid interest per like-amount of Debentures and all Junior Subordinated Indebtedness bear to each other); *provided, however*, the restrictions in the foregoing clauses (a) and (b) will not apply to (i) any stock dividends paid by the Company where the dividend stock is the same stock as that on which the dividend is being paid, or (ii) dividends or distributions by or other transactions solely among the Guarantor and any wholly-owned subsidiary of the Guarantor or solely among wholly-owned subsidiaries of the Guarantor.

#### Section 6.2 Subordination.

The obligations of the Guarantor under this Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment to all Senior Indebtedness (as defined in the Indenture) of the Guarantor to the extent and in the manner set forth in the Indenture with respect to the Debentures, and the provisions of Article Fourteen of the Indenture will apply, *mutatis mutandis*, to the obligations of the Guarantor hereunder. The obligations of the Guarantor hereunder do not constitute Senior Indebtedness (as defined in the Indenture) of the Guarantor.

#### Section 6.3 Pari Passu Guarantees.

The obligations of the Guarantor under this Guarantee Agreement shall rank *pari passu* with the obligations of the Guarantor under (i) any similar guarantee agreements issued by the Guarantor on behalf of the holders of preferred or capital securities issued by any GMAC Trust (as defined in the Indenture), (ii) the Indenture and the Securities (as defined therein) issued thereunder, (iii) any expense agreements entered into by the Guarantor in connection with the offering of preferred or capital securities by any GMAC Trust (as defined in the Indenture), and (iv) any other security, guarantee or other agreement or obligation that is by its terms *pari passu* with the Securities (as defined in the Indenture) and, in the case of this clause (iv) only, (x) is issued with the concurrence or approval of the staff of the Federal Reserve Bank of Chicago or the staff of the Board of Governors of the Federal Reserve System or (y) does not at the time of issuance prevent the Securities from qualifying for tier 1 capital treatment (irrespective of any limits on the amount of the Guarantor's tier 1 capital) under the applicable capital adequacy guidelines, regulations, policies or published interpretations of the Board of Governors of the Federal Reserve System.

## ARTICLE VII

### TERMINATION

#### Section 7.1 Termination.

This Guarantee Agreement shall terminate upon the first to occur of (i) full payment of the Redemption Price of all Trust Preferred Securities, (ii) the distribution of the Debentures to the Holders of all of the Trust Preferred Securities or (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid under the Trust Preferred Securities or under this Guarantee Agreement.

**ARTICLE VIII**  
**INDEMNIFICATION**

Section 8.1 Exculpation.

(a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Guarantor or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith in accordance with this Guarantee Agreement and in a manner that such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Guarantee Agreement or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's negligence or willful misconduct with respect to such acts or omissions.

(b) An Indemnified Person shall be fully protected in relying in good faith upon the records of the Guarantor and upon such information, opinions, reports or statements presented to the Guarantor by any Person as to matters the Indemnified Person reasonably believes are within such other Person's professional or expert competence and who, if selected by such Person, has been selected with reasonable care by such Person, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which Distributions to Holders might properly be paid.

Section 8.2 Compensation; Expenses; Indemnification.

The Guarantor agrees to pay to the Guarantee Trustee from time to time such compensation as shall be agreed to in writing between the Guarantor and the Guarantee Trustee for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); except as otherwise expressly provided herein or in the writing referred to above, to reimburse the Guarantee Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Guarantee Trustee in accordance with any provision of this Guarantee Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith; and to indemnify each Indemnified Person for, and to hold each Indemnified Person harmless against, any loss, liability, claim, damage or expense incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 8.2 shall survive the termination of this Guarantee Agreement.

## ARTICLE IX

### MISCELLANEOUS

#### Section 9.1 Successors and Assigns.

(a) Neither this Guarantee Agreement nor any right, remedy, obligation nor liability arising hereunder or by reason hereof shall be assignable by any party hereto without the prior written consent of the other party, and any attempt to assign any right, remedy, obligation or liability hereunder without such consent shall be void, except in connection with a transaction involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder.

(b) This Guarantee Agreement shall be binding upon and shall inure to the benefit of any successor or permitted assign of the Guarantor.

