

# PHH Mortgage Corporation Servicing Marketplace – Mortgage Loan Servicing Purchase and Sale Agreement

## Introduction

This **SERVICING MARKETPLACE - MORTGAGE LOAN SERVICING PURCHASE AND SALE AGREEMENT** (this "**Agreement**"), is by and between a seller that sells the Mortgage Loan (as defined below) to Fannie Mae ("**Seller**"), and a servicer approved by Fannie Mae to service the Mortgage Loan sold to Fannie Mae ("**Servicer**").

## RECITALS

**WHEREAS**, Seller commits and sells Mortgage Loans pursuant to Fannie Mae's whole loan committing application;

**WHEREAS**, pursuant to the whole loan committing application, Seller may release and sell the Servicing Rights (as defined below) to approved loan servicers concurrently with the sale of the Mortgage Loan to Fannie Mae via the Servicing Marketplace ("**SMP**");

**WHEREAS**, pursuant to the whole loan committing application and the Purchase Documents (as defined below), Seller will sell the Mortgage Loan to Fannie Mae;

**WHEREAS**, concurrent with such sale and pursuant to SMP, Seller will sell and transfer, and Servicer will purchase and accept, the Servicing Rights to the Mortgage Loan;

**WHEREAS**, Seller and Servicer agree that each such sale and transfer of the Servicing Rights to the Mortgage Loan will be governed by the terms of this Agreement and, through their agreements with Fannie Mae to participate in SMP and their access to and use of SMP (either directly or indirectly through the whole loan committing application) to transact business with each other, they have agreed to be bound by this Agreement, as amended from time to time, with regard to each such sale and transfer of the Servicing Rights; and

**WHEREAS**, Seller has entered into the Purchase Documents with Fannie Mae which set forth, among other things, Fannie Mae's right to enforce remedies with respect to any breach of Selling Representations and Warranties (as defined below) with respect to Mortgage Loans sold by Seller to Fannie Mae pursuant to the whole loan committing application.

**WHEREAS**, Servicer will acquire the Servicing Rights in accordance with the terms and conditions of this Agreement and Servicer will service such Mortgage Loans in accordance with the Servicing Documents (as defined below) it has entered into with Fannie Mae.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Servicer agree to the terms and conditions set forth below in this Agreement.

## 1. Definitions

A capitalized term used in this Agreement shall have the meaning defined in the Guide, unless otherwise defined in this Agreement.

1.1. **Agreement.** As defined in the preamble.

1.2. **Applicable Percentage.** The applicable percentage by which the unpaid principal balance of the Mortgage Loans, or an applicable subset thereof, is multiplied in determining the purchase price paid to Seller for the Servicing Rights of the applicable Mortgage Loans, as reflected in SMP, if applicable or available.

- 1.3. **Business Day.** A day on which Fannie Mae's Capital Markets Pricing and Sales Desk is open for business, which excludes any SIFMA recommended holidays and early closings.
- 1.4. **Concurrent Transfer of Servicing.** The transfer of the Servicing Rights related to the Mortgage Loan at the same time Fannie Mae purchases such Mortgage Loan.
- 1.5. **Fannie Mae.** The Federal National Mortgage Association or any successor thereto.
- 1.6. **Funding Adjustments.** If, and to the extent applicable or available, for the Mortgage Loan, the escrow deposits, Net SRP and any holdbacks required by Servicer.
- 1.7. **Funding Date.** The date on which Fannie Mae disburses payment to Seller for the Mortgage Loan Fannie Mae purchases.
- 1.8. **Guides.** The Fannie Mae *Selling Guide* and the Fannie Mae *Servicing Guide*, each as amended, restated, supplemented or otherwise modified from time to time.
- 1.9. **Litigation.** All legal, regulatory, governmental or administrative actions, suits, claims, investigations and complaints that affect or involve the Mortgage Loan, excluding foreclosure and bankruptcy actions.
- 1.10. **Mortgage Loan.** The mortgage loan which conforms to all applicable requirements in the Guides and is purchased by Fannie Mae through the whole loan committing application with its Servicing Rights sold and transferred by Seller to Servicer via a Concurrent Transfer of Servicing through SMP.
- 1.11. **Master Agreement and Master Commitment.** The agreements entered into between Seller and Fannie Mae for the sale of the Mortgage Loan.
- 1.12. **Mortgage Insurance.** A contract with a private mortgage insurer insuring or guaranteeing full or partial payment of principal, interest and related expenses of a Mortgage Loan.
- 1.13. **Mortgaged Premises.** The real property and improvements located thereon that secure the Mortgage Loan.
- 1.14. **Net SRP.** The SRP less any administrative fee, tax service fee, flood determination fee, and other fees or adjustments set forth in SMP.
- 1.15. **Private Mortgage Insurance Policy.** Each private mortgage insurance policy required to be in effect for a specific Mortgage Loan pursuant to the Fannie Mae *Servicing Guide*, or any replacement policy therefore obtained by Seller.
- 1.16. **Purchase Date.** The Business Day immediately preceding the Funding Date. The right of Seller to any portion of the servicing fees or any other fees or income relating to servicing of the Mortgage Loan shall terminate at the close of business on the Purchase Date.
- 1.17. **Purchase Documents.** Those agreements executed by Seller with respect to the Mortgage Loans, including, without limitation, any Master Agreement and Master Commitment, the Mortgage Selling and Servicing Contract, the Guides, any supplemental servicing instructions or directives provided by Fannie Mae, all applicable master agreements, recourse agreements, repurchase agreements, indemnification agreements, loss-sharing agreements, and any other agreements between Fannie Mae and Seller, and all as amended, modified, restated or supplemented from time to time.
- 1.18. **Seller.** As defined in the preamble.

