

# SECURITIES AND EXCHANGE COMMISSION

## FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **1994-05-13** | Period of Report: **1994-03-31**  
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### FILER

#### CU BANCORP

CIK: **356050** | IRS No.: **953657044** | State of Incorporation: **CA** | Fiscal Year End: **1231**  
Type: **10-Q** | Act: **34** | File No.: **000-11008** | Film No.: **94528198**  
SIC: **6022** State commercial banks

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FORM 10-Q  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

/X/ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE SECURITIES EXCHANGE ACT OF 1934.

/X/ For the Quarterly Period Ended March 31, 1994, or

Transition Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

-----  
Commission File Number 0-11008  
-----

CU BANCORP  
(Exact name of registrant as specified in its charter)

California	95-3657044
(State or other Jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

818-907-9122  
(Registrant's telephone number, including area code)

NOT APPLICABLE  
(Former name, former address, and former fiscal year if changes since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes /X/ No / /

As of March 31, 1994, the Registrant has outstanding 4,437,312 shares of its Common Stock, no par value.

CU Bancorp  
Quarter Ended March 31, 1994  
Table of Contents - Form 10-Q

	Page
Part I. Financial Information	----
Item 1. Financial Statements	
<TABLE>	
<S>	<C>
Management's Discussion and Analysis of Financial Condition and Results of Operation.	3
Consolidated Statements of Financial Condition: -March 31, 1994, and December 31, 1993.	17
Consolidated Statements of Income: -Three Month Periods Ended March 31, 1994, and March 31, 1993.	18
Consolidated Statements of Cash Flows: -Three Month Periods Ended March 31, 1994, and March 31, 1993.	19

Notes to Consolidated Financial Statements	20
Signatures	24

</TABLE>

Part II. Other Information

<TABLE>

<S>	<C>
Item 1. Legal Proceedings	25
Item 2. Changes in Securities	25
Item 3. Defaults Upon Senior Securities	25
Item 4. Submission of Matters to a Vote of Security Holders	25
Item 5. Other Information	25
Item 6. Exhibits and Filings on Form 8-K	25

</TABLE>

3

MANAGEMENT'S DISCUSSION AND ANALYSIS

OVERVIEW

The Company earned \$578 thousand, or \$0.13 per share, during the first quarter of 1994, compared to \$384 thousand, or \$0.09 per share, during the same period in 1993. This represented the fifth consecutive quarter of increased profits. First quarter 1994 earnings included profitable performance by the bank and a gain on the sale of a portion of the mortgage servicing rights retained by the Bank when its mortgage origination network was sold in 1993.

The Bank's asset quality ratios continue to be exceptionally strong. At March 31, 1994, nonperforming assets were \$1.1 million, down \$1.2 million, or 52%, from the prior quarter, and nearly \$9.9 million, or 90% from the first quarter of 1993. By March 31, 1994, the Bank did not have any real estate acquired through foreclosure. The improvement in asset quality over the past year is illustrated by Graph 1: Nonperforming Assets. The Bank's allowance for loan losses as a percent of both nonperforming loans and nonperforming assets at the end of the first quarter of 1994 was 652%, compared to first quarter 1993 levels of 164% and 98%, respectively. This trend can be seen in Graph 2: Ratio of Allowance for Loan Losses to Nonperforming Assets.

Graph 1: Nonperforming Assets

[GRAPH 1]

4

Graph 1 Data: Nonperforming Assets

<TABLE>

<CAPTION>	March 31, 1993	June 30, 1993	September 30, 1993	December 31, 1993	March 31, 1994
	-----	-----	-----	-----	-----
<S>	<C>	<C>	<C>	<C>	<C>
Nonperforming Loans	\$6,602	\$6,530	\$1,065	\$1,378	\$1,108
Nonperforming Assets	11,034	9,988	4,034	2,298	\$1,108

</TABLE>

The allowance for loan losses as a percentage of nonperforming loans and assets has increased as both nonperforming categories were reduced. During the first quarter of 1994, the Bank enjoyed a net recovery as recoveries exceeded chargeoffs for the second consecutive quarter. Net recoveries further increase the allowance's coverage of the nonperforming loans and assets.

Graph 2: Allowance for Loan Losses to Nonperforming Assets

[GRAPH 2]

Graph 2 Data: Allowance for Loan Losses to Nonperforming Assets

<TABLE>

<CAPTION>

	March 31, 1993	June 30, 1993	September 30, 1993	December 31, 1993	March 31, 1994
Allowance to:	----	----	----	----	----
<S>	<C>	<C>	<C>	<C>	<C>
Nonperforming Loans	164%	118%	536%	473%	652%
Nonperforming Assets	98%	77%	142%	283%	652%

Capital ratios are strong, substantially exceeding levels required to be in the "well capitalized" category established by bank regulators. The Total Risk-Based Capital Ratio was 17.0%, the Tier 1 Risk-Based Capital Ratio was 15.7%, and the Leverage Ratio was 10.7% at March 31, 1994, compared to 16.7%, 15.4%, and 9.2%, respectively, at year-end 1993. Regulatory requirements for Total Risk-Based, Tier 1 Risk-Based, and Leverage capital ratios are a minimum of 8%, 4%,

5

and 3%, respectively, and for classification as well capitalized, 10%, 6%, and 5%, respectively.

The successful results in 1993 concerning asset quality, regulatory relations, growth of middle market lending and strategic focus make expansion and growth possible in 1994. Two new loan production offices were opened in January 1994. These offices will allow expanded market penetration and commercial portfolio diversification. Subsequent to the end of the first quarter of 1994, the Bank acquired the deposits of the Encino branch of Mechanics National Bank from the FDIC, to expand and improve deposit mix.

Balance Sheet Analysis

#### LOAN PORTFOLIO COMPOSITION AND CREDIT RISK

Loan portfolio quality has been a focal point of management's attention since June 1992. As a result, considerable improvements have been made. Credit policies have been established to promote quality production. Further, target markets have been redefined to emphasize middle market commercial lending and reduce real estate concentrations.

The Bank's focus on middle market lending, in its infancy at year-end 1992, gained momentum in 1993 and 1994. While total loans decreased from year-end 1993 to March 31, 1994 the assets of the core commercial bank increased. Offsetting this, the remaining Held for Sale mortgages of \$10.4 million at December 31, 1993 were sold in the first quarter of 1994. Excluding this planned liquidation, loans increased by \$6.9 million, or 5%, for the quarter ended March 31, 1994.

Table 1 Loan Portfolio Composition

Amounts in thousands of dollars	March 31, 1994	December 31, 1993	March 31, 1993
<S>	<C>	<C>	<C>
Commercial & Industrial Loans	\$126,885	\$120,513	\$111,181
Real Estate Loans:			
Held for Sale	0	10,426	58,576
Mortgages	9,166	8,496	39,081
Construction	1,010	1,226	261
Other Loans	0	0	494
Total loans net of unearned fees	\$137,061	\$140,661	\$209,593

The Bank's credit policy limits concentrations of loans in any industry or collateral. Efforts to reduce any remaining concentrations continue.

6

Historically, the Bank's real estate loans secured by single family residences were principally mortgages held for sale that were originated by the Mortgage Banking Operation. These were sold to investors through firm commitments, generally in less than 90 days. The loans amounted to \$10.4 million, or 7.4% of the December 31, 1993, loan portfolio. This part of the loan portfolio historically presents almost no credit risk. The mortgage origination operation sale eliminated this loan concentration. The remainder of real estate loans

are generally collateralized by a first or second trust deed position.

Lending efforts have been directed away from commercial real estate, as well as construction and multifamily lending. The Bank is now focused on business lending to middle market customers. Current credit policy now permits commercial real estate lending generally only as part of a complete commercial banking relationship with a middle market customer. Existing commercial real estate loans, 19% of the loan portfolio, or \$26 million at March 31, 1994, compared to \$27 million at year-end 1993, are secured by first or second liens on office buildings and other structures. The loans are secured by real estate that had appraisals in excess of loan amounts at origination.

Monitoring and controlling the Bank's allowance for loan losses is a continuous process. All loans are assigned a risk grade, as defined by credit policies, at origination and are monitored to identify changing circumstances that could modify their inherent risks. These classifications are one of the criteria considered in determining the adequacy of the allowance for loan losses.

The amount and composition of the allowance for loan losses is as follows:

Table 2 Allocation of Allowance for Loan Losses

<TABLE>  
<CAPTION>

Amounts in thousands of dollars	March 31, 1994	December 31, 1993	March 31, 1993
	----	----	----
<S>	<C>	<C>	<C>
Commercial & Industrial Loans	\$6,392	\$5,699	\$9,783
Real estate loans - Held for Sale	0	67	128
Real estate loans - Mortgages	277	225	324
Real estate loans - Construction	5	10	45
Other loans	0	0	12
Loans	6,674	6,001	10,292
Unfunded commitments and letters of credit	551	512	531
	-----	-----	-----
Total Allowance for loan losses	\$7,225	\$6,513	\$10,823
	=====	=====	=====

</TABLE>

Adequacy of the allowance is determined using management's estimates of the risk of loss for the portfolio and individual loans. Included in the criteria used to evaluate credit risk are, wherever appropriate, the borrower's cash flow, financial condition, management capabilities, and collateral valuations, as well as industry conditions. A portion of the allowance is established to address the risk inherent in

7

general loan categories, historic loss experience, portfolio trends, economic conditions, and other factors. Based on this assessment a provision for loan losses may be charged against earnings to maintain the adequacy of the allowance. The allocation of the allowance based upon the risks by type of loan, as shown in Table 2, implies a degree of precision that is not possible when using judgments. While the systematic approach used does consider a variety of segmentations of the portfolio, management considers the allowance a general reserve available to address risks throughout the entire loan portfolio.

Activity in the allowance, classified by type of loan, is as follows:

Table 3 Analysis of the Changes in the Allowance for Loan Loss

<TABLE>  
<CAPTION>

Amounts in thousands of dollars	March 31, 1994	For the Periods Ended December 31, 1993	March 31, 1993
	----	----	----
<S>	<C>	<C>	<C>
Balance at January 1	\$6,513	\$12,986	\$12,986
Loans charged off:			
Real estate secured loans	200	3,266	568
Commercial loans secured and unsecured	464	6,582	2,520
Loans to individuals, installment and other loans	0	901	209
Total charge-offs	664	10,749	3,297
Recoveries of loans previously charged off:			
Real estate secured loans	493	393	2

Commercial loans secured and unsecured	882	3,189	949
Loans to individuals, installment and other loans	0	244	33
Total recoveries of loans previously charged off	1,377	3,826	984
Net charge-off (recovery)	(713)	6,923	2,313
Provision for loan losses	0	450	150
	-----	-----	-----
Balance at end of period	\$7,226	\$6,513	\$10,823
	=====	=====	=====
Net loan charge-offs (recoveries) as a percentage of average gross loans outstanding during the period ended	(0.52)%	3.49%	1.15%
	=====	=====	=====

</TABLE>

The Bank's policy concerning nonperforming loans is more conservative than is generally required. It defines nonperforming assets as all loans ninety days or more delinquent, loans classified nonaccrual, and foreclosed, or in substance foreclosed real estate. Nonaccrual loans are those whose interest accrual has been discontinued because the loan has become ninety days or more past due or there exists reasonable doubt as to the full and timely collection of principal or interest. When a loan is placed on nonaccrual status, all interest previously accrued but uncollected is reversed against operating results. Subsequent payments on nonaccrual loans are treated as principal reductions. At March 31, 1994, nonperforming loans amounted to \$1.1 million, down 20% from \$1.4 million at December 31, 1993.