#### Section 9.2 Amendments.

Except with respect to any changes that do not adversely affect the rights of Holders (in which case no consent of Holders will be required), this Guarantee Agreement may be amended only with the prior approval of the Holders of not less than a Majority in liquidation amount of Trust Preferred Securities. The provisions of Section 12.2 of the Declaration with respect to meetings of Holders apply to the giving of such approval.

#### Section 9.3 Notices.

Any notice, request, instruction or other document to be given hereunder by any party to the other will be in writing and will be deemed to have been duly given (a) on the date of delivery if delivered personally, or by facsimile, upon confirmation of receipt, or (b) on the second business day following the date of dispatch if delivered by a recognized next day courier service. All notices shall be delivered, telecopied or sent by a recognized next day courier service, as set forth below, or pursuant to such other instructions as may be designated by the Guarantee Trustee, the Guarantor or the Holders:

(a) If given to the Guarantee Trustee, at the Guarantee Trustee's mailing address set forth below (or such other address as the Guarantee Trustee may give notice of to the Holders and the Guarantor):

The Bank of New York Mellon  
101 Barclay Street – 8W  
New York, New York 10286  
Attention: Corporate Trust Administration

(b) If given to the Guarantor, at the Guarantor's mailing address set forth below (or such other address as the Guarantor may give notice of to the Holders and the Guarantee Trustee):



GMAC Inc.  
200 Renaissance Center  
P.O. Box 200  
Detroit, Michigan 48265-2000  
Attention: General Counsel

(c) If given to any Holder, at the address set forth on the books and records of the Issuer.

Section 9.4 Benefit.

This Guarantee Agreement is solely for the benefit of the Holders of the Trust Preferred Securities and, subject to Section 3.1(a), is not separately transferable from the Trust Preferred Securities.

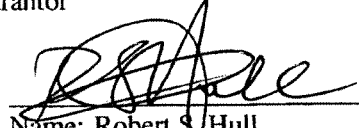
Section 9.5 Governing Law; Waiver of Trial by Jury.

THIS CAPITAL SECURITIES GUARANTEE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, AND ALL RIGHTS AND REMEDIES SHALL BE GOVERNED BY SUCH LAWS WITHOUT REGARD FOR THE PRINCIPLES OF ITS CONFLICTS OF LAWS. EACH OF THE PARTIES HERETO AGREES (A) TO SUBMIT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE UNITED STATES COURT OF FEDERAL CLAIMS FOR ANY AND ALL CIVIL ACTIONS, SUITS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CAPITAL SECURITIES GUARANTEE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, AND (B) THAT NOTICE MAY BE SERVED UPON (i) THE GUARANTOR AT THE ADDRESS AND IN THE MANNER SET FORTH FOR NOTICES TO THE GUARANTOR IN SECTION 9.3 AND (ii) THE GUARANTEE TRUSTEE AT THE ADDRESS AND IN THE MANNER SET FORTH FOR NOTICES TO THE GUARANTEE TRUSTEE IN SECTION 9.3. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY CIVIL LEGAL ACTION OR PROCEEDING RELATING TO THIS INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

THIS TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT is executed  
as of the day and year first above written.

GMAC INC.,  
as Guarantor

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

  
Name: Robert S. Hull

Title: Executive Vice President and Chief  
Financial Officer

THE BANK OF NEW YORK MELLON,  
as Guarantee Trustee

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

Name:


Title:

THIS TRUST PREFERRED SECURITIES GUARANTEE AGREEMENT is executed as of the day and year first above written.