1.19. **Selling Representations and Warranties.** The selling representations and warranties required to be made to Fannie Mae by a seller of mortgage loans, including, without limitation, those made pursuant to the Master Selling and Servicing Contract between Seller and Fannie Mae, the Fannie Mae *Selling Guide* and Seller's Master Agreement with Fannie Mae, as the same may be amended or supplemented from time to time.

1.20. **Servicer.** As defined in the preamble.

1.21. **Servicing Documents.** Those agreements executed by Servicer with respect to the Mortgage Loans, including without limitation, the Mortgage Selling and Servicing Contract, the Fannie Mae *Servicing Guide* and any supplemental servicing instructions or directives provided by Fannie Mae, all applicable master agreements (including applicable variances), recourse agreements, repurchase agreements, indemnification agreements, loss-sharing agreements, and any other agreements between Fannie Mae and Servicer, and all as amended, modified, restated or supplemented from time to time.

1.22. **Servicing Rights.** All of Seller's responsibilities, rights, title and interest associated with servicing the Mortgage Loan, as required by Fannie Mae, which include but are not limited to the contractual right to receive all existing funds in any existing custodial or escrow accounts, incidental income and benefits, amounts payable, such as servicing fees, late fees, assumption fees, and other authorized amounts with respect to the Mortgage Loan, and possession and use of the servicing files and records, to the extent applicable, including without limitation, copies of applicable insurance policies, all related to the Mortgage Loan.

1.23. **Servicing Rights Repurchase Amount.** With respect to the Servicing Rights related to any Mortgage Loan or REO property, the sum of (a) the product of (1) the Applicable Percentage, and (2) the then-outstanding unpaid principal balance of such Mortgage Loan, or with respect to REO property, the unpaid principal balance of the related Mortgage Loan at the time of conversion to REO property, (b) any unreimbursed costs, expenses and corporate, servicing, principal and interest advances incurred by Servicer in connection with such Mortgage Loan and its servicing, the transfer of the Servicing Rights to Seller, and if applicable, repurchase and transfer of the related Mortgage Loan from Fannie Mae to Seller, including reasonable attorney's fees and costs, and (c) any and all other costs, expenses, losses, damages, deficiencies, claims, including costs of investigation, attorney's fees and disbursements incurred by Servicer in connection with such Servicing Rights and the related Mortgage Loan, other than to the extent attributable to Servicer's failure to service the related Mortgage Loan in accordance with the terms and conditions of the Servicing Documents.

1.24. **Servicing Transfer Instructions.** The Servicing Marketplace - Servicing Transfer Instructions, which describe the submission of required information and completion of applicable forms by Seller for the transfer of servicing for the Mortgage Loan, as may be amended from time to time. The Servicing Transfer Instructions are provided to Seller by Servicer.

1.25. **SIFMA.** The Securities Industry and Financial Markets Association.

1.26. **SRP.** The servicing-released premium calculated by Fannie Mae based upon the rate sheet for the Mortgage Loan provided by Servicer in SMP.

## **2. Scope of Responsibilities for Purchase and Sale**

2.1 **Seller.** Upon selecting the Servicer as the purchaser of the Servicing Rights in SMP, Seller agrees that Seller shall sell its interest in the Servicing Rights of the Mortgage Loan to Servicer at the same time Fannie Mae purchases that Mortgage Loan.

2.2 **Servicer.** Upon being selected as the purchaser of the Servicing Rights in SMP, Servicer agrees that Servicer shall purchase Seller's interest in the Servicing Rights of the Mortgage Loan at the same time Fannie Mae purchases that Mortgage Loan. A Servicer for purposes of this Agreement may designate a third party to act on its behalf (such as a subservicer), and Seller shall perform its obligations under this Agreement with such designee as instructed or authorized by Servicer or by Fannie Mae.

2.3 **Fannie Mae.** Fannie Mae shall facilitate in the transfer of the Servicing Rights. In no event shall Fannie Mae have and/or be subject to any recourse, claim or liability which may be alleged, due or imposed in connection with any breach, claim or default of any kind under this Agreement, and any such recourse, claim or liability shall be the responsibility of, satisfied by and chargeable to Seller or Servicer, as applicable.