8

Table 4: Nonperforming Assets

<TABLE>  
<CAPTION>

Amounts in thousands of dollars	March 31, 1994	December 31, 1993	March 31, 1993
	----	----	----
<S>	<C>	<C>	<C>
Loans not performing (1)	\$308	\$378	\$3,067
Insurbstance foreclosures	800	1,000	3,535
	----	----	----
Total nonperforming loans	1,108	1,378	6,602
Other real estate owned	0	920	4,432
	----	----	----
Total nonperforming assets	\$1,108	\$2,298	\$11,034
	=====	=====	=====
Allowance for loan losses as a percent of:			
Nonperforming loans	652%	473%	164%
Nonperforming assets	652%	283%	98%
Nonperforming assets as a percent of total assets	0.8%	0.8%	3.3%
Nonperforming loans as a percent of total loans	0.8%	1.0%	3.1%

Note 1:

Loans not performing			
Performing as agreed	\$271	\$9	\$2,034
Partial performance	0	369	1,162
Not performing	37	0	3,406
	-----	-----	-----
	\$308	\$378	\$6,602
	=====	=====	=====
Nonaccrual:			
Loans	\$308	\$378	\$5,595
Troubled debt restructurings	0	0	1,007

(a) Past due with respect to principal and/or interest and continuing to accrue interest.  
</TABLE>

#### SECURITIES

The securities portfolio at March 31, 1994, totaled \$68.8 million, compared to \$88.0 million at year-end 1993. The securities are all held in a Held for Investment portfolio. There was no held for sale portfolio at March 31, 1994 or year-end 1993. This portfolio is recorded at amortized cost. It is the Bank's intention to hold these securities to their individual maturity dates.

There have been no realized gains or losses on securities in the first quarter of 1994. Gains of \$77 thousand were realized in the comparable quarter of 1993. At March 31, 1994, there were unrealized gains of \$28 thousand and losses of \$961 thousand in the securities portfolio.

Additional information concerning securities is provided in the

#### OTHER REAL ESTATE OWNED

At March 31, 1994, there was no Other Real Estate Owned on the Bank's balance sheet, compared with \$920 thousand at December 31, 1994. The carrying values of these properties are at fair value, which is determined using recent appraisal values adjusted, if necessary, for other market conditions. Loan balances in

9

excess of fair value are charged to the allowance for loan losses when the loan is reclassified to other real estate. Subsequent declines in fair value are charged against an allowance for real estate owned losses created by charging a provision to other operating expenses. Expenses related to Other Real Estate Owned were \$8 thousand in the quarter ended March 31, 1994 and \$22 thousand in the first quarter of 1993.

#### DEPOSIT CONCENTRATION

Due to its historic focus on real estate-related activities, the Bank developed a concentration of deposit accounts from title insurance and escrow companies. These deposits are generally noninterest bearing transaction accounts that contribute to the Bank's interest margin. Noninterest expense related to these deposits is included in other operating expense. The Bank monitors the profitability of these accounts through an account analysis procedure.

The Bank offers products and services allowing these customers to operate with increased efficiency. A substantial portion of the services, provided through third party vendors, are automated data processing and accounting for trust balances maintained on deposit at the Bank. These and other banking related services, such as messenger and deposit courier services, will be limited or charged back to the customer if the deposit relationship profitability does not meet the Bank's expectations.

Noninterest bearing deposits represent nearly the entire title and escrow relationship. These balances have been reduced substantially as the Bank focused on middle market business loans. The balance at March 31, 1994, was \$49.2 million compared to \$58.1 million at December 31, 1993. Costs relative to servicing the above relationships are the significant portion of the Bank's customer data processing and messenger and courier costs. Part of the decrease in these expenses is related to lower general market interest rates, but the majority is due to the reduced amount of this deposit concentration.

The Bank had \$17.0 million in certificates of deposit larger than \$100 thousand dollars at March 31, 1994. The maturity distribution of these deposits is relatively short term, with \$11.2 million maturing within 3 months and the balance maturing within 12 months.

#### LIQUIDITY AND INTEREST RATE SENSITIVITY

The objective of liquidity management is to ensure the Bank's ability to meet cash requirements. The liquidity position is managed giving consideration to both on and off-balance sheet sources and demands for funds.

10

Sources of liquidity include cash and cash equivalents (net of Federal Reserve requirements to maintain reserves against deposit liabilities), securities eligible for pledging to secure borrowings from dealers pursuant to repurchase agreements, loan repayments, deposits, and borrowings from a \$20 million overnight federal funds line available from a correspondent bank. Potential significant liquidity requirements are withdrawals from noninterest bearing demand deposits and funding of commitments to loan customers.

During 1993, the Bank maintained a \$20 million line of credit with a major purchaser of the mortgage loans originated by the mortgage origination operation. This warehouse line was terminated in conjunction with the sale of that operation.

From time to time the Bank may experience liquidity shortfalls ranging from one to several days. In these instances, the Bank will either purchase federal funds, and/or sell securities under repurchase agreements. These actions are intended to bridge mismatches between funding sources and requirements, and are designed to maintain the

minimum required balances. Liquidity volatility was significantly reduced by the sale of the mortgage origination operation which created volatility with production volume fluctuations.

The Bank's historical portfolio of large certificates of deposit (those of \$100 thousand or more) has not been significant relative to the total deposit base. At March 31, 1994 this funding source was 7.8% of average deposits, compared to 7.3% at December 31, 1993. This funding source has traditionally been used to manage liquidity needs within the deposit portfolio.

11

Table 5 Interest Rate Maturities of Earning Assets and Funding Liabilities at March 31, 1994

<TABLE>  
<CAPTION>  
Amounts in thousands of dollars

	Amounts Maturing or Repricing in				
	Less Than 3 Months	More Than 3 Months But Less Than 6 Months	More Than 6 Months But Less Than 9 Months	More Than 9 Months But Less than 12 Months	12 Months & Over
<S>	<C>	<C>	<C>	<C>	<C>
Earning Assets					
Gross Loans (1)	\$128,971	\$348	\$886	\$838	\$5,018
Securities	20,999	4,053	3,416	3,000	38,750
Federal funds sold & other	17,000	---	---	---	---
Total earning assets	166,970	4,401	4,302	3,838	43,768
Interest-bearing deposits:					
Now and money market	62,913	---	---	---	---
Savings	6,964	---	---	---	---
Time certificates of deposit:					
Under \$100	6,479	5,071	3,089	623	1,375
\$100 or more	11,193	3,108	1,770	500	425
Non interest-bearing demand deposits	46,080	---	---	---	---
Total interest-bearing liabilities	133,629	8,179	4,859	1,123	1,800
Interest rate sensitivity gap	33,341	(3,778)	(557)	2,715	41,968
Cumulative interest rate sensitivity gap	33,341	29,563	29,006	31,721	73,689
Off balance sheet financial instruments	750	750	---	---	---
Net cumulative gap	\$34,091	\$30,313	\$29,006	\$31,721	\$73,689
Adjusted cumulative ratio of rate sensitive assets to rate sensitive liabilities (2)	1.25%	1.21%	1.20%	1.21%	1.49%

(1) Included in loans are mortgages in the process of being sold.

(2) Ratios greater than 1.0 indicate a net asset sensitive position. Ratios less than 1.0 indicate a liability sensitive position. A ratio of 1.0 indicates a risk neutral position.

</TABLE>

Assets and liabilities shown on Table 6 are categorized based on contractual maturity dates. Maturities for those accounts without contractual maturities are estimated based on the Bank's experience with these customers. Noninterest bearing deposits of title and escrow companies, having no contractual maturity dates, are considered subject to more volatility than similar deposits from commercial customers. The net cumulative gap position shown in the table above indicates that the Bank does not have a significant exposure to interest rate fluctuations during the next twelve months.

#### CAPITAL

Total shareholders' equity was \$27.6 million at March 31, 1994, compared to \$27.0 million at year-end 1993. This increase was due to earnings, plus the exercise of stock options. The Bank is guided by statutory capital requirements, which are measured with three ratios, two of which are sensitive to the risk inherent in various assets and which consider off-balance sheet activities in assessing capital adequacy. During 1994 and 1993, the Bank's capital levels exceeded the "well capitalized" standards, the highest classification established by bank regulators.



Table 6 Capital Ratios

	March 31, 1994	December 31, 1993	Regulatory Standards	
			Minimum	Well Capitalized
<S>	<C>	<C>	<C>	<C>
Total Risk Based Capital	17.0%	16.7%	8.0%	10.0%
Tier 1 Risk Base Capital	15.7	15.4	4.0	6.0
Leveraged Capital	10.7	9.2	3.0	5.0

No dividends have been paid in 1994 or 1993. Capital being generated by current earnings are currently expected to be used to support anticipated growth of the Bank.

The common stock of the Company is listed on the National Association of Securities Dealers Automated Quotation (NASDAQ) National Market Systems where it trades under the symbol CUBN.

## EARNINGS BY LINE OF BUSINESS

Prior to the sale of the mortgage origination network in November, 1993, the Bank operated a commercial bank and a mortgage bank as two distinct business segments. In 1994, real estate lending is generally only done as part of a commercial banking relationship. For 1994, therefore, the Bank consists of only a single segment, the commercial banking operation. Table 7 shows the pre-tax operating contributions by the Commercial Banking and Mortgage Banking divisions.

Table 7 Pre-tax operating contribution by line of business (i)

	March 31, 1994		March 31, 1993	
	Consolidated	Consolidated	Commercial Banking	Mortgage Banking
<S>	<C>	<C>	<C>	<C>
Net interest income	\$2,752	\$3,814	\$3,527	\$287
Provisions for loan losses	0	150	150	0
	2,752	3,664	3,377	287
Noninterest revenue	903	4,349	284	4,065
Total revenues	3,655	8,013	3,661	4,352
Salaries and related benefits	1,543	2,439	1,553	886
Other operating expenses	1,942	4,932	1,978	2,954
Total operating expenses	3,485	7,371	3,531	3,840
Operating income	170	642	130	512
Gain on sale of mortgage servicing portfolio	838	---	---	---
Income before taxes	\$1,008	\$642	\$130	\$512

(i) Inter-divisional transactions have been eliminated at the division level.

&lt;/TABLE&gt;

The Bank changed its strategic direction during the second half of 1992 when the new management team committed its focus to southern California's middle market commercial business. Historically, it had concentrated on commercial real estate and related businesses. The portfolios of loans and deposits that resulted

from past operations have been substantially replaced by new middle market commercial customer relationships.

Steps taken to facilitate the expansion and market penetration of the commercial bank include the creation of loan production offices, establishment of a Small Business Administration ("SBA") loan production group, and development of an international trade services group.

Loan production offices have been established in two strategic locations in southern California. These will serve the San Gabriel

Valley area and the South Bay area. The offices are staffed with seasoned commercial lenders whose primary focus is business development. Such offices are cost effective approaches to business development and allow the Bank access to wider market exposure. While these offices are primarily staffed with existing personnel, when appropriate, key people with specific market knowledge and experience have been hired.

The Bank has established a group of lenders to focus on the production of commercial loans that can be participated with the SBA. These loans are subject to the same credit quality policies and procedures as all commercial loan production. Fees generated from the sale of the guaranteed portion of the loans will be an important new source of noninterest income.

Another new product was added with the creation of an international trade services group. Many of the Bank's existing commercial customers and prospects are involved in import and/or export. This product line includes letters of credit, foreign exchange, and foreign collections, and is another important element in the total banking relationship offered to our business customers.

#### NET INTEREST INCOME AND INTEREST RATE RISK

Net interest income is the difference between interest and fees earned on earning assets and interest paid on funding liabilities. Net interest income for the first quarter of 1994 was \$2.8 million, compared to \$3.6 million for the same period in 1993. The change is primarily attributable to changes in volume. As a result of efforts to deal with credit quality issues and refocus the Bank on middle market business customers, loans outside target markets have been motivated to leave the Bank. Initially this has an adverse affect on net interest margin but subsequent growth of the middle market loan portfolio replaces these assets and provides a more reliable and valuable source of interest margin.