GMAC INC.,  
as Guarantor

By: \_\_\_\_\_  
Name:  
Title:

THE BANK OF NEW YORK MELLON,  
as Guarantee Trustee

By:  \_\_\_\_\_  
Name: **GIOVANNI BARRIS**  
Title: **VICE PRESIDENT**

## GMAC INC.

### **I. Summary of Trust Preferred Securities and Warrant Terms**

**The terms of the Trust Preferred Securities are as follows:**

<b>Issuer:</b>	GMAC Capital Trust I, a Delaware statutory business trust (the “Trust” established by GMAC Inc. (“GMAC”))
<b>Guarantor:</b>	GMAC Inc.
<b>Initial Holder:</b>	United States Department of the Treasury (the “UST”).
<b>Trustee:</b>	Bank of New York Mellon
<b>Size:</b>	\$2.540 billion in aggregate liquidation preference.
<b>Trust Preferred Securities:</b>	8.0% Trust Preferred Securities, liquidation preference \$1,000 per security (the “Trust Preferred”).
<b>Common Securities:</b>	\$80.01 million 8.0% Common Securities, liquidation preference \$1,000 per security (the “Common Securities”). Except under certain circumstances, the Common Securities will receive distributions <i>pro rata</i> with the Trust Preferred.
<b>Debentures:</b>	GMAC will issue \$2.747 billion in aggregate principal amount of 8.0% junior subordinated debentures (the “Debentures”) to the Trust.
<b>Distribution:</b>	The Debentures, the Trust Preferred and the Common Securities will each pay cumulative cash distributions at a rate of 8.0% per annum, paid on a quarterly basis.
<b>Deferral of Distributions:</b>	<p>GMAC may defer payments on the Debentures (and the Trust may defer payments of the Trust Preferred and Common Securities) during any period of up to 20 consecutive quarters (an “Extension Period”), provided there is no event of default. At the end of the Extension Period, GMAC must immediately pay all unpaid and accrued interest, at which point it may elect a new deferral period provided that no deferral may extend beyond maturity. For the avoidance of doubt, GMAC shall be entitled to make partial payments on any deferred interest during an Extension Period.</p> <p>Deferred payments will accrue interest, compounded quarterly, at 8.0% per annum.</p>
<b>Maturity:</b>	The Debentures will mature on February 15, 2040.

<b>Ranking:</b>	<p>The Trust Preferred shall be senior to all other equity securities of the Trust.</p> <p>The Debentures are unsecured and rank equally with all of GMAC's other existing and future junior subordinated indebtedness, and rank junior to all of GMAC's existing and future senior or subordinated indebtedness.</p>
<b>Guarantee:</b>	<p>GMAC will fully and unconditionally guarantee, on an unsecured subordinated basis, payments of distributions and other amounts due on the Trust Preferred up to an amount equal to the sum of the payments that GMAC has made to the Trust on the Debentures for the corresponding payment period.</p>
<b>Regulatory Capital Status:</b>	<p>Tier 1.</p>
<b>No Call Period:</b>	<p>5 years, subject to certain exceptions.</p>
<b>Redemption of Trust Preferred at the Option of GMAC:</b>	<p>The Debentures and the Trust Preferred may be redeemed, subject to the approval of the Federal Reserve, (i) upon the occurrence of certain specified events, (ii) while the Trust Preferred are held by the U.S. government in connection with assistance provided to GMAC under TARP or similar programs, or (iii) on or after December 30, 2014, in whole or in part at any time and from time to time at the outstanding principal amount or liquidation preference, as applicable, plus any accrued and unpaid distributions as of the date of redemption. The Trust may only redeem the Trust Preferred in such amount as is equal to the amount of Debentures that have previously (or concurrently) been redeemed by GMAC.</p>
<b>Restrictions on Repurchases:</b>	<p>For as long as any Trust Preferred are outstanding, there shall be no share repurchases or redemptions of preferred stock or common stock, unless all accrued and unpaid distributions for all past distribution periods on the Trust Preferred are fully paid.</p>
<b>Restrictions on Dividends and Distributions:</b>	<p>During any Extension Period, (i) no dividend shall be declared or paid on any of GMAC's capital stock, and no capital stock issued by GMAC or any subsidiary of GMAC (other than any subsidiary that is a depository institution) shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by GMAC or any of its subsidiaries and (ii) no payment of principal of or interest or premium shall be declared or paid on any indebtedness which by its terms is expressly made <i>pari</i></p>