2.4 **Notification of Parties.** Fannie Mae shall notify Servicer and Seller of the transfer of Servicing Rights as follows:

(a) **Notice to Seller.** Seller shall be notified of the transfer of the Servicing Rights of the Mortgage Loan via the whole loan committing application.

(b) **Notice to Servicer.** Servicer shall be notified of the transfer of the Servicing Rights of the Mortgage Loan via SMP.

2.5 **Sellers and Servicer Acknowledgement of Fannie Mae's Role.** Both Seller and Servicer hereby agree and acknowledge that:

(a) **Cooperation.** Fannie Mae through SMP will facilitate the purchase and sale of Seller's interest in the Servicing Rights.

(b) **Recourse.** In no event shall Fannie Mae have and/or be subject to any recourse, claim or liability which may be alleged, due or imposed in connection with any breach, claim or default of any kind under this Agreement, and any such recourse, claim or liability shall be the responsibility of, satisfied by and chargeable to Seller or Servicer, as applicable.

(c) **Release of Liability.** Except as otherwise provided in this Agreement or any other agreement between Fannie Mae and Seller or Servicer, respectively, Seller and Servicer each hereby release Fannie Mae from any liability, claim or expense relating to the performance of each other under the terms of this Agreement.

### **3. Responsibility and Liability for Selling Representations and Warranties**

Seller and Servicer acknowledge and agree that Fannie Mae is entitled to enforce directly against Seller, and Seller is liable for, any and all remedies (including, without limitation, repurchase) for a breach of the Selling Representations and Warranties, related to the Mortgage Loans pursuant to, and to the extent provided by, the terms and conditions of the Seller's Purchase Documents. Fannie Mae has agreed not to enforce or attempt to enforce any such remedies against Servicer.

### **4. Purchase Price**

4.1 **Seller.** The purchase price paid to Seller for the Servicing Rights of the Mortgage Loan shall be the Net SRP calculated using the data set forth on the rate sheet for the Mortgage Loan provided by Servicer in SMP.

**4.2 Funding Adjustments.** The amount of all Funding Adjustments shall be reflected in the purchase proceeds paid by Servicer on the Funding Date for the Servicing Rights of the Mortgage Loans.

## **5. Condition Precedent to Servicer's Obligations**

Unless waived by Servicer in writing, Seller agrees to the following:

### **5.1 Seller Obligations on Purchase Date.**

(a) **Notice to Insurance Company.** On the Purchase Date, Seller shall inform, by written notice, all interested insurance companies, all other interested parties, and/or their respective agents, of the transfer of Servicing Rights to Servicer. Such notice shall include Servicer's Mortgage Loan number and shall:

(i) **Title.** Name Servicer and its successors and assigns as an insured in the lender's policy of title insurance for the Mortgage Loan (unless the lender's policy of the title insurance for the Mortgage Loan defines "insured" as any owner of indebtedness secured by the insured mortgage);

(ii) **Fire and Extended Coverage.** Change the loss payee or mortgagee clause to include Servicer in the fire and extended coverage policy for the Mortgaged Premises;

(iii) **Flood and Catastrophe.** Change the loss payee or mortgagee clause to include Servicer in the flood insurance policy and in the catastrophe insurance policy, if any, for the Mortgaged Premises; and

(iv) **Private Mortgage.** Name Servicer and its successors and assigns as an insured and, if applicable, include a lender's loss payable endorsement in the private Mortgage Insurance certificate for the Mortgage Loan.

(b) **Notice to Mortgagor.** Seller shall provide the mortgagors with written notice of the transfer of servicing from Seller to Servicer, the form and content of which notice shall comply with the Real Estate Settlement Procedures Act ("**RESPA**"), RESPA's implementing Regulation X, and any other applicable laws and regulations. Seller shall provide the mortgagors with such written notice at the closing of the Mortgage Loan or such other time as may be required by RESPA and other applicable laws and regulations.

### **(c) Recording and Delivery of Assignment.**

(i) If (A) Mortgage Electronic Registration Systems, Inc. ("**MERS**"®) is not the mortgagee of record at the time Seller transfers the Servicing Rights to Servicer, Seller shall execute and submit for recording at the applicable recording office an assignment of the relevant security instrument securing the Mortgage Loan in favor of Servicer, in the format provided by Servicer and as required by the Guides, or (B) MERS is the mortgagee of record at the time Seller transfers the Servicing Rights to Servicer, Seller shall cause the applicable Mortgage Loan to be registered on MERS and identify Servicer as servicer, in the format provided by Servicer, and Fannie Mae as investor, and deliver all such recorded assignments to Servicer.

(ii) Seller shall deliver powers of attorney to Servicer sufficient to allow Servicer to execute all documentation requiring execution on behalf of Seller with respect to the servicing of the Mortgage Loan, including assignments, mortgages, title policies, satisfactions, partial releases, modifications and foreclosure documentation, or in the alternative when execution by Seller is required, Seller shall, as promptly as reasonably feasible, but in no event exceeding five (5) days after delivery, execute and return such documentation to Servicer.