Yields on earning assets were approximately 6.5% in the first quarter of 1994, compared to a 7.6% yield for the same period in 1993. The lower average yield

14

on earning assets in 1994 is largely due to the higher mix of Fed Funds and government securities held in 1994 compared with higher concentrations of mortgage loans in 1993. Through October 8, 1993, net interest income continued to benefit from an interest rate swap agreement, discussed below. Rates on interest-bearing liabilities resulted in an average cost of funds of 3.0% in 1994, compared to 3.1% for 1993.

Shrinkage in the Bank's earning asset and funding liability portfolios contributed to the reduction in net interest income. Average loans during the first quarter of 1994 decreased \$63 million from \$200 million in the first quarter of 1993. As previously discussed, this resulted from the sale of the held for sale mortgage loans, discussed below, and management's efforts to improve the quality of the loan portfolio and redirect production to middle market commercial loans. Earning assets averaged \$226 million in 1994, down \$31 million from \$257 million in the same period of 1993

Following the sale of the mortgage origination operation, the Bank's funded warehouse inventory was sold in the normal course of business. The liquidation of this mortgage loan portfolio is being used to increase the Bank's investment portfolio and liquidity position. This liquidity will fund the expected growth of the Bank's core commercial loan portfolio. While this transition will have a temporary adverse impact on net interest margin, it facilitates the commercial loan growth planned for 1994.

Expressing net interest income as a percent of average earning assets is referred to as margin. Margin for 1994 was 4.91%, compared to 6.01% for the same period in 1993. The Bank's margin is strong because it has funded itself with a significant amount of noninterest bearing deposits. The lower margin in 1994 is largely due to the maturing of the interest rate swap discussed below.

Through October 8, 1993, the Bank continued to benefit from an interest rate swap agreement entered into October 8, 1991, which had a notional value of \$100 million. Under this arrangement, the Bank received a fixed rate of 8.18% and paid interest at prime rate, which was 6.0% during 1993. The income earned from the interest rate swap agreement was \$0.5 million in the first quarter of 1993.

#### OTHER OPERATING INCOME

The majority of other operating income in prior years was earned as the Mortgage Banking Operation originated and sold mortgage loans. The trends and composition of other operating income are shown in the following table.

15

Table 8 Other operating income  
<TABLE>  
<CAPTION>  
Amounts in thousands of dollars

	March 31, 1994	For the Periods Ended March 31, 1993		
	Consolidated	Consolidated	Commercial Banking	Mortgage Banking
<S>	<C>	<C>	<C>	<C>
Processing fees		\$225		\$225
Capitalization of excess servicing rights		71		71
Fees on loans sold		396		396
Premium on sales of mortgage loans	\$68	2,625		2,625
Service income	466	480		480
Documentation fees	22	208	\$33	175
Other service fees and charges	347	267	196	71
Securities & other nonoperating gains	0	77	77	0
Gain on sale of mortgage servicing portfolio	838	---	---	---
	---	---	---	---
Total	\$1,741	\$4,349	\$306	\$4,043
	=====	=====	=====	=====

</TABLE>

The Mortgage Banking Operation earned fee income on loans originated, and gains as loans were sold to permanent investors. Loans for which servicing was retained are conventional mortgages under approximately \$200 thousand which were sold to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other institutional investors. Excess servicing rights were capitalized, and related gains recognized, based on the present value of the servicing cash flows discounted over a period of seven years. When loan prepayments occur within this period, the remaining capitalized cost associated with the loan is written off.

The servicing rights were retained by the bank following sale of the mortgage origination operation. The Bank has entered into an agreement with the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to dispose of any remaining portion of this portfolio by the end of 1994 because, with the sale of the mortgage origination operation, the Bank is no longer a qualified seller/servicer of such loans. In the first quarter of 1994, the bank sold a portion of the retained servicing rights at a gain of \$838 thousand.

#### OPERATING EXPENSE

Total operating expense for the commercial bank was \$1.9 million in the first quarter of 1994, compared to \$2.0 million for the same period in 1993. Refocusing productive resources toward commercial banking activities and eliminating historic inefficiencies allowed this reduction. The current level of operating expense is deemed to be adequate and will be leveraged further as the core middle market business is expanded.

#### PROVISION FOR LOAN LOSSES

The Bank's made no provision for loan losses in 1994 compared with \$150 thousand in the first quarter of 1993. This change in provision was made possible

16

by the significant reduction of nonperforming loans. The relationship between the level and trend of the allowance for loan losses and nonperforming assets, combined with the results of the ongoing review of credit quality, determine the level of provisions.

#### LEGAL AND REGULATORY MATTERS

In June 1992, the Bank entered into an agreement with the Office of the Comptroller of the Currency (OCC), the Bank's primary federal regulator, which required the implementation of certain policies and

procedures for the operation of the bank to improve lending operations and management of the loan portfolio. In November 1993, after completion of its annual examination, the OCC released the Bank from the Formal Agreement. Following this, the Federal Reserve Bank of San Francisco ("Fed") notified the Company on November 29, 1993, that the Memorandum of Understanding, which it had signed, was terminated because the requirements of the agreement were satisfied.

17

<TABLE>

<CAPTION>

Consolidated Statements of Financial Condition CU Bancorp and Subsidiary

Amounts in thousands of dollars	March 31, 1994 ----	December 31, 1993 ----
<b>ASSETS</b>		
<S>	<C>	<C>
Cash and due from banks	\$37,511	\$18,440
Federal funds sold	17,000	28,000
	-----	-----
Total cash and cash equivalents	54,511	46,440
Time deposits with other financial institutions	1,377	1,377
Investment securities (Market value of \$67,908 and \$87,889 at March 31, 1994 and December 31, 1993, respectively)	68,842	88,034
Loans, (Net of allowance for loan losses of \$7,226 and \$6,513 at March 31, 1994, and December 31, 1993, respectively)	129,835	134,148
Premises and equipment, net	872	924
Other real estate owned, net	---	920
Accrued interest receivable and other assets	7,111	7,363
	-----	-----
<b>Total Assets</b>	<b>\$262,548</b>	<b>\$279,206</b>
	=====	=====
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Deposits:		
Demand deposits	\$123,782	\$125,665
Savings deposits	69,505	66,214
Time deposits under \$100	16,637	27,753
Time deposits of \$100 or more	16,996	19,296
	-----	-----
Total deposits	226,920	238,928
Accrued interest payable and other liabilities	8,006	13,288
	-----	-----
Total liabilities	234,926	252,216
	-----	-----
Shareholders' equity:		
Preferred stock, no par value:		
Authorized -- 10,000,000 shares		
No shares issued or outstanding in 1994 or 1993	---	---
Common stock, no par value:		
Authorized - 20,000,000 shares		
Issued and outstanding - 4,437,312 in 1994, and 4,424,306 in 1993.	26,304	26,250
Retained earnings	1,318	740
	-----	-----
Total Shareholders' equity	27,622	26,990
	-----	-----
Total Liabilities and Shareholders' equity	\$262,548	\$279,206

The accompanying notes are an integral part of these consolidated financial statements.

</TABLE>

18

Consolidated Statements of Income

CU Bancorp and Subsidiary

<TABLE>

<CAPTION>

Amounts in thousands of dollars, except per share data

For the three months ended March 31,

	1994 ----	1993 ----
<S>	<C>	<C>
Revenue from earning assets:		
Interest and fees on loans	\$2,831	\$3,773
Benefits of interest rate hedge transactions	---	538
Interest on taxable investment securities	641	462
Interest on tax exempt investment securities	1	10
Interest on time deposits with other financial institutions	16	37

Interest on federal funds sold	147	46
	-----	-----
Total revenue from earning assets	3,637	4,866
	-----	-----
Cost of funds:		
Interest on interest-bearing demand deposits	361	419
Interest on savings deposits	45	92
Interest on time deposits under \$100	214	162
Interest on time deposits of \$100 or more	143	200
Interest on federal funds purchased & securities sold under agreements to repurchase	23	27
Interest on other borrowings	99	152
	-----	-----
Total cost of funds	885	1,052
	-----	-----
Net revenue from earning assets before provision for loan losses	2,752	3,814
Provision for loan losses	0	150
	-----	-----
Net revenue from earning assets	2,752	3,664
	-----	-----
Other operating revenue:		
Capitalization of excess servicing rights	---	71
Servicing income - mortgage loans sold	466	480
Other fees & charges - commercial	229	206
Fees on loans sold	0	396
Premium on sales of mortgage loans	68	2,625
Other fees and charges - mortgage	140	494
Gain on sale of mortgage servicing portfolio	838	---
Gain on sale of investment securities (before taxes of \$0, and \$11, in 1994, 1993, respectively)	---	28
Gain on sale of securities held for sale (before taxes of \$0 and \$20 in 1994 and 1993, respectively)	---	49
	-----	-----
Total other operating revenue	1,741	4,349
	-----	-----
Other operating expenses:		
Salaries and related benefits	1,543	2,439
Selling expenses - mortgage loans	126	2,088
Other operating expenses	1,816	2,844
	-----	-----
Total operating expenses	3,485	7,371
	-----	-----
Income before provision for income taxes	1,008	642
Provision for income taxes	430	258
	-----	-----
Net income	\$578	\$384
	=====	=====
Earnings per share	\$0.13	\$0.09
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

</TABLE>

19

CU BANCORP AND SUBSIDIARY  
CONSOLIDATED STATEMENTS OF CASH FLOWS  
(AMOUNTS IN THOUSANDS OF DOLLARS)

<TABLE>  
<CAPTION>

	For the three months ended March 31,	
	1994	1993
	----	----
Cash flows from operating activities:		
<S>	<C>	<C>
Net income	\$578	\$384
Adjustments to reconcile net income to net cash provided by operating activities:		
Provision for loan losses	---	150
Increase (decrease) in cash provided by other operating activities	(4,004)	1,307
	-----	-----
Total adjustments	(4,004)	1,457
	-----	-----
Net cash (used) by operating activities	(3,426)	1,841
	-----	-----
Cash flows from investing activities:		
Net (increase) decrease in investment securities	19,192	46,880

Net (increase) decrease in loans	4,313	(11,269)
(Increase) in other investing activities	(54)	(129)
	-----	-----
Net cash provided by investing activities	23,451	35,482
Cash flows from financing activities:		
Net increase (decrease) in demand and savings deposits	1,408	(35,409)
Net increase (decrease) in time certificates of deposit	(13,416)	19,002
Net increase in other financing activities	54	0
	-----	-----
Net cash (used) by financing activities	(11,954)	(16,407)
	-----	-----
Net increase in cash and cash equivalents	8,071	20,916
Cash and cash equivalents at beginning of year	46,440	55,989
	-----	-----
Cash and cash equivalents at end of year	\$54,511	\$76,905
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.

</TABLE>

20

Notes to Consolidated Financial Statements  
March 31, 1994  
UNAUDITED

Note A. BASIS OF PRESENTATION

The accounting and reporting policies of CU Bancorp ("the Company") and its wholly owned subsidiary, California United Bank, N.A. ("the Bank"), are prepared in accordance with generally accepted accounting principles used in the banking industry. All material inter company balances have been eliminated and all material interim period adjustments which, in the opinion of management, are necessary for a fair presentation of financial condition, results of operations, and cash flow have been made.

Note B. EARNINGS PER SHARE

Net income per share is computed using the weighted average number of shares of common stock and common stock equivalents outstanding during the periods presented, except when the effect of the latter would be anti-dilutive.

NOTE C. SECURITIES

The Bank has the intent and ability to hold its investment securities until maturity. Accordingly, investment securities are carried at cost, adjusted for amortization of premiums and accretion of discounts on a straight-line basis, which approximates the effective interest method. Gains and losses recognized on the sale of investment securities are based upon the adjusted cost and determined using the specific identification method.