*passu* in rank and payment with or subordinated to the Debentures (“Junior Subordinated Indebtedness”) (other than any payment of interest on Junior Subordinated Indebtedness paid *pro rata* such that the respective amounts of such payments made shall bear the same ratio to each other as all accrued but unpaid interest per like-amount of Debentures and all Junior Subordinated Indebtedness bear to each other) and no Junior Subordinated Indebtedness issued by GMAC shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by GMAC or any of its subsidiaries, unless, in each case, the Extension Period has been or is contemporaneously terminated and all accrued and unpaid interest and any additional interest then due on the Debentures has been or is contemporaneously declared and paid in full (or has been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of the Debentures on the applicable record date). The foregoing limitations shall not apply to (i) redemptions, purchases or other acquisitions of shares of capital stock or Junior Subordinated Indebtedness in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (ii) the acquisition by GMAC or any of its subsidiaries of record ownership in shares of capital stock or Junior Subordinated Indebtedness for the beneficial ownership of any other persons (other than GMAC or any of its subsidiaries), including as trustees or custodians; (iii) the exchange or conversion of capital stock of GMAC or any affiliate of GMAC for or into other capital stock of GMAC or any affiliate of GMAC, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the applicable original issue date of the Debentures or any subsequent agreement for the accelerated exercise, settlement or exchange thereof, or the exchange or conversion of Junior Subordinated Indebtedness of GMAC or any affiliate of GMAC for or into other Junior Subordinated Indebtedness of GMAC or any affiliate of GMAC; (iv) redemptions of securities held by GMAC or any wholly-owned subsidiary of GMAC; (v) dividends, distributions, or any other transaction solely among GMAC and any wholly-owned subsidiary of GMAC or solely among wholly-owned subsidiaries of GMAC; (vi) stock dividends paid by GMAC where the dividend stock is the same as that on which the dividend is being paid and (vii) for the avoidance of doubt, unpaid tax distributions to holders of membership interests of GMAC pursuant to Section 4(b) of GMAC’s Plan of Conversion, dated June 30, 2009.

**Voting rights:** The Trust Preferred shall have no voting rights other than class voting rights on (i) any authorization or issuance of equity securities of the Trust ranking senior to the Trust Preferred, (ii) any adverse amendment to the rights of the Trust Preferred, (iii) any merger, exchange or similar transaction which would materially adversely affect the rights of the Trust Preferred, or (iv) the exercise of the Trust's rights as holder of the Debentures.

**Transferability:** The Trust Preferred will not be subject to any contractual restrictions on transfer, other than the restrictions on transfer included in the Declaration of Trust of the Trust.

GMAC will file a shelf registration statement covering the Trust Preferred as promptly as reasonably practicable after the date of this investment closing and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. GMAC will also grant to the UST piggyback registration rights for the Trust Preferred and will take such other steps as may be reasonably requested to facilitate the transfer of the Trust Preferred.

**The terms of the Trust Preferred Warrant are as follows:**

**Trust Preferred Warrant:** The UST will receive warrants from GMAC to purchase an additional \$127.0 million in aggregate liquidation amount of Trust Preferred, liquidation preference \$1,000 per share. The initial exercise price for the Trust Preferred Warrant shall be \$0.01 per share. The UST intends to immediately exercise the Trust Preferred Warrant.

**Term:** 10 years

**Exercisability:** Immediately exercisable, in whole or in part

**Transferability:** Neither the Trust Preferred Warrant nor the Trust Preferred underlying the Trust Preferred Warrant will be subject to any contractual restrictions on transfer, other than the restrictions on transfer included in the Amended and Restated Declaration of Trust of the Trust.

GMAC and the Trust will file a shelf registration statement covering the Trust Preferred (including the Trust Preferred sold to UST upon exercise of the warrant) after the date of the investment closing and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. GMAC will take such other steps as may be reasonably requested to facilitate the transfer of the Trust Preferred underlying the Trust Preferred Warrant.