(d) **Real Estate Tax Payment.** In the event the Mortgage Loan requires the mortgagor to escrow funds, Seller shall pay all real estate taxes that are due and payable (i) on or before the Purchase Date, and (ii) within thirty (30) days after the Purchase Date. Seller agrees to follow transfer procedures with respect to real estate tax service contracts in a manner described in the Servicing Transfer Instructions. In addition, Seller shall not pay any bill for which Seller has not specifically retained escrow funds pursuant to the Section 6.2 herein. In the event the Mortgage Loan does not require the mortgagor to escrow funds, Seller shall cause the mortgagors to pay the above-described real estate taxes.

(e) **Insurance Payment.** In the event the Mortgage Loan requires the mortgagor to escrow funds, Seller shall pay the hazard insurance, flood insurance and private Mortgage Insurance premiums that are due and payable (i) on or before the Purchase Date, and (ii) within thirty (30) days after the Purchase Date. Seller shall not pay any bill for which Seller has not specifically retained escrow funds pursuant to Section 6.2 herein. In the event the Mortgage Loan does not require the mortgagor to escrow funds, Seller shall cause the mortgagors to pay the above-described hazard insurance, flood insurance and private Mortgage Insurance premiums.

(f) **Execute Other Documents.** Seller shall execute such further documents reasonably required by Servicer to fully transfer or assign all of Seller's rights, title, and interest in and to the subject Servicing Rights to Servicer and escrow funds transferred hereunder.

**5.2 Seller Obligations after Purchase Date.** Within three (3) Business Days after the Purchase Date, Seller at its own expense shall furnish Servicer or the designated document custodian, as applicable, with the following:

(a) **Mortgage Loan Information.** Seller shall provide all available computer or like records if and as reasonably requested by Servicer, from time to time, reflecting pertinent information on the Mortgage Loan, including but not limited to comprehensive tax and insurance information identifying payee, payee address, next payment due date, and policy number.

(b) **File.** A complete loan file as described in the Fannie Mae *Selling Guide* to Servicer unless otherwise directed by Fannie Mae. Seller must also retain a copy of the complete loan file and maintain that copy in accordance with the requirements of the Fannie Mae *Servicing Guide* and any other applicable requirements set forth therein.

(c) **Other Documents.** Seller shall deliver to Servicer any and all further documents reasonably required by Servicer in order to fully transfer to Servicer all of Seller's rights, title and interest in and to the Servicing Rights and escrow funds transferred hereunder.

(d) **Late Fee.** If Seller fails to comply with this Section, Servicer may, in its sole discretion, charge Seller a late fee of up to \$500.00 per Mortgage Loan.

**5.3 Accurate Representations and Warranties.** Seller's representations and warranties hereunder are true and accurate as of and prior to the Purchase Date.

**5.4 Compliance with Requirements.** Seller shall comply with the Servicing Transfer Instructions, as amended from time to time, and Seller shall complete any and all required forms contained in and as required by the Servicing Transfer Instructions and return such information and items to the party designated therein to receive such information and items.

## **6. Exchange of Funds**

### **6.1 After Purchase Date.**

(a) **Reconciliation of Funding Adjustments.** Seller and Servicer shall have the sole responsibility to adjust and reconcile the amount of the Funding Adjustments. Seller and Servicer hereby agree to release Fannie Mae from any responsibility to adjust the Funding Adjustments, to communicate with Seller and Servicer regarding any adjustments to or reconciliations of the Funding Adjustments, or to pay any amounts owed or owing between Seller and Servicer regarding adjustments to or reconciliations of the Funding Adjustments. In the event either party informs the other of the need to adjust and reconcile the Funding Adjustments, the party that is so informed shall research the discrepancy and, upon verification by them, the parties shall take such actions as are necessary to rectify the discrepancy.

(b) **Late Fee.** If Seller fails to transfer any and all funds required pursuant to this Agreement within three (3) Business Days of demand from Servicer, Servicer may, in its sole discretion, charge Seller a late fee of up to \$500.00 per Mortgage Loan.

6.2 **After Receipt.** Within one (1) Business Day of receipt, Seller shall transfer and forward to Servicer via wire transfer or overnight delivery service all funds received from the mortgagor after the Purchase Date.

## 7. Payment of Costs

7.1 **Seller Costs.** Seller shall pay all its own costs for computer service fees, production of required material, transporting records and files, obtaining a real estate tax contract, assignment fees, legal and accounting fees, wire transfer fees and other costs incurred by Seller in its performance of its obligations under this Agreement related to the time period ending on or before the Purchase Date. Additionally, Seller shall pay the applicable Fannie Mae transfer fee(s), if any, for the Servicing Rights transferred to Servicer. Seller shall also be responsible for all designated document custodian-assessed custodial fees, including but not limited to fees for the certification, safekeeping and release of the promissory note.