The Bank has no securities classified as "held for sale", indicating the willingness to sell these securities under certain conditions. These securities would be carried at current market value with unrealized gains or losses not recognized as current income but reported as an increase or decrease to capital in the statements of financial condition and in the statements of shareholders' equity.

The following tables set forth the book value and market value, of investment securities at March 31, 1994.

<TABLE>  
<CAPTION>

(Thousands of dollars)	Book Value	Gross Unrealized Gains	Gross Unrealized Losses	Market Value
	-----	----	-----	-----
<S>	<C>	<C>	<C>	<C>
U.S. Treasury Securities	\$57,516		\$(961)	\$56,555
U.S. Government Agency Securities	10,143			10,143
State and Municipal Securities	750	\$28		778
Other	0			0
Federal Reserve Bank Stock	433			433

Total	----- \$68,842 =====	--- \$28 ===	----- \$(961) =====	----- \$67,909 =====
-------	----------------------------	--------------------	---------------------------	----------------------------

</TABLE>

At March 31, 1994, investment securities with a book value of \$20.8 million were pledged to secure U.S. District Court deposits and for other purposes as required or permitted by law. Included in interest on investment securities is \$1.0 thousand of interest from tax-exempt securities.

21

Note D. AVERAGE FEDERAL RESERVE BALANCES

The average cash reserve required to be maintained at the Federal Reserve Bank was approximately \$6 million, \$9 million, and \$8 million for the periods ending March 31, 1994 and December 31 and March 31, 1993, respectively.

Note E. PREMISES AND EQUIPMENT

Premises and equipment are carried at cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Amortization of leasehold improvements is also computed using the straight-line method over the shorter of the useful life of the improvement or the term of the lease.

Note F. OTHER REAL ESTATE OWNED

Real estate owned, acquired either through foreclosure or deed in lieu of foreclosure, is carried at the lower of cost or fair value. When acquired, any excess of the loan amount over the fair value is charged to the allowance for loan losses. Subsequent write-downs, if any, are charged to operation expenses in the periods that they become known. There was no other real estate owned as of March 31, 1994. Other real estate owned at December 31, and March 31, 1993 was \$.9 million and \$4.4 million, respectively.

Note G. INCOME TAXES

Effective January 1, 1993, the Bank implemented the provisions of Financial Accounting Standards (SFAS) No. 109, "Accounting for Income Taxes." The implementation had no significant impact on the financial condition or operations of the Bank. SFAS No. 109 utilizes the liability method and deferred taxes are determined based on the estimated future tax effects of differences between the financial statement and tax bases of assets and liabilities given the provisions of the enacted tax laws.

Note H. LOANS

Loans are carried at face amount, less payments collected, allowance for loan losses, and unamortized deferred fees. Interest on loans is accrued monthly on a simple interest basis. The general policy of the Bank is to discontinue the accrual of interest and transfer loans to nonaccrual (cash basis) status where reasonable doubt exists with respect to the timely collectibility of such interest. Payments on nonaccrual loans are accounted for using a cost recovery method.

Loan origination fees and commitment fees, offset by certain direct loan origination costs, are deferred and recognized over the contractual life of the loan as a yield adjustment.

The allowance for loan losses is maintained at a level considered adequate to provide for losses that can reasonably be anticipated. Management considers current economic conditions, historical loan loss experience, and other factors in determining the adequacy of the allowance. The allowance is based on estimates and ultimate losses may differ from current estimates. These estimates are reviewed periodically and as adjustments become necessary, they are charged to earnings in the period in which they become known. The allowance is increased by provisions charged to operating expenses, increased for recoveries of loans previously charged-off, and reduced by charge-offs.

Note I. RECLASSIFICATIONS

Certain items have been reclassified in the prior period financial statements presented herein, in order to conform to classifications followed for March 31, 1994.

## Note J. LEGAL MATTERS

In the normal course of business the Bank occasionally becomes a party to litigation. In the opinion of management, based upon consultation with legal counsel, other than as set forth below, pending or threatened litigation involving the Bank will have no adverse material effect upon its financial condition, or results of operations.

The Bank is a defendant in multiple lawsuits related to the failure of two real estate investment companies, Property Mortgage Company, Inc., ("PMC") and S.L.G.H., Inc. ("SLGH"). The lawsuits, consist of a federal action by investors in PMC and SLGH (the "Federal Investor Action"), at least three state court actions by groups of Investors (the "State Investor Actions"), and an action filed by the Resolution Agent for the combined and reorganized bankruptcy estate of PMC and SLGH (the "Neilson" Action). An additional action was filed by an individual investor and his related pension and profit sharing plans (the "Individual Investor Action").

Other defendants in these multiple actions and in related actions include financial institutions, title companies, professionals, business entities and individuals, including the principals of PMC and SLGH. The Bank was a depository bank for PMC, SLGH and related companies and was a lender to certain principals of PMC. The Bank denies any participation in the sale of the interests which are the principal gravamen of the complaints.

Plaintiffs allege that PMC/SLGH was or purported to be engaged in the business of raising money from investors by the sale and issuance of interests in promissory notes secured by trust deed and real property notes secured, or purported to be secured, by real property. Plaintiffs allege that false representations were made, and the investment merely constituted a "Ponzi" scheme. Other charges relate to the Bank's conduct with regard to the depository accounts, the lending relationship with the principals and certain collateral taken in conjunction with these loans. The lawsuits allege inter alia violations of federal and state securities laws, fraud, negligence, breach of fiduciary duty, and conversion as well as conspiracy and aiding and abetting counts with regard to these violations. The Bank denies the allegations of wrongdoing.

Damages in excess of \$100 million have been alleged, and compensatory and punitive damages have been sought generally against all defendants, although no specific damages have been prayed for with regard to the Bank, nor has there been any apportioning of liability among defendants or attributable to the various claims asserted. A former officer and director of the Bank has also been named as a defendant.

Despite the complexity of the case and the length of time the actions have been on file, very little discovery has been taken. The Federal Investor and the Neilson Actions are proceeding slowly. The Federal Court in that case denied the plaintiff's request for class certification for litigation purposes but granted such certification for settlement purposes, at least as to one unrelated defendant. As a result of the denial of the class action status, the plaintiffs filed the State Investor Actions in the Los Angeles County Superior Court. The Neilson Action remains in the United States District Court for the Central District of California.

During 1993, the Bank filed a motion to dismiss racketeering ("RICO") claims in the Federal Investor Action, originally stated, which motion was granted.

In early 1994, the Bank's motion for a summary judgment in the Individual Investor Action was granted, thereby dismissing the case as to the Bank, subject to appeals of that decision. That case primarily included allegations regarding the Bank's aiding and abetting the sale of securities by PMC and SLGH and state securities claims with regard thereto. It did not make claims with regard to the Bank's depository or lending relationships with PMC, SLGH or the principal thereof. No officer or director of the Bank was named in that case.

The Bank and its former officer have filed claims with insurance carriers for coverage regarding the remaining litigation. The attorneys for the Investor and Neilson Actions have made a settlement demand on the Bank and its former officer for payment of full policy limits by certain insurance carriers.

On the basis of the current pleadings, no carriers have accepted or acknowledged coverage, but are continuing to monitor the cases. It is anticipated that further pleadings and supplemental presentations will clarify the plaintiffs' claims and the applicability of insurance



coverage. The Bank believes that should insurance be available to its officers and directors, that the applicable deductible will be between \$500,000 and \$1,000,000, and that the maximum coverage available will be \$10,000,000. The applicable policies are reimbursement policies and do not provide any defense or legal fees coverage at this time. Notwithstanding this, one of the

23

insurers has indicated its intention to take over (and assume the cost of) the defense of the director/officer named in the litigation, subject to a reservation of rights, and subject to a statement that it is not obligated to do so.

Based on the limited discovery to date, the Bank is not aware of any factual basis for the plaintiffs' allegations of intentional wrongdoing by the Bank or its former officer. The Bank officers involved in the subject matter deny these allegations. The Bank believes that the litigation is an attempt to recover from solvent defendants and their insurers for the alleged wrongdoing of the PMC/SLGH entities.

Settlement negotiations are ongoing among all the parties to the lawsuits. In the event of a failure of these negotiations, the Bank intends to vigorously contest the charges, and believes it has meritorious legal and factual defenses assertable in connection with the same.

#### Note K. REGULATORY MATTERS

On November 2, 1993, the Office of the Comptroller of the Currency ("OCC"), after completion of their annual examination of the Bank, terminated the Formal Agreement entered into in June, 1992. In December 1993, the Fed terminated the Memo of Understanding entered into in August, 1992.

The Formal Agreement had been entered into in June 1992 and required the implementation of certain policies and procedures for the operation of the Bank to improve lending operations and management of the loan portfolio. The Formal Agreement required the Bank to maintain a Tier 1 Risk Weighted Capital ratio of 10.5% and a 6.0% Tier 1 Leverage Ratio. The Formal Agreement mandated the adoption of a written program to essentially reduce criticized assets, maintain adequate loan loss reserves and improve bank administration, real estate appraisal, asset review management and liquidity policies, and restricted the payment of dividends.

The agreement specifically required the Bank to: 1) create a compliance committee; 2) have a competent chief executive officer and senior loan officer, satisfactory to the OCC, at all times; 3) develop a plan for supervision of management; 4) create and implement policies and procedures for loan administration; 5) create a written loan policy; 6) develop and implement an asset review program; 7) develop and implement a written program for the maintenance of an adequate Allowance for Loan and Lease Losses, and review the adequacy of the Allowance; 8) eliminate criticized assets; 9) develop and implement a written real estate appraisal policy; 10) obtain and improve procedures regarding credit and collateral documentation; 11) develop a strategic plan; 12) develop a capital program to maintain adequate capital (this provision also restricts the payment of dividends by the Bank unless (a) the Bank is in compliance with its capital program; (b) the Bank is in compliance with 12 U.S.C. 55 and 60 and (c) the Bank receives the prior written approval of the OCC District Administrator); 13) develop and implement a written liquidity, asset and liability management policy; 14) document and support the reasonableness of any management and other fees to any director or other party; 15) correct violations of law; and 16) provide reports to the OCC regarding compliance.

The Memorandum of Understanding was executed in August 1992 and required 1) a plan to improve the financial condition of CU Bancorp and the Bank; 2) development of a formal policy regarding the relationship of CU Bancorp and the Bank, with regard to dividends, inter-company transactions, tax allocation and management or service fees; 3) a plan to assure that CU Bancorp has sufficient cash to pay its expenses; 4) ensure that regulatory reporting is accurate and submitted on a timely basis; 5) prior approval of the Federal Reserve Bank prior to the payment of dividends; 6) prior approval of the Federal Reserve Bank prior to CU Bancorp incurring any debt and 7) quarterly reporting regarding the condition of the Company and steps taken regarding the Memorandum of Understanding.

## SIGNATURES

Pursuant to the Securities Exchange Act of 1934, the Registrant has caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CU BANCORP  
May 12, 1994

By: PATRICK HARTMAN  
-----  
Patrick Hartman  
Chief Financial Officer

25

## Part II - Other Information

## Item 1. Legal Proceedings

Please refer to Notes J and K, on pages 22 and 23 above, for a complete discussion of both legal and regulatory matters.

## Item 2. Changes in Securities

None.

## Item 3. Defaults Upon Senior Securities

None.

## Item 4. Submission of Matters to a Vote of Security Holders

None.

## Item 5. Other Information

None.

## Item 6. Exhibits and Filings on Form 8-K

## (a) Exhibits:

## (10) Material Contracts

- (i) Mortgage Servicing Purchase and Sale Agreement  
Dated March 31, 1994

pg. 26

## (b) Reports on Form 8-K:

None.