## **II. Issuance of New Mandatorily Convertible Preferred Stock**

**The terms of the Series F-2 are as follows:**

<b>Issuer:</b>	GMAC.
<b>Initial Holder:</b>	UST.
<b>Size:</b>	\$1.25 billion of GMAC's Fixed Rate Cumulative Mandatorily Convertible Preferred Stock, Series F-2 ("Series F-2"), \$50 liquidation preference per share.
<b>Term/Mandatory Conversion:</b>	Mandatorily converts to GMAC common stock after 7 years at the Conversion Rate.
<b>Conversion at the Option of the Issuer:</b>	The Series F-2 shall be convertible to common stock in whole or in part at the applicable Conversion Rate at GMAC's option at any time, subject to the approval of the Federal Reserve; and for shares of Series F-2 held by UST, (1) with the prior written consent of UST (such consent to be granted in the sole discretion of UST, it being understood that with respect to any conversion, UST may consider such factors as it deems appropriate at such time and may seek to condition the terms on which it may provide such consent which may include an alteration of the Conversion Rate), or (2) pursuant to an order of the Federal Reserve compelling such a conversion. For the avoidance of doubt, any consent granted by UST with respect to any conversion shall not constitute a waiver by UST of any consent right regarding any other conversion or estop UST from withholding such consent with respect to any other conversion.
<b>Conversion at the Option of the Holder:</b>	The Series F-2 shall be convertible to common stock, in whole or in part, at the applicable Conversion Rate at the option of the holder upon specified corporate events, including any public offering of GMAC's common stock, certain sales, mergers or changes of control at GMAC; provided that the conversion of GMAC preferred stock into common stock shall not constitute a change of control.
<b>Conversion Rate:</b>	The "Conversion Rate" for the Series F-2 means the number of shares of Common Stock for which a share of Series F-2 shall be exchanged upon a conversion, calculated as follows:  (i) for a conversion at the option of GMAC pursuant to an order of the Federal Reserve which occurs (1) on or prior to December 31, 2010, the Conversion



Rate shall equal the Initial Conversion Rate; and (2) subsequent to December 31, 2010, the Conversion Rate shall equal the Reset Conversion Rate if GMAC has completed any Applicable Transactions, and shall otherwise equal the Initial Conversion Rate;

(ii) for a conversion at the option of GMAC, other than pursuant to an order of the Federal Reserve, which occurs: (1) on or prior to December 31, 2010, the Conversion Rate shall equal the Initial Conversion Rate; and (2) subsequent to December 31, 2010, the Conversion Rate shall equal the Reset Conversion Rate if GMAC has completed any Applicable Transactions, and shall otherwise equal the Initial Conversion Rate;

(iii) for a conversion at the option of a Holder which occurs on or prior to December 31, 2010, the Conversion Rate shall equal the greater of (a) the Initial Conversion Rate and (b) the rate equal to the liquidation amount per share of Series F-2 divided by the price at which such Common Stock is offered in such public offering or the price at which such Common Stock is sold or otherwise valued in such Change of Control of GMAC, as applicable;

(iv) for a conversion at the option of a Holder which occurs subsequent to December 31, 2010, the Conversion Rate shall equal the Reset Conversion Rate if GMAC has completed any Applicable Transactions, and shall otherwise equal the Initial Conversion Rate; and

(v) for any Mandatory Conversion, the Conversion Rate shall be the Reset Conversion Rate if the Company has completed any Applicable Transactions, and shall otherwise be the Initial Conversion Rate.

“Adjusted Conversion Rate” means (i) the liquidation amount per share of Series F-2 divided by (ii) the weighted average price at which the shares of common equity securities were sold or the price implied by the conversion of securities into common equity securities in all Applicable Transactions (if any), subject to the anti-dilution provisions.

“Applicable Transactions” means any transactions completed in calendar year 2010 in which GMAC raised at least \$500 million of common equity capital (either through the sale of new common equity securities or

through the conversion of existing indebtedness or preferred stock (other than Series F-2 held by UST at the time of conversion) to common equity securities) from a party or parties that are not UST or affiliates of UST.

“Initial Conversion Rate” means 0.00432, subject to the anti-dilution provisions.

“Reset Conversion Rate” means the greater of (a) the Initial Conversion Rate or (b) the Adjusted Conversion Rate.

Upon any conversion of the Series F-2 to common stock, GMAC shall also pay any accrued and unpaid distributions at its option in either cash or common stock, which common stock shall be valued for this purpose at the Conversion Price.

“Conversion Price” means the capital amount per share of the Series F-2 divided by the Conversion Rate.