7.2 **Servicer Costs.** Servicer shall pay all its own costs for computer service fees, legal and accounting fees, all designated document custodian-assessed custodial fees, including but not limited to fees for the certification, safekeeping and release of the promissory note, and other costs incurred by Servicer in its performance of its obligations under this Agreement after the Purchase Date.

7.3 **Late Fee.** Servicer shall be entitled to charge Seller a fee ("**Late Document Fee**") equal to \$100.00 per Mortgage Loan per month if all final documents specified in the "Final Documents" section of the Servicing Transfer Instructions have not been delivered to Servicer or the designated document custodian within six (6) months of the Purchase Date. Such Late Document Fee shall begin to accrue on the first (1st) day of the seventh (7th) month after the Purchase Date. Notwithstanding the foregoing, Servicer shall not impose a Late Document Fee if Seller's failure to deliver an original loan document is caused by the failure of the applicable recording office to record and return the loan document, provided Seller, in Servicer's reasonable judgment, has exercised and continues to exercise reasonable good faith efforts to fulfill its obligation hereunder.

### 7.4 Refund of the SRP and Repurchase of Mortgage Loan.

(a) **Mortgage Loan Paid in Full.** If the Mortgage Loan is paid in full within 120 days of the Purchase Date, Seller shall refund one hundred percent (100%) of the price paid by Servicer for such Servicing Rights, plus any applicable associated interest loss and any applicable fees due to Fannie Mae.

(b) **Mortgage Loan Repurchases.**

(i) If Fannie Mae requires Seller to repurchase the Mortgage Loan, Servicer may, in its sole discretion, require Seller to repurchase the Servicing Rights. Seller shall then be required to refund the price paid by Servicer for the Servicing Rights in accordance with the schedule in *Exhibit A* to this Agreement.

(ii) Servicer may charge Seller a \$200.00 repurchase fee in the event Seller is required to repurchase the Mortgage Loan. Seller shall remit payment of such repurchase fees directly to Servicer.

(iii) In the event that for any Mortgage Loan for which Servicer has purchased the Servicing Rights, the first, second or third monthly payment due Servicer becomes sixty (60) or more days delinquent (each such Mortgage Loan, an "**EPD Mortgage Loan**") after the applicable Purchase Date, Seller shall reimburse Servicer for the original purchase price paid for said EPD Mortgage Loan, along with an early payment default fee of \$1,500 per EPD Mortgage Loan. Seller shall wire to Servicer the applicable amount within seven (7) Business Days from the date of Servicer's request.

(iv) If it is discovered after the Purchase Date with respect to a Mortgage Loan that a Private Mortgage Insurance Policy is not in force or has been canceled with respect to such Mortgage Loan as of the Purchase Date, and the failure of such a policy to be in force on or after the Purchase Date is due to negligence on the part of Seller, Seller shall, no later than thirty (30) days after Seller's receipt of notification thereof, either (a) take all such actions as are necessary to cause such policy to be in force or to be reinstated by the applicable insurer, or (b) repurchase the related Servicing Rights from Servicer at the Servicing Rights Repurchase Price. If Seller fails to comply with the preceding sentence with respect to a Mortgage Loan, Servicer shall notify Fannie Mae, to initiate the repurchase process with respect to such Mortgage Loan. At no time shall Servicer be made to advance funds to reinstate any Private Mortgage Insurance Policy or pass-through to Fannie Mae any losses due to reasons stated in this subsection. If Servicer is notified of a rescission of the Private Mortgage Insurance Policy, Seller shall reimburse Servicer for any amounts due within fifteen (15) Business Days of receipt of request for reimbursement from Servicer, provided such policy cannot be reinstated.

(v) Notwithstanding the provisions of this Section 7.4, if Fannie Mae requires Seller to repurchase a Mortgage Loan that was sold to Fannie Mae in a bifurcated SMP transaction, the parties agree and acknowledge that such repurchase shall be handled in accordance with the procedures and requirements specified in the *Servicing Guide* with respect to repurchase obligations related to bifurcated mortgage loans.

**7.5 Post Purchase Date Data Corrections.** If after the Purchase Date Seller or Servicer determines that Seller did not deliver the required data or the correct data for the Mortgage Loan, Servicer must complete post Purchase Date data corrections in accordance with the terms and provisions of the Fannie Mae *Servicing Guide*.

## **8. Representations, Warranties, Covenants and Indemnification and other Responsibilities**

### **8.1 Transfer of Servicing Rights.**

(a) **Governing Rules.** Except as provided in the Fannie Mae *Selling Guide*, the Purchase Documents and the Servicing Documents, as and to the extent applicable, all Concurrent Transfers of Servicing shall be in accordance with the Fannie Mae *Selling Guide* and the Fannie Mae *Servicing Guide*.

(b) **Selling Representations and Warranties.** Seller shall be solely liable to Fannie Mae for all Selling Representations and Warranties with respect to the Mortgage Loans upon the transfer of servicing to the extent provided in the Purchase Documents.