MORTGAGE SERVICING PURCHASE AND SALE AGREEMENT

between

HAMILTON FINANCIAL CORPORATION  
(PURCHASER)

and

CALIFORNIA UNITED BANK, N.A.  
(SELLER)

Dated March 31, 1994

CONTENTS

<TABLE>

<S>	<C>
ARTICLE 1 DEFINITIONS	2
ARTICLE 2 SALE AND TRANSFER OF SERVICING	5
ARTICLE 3 PURCHASE PRICE	8

ARTICLE 4		
	GENERAL REPRESENTATIONS AND WARRANTIES OF SELLER	10
ARTICLE 5		
	REPRESENTATIONS AND WARRANTIES AS TO LOANS	16
ARTICLE 6		
	PURCHASER'S REPRESENTATIONS AND WARRANTIES	17
ARTICLE 7		
	COVENANTS	20
ARTICLE 8		
	INTERIM SERVICING	26
ARTICLE 9		
	CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER	31
ARTICLE 10		
	CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER	33
ARTICLE 11		
	TERMINATION	34
ARTICLE 12		
	MISCELLANEOUS	36

THIS MORTGAGE SERVICING PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into March 31, 1994 by and between HAMILTON FINANCIAL CORPORATION, a California corporation ("Purchaser") and CALIFORNIA UNITED BANK, N.A. ("Seller").

3

#### R E C I T A L S:

A. Purchaser and Seller have entered into a Letter of Intent effective as of March 18, 1994 (the "Letter"), pursuant to which Seller agreed to sell to Purchaser the right to service approximately 1,049 mortgage loans serviced by Seller with an aggregate principal balance of approximately \$ 151,863,473 (collectively hereinafter the "Loans") and more particularly described on Exhibit "A" attached hereto. This transaction is also referred to as the "First Quarter

Transaction".

B. Purchaser agreed in the Letter to acquire all right, title and interest in and to, and to assume the duties relating to, Seller's Servicing, all on the terms and conditions described herein, which supersede in their entirety the terms and conditions set forth in the letter.

C. Buyer and Seller wish to set forth the terms and conditions of the sale and transfer of the Servicing.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, Purchaser and Seller agree as follows:

ARTICLE 1  
DEFINITIONS

Unless the context in which it is used clearly requires otherwise, as used herein:

1.1 "Advances" means amounts that, as of the Transfer Date(s), have been advanced in connection with servicing the Loans (including without limitation, principal, interest, taxes and insurance premiums) and which are required to be paid by Seller as the servicer for the Loans pursuant to applicable Investor requirements and the terms of the applicable Servicing Agreements.

1.2 "Agreement" means this Purchase and Sale Agreement and all Exhibits hereto as the same may from time be amended or supplemented by one or more instruments executed by all Parties hereto.

1.3 "Agreement Date" means the date of execution of this Agreement by all parties hereto.

1.4 "Business Day" means any day other than (a) a Saturday or Sunday, or (b) a day on which banking institutions in the state of California are authorized or obligated by law or by executive order to be closed.

1.5 "CPI" means Computer Power, Inc. the computer service bureau for Purchaser and Seller.

1.6 "Delinquent Mortgage" means a mortgage that is ninety (90) calendar days or more past due.

1.7 "FNMA" means the Federal National Mortgage Association, or any Successor thereto.

1.8 "FNMA Loans" are those certain FNMA mortgage loans serviced by Seller, described on Exhibit "A" hereof and the servicing of which is intended by Seller to be sold to Purchaser.

1.9 "Foreclosure Mortgage" shall mean a Mortgage as of the Sale Date (1) as to which a summons and complaint have

been filed against the Mortgagor seeking foreclosure of the mortgage, (2) on which publication in a proceeding to foreclosure by advertisement against the Mortgagor has occurred, (3) which has been referred to legal counsel for foreclosure, (4) on which any action has been taken to obtain title to the mortgage property through exercise a power of sale or (5) in

respect of which one or more of the obligors thereunder is in a proceeding under Chapters 7, 11, 12 or 13, or any successor provisions thereof, of the Bankruptcy Code.

1.10 "Investor" is FNMA, or any Private Investor as the case may be, who owns any of the Loans or holds beneficial title to the Loans.

1.11 "Loans" means the Loans set forth on Exhibit "A".

1.12 "Mortgage" means the mortgage, deed of trust or other instrument creating a first lien or a first priority ownership or security interest in an estate in fee simple (except for loans secured by condominiums in states where such ownership interest is not considered to be a fee simple interest in real property securing a loan). The term also includes the related promissory note secured by the Mortgage and is sometimes used synonymously with the term "Loan" depending on the context.

1.13 "Mortgagor" means the person or persons shown as mortgagors on the Mortgage, and the borrowers under the related loan.

1.14 "Prior Servicer" means the servicers who serviced any of the Mortgage Loans prior to Seller, if any.

1.15 "Private Investor" is defined as one of the three investors identified in the Hamilton, Carter, Smith & Co., Inc. offering WC-5010 and more specifically identified in Exhibit "A".

1.16 "Purchase Price" is as defined in Section 3.1 hereof.

1.17 "Purchaser" means HAMILTON FINANCIAL CORPORATION.

1.18 "Related Escrow Accounts" means Mortgage escrow/impound accounts maintained by Seller relating to the Servicing.

1.19 "Sale Date" means March 31, 1994.

1.20 "Seller" means CALIFORNIA UNITED BANK, N.A.

1.21 "Seller's Knowledge" or "Best of Seller's Knowledge" mean the actual knowledge of the senior officers of Seller or that knowledge that such an officer would have obtained upon a reasonable examination of the official corporate records of Seller.

1.22 "Servicer" means the party responsible for Servicing a Loan.

1.23 "Servicing" means all of Seller's right, title and interest in and to the Loans, including its rights and duties as servicer of FNMA/Private Investor Loans pursuant to the servicing agreements between Seller & FHLMC/FNMA/Private Investor relating to the Loans.

1.24 "Servicing Agreements" means the respective mortgage loan servicing agreements between Seller and FNMA, or Private Investor pursuant to which Seller performs mortgage servicing with respect to any of the Loans.

1.25 "Total Servicing Fee" means that with respect to each Loan, the amount of interest received on a loan by the Seller exceeding the amount of interest and guaranty fees

the Seller is contractually obligated to remit to FNMA, or Private Investor.

1.26 "Transfer Date" means the date on which Purchaser

shall assume the actual performance of the duties under the Servicing Agreements from Seller at the end of the "Interim Period" as defined in Section 8.1 hereof, and shall be October 1, 1994 (for FNMA and Private Investors).

## ARTICLE 2

### SALE AND TRANSFER OF SERVICING

2.1 Sale of Right to Servicing. Subject to and upon the terms and conditions of this Agreement, Seller as of the Sale Date does hereby sell, transfer, assign and deliver to Purchaser all beneficial right, title and interest in and to the Servicing, including without limitation, the right to receive servicing fees on the Loans.

2.2 Transfer Date. On the applicable Transfer Date:

(a) Purchaser shall assume and Seller shall cease all servicing responsibilities related to the Loans owned by FNMA, or Private Investors for which servicing responsibility is transferred; and

(b) Seller shall transfer to Purchaser the right to all accrued receivables relating to the Loans including but not limited to accrued late charge balances and impound/escrow advances.

2.3 Obligations of Seller. Seller covenants and agrees that:

(a) from the Sale Date until the applicable Transfer Date, that Seller shall pay, perform and discharge all of its liabilities and obligations relating to ownership of the Servicing and all the rights, obligations and duties with respect to the Related Escrow Accounts, in accordance with the terms and conditions of Article 8 hereof, until the transfer of such items on the applicable Transfer Date; and

(b) On or prior to the applicable Transfer Date, Seller shall assign to Purchaser, by appropriate endorsements and assignments, all of Seller's rights, title and interest in and to the Servicing, and the promissory notes and Loans as required by FNMA, or Private Investor or as reasonably requested by Purchaser. Seller shall execute or cause to be executed assignments for each Mortgage as Purchaser may reasonably request. Seller shall prepare and record the assignments at its sole cost and expense. Seller shall also prepare assignments of Loans from Purchaser to FNMA, or Private Investor, if required by FNMA, or Private Investor.

2.4 Obligations of Purchaser. Purchaser covenants and agrees, that from and after the applicable Transfer Date it shall service the Loans for which servicing responsibility is transferred on such date in accordance with the terms and conditions of the Servicing Agreements, all applicable statutes, regulations and contractual provisions, and prudent mortgage banking practices. Purchaser shall not be responsible for the acts or omissions of Seller or prior servicers, nor for any other obligations or liabilities of Seller or prior servicers

whatsoever, except those obligations or liabilities which would not have occurred but for the acts or neglect of the Purchaser.

#### 2.5 Approval to Transfer Servicing.

(a) Seller shall obtain FNMA, or Private Investor approvals and any other approvals necessary to transfer the Servicing from Seller to Purchaser; provided that any corporate, regulatory or other approvals which apply only to Purchaser, shall be obtained by Purchaser. Seller shall prepare the requests for approval in a manner to secure from FNMA, or Private Investors a prompt written determination of the acceptability of the transfer of Servicing.

(b) On or before the applicable Transfer Date, Seller shall prepare and execute all forms, documents and other information reasonably requested by FNMA, or Private Investors or others in connection with the transfer of the Servicing.

2.6 Cooperation. Purchaser and Seller shall cooperate with and assist each other, and use their best efforts to assure the orderly transfer of the Servicing from Seller to Purchaser under this Agreement. Seller and Purchaser shall execute and deliver all documents, provide all information which is not confidential, and take or forebear from all such action as may be reasonably necessary, convenient or appropriate to achieve the purposes of this Agreement. Each party shall designate an employee to coordinate and be responsible for the orderly transfer of the Servicing.

### ARTICLE 3

#### PURCHASE PRICE

3.1 Purchase Price. The purchase price for the Servicing shall be the product of multiplying .70% by the unpaid principal balance as of the Sale Date of all Loans other than Loans which, as of the Sale Date, are (a) more than 60 days past due, (b) in litigation, (c) in foreclosure, (d) in which a bankruptcy action has been filed, (e) are subject to forbearance or modification agreements less than 180 days old. Loans which are the subject of a standard earthquake forbearance arrangement in which no more than three monthly payments have been deferred, to repaid in full on or by March 1995, shall not be considered a part of the excluded Loans per a, b, c, d, or e above for purposes of this agreement. Notwithstanding same, on March 1, 1995 these Loans (as detailed in Exhibit B) shall be reviewed for current status and if delinquent will have their purchase price refunded to Purchaser within five (5) business days. Such purchase price will be calculated by multiplying .8336% by the unpaid principal balance on Exhibit B.

3.2 Payment. Payment of the purchase price will be as follows:

a. On the Sale Date, Purchaser will wire twenty percent (20%) of the estimated total purchase price to an account designated by Seller.



b. Thirty five percent (35%) of the purchase price shall be wired to the Seller to an account designated by

7

Seller on June 30, 1994.

c. Thirty five percent (35%) of the purchase price shall be wired to the Seller to an account designated by Seller within 3 business days of receipt of the final transfer reports.

d. Ten percent (10%) of the purchase price minus final adjustments will be wired to Purchaser within 15 days of the Transfer Date(s) upon a successful reconciliation of all transfer balances.

### 3.3 Other Costs.

(a) Seller shall bear the entire cost of securing any approvals of the transfer of Servicing from Seller to Purchaser, including all transfer fees due to FNMA or Private Investors; provided that any corporate, regulatory or other approvals applicable only to Purchaser shall be obtained at the sole cost and expense of Purchaser.

(b) Seller shall comply, at its sole cost and expense, with Purchaser's reasonable requirements pertaining to the processing and shipping of loan files, insurance files, tax records and collection records which are reasonably necessary to service the Loans.