**Ranking:**

The Series F-2 shall be senior to common stock, and pari passu with existing preferred stock (including the Series A Preferred Stock) and any other preferred stock issued in the future other than preferred stock issued in the future which by its terms ranks junior to any other preferred stock.

**Regulatory Capital Status:**

Tier 1.

**Dividends:**

The Series F-2 will pay cumulative cash dividends at a rate of 9.0% per annum, paid on a quarterly basis. Deferred payments will accrue interest, compounded quarterly, at 9.0% per annum.

**Redemption of Series F-2 at the Option of the Issuer:**

The Series F-2 may be redeemed, at GMAC’s option, subject to the approval of the Federal Reserve, in whole or in part at any time and from time to time.

The Series F-2 may be redeemed, in whole or in part, within the first two years of issuance at the liquidation preference, plus any accrued and unpaid dividends. After the first two years of issuance, the Series F-2 may be redeemed, in whole or in part, at the greater of (i) liquidation preference plus accrued and unpaid dividends and (ii) the As-Converted Value equivalent of the redeemed shares of Series F-2 (as defined below).

**Restrictions on Dividends:**

For as long as any shares of Series F-2 are outstanding and are owned by UST or an affiliate of UST, no dividends may be declared or paid on junior preferred stock, preferred

stock ranking pari passu with the Series F-2, or common stock (other than in the case of pari passu preferred stock, distributions on a pro rata basis with the Series F-2), nor may GMAC repurchase or redeem any junior preferred stock, preferred stock ranking pari passu with the Series F-2 or common stock, unless all accrued and unpaid dividends for all past dividend periods on the Series F-2 are fully paid. Notwithstanding the foregoing, GMAC may pay outstanding tax distributions on junior membership interests of GMAC LLC pursuant to GMAC's Plan of Conversion, dated June 30, 2009.

**Common Dividends:**

For so long as any Series F-2 are outstanding and owned by the UST or an affiliate of UST or the UST or an affiliate of UST owns any common stock of GMAC issued upon conversion of the Series F-2, any dividends declared and paid on the common stock shall be subject to the consent of the UST. For the avoidance of doubt, GMAC may pay outstanding tax distributions on junior membership interests of GMAC LLC pursuant to GMAC's Plan of Conversion, dated June 30, 2009.

**Restrictions on Repurchases:**

For so long as any Series F-2 are outstanding and owned by the UST or an affiliate of UST, the UST's consent shall be required for any repurchases or redemptions of equity securities or trust preferred securities (other than the Trust Preferred Securities described in Section I hereof), subject to certain exceptions, including exceptions similar to those in Section 4.8 of the Securities Purchase Agreement – Standard Terms of the UST's Capital Purchase Program. In addition, there shall be no share repurchases or redemptions of junior preferred stock, preferred stock ranking pari passu with the Series F-2, or common stock, if prohibited as described above under "Restrictions on Dividends."

**Voting Rights:**

The Series F-2 shall have no voting rights prior to conversion to common stock, other than class voting rights on (i) any authorization or issuance of stock ranking senior to the Series F-2, (ii) any adverse amendment to the rights of the Series F-2, or (iii) any merger, exchange or similar transaction which would adversely affect the rights of the Series F-2.

Upon conversion of the Series F-2, the UST will have the voting rights associated with GMAC's common stock.

**Transferability:**

The Series F-2 and the underlying common stock will not be subject to any contractual restrictions on transfer.

GMAC will file a shelf registration statement covering the

Series F-2 and underlying common stock as promptly as reasonably practicable after the date of this investment closing if it is eligible to do so and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. GMAC will also grant to the UST piggyback registration rights for the Series F-2 and the underlying common stock and will take such other steps as may be reasonably requested to facilitate the transfer of the Series F-2 and the underlying common stock. If requested by UST, GMAC will appoint a depository to hold the Series F-2 and issue depository receipts.