(i) **Quality control activities.** Fannie Mae will conduct quality control activities relating to the sale representations and warranties with Seller. Seller agrees that Fannie Mae may share information with Servicer regarding the Mortgage Loan including, but not limited to, quality control findings, Seller's response to quality control findings, and defect reports.

(ii) **Consent to Workout/REO Disposition.** Seller acknowledges that in the event the Mortgage Loan becomes delinquent or is foreclosed, Fannie Mae or Servicer may enter into a workout of the Mortgage Loan or dispose of the Mortgaged Premises. Seller consents in advance to any such workout option or disposition of the Mortgaged Premises that Fannie Mae and/or Servicer enters into for the Mortgage Loan, and acknowledges that Fannie Mae retains the right to exercise its remedies for Seller's breach of the Selling Representations and Warranties.

(c) **Servicer's Representations, Warranties and Covenants.** As of the Purchase Date, Servicer agrees, for the benefit of Fannie Mae, to the following:

(i) Servicer accepts the Servicing Rights and agrees to service the Mortgage Loans in accordance with all Fannie Mae requirements;

(ii) Servicer assumes responsibility for all of the Seller's contractual obligations related to the Mortgage Loans, excluding the Selling Representations and Warranties, that arise in connection with the Mortgage Loans or the servicing of them prior to the delivery of the Mortgage Loans to Fannie Mae;

(iii) Servicer has performed due diligence review(s) of the Servicing Rights to its satisfaction, which includes examination of the books, records, and custodial accounts of the Seller with respect to the Servicing Rights;

(iv) Servicer assume full responsibility to Fannie Mae for the correctness of such books and records; and

(v) Servicer represents and warrants that the provisions of any agreement between Servicer and any other party providing for servicing the Mortgage Loans will not continue after the Funding Date.

## 8.2 Indemnification of Servicer.

(a) **Seller Action.** Seller shall indemnify Servicer for, and shall hold Servicer harmless from and against any and all losses, liabilities, penalties, damages, expenses or other harm or injury that Servicer may incur or suffer or claims or causes of action which may be asserted by any person or entity, including reasonable attorneys' fees and court costs, arising from any failure to observe and perform properly each and every covenant of this Agreement either by (a) Seller or (b) Servicer in reliance upon information provided to Servicer by Seller; provided, however, that there is no negligence by Servicer.

(b) **Third Party Claims.** Without limiting the above, Seller shall indemnify Servicer and Fannie Mae for and shall hold Servicer and Fannie Mae harmless from and against any and all losses, liabilities, penalties, damages, expenses or other harm or injury that Servicer or Fannie Mae may incur or suffer or any claims or causes of action that may be asserted by any person or entity, including reasonable attorney's fees and court costs, resulting from third party claims arising out of or relating to the Mortgage Loan or the Servicing Rights and:

(i) **Misrepresentation.** Any misrepresentation made by Seller in relation to the subject matter of this Agreement.

(ii) **Breach.** Any breach by Seller, any prior originator or any prior servicer of any of Seller's representations or warranties under this Agreement or the Purchase Documents.

(iii) **Seller Act.** Any act or failure to act or perform any term, covenant, condition or obligation of Seller under this Agreement.

(iv) **Prior Act.** Any act or failure to act by any prior originator of the Mortgage Loan or any act or failure to act by any prior servicer of the Mortgage Loan.

(v) **Defect.** Any defect in the Mortgage Loan existing as of the Purchase Date.

(vi) **Error.** Any errors in originating, closing or servicing the Mortgage Loan existing as of the Purchase Date, including any improper act or failure to act when required to do so.

(c) **Servicer Remedies.** Notwithstanding the provisions set forth above, Servicer shall use commercially reasonable efforts to pursue all remedies under any title insurance policy, hazard insurance policy, flood insurance policy, PMI policy, government guarantee, tax service contract, or any other means available in the Mortgage Loan documents or under this Agreement. Servicer, however, shall not be required to sue any such third parties.

**8.3 Indemnification of Seller.** Servicer shall indemnify Seller and Fannie Mae and shall hold Seller and Fannie Mae harmless from and against any and all losses, liabilities, penalties, damages, expenses or other harm or injury that Seller or Fannie Mae may incur or suffer or claims or causes of action which may be asserted by any person or entity, including reasonable attorney's fees and court costs, arising from any failure to observe and perform properly each and every covenant of this Agreement either by (a) Servicer or (b) Seller in reliance upon information provided to Seller by Servicer; provided, however, that there is no negligence by Seller.