## ARTICLE 4

### GENERAL REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Purchaser to enter into this Agreement, Seller represents and warrants with the knowledge that each such representation and warranty relates to material matters upon which Purchaser has relied, and it being further understood that each such representation and warranty is made to the Purchaser as of the Sale Date except with respect to Sections 4.8 and 4.10 - 4.19.

4.1 Due Incorporation and Good Standing. Seller is properly licensed and qualified to transact business in all appropriate jurisdictions to conduct all activities performed with respect to origination and servicing of the Loans, except where the failure to be so licensed or qualified would not have a material adverse effect thereon.

4.2 Authority and Capacity. Seller has all requisite corporate power, authority and capacity to enter into this Agreement and to perform the obligations required of it hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, have each been duly and validly authorized by all necessary corporate action. This Agreement constitutes the valid and legally binding Agreement of Seller enforceable in accordance with its terms, except to the extent enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting creditors rights generally and by general

principles of equity.

4.3 Effect. The execution, delivery and performance of this Agreement by Seller, its compliance with the terms hereof and the consummation of the transactions contemplated hereby (assuming receipt of the various consents necessary to consummate this Agreement) will not violate, conflict with, result in a

8

breach of, constitute a default under, be prohibited by or require any additional approval under its certificate of incorporation, articles of incorporation, bylaws, or any material instrument or Agreement to which it is a party or by which it is bound, or which affects the Servicing, or any state or federal law rule or regulation or any judicial or administrative decree, order, ruling or regulation applicable to it or to the Servicing.

4.4 Compliance with Contracts and Regulations. Seller and, to the Best of Seller's Knowledge, Prior Servicers have complied with all material obligations under all contracts to which any of them was or is a party, and with all applicable federal, state and local laws and regulations, with respect to and which might affect any of the Servicing. The laws and regulations which Seller has complied with include but are not limited to all applicable FNMA or Private Investor requirements, as the case may be.

4.5 Filing of Reports. For each Loan, Seller and, to the Best of Seller's Knowledge, Prior Servicers have filed or Seller shall file through the Transfer Date(s), all required reports including but not limited to investor reports to FNMA or Private Investor, reports to all governmental agencies having jurisdiction over the Servicing and all appropriate private mortgage insurance companies.

4.6 Title to the Servicing and Related Escrow Accounts. Seller is the lawful owner of the Servicing, is custodian of the Related Escrow Accounts and has the sole right and authority to transfer the Servicing and the Related Escrow Accounts as contemplated hereby. The transfer, assignment and delivery of the Servicing and of the Related Escrow Accounts in accordance with the terms and conditions of this Agreement shall vest in Purchaser all rights as a FNMA/Private Investor servicer free and clear of any and all claims, charges, defenses, offsets and encumbrances of any kind of nature whatsoever.

4.7 Related Escrow Accounts. All Related Escrow Accounts are being maintained in accordance with applicable law and in accordance with the Servicing Agreements and the terms of the Mortgages related thereto. Except as to payments which are past due under the Loans, all escrow balances required by the Loans and paid to Seller for the account of the Mortgagors are on deposit in the appropriate escrow/impound accounts.

4.8 Litigation; Compliance with Laws. There is no litigation, proceeding or governmental investigation pending, or any order, injunction or decree outstanding which might materially affect

any of the Loans or the Servicing, except for Foreclosure Mortgages. Additionally, there is no litigation, proceeding or governmental investigation existing or pending or, to the knowledge of Seller, threatened, or any order, injunction or decree outstanding against, or relating to Seller, a Prior Servicer or the Servicing which could have a material adverse effect upon any of the Loans or the Servicing, except for Foreclosure Mortgages. Neither Seller nor, to the Best of Seller's Knowledge, any Prior Servicer has violated any applicable law, regulation, ordinance, order, injunction or decree, or any other requirement of any governmental body or

9

court, which may materially affect any of the Loans or the Servicing.

4.9 Statements Made. No representation, warranty or written statement made by Seller in this Agreement, or in any exhibit, schedule, written statement or certificate delivered to Purchaser pursuant hereto or made in or pursuant to the Letter contains or will contain any untrue statement of material fact as of the date made or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading as of the date made.

4.10 No Accrued Liabilities. To the Best of Seller's Knowledge, there are no accrued liabilities of Seller with respect to breaching Seller's responsibility to the Loans or the Servicing or circumstances under which such accrued liabilities will arise against Purchaser as successor to the Servicing, with respect to occurrences prior to the Transfer Date(s).

4.11 FNMA/Private Investor Requirements. Seller and, to the Best of Seller's Knowledge, each Prior Servicer has performed under the respective FNMA or Private Investor requirements with respect to the Servicing, and no event has occurred and is continuing which, but for the passage of time or the giving of notice or both, would constitute an event of default thereunder. Seller and, to the Best of Seller's Knowledge, each Prior Servicer has serviced the Loans and has kept and maintained complete and accurate books and records in connection therewith, all in accordance with the respective FNMA and Private Investor requirements.

4.12 Compliance with Insurance Contracts. Seller has complied with all obligations under all applicable insurance contracts, including private mortgage insurance, with respect to, and which might affect, any of the Servicing. Seller has not taken any action or failed to take any action which might cause the cancellation of or otherwise adversely affect any of the insurance policies on a Loan.

4.13 Private Mortgage Insurance.

(a) Each Mortgage which is represented by Seller to have private mortgage insurance ("PMI") is insured in the amounts represented.

(b) As to each private mortgage insurance certificate,

Seller further warrants that it has complied with applicable provisions of federal status and regulations and applicable PMI requirements, the insurance is in full force and effect with respect to each Mortgage, and, to the Best of Seller's Knowledge, no event or condition exists within the control of Seller which can result in a revocation of any such insurance.

(c) If a Loan transferred and/or assigned to Purchaser hereunder which is represented by Seller as having PMI fails to have PMI, or subsequently loses its PMI by reason of any act or omission of Seller or any Prior Servicer occurring prior to the Transfer Date(s), then, upon receipt of written notice from Purchaser, Seller shall have sixty (60) days to remedy the problem causing loss on insurance. If Seller is unable within sixty (60) days after receipt of notice to remedy the problem,

10

then Seller shall repurchase the loan, provided FNMA or Private Investors requires such repurchase, as well as the Servicing from Purchaser within ten (10) Business Days after the expiration of the sixty (60) day remedial period at the price computed according to Section 12.5(b), and against delivery of the purchase price thereof, Purchaser shall assign its rights in such Loan to Seller and transfer its related Servicing and all mortgage servicing records related to the Loan, all free and clear of all liens, charges or encumbrances whatsoever.

4.14 Title Insurance. A title policy currently in effect running to the benefit of the owner of the Loan has been issued for each Loan insuring that the Mortgage relating thereto is a valid first lien on the property therein described, which has not been modified, and that the mortgaged property is free and clear of all encumbrances and liens having priority over the first lien of the mortgage or deed of trust, except for liens for real estate taxes and special assessments not yet due and payable and except for easements and restrictions of record identified in the title policy.

4.15 Non-Recourse Servicing. All loans which were sold to the Investors were sold without recourse to the Servicer, except as may arise from any misrepresentation or breach of warranty or covenant made under the Servicing Agreements or otherwise in connection with the Servicing.

4.16 Payment of Taxes, Insurance Premiums, Etc. All applicable taxes, special assessments, ground rents, flood insurance premiums and mortgage insurance premiums have been paid, by the Mortgagor or Seller, as required by and in accordance with the terms of the Loans or the Servicing Agreements.

4.17 Effective Insurance. All required insurance policies, including hazard, flood, and PMI, remain in full force and effect, and such policies are with companies acceptable to FNMA and Private Investor in accordance with the Servicing Agreements.

4.18 Payoff Statements. All payoff and assumption statements with respect to each Loan provided by Seller to Mortgagors or their agents were complete and accurate.

4.19 Interest on Escrows. Seller has paid to the mortgagor all interest required to be paid on any escrow/impound account through the Transfer Date(s). Evidence of such payment shall be provided to Purchaser upon request.

#### ARTICLE 5 REPRESENTATIONS AND WARRANTIES AS TO LOANS

As further inducement to Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser as of the Sale Date, that to the Best of Seller's Knowledge:

5.1 Mortgage Documents. The Mortgage documents are genuine, duly executed by a borrower of legal capacity, and all insertions in any loan document are correct.

5.2 No Defenses. There are no defenses, set-offs or counterclaims against the Loan.

11

5.3 Validity of Note. There is nothing which would impair the validity of the promissory note, the Mortgage, or any other material loan document.

5.4 Compliance with Law. The origination and closing of each Loan complied in all material respects with each of the federal or state laws or regulations which were in effect at the time of origination and pertain to the origination and closing of the Loan.

#### ARTICLE 6 PURCHASER'S REPRESENTATIONS AND WARRANTIES

As an inducement to Seller to enter into this Agreement, Purchaser represents and warrants as follows, it being acknowledged that each such representation and warranty relates to material matters upon which Seller relied, and it being understood that each such representation and warranty is made to Seller as of the Sale Date and shall be deemed remade as of the Transfer Date(s):

6.1 Due Incorporation and Good Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the state of California, and is properly licensed and qualified to transact business in each jurisdiction in which such qualification is necessary to the conduct of its servicing activities with respect to the Loans following the respective transfer dates, except where the failure to be so licensed or qualified would not have a material adverse effect on the servicing of the Loans after the Transfer Date(s).

6.2 Authority and Capacity. Purchaser has all requisite corporate power, authority and capacity to enter into this Agreement

and to perform the obligations required of it hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have each been duly and validly authorized by all necessary corporate action. This Agreement constitutes the valid and legally binding agreement of Purchaser enforceable in accordance with its terms, except to the extent enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting the enforcement of creditors rights generally and by general principles of equity.

6.3 Effect of Agreement. The execution, delivery and performance of this Agreement by Purchaser, its compliance with the terms hereof and the consummation of the transactions contemplated hereby (assuming receipt of the various consents necessary to consummate this Agreement) will not violate, conflict with, result in a breach of, constitute a default under, be prohibited by or require any additional approval under its charter, articles of incorporation, bylaws, or any material instrument or agreement to which it is a party or by which it is bound, or any state or federal law, rule or regulation or any judicial or administrative decree, order, ruling or regulation applicable to it, except such violation, conflict, breach or default that would not have a material adverse effect on the servicing of the Loans following the respective Transfer Date(s).

12

6.4 Approvals and Compliance. Purchaser is an approved FNMA Seller/Servicer in good standing. Purchaser is not in material default under the terms of any agreement between Purchaser and FNMA.

6.5 Litigation. There is no litigation, proceeding or governmental investigation existing or pending, or to the knowledge of Purchaser, threatened, or any order, injunction or decree outstanding, against or relating to Purchaser that could have a material adverse effect upon the Servicing being purchased by Purchaser hereunder or the performance of Purchaser of its obligations under the Servicing Agreements, nor does Purchaser know of any basis for any such litigation, proceeding or governmental investigation.

6.6 Facts and Omissions. No representation or warranty of Purchaser contained in this Agreement or in any schedule or written statement delivered to Seller pursuant hereto contains or will contain any untrue statement of material fact, or omits or will omit to state a material fact necessary to make the statements contained herein and therein not misleading.

## ARTICLE 7 COVENANTS

7.1 Notice to Mortgagors. Seller shall, at Seller's expense, mail to the Mortgagor of each Loan a letter advising the Mortgagor of the transfer of Servicing to Purchaser no later than fifteen (15) days prior to the Transfer Date(s) or earlier if required

by state or federal law or by FNMA, provided, however, the content and format of the letter shall be subject to the prior written approval of Purchaser, which approval shall not be unreasonably withheld.

Purchaser shall mail to the Mortgagor of each Mortgage, no sooner than the date of Seller's notice pursuant to this Section 7.1 and no later than five (5) days after the date of Seller's notice, a letter (in form and substance reasonably satisfactory to Seller) confirming Seller's notice of the transfer of the Servicing.