**Repurchases:**

Following the conversion of the Series F-2 into GMAC's common stock, GMAC will have the right, subject to the approval of the Federal Reserve, to repurchase any of such common stock held by the UST at a price equal to the greater of (i) the Conversion Price (as defined below) and (ii) (a) if GMAC's common stock is traded on a national securities exchange, the market price of the common stock on the date of repurchase (calculated based on the average closing price during the 20 trading day period beginning on the day after notice of repurchase is given) or (b) if GMAC's common stock is not traded on a national securities exchange, the per share fair market value of GMAC as of the last day of the most recent calendar quarter prior to the repurchase date as determined by an investment bank of national reputation (selected by UST and paid for by GMAC) (the "As-Converted Value"). Any such repurchases must be made with the proceeds of an issuance of common stock for cash or additions to retained earnings from the date of the investment closing through the date of the repurchase.

**Preemptive Rights:**

Existing holders of common stock will be offered the right to purchase their preemptive share of Series F-2 from the UST pursuant to Section 10.3 of GMAC's Bylaws.

**The terms of the F-2 Warrant are as follows:**

**F-2 Warrant:**

The UST will receive warrants from GMAC to purchase an additional \$62.5 million in aggregate liquidation amount of Series F-2, liquidation preference \$50 per share. The initial exercise price for the F-2 Warrant shall be \$0.01 per share. The UST intends to immediately exercise the F-2 Warrant.

**Term:**

10 years

**Exercisability:**

Immediately exercisable, in whole or in part

**Transferability:** Neither the F-2 Warrant, the Series F-2 underlying the F-2 Warrant nor the common stock underlying the Series F-2 will be subject to any contractual restrictions on transfer.

GMAC will file a shelf registration statement covering the Series F-2 (including the Series F-2 sold to UST upon exercise of the warrant and the common stock underlying the Series F-2) after the date of the investment closing and, if necessary, shall take all action required to cause such shelf registration statement to be declared effective as soon as possible. GMAC will take such other steps as may be reasonably requested to facilitate the transfer of the Series F-2 underlying the F-2 Warrant (including the common stock underlying the Series F-2).

### **III. Exchange of Old Shares for Series F-2**

**Exchange:** UST exchanges its (i) 5,000,000 shares of GMAC's Fixed Rate Cumulative Perpetual Preferred Stock, Series D-1, (ii) 250,000 shares of GMAC's Fixed Rate Cumulative Perpetual Preferred Stock, Series D-2 and (iii) 97,500,000 shares of the Mandatorily Convertible Preferred Stock, Series F ("Old MCP", together with the Series D-1 and Series D-2, the "Old Shares") for 202,500,000 shares of Series F-2. The aggregate liquidation preference of the Old Shares will be equal to the liquidation preference of shares of Series F-2 issued to the UST.

**Timing:** The Exchange will occur on or before December 30, 2009.

**Cancellation of Old Shares:** Upon completion of the Exchange, all Old Shares will be cancelled.

### **IV. Conversion of Old MCP into Common Stock:**

**Conversion:** 60,000,000 shares of Old MCP will be immediately converted into 259,200 shares of GMAC common stock at the Old MCP Conversion Rate pursuant to the terms of the Old MCP. Upon the conversion of Old MCP to common stock, GMAC shall also pay any accrued and unpaid dividends in cash.

The "Old MCP Conversion Rate" shall be 0.00432 shares of common stock per share of Old MCP converted.

### **IV. Other Terms:**

**Executive Compensation, Transparency, Accountability, Monitoring:**

GMAC and its covered officers and employees shall agree to additional covenants consistent with the Targeted Investment Program, as well as comply with the rules, regulations and guidance of the UST applicable to GMAC

**Closing Conditions,  
Documentation and Timing:**

with respect to executive compensation, transparency, accountability and monitoring.

GMAC's Bylaws shall have been amended such that GMAC's common stockholders shall have no preemptive rights with regard to the issuance of the Trust Preferred and no preemptive rights with regard to the issuance of the Series F-2 prior to the issuance thereof.

Completion of the legal documentation consistent with discussions between GMAC and UST and the terms set forth herein.

Confirmation by the Federal Reserve that the investment will be treated as Tier 1 capital for GMAC.

Receipt by GMAC of any regulatory and corporate approvals required for GMAC to issue the Trust Preferred and the Warrants.