**8.4 Notice of Claim/Subrogation.** The party seeking indemnification under this Agreement shall notify the other party, in writing, within 30 days of receipt of notice of any claim, the commencement of any action or of the party which is seeking indemnification becoming aware of any facts that would give rise to, or serve as a basis for, a claim or action for which such party is entitled to receive indemnification under this Agreement. It is understood that Servicer shall take action in accordance with servicing standards generally applicable in the industry in dealing with such matters, and failure to promptly notify Seller shall not affect Servicer's right of indemnification unless such failure is prejudicial to Seller. If any such action is brought against Servicer and Servicer notifies Seller as set forth above, Seller shall be entitled to participate in and, provided Seller delivers written notice to Servicer of its interest to do so and no conflict of interest exists in doing so, to assume the defense with counsel reasonably satisfactory to Servicer. However, Seller shall promptly deliver written notice to Servicer of its intent to assume the defense of such action. Upon receipt by Servicer of the notice from Seller of its election to assume the defense of such action, Seller shall not be liable to Servicer under this Agreement for any legal or other expenses subsequently incurred by Servicer in connection with the defense thereof. Additionally, Seller shall not be entitled to settle, compromise, decline to appeal or otherwise dispose of any such action without the consent of Servicer, which consent shall not be unreasonably withheld or delayed, but which consent may be withheld by Servicer if the settlement or compromise will have a material impact on Servicer's methods of servicing or ability to service the Mortgage Loan or any other mortgage loans serviced for other investors.

## **9. Seller's Representation and Warranties**

**9.1 As to Each Mortgage Loan.** Seller represents and warrants as to each Mortgage Loan:

(a) **Fannie Mae Requirements.** The Mortgage Loan meets all requirements of the applicable Purchase Documents, as amended and in effect at the time the Mortgage Loan was sold.

(b) **No Fraud.** There was no fraud or misrepresentation in the origination of the Mortgage Loan, whether or not as a result of any act or omission of Seller, a prior originator, the mortgagor, or any employee, representative or agent of the foregoing as would materially impair the Mortgage Loan or the related Mortgage Insurance contract.

(c) **Delinquency.** The Mortgage Loan shall not have been delinquent (more than 30 days past due) within one year of the Purchase Date.

(d) **Other.** Seller has not committed any act or failed to commit an act in connection with the Mortgage Loan which would cause Fannie Mae to request a repurchase of the Mortgage Loan.

**9.2 As to Servicing Rights.** Seller represents, warrants and covenants that:

(a) **Title to Servicing Rights.** Seller has good and marketable title to the Servicing Rights and has the complete right and power to transfer the Servicing Rights to Servicer, subject to approval by Fannie Mae, free and clear of all adverse claims and encumbrances.

(b) **No Adverse Claims.** The transfer of Servicing Rights by Seller to Servicer is free and clear of all adverse claims and encumbrances, and there has been no assignment, sale or hypothecation thereof.

(c) **Validity of Transfer.** If the Mortgage Loan was not originated by Seller or Seller's subsidiary, it shall nonetheless be transferred to Servicer by Seller pursuant to appropriate endorsement and assignment of the Mortgage Loan and shall be subject to the representations, warranties and covenants of Seller as provided in this Agreement with the same force and effect as if the Mortgage Loan was originated by Seller or Seller's subsidiary.

(d) **Requirement Adherence.** The Mortgage Loan was serviced in accordance with applicable federal, state and local laws, rules and regulations and with all applicable requirements of Fannie Mae with respect thereto.

(e) **Prior Servicing.** There are no defenses, counterclaims, or rights of setoff arising from the prior servicing affecting the Mortgage Loan or affecting the validity or enforceability of any Mortgage Insurance applicable to the Mortgage Loan. The provisions of any agreement between Seller and any other party providing for servicing of the Mortgage Loan existing as of the Purchase Date will not continue after the Purchase Date.

(f) **Filing of Reports.** Seller has filed or will have filed all reports required by governmental agencies having jurisdiction over the Servicing Rights being transferred by Seller to Servicer.

(g) **Pending Litigation.** There is no pending, or to the best of Seller's knowledge, threatened, litigation, or basis therefore, with respect to a Mortgage Loan which would have a material adverse effect on the servicing of the Mortgage Loan.

**9.3 Servicer Representations and Warranties.** Servicer represents, warrants and covenants that it will service the Mortgage Loan in accordance with the Servicing Documents.

## **10. Non-Solicitation by Seller**

Seller covenants and agrees that it shall not solicit any borrower of a Mortgage Loan for a refinance after the Purchase Date. Notwithstanding the foregoing, the parties understand and agree that promotions undertaken by Seller or any affiliate of Seller which are directed to the general public at large or any portion thereof, including, without limitation, any mass mailing, newspaper, radio, internet or television advertisements, shall not constitute solicitation under this Section.

## **11. Mutual Further Assurances**

Seller and Servicer agree and covenant that each will at any time and from time to time, upon the reasonable request of the other party, execute, acknowledge, deliver or perform all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better vesting and confirming unto the other party and its successors and assigns the title to and possession of the Servicing Rights or as shall be necessary to effect the transactions provided for in this Agreement.

## **12. Governmental Authorities and Laws**

In the event any provision of the Agreement is inconsistent with or in violation of any federal statute or rule or regulation of applicable governmental agencies, it is agreed by the parties thereto that such provision shall be of no force or effect and that the Agreement shall continue as though said contrary provision was deleted from this Agreement.