7.2 Notice to Mortgage Insurers. Seller shall, at Seller's expense, notify all relevant private mortgage insurance companies no later than fifteen (15) Business Days prior to the Transfer Date(s) by certified mail, return receipt required, that all insurance premium billings for the Loans must thereafter be sent to Purchaser. Seller shall provide Purchaser with a copy of the certified receipt. Additionally, Seller shall, prior to the Transfer Date(s), obtain the written consent of any private mortgage insurance companies which have the contractual right to approve transfer of the Servicing.

7.3 Notice to Taxing Authorities and Insurance Companies. No later than fifteen days prior to the Transfer Date(s), unless otherwise agreed by the parties, Seller shall, at Seller's expense, notify applicable taxing authorities, tax service agencies and insurance companies and/or agents by certified mail, of the assignment of the Servicing and instructions to deliver all notices, tax bills and insurance

13

statements, as the case may be, to Purchaser from and after the Transfer Date(s).

7.4 Delivery of Loan Documents/Files. Against delivery of final payment under Paragraph 3.2(b), Seller shall forward to Purchaser in a manner reasonably acceptable to Purchaser no later than three (3) Business Days after the FNMA and Private Investor Transfer Date(s) all loan documentation in Seller's possession relating to each Mortgage.

7.5 Delivery of Servicing Records. Against delivery of final payment under Paragraph 3.2(c), Seller shall deliver to Purchaser, in a manner acceptable to Purchaser, on the relevant Transfer Date, all servicing records necessary to effectuate a proper transfer of servicing.

7.6 Delivery of Data Base Record Definition. Against delivery of Transfer Date(s) payment under Paragraph 3.2(a), Seller shall forward to Purchaser no later than ten (10) Business Days after the Sale Date, or earlier if so requested by Purchaser, a full definition of user developed field uses of any and all data base fields ("Data Base").

7.7 Delivery of Data Base Records.

(a) Against delivery of final payment under Paragraph 3.2(b), Seller shall direct the computer service bureau to deliver to Purchaser on the close of business on the "trial conversion date" (to

be established by Purchaser) the data base records which represent the Data Base for the Loans as of close of business on the "trial conversion date".

(b) Against delivery of final payment under Paragraph 3.2(b), Seller shall direct their computer service bureau to deliver to Purchaser on close of business, within two (2) Business Days of September 30, 1994, the data base records which represent the Data Base for the Loans as of close of business on the applicable Transfer Date(s).

7.8 Escrow/Impound Balance . Within three (3) Business Days after the Transfer Date(s), Seller shall deliver to Purchaser, in immediately available funds, the net (net of any Advances) escrow and suspense balances and all loss draft and buydown balances associated with the Loans, together with an accounting statement of escrow and suspense balances and loss draft balances and buydown balances sufficient to enable Purchaser to reconcile the amount of such funds with the accounts of the Loans.

7.9 Payoffs and Assumptions. Seller shall provide to Purchaser on the Transfer Date(s) copies of all assumption and payoff statements generated by Seller on the Mortgages within the preceding thirty (30) days. Seller shall notify Purchaser prior to the Transfer Date(s) of all payoffs and assumptions in process or of which Seller has any notice or knowledge.

7.10 Mortgage Payments Received Prior to Transfer Date. Prior to the Transfer Date, all payments received by Seller on each Mortgage shall be properly applied by Seller to the account of the particular Mortgagor.

7.11 Mortgage Payments Received After Transfer Date. Any Mortgage payments received by Seller within sixty (60) days after the Transfer Date(s) shall be delivered to Purchaser in the

14

form received within two (2) Business Days after receipt by Seller, properly endorsed by Seller to Purchaser. Seller shall notify Purchaser of the particulars of the payment, which notification shall be satisfied if Seller forwards with its payment sufficient information to permit appropriate processing of the payment by Purchaser. If certain Mortgagors persist in forwarding payments to Seller after the Transfer Date(s), Seller shall notify Purchaser and Purchaser shall take all steps reasonably necessary to assure that such Mortgagors remit payments directly to Purchaser.

7.12 Misapplied Payments. Misapplied payments shall be processed as follows:

(a) Both parties shall cooperate in correcting misapplication errors.

(b) The party receiving notice of a misapplied payment occurring prior to the Transfer Date(s) and discovered after the Transfer Date(s) shall immediately notify the other party.

(c) If a misapplied payment that occurred prior to the



Transfer Date(s) cannot be identified by either party and it has resulted in a shortage in a Mortgage account, Seller shall be liable for the amount of such shortage. Seller shall reimburse Purchaser for the amount of such shortage within thirty (30) days after receipt of written demand from Purchaser.

(d) If a misapplied payment resulted in the incorrect calculation of the Purchase Price, a check in the amount of the shortage and payable to the party shorted shall be delivered by the other party within ten (10) Business Days after notice thereof.

(e) Any check issued under the provisions of this Section 7.12 shall be accompanied by a statement indicating the purpose of the check, the Mortgagor and property address involved, and the corresponding Seller and/or Purchaser account number.

7.13 Payment of Taxes and Insurance. Before the Transfer Date(s) Seller will pay all taxes and insurance premiums (including hazard and PMI premiums) payable from escrow accounts which are (a) due on or before the Transfer Date(s) whether or not Seller has received bills for those payments, or (b) due within thirty (30) days after the Transfer Date(s). Seller shall provide a list to Purchaser on or before the Transfer Date(s) of tax and insurance bills coming due thirty (30) days after Transfer Date(s) for which Seller has not received bills on or before the Transfer Date(s). Seller shall send to Purchaser within two (2) Business Days of Seller's receipt, any tax or insurance (hazard or PMI) bills received by Seller after the Transfer Date(s) on the Loans. Purchaser and Seller agree to cooperate to make sure all bills relating to the Loans and due thirty (30) days after the Transfer Date(s) are paid by the respective due dates.

7.14 Missing Payments. Seller agrees to indemnify and remit to Purchaser any missing escrow funds or unremitted principal and interest which preceded the transfer of Servicing; provided that this obligation shall exist only to the extent

15

Seller was responsible for such shortages under the terms of the Servicing Agreements and provided further that Purchaser shall reimburse Seller to the extent such missing payment represented an advance otherwise reimbursable to Seller under Section 3.3 hereof.

7.15 Tax Contracts. Seller, at its expense, shall assign to Purchaser on the Transfer Date(s), a fully paid, transferable, life-of-the-loan, tax service contract with Transamerica Realty Tax Service. The tax service contract so assigned shall cover each of the Loans for their respective remaining terms.

7.16 Annual Report to Mortgagors and IRS. Seller agrees to provide the IRS and each Mortgagor whose Loan Servicing is transferred under this Agreement with an annual year-end statement in accordance with IRS and state regulations and FNMA/Private Investor requirements. Such statement(s) shall reflect the status of the Loan up to the applicable Transfer

Date. Purchaser shall have no responsibility for providing this information for the period of time the Loan was serviced by the Seller and Seller is likewise not responsible for providing this information for the period of time the Loan is serviced by Purchaser or its successors. Seller agrees to mail the applicable information to the mortgagor on or after January 15, 1995, along with a 1099 INT (Interest on Escrow), if applicable.

7.17 Further Solicitation. Seller agrees that it shall not solicit the Mortgagors for any mortgage-related services, including but not limited to, refinancing their mortgage loan, credit insurance and homeowner's insurance. General solicitation to the public and borrower initiated contacts shall not constitute solicitations hereunder.

## ARTICLE 8 INTERIM SERVICING

8.1 Servicing of Mortgages. In the event the Transfer Date(s) with respect to the Servicing or any portion thereof occurs later than the Sale Date, Seller shall service the Loans relating thereto on behalf of the Purchaser during that time period (the "Interim Period") as provided herein. Purchaser agrees and acknowledges that Seller shall perform all servicing responsibilities through a designated subservicer. Seller acknowledges that it shall be responsible for any errors and omissions committed by same subservicer. In the event the Transfer Date(s) with respect to the Servicing occurs simultaneously with the Sale Date, these provisions of this Article 8 shall be inapplicable to those Loans already transferred.

8.2 Assumption of Duties; Standard of Care. Seller agrees that, throughout the Interim Period, it shall observe and perform all warranties, representations, covenants and agreements with respect to the Loans and the Servicing required to be observed and performed by Seller as servicer under the Servicing Agreements. Seller shall at all times, service the Loans in accordance with all applicable statutes, regulations, contractual provisions, and in accordance with prudent mortgage banking

16

practices. It is understood and agreed that Seller shall exercise the same standard of care that it exercises in the servicing of mortgages for its own account. Among the services to be provided by Seller during the Interim Period are:

- (a) Receive and process Mortgagor's payments;
- (b) Make all escrow disbursements in its own name;
- (c) Handle all collection efforts with Mortgagor in its own name;
- (d) Provide and handle insurer delinquency notices in its own name;
- (e) Prepare and forward all remittances due for the months during the Interim Period;

(f) Prepare and submit all cut-off reports for the months of the Interim Period;

(g) Resolve all items prior to Transfer Date(s) appearing on reports listed in Section 8.4 (e) and (f).

8.3 Servicing Fee. As consideration for servicing the Mortgages during the Interim Period, Seller shall receive for each Loan for each month the Loan is serviced by Seller a servicing fee of five dollars (\$ 5.00) per Loan. The monthly servicing fee with respect to any Loan is payable from the principal and interest payment actually received during the month for that Loan. Seller shall promptly remit to Purchaser on the day accounting reports are due to FNMA or Private Investor for each month during the Interim Period, the Total Servicing Fee for each Loan less the servicing fee retained by Seller under this Section 8.3.

8.4 Reporting by Seller. Servicer shall provide to Purchaser within five (5) business days of each respective cutoff (FNMA and Private Investor), a Trial Balance report which shall set forth for the prior investor accounting period for each Mortgage, subtotaled by pool (as applicable): (a) collections of principal and interest; (b) the remaining principal balance; (c) the mortgage interest rate; (d) the servicing fee retained by Servicer; (the following (e) and (f) will be separate reports, not part of the Trial Balances); (e) a report with any real estate taxes still delinquent with anticipated resolution date by account number; (f) a report listing all hazard insurance expired with anticipated resolution dates by account number; and (g) such other information as may be reasonably requested in writing by Purchaser with reasonable notice.

8.5 Notifications. If required by FNMA, or Private Investor Servicer shall upon execution of this Agreement, notify FNMA, or Private Investor in writing that Servicer shall service the Loans during the Interim Period. Purchaser hereby authorizes FNMA or Private Investor to communicate with, issue instructions to, accept directives from and otherwise deal with Seller in the manner and to the extent permitted pursuant to applicable rules and regulations.

8.6 Fees and Advances. During the Interim Period, Servicer shall be responsible for payment of all guarantee fees to FNMA and for all advances required by FNMA or Private Investor. Servicer shall also be responsible for any advances required for the various Mortgage escrow/impound accounts, and shall be responsible for prompt payment of all mortgage insurance premiums, hazard insurance premiums and real estate taxes during the Interim Period. If adequate funds are not

17

held in escrow to pay, when due, real estate taxes or insurance premiums on any property securing a Loan, Servicer shall advance sufficient funds to cover any such deficiency in a manner to ensure timely payment of such taxes or insurance premiums. Servicer shall be reimbursed for all Advances made pursuant to this Section 8.6 in accordance with Section 7.8 of this agreement.

8.7 Escrows. Until the Transfer Date(s), Seller shall credit to the account of borrower all interest required to be credited, or otherwise accrued, to any escrow amount by applicable law or Investor requirement.

Also, during the Interim Period, Servicer shall maintain all escrow/impound accounts at a financial institution or institutions of its choice, consistent with the Servicing Agreements and applicable laws, rules and regulations.