## **13. Notices**

Any notice, demand, or communication which either party desires or is required to give the other party in connection with this Agreement shall be in writing and shall be either served personally, sent by prepaid registered or certified mail, delivered by a nationally recognized overnight courier service, or sent via electronic mail with transmittal confirmed in writing, addressed to the parties as set forth in the Servicing Transfer Instructions.

## **14. Termination Provision**

**14.1 Termination for Cause.** Servicer may elect to not complete the sale and transfer of the Servicing Rights at any time prior to the purchase of the Mortgage Loan by Fannie Mae, if Servicer instructs Fannie Mae to deactivate Servicer's association with Seller in SMP for any of the following for cause events:

(a) **Seller Bankruptcy Protection.** Seller files for protection under any bankruptcy or similar law.

(b) **Seller Termination.** Any termination of Seller's approvals from Fannie Mae, any government entity, or any other regulatory entity.

**14.2 Termination without Cause.** Either Seller or Servicer may terminate this Agreement without cause or penalty by instructing Fannie Mae to deactivate its association with the other party in SMP. Seller shall sell and transfer and Servicer shall purchase and accept the Servicing Rights for the Mortgage Loan, and the parties shall fulfill all obligations hereunder pertaining to the Mortgage Loan, if the Mortgage Loan was committed for sale to Fannie Mae before the date of such deactivation.

**14.3 Effect of Termination on Prior Breaches.** Upon termination of this Agreement, each party shall remain liable for breaches of the Agreement that occurred prior to such termination. Termination of this Agreement shall not release a breaching party from its obligation to indemnify the non-breaching party and the non-breaching party shall be entitled to receive reimbursement and payment for all sums that it would have been entitled to receive under this Agreement prior to termination.

## 15. Entire Agreement

Except as set forth herein, this Agreement, together with the attachments and schedules, constitutes the entire Agreement between the parties pertaining to the subject matter hereof and supersedes any and all prior agreements, representations, and understanding of the parties, written or oral. In the event of a conflict between this Agreement, the attachments or schedules hereto, the Fannie Mae Guides and the Servicing Transfer Instructions, the order of precedence shall be: (i) the Guides, (ii) this Agreement, (iii) the attachments or schedules hereto, and (iv) the Servicing Transfer Instructions. No addendum, supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto. Notwithstanding the foregoing, this Agreement shall not affect or supersede any terms of other agreements between Seller and Fannie Mae, including but not limited to the Purchase Documents, or between Servicer and Fannie Mae, including but not limited to the Servicing Documents.

## 16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

## 17. Disputes

17.1 **Jurisdiction.** In the event of any suit, action, or other proceeding arising directly or indirectly out of such dispute (hereinafter in this Section collectively "**such proceeding**"), the parties agree that such proceeding shall be instituted in the federal and/or state courts located in the state in which Servicer's principal place of business is located and that such courts shall have sole and exclusive in personam, subject matter, and other jurisdiction in connection with such proceeding. For all purposes of venue, such proceeding shall occur in and be determined solely and exclusively by such courts; and any final judgment rendered by such courts shall be deemed final and conclusive for all purposes among the parties, subject to appellate review.

17.2 **Survival of Provisions.** Notwithstanding any provision to the contrary in this Agreement, all representations, warranties and covenants, as well as the agreements, commitments, promises, and obligations of Servicer and Seller under this Agreement that are intended by their terms to survive the termination of this Agreement shall survive for the life of the Mortgage Loan.

17.3 **Waiver.** Notwithstanding any provision to the contrary in this Agreement, any waiver regarding this Agreement by a party may be made only by a writing signed by the party to be bound thereby specifying that such writing is such a waiver.

17.4 **Party Consent.** Notwithstanding any provision to the contrary in this Agreement, no consent, permission, authorization, or approval required of or by Servicer under this Agreement shall be unreasonably withheld, conditioned or delayed.

**SIGNATURES APPEAR ON THE FOLLOWING PAGE**

**SELLER:**

\_\_\_\_\_, a \_\_\_\_\_

Date: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**SERVICER:**

PHH Mortgage Corporation

1 Mortgage Way

Mount Laurel, NJ 08054

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

Date: \_\_\_\_\_

Name: Kenneth E Setzekorn

Title: Vice President, Managing Director

**Exhibit A to Mortgage Loan Servicing Purchase and Sale Agreement**

<b>EXHIBIT A</b>	
<b>TO MORTGAGE LOAN SERVICING PURCHASE AND SALE AGREEMENT REPURCHASE</b>	
<b>SERVICING RELEASED PREMIUM SCHEDULE</b>	
<b>Time from Date of Purchase of Servicing Rights</b>	<b>Percent</b>
Up to 12 months	100%
13 to 24 months	75%
25 to 36 months	50%
37 to 60 months	25%
Greater than 60 months	0%