8.8 After Transfer Date. Following the Transfer Date(s), Servicer shall endorse and forward to Purchaser all funds received by Servicer related to the Loans as provided in Section 7.9.

8.9 Suspension. Should Seller at any time during the Interim Period have its right to service for FNMA or Private Investor temporarily or permanently suspended, then Purchaser shall, in its sole discretion and without liability of any kind to Seller, elect to:

(a) Immediately accelerate performance of the provisions of this Agreement to require immediate transfer of the Servicing and payment of the purchase Price, provided all necessary approvals can be obtained. If such approvals cannot be obtained, then;

(b) Immediately terminate this Agreement, at which time Seller shall be required to refund to Purchaser all portions of the Purchase Price which have been previously paid by Purchaser plus costs as provided for in Section 11.2(b) below and Purchaser shall assign its rights in the Loans and transfer and assign the related servicing and deliver any and all mortgage servicing records in its possession to Seller.

8.10 Termination. The provisions of Article 8 of this Agreement shall terminate with respect to the Servicing or portion thereof transferred on the Transfer Date(s).

8.11 Maintenance of Books and Records. Seller shall keep full and complete records pertaining to (i) each Mortgage and the collections made thereon, and (ii) each check paid as distribution of principal and interest collected, to appropriate parties. During the Interim Period, Purchaser or its representative, upon three (3) Business Days' written notice to Seller may examine any and all such records at such time or times as it may elect during the Seller's regular business hours, subject to the provisions of Section 12.8.

8.12 Insurance. In addition to insurance required to be maintained by Seller under the Servicing Agreements, Seller shall also at its own expense maintain at all times during the Interim Period policies of fidelity, theft, forgery and errors and omissions insurance. Such policies shall be in reasonable amounts with acceptable standard coverages in accordance with industry standards.

8.13 Relationship of Parties. Nothing herein contained shall be deemed or construed to create a partnership or joint venture between the parties. The duties and responsibilities of the Seller

shall be rendered by the Seller as an independent contractor and not as an agent of Purchaser. The Seller shall have full control of all of its acts, doings, proceedings, relating to or requisite in connection with the discharge of its duties and responsibilities under this Agreement.

ARTICLE 9  
CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

All of the obligations of Purchaser under this Agreement are subject to the fulfillment prior to or on the Sale Date and/or the Transfer Date(s), as the case may be, of each of the following conditions, any one or more of which may be waived in writing by Purchaser:

9.1 Accuracy of Representatives and Warranties. The representations and warranties of Seller contained herein or in any certificate, schedule or other document delivered pursuant to the provisions hereof or in connection herewith shall be true and correct in all material respects as of the Sale Date and the Transfer Date(s), except to the extent such representations and warranties expressly relate only to an earlier date, in which case they shall be true and correct in all material respects only as of such earlier date and except for changes contemplated by this Agreement or approved by Purchaser.

9.2 Compliance with Conditions. Seller shall have performed and complied in all material respects with all conditions and agreements required by this Agreement to be complied with or performed by it prior to or on the Sale Date and the Transfer Date(s).

9.3 No Actions. There shall not have been commenced or, to the knowledge of any party hereto, threatened prior to or on the Sale Date or the Transfer Date(s) any action, suit or proceeding which may materially and adversely affect Seller's ability to consummate the transactions contemplated hereby.

9.4 Consents and Approvals. Seller shall have obtained prior to or on the Transfer Date(s), all consents and approvals required for consummation of the transaction contemplated hereby, including those contemplated by Section 2.5 hereof. Purchaser shall have obtained all consents and approvals required for the consummation of the transaction contemplated hereby.

9.5 Sale Date Documents. Seller shall have delivered to Purchaser on the Sale Date a copy of the resolution of the board of directors of Seller approving the execution, delivery and performance of this Agreement, certified as of the Sale Date by the Secretary or Assistant Secretary of Seller.

ARTICLE 10  
CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER

All of the obligations of Seller under this Agreement are subject to the fulfillment prior to or on the Sale Date and/or the Transfer Date(s), as the case may be, of each of the

following conditions, any one or more of which may be waived in writing by

Seller.

10.1 Accuracy of Representations and Warranties. The representations and warranties of Purchaser contained herein or in any certificate, schedule or other document delivered pursuant to the provisions hereof or in connection herewith shall be true and correct in all material respects as of the Sale Date and Transfer Date(s), except to the extent such representations and warranties expressly relate only to an earlier date, and except for changes contemplated by this Agreement or approved by Seller.

10.2 Compliance with Conditions. Purchaser shall have performed and complied in all material respects with all conditions and agreements required by this Agreement to be performed or complied by it prior to or on the Sale Date and Transfer Date(s).

10.3 No Actions. There shall not have been commenced or, to the knowledge of any party hereto, threatened prior to or on the Sale Date or Transfer Date any action, suit or proceeding which may materially and adversely affect Purchaser's ability to consummate the transaction contemplated hereby.

10.4 Consents and Approvals. Seller shall have obtained prior to or on the Transfer Date all consents and approvals required for consummation of the transaction contemplated hereby including those contemplated by Section 2.5 hereof. Purchaser shall have obtained all consents and approvals required for the consummation of the transaction contemplated hereby.

10.5 Sale Date Document. Purchaser shall have delivered to Seller on the Sale Date a copy of the resolutions of the board of directors of Purchaser approving the execution, delivery and performance of this Agreement, certified as of the Sale Date by the Secretary or an Assistant Secretary of Purchaser.

## ARTICLE 11 TERMINATION

11.1 Events of Termination. To the extent and under the circumstances set forth below, this Agreement may be terminated at any time by Purchaser or Seller prior to the Transfer Date(s) upon written notice to the other party as follows:

(a) By Purchaser at any time in the event that the examination of the books and records of Seller relating to the Mortgages, the Related Escrow Accounts or the Servicing reveals that there has been on or before the Sale Date any information provided to Purchaser in this Agreement or any Exhibit or Schedule hereto was materially inaccurate or incomplete (as of the date as of which the information spoke), which can not adequately be remedied by the payment by the Seller or Purchaser of damages;

(b) By Purchaser or Seller, if FNMA or Private Investor disapproves or fails to timely approve the transfer of Servicing in accordance with Section 2.5 hereof;

(c) By Purchaser or Seller if an action, suit or proceeding of the type the absence of which would be a condition precedent to either party's obligations described in Section 9.3 and 10.3, respectively, shall have been commenced, or, to the knowledge of either hereto, threatened;

(d) By Purchaser or Seller, if the other shall materially breach any material term of this Agreement, which breach can not adequately be remedied by the payment by Seller or Purchaser of damages, and such breach shall not have been cured within thirty (30) days following notice thereof by the other party, but in any event prior to the Transfer Date(s); and

(e) By Purchaser or Seller, if the conditions precedent to its obligation to consummate on the Transfer Date(s) the transaction contemplated hereby have not been satisfied or waived on or prior to such Transfer Date(s), or such later date as may be mutually agreed upon in writing by the parties hereto, which can not adequately be remedied by the payment by the Seller or Purchaser of damages; provided, however, that neither Purchaser nor Seller shall have any obligation to waive a condition precedent to its obligation or to extend the date for satisfaction thereof.

#### 11.2 Requirements and Effects of Termination.

(a) Upon valid and proper termination of this Agreement pursuant to any provision of Section 11.1, all right, title and interest in or to the Servicing, the Related Escrow Accounts and the Mortgages shall revert to Seller and no party hereto shall have any liability or further obligation to the other party hereunder except as provided in Paragraphs 11.2(b), 12.1 and 12.10 hereof.

(b) Except as specifically set forth or referred to in Paragraph 11.2(a) above, if this Agreement is terminated with cause or the transaction contemplated hereby is not consummated, any amounts paid by Purchaser pursuant to Paragraphs 3.2(a) or 3.2(b) shall be immediately refunded by Seller to Purchaser. If such termination occurs on or before May 31, 1994 Seller shall also reimburse Purchaser for all costs it has incurred to the date of termination.

### ARTICLE 12 MISCELLANEOUS

12.1 Costs and Expenses. Except as otherwise provided for in this Agreement, costs and expenses incurred in connection with the transactions contemplated hereby shall be paid as follows:

(a) Seller shall pay all the standard and customary costs associated with the transfer of the Servicing to Purchaser, including without limitation, any recording or filing fees, FNMA or Private Investor transfer fees, any fees related to obtaining any required approvals, custodian charges, cost of shipping and delivery of mortgage files to Purchaser, Tax Service tax contract fees, Flood

costs associated with the preparation and filing of Mortgage assignments or any other transfer documents; and

(b) Except as provided in Section 12.1(a) above, Purchaser shall pay the expenses incurred by it or its affiliates in connection with the transactions contemplated hereby whether or not the transactions are consummated.

#### 12.2 Indemnification by Seller.

(a) Subject to the further terms and conditions of this Agreement, Seller shall indemnify and hold Purchaser harmless from and shall reimburse Purchaser for any losses, damages, deficiencies or expenses of any nature (including reasonable attorneys' fees) incurred by Purchaser before or after the Transfer Date(s) to the extent that such loss, damage, deficiency or expense results from:

(1) Any knowing, intentional or negligent misrepresentation made by Seller in this Agreement, or any knowing, intentional or negligent inaccurate information or omission in any schedule, written statement or certificate furnished by Seller pursuant to this Agreement;

(2) (x) any representation or warranty set forth in Article 4 or article 5 hereof being untrue in any material respect as the date made, (y) the failure of Seller to perform its material obligations under any covenant set forth in Article 7 or Article 8, or (z) any representation or warranty set forth in the certificate referenced in Section 9.5 being untrue in any material respect as of the date of such Exhibit or certificate.

(3) Any material defect in any Loans existing as of the Transfer Date(s) (including those defects subsequently discovered), or as a result of any act or omission of Seller prior thereto:

(4) Material errors in originating or servicing any of the Loans (e.g., failure to follow underwriting or appraisal guidelines, misquoted payoffs, misapplied payments, failure to file timely notice of default or failure to pay taxes or other charges including penalties and interest) prior to the Transfer Date(s) or as a result of Seller's act or omission prior thereto. Such errors may include, without limitation, improper action or failure to act when required to do so.

Provided, however, that Purchaser has taken reasonable and appropriate actions to mitigate any such loss, damage, deficiency, claim or expense. For purposes of this Section 12.2(a) the word "material" means a misrepresentation, misstatement, breach, nonperformance, defect, error or omission resulting in a loss to Purchaser of \$500 or more.

#### 12.3 Indemnification of Seller.

(a) Subject to the further terms and conditions of this



Agreement, Purchaser shall indemnify and hold Seller harmless from, and shall reimburse Seller for any losses, damages, deficiencies or expenses of any nature (including reasonable attorneys' fees) incurred by Seller before or after the Transfer Date(s) to the extent that such loss, damage, deficiency or expense results from:

22

(1) Any knowing, intentional or negligent misrepresentation made by Purchaser in this Agreement, or any knowing, intentional or negligent inaccurate information or omission in any schedule, written statement or certificate furnished by Purchaser pursuant to this Agreement,

(2) Any breach of a representation or warranty by Purchaser or the failure to perform any covenant or condition of Purchaser contained in this Agreement, or in any schedule, written statement or certificate furnished by Purchaser pursuant to this Agreement.

Provided, however, that Seller has taken reasonable and appropriate actions to mitigate any such loss, damage, deficiency, claim or expense. For purposes of this Section 12.2(a) the word "material" means a misrepresentation, misstatement, breach, nonperformance, defect, error or omission resulting in a loss to Seller of \$500 or more.

12.4 Notice and Settlement of Claims. Each party to this Agreement shall promptly notify the other party in writing of the existence of any material fact known to it giving rise to any obligations of the other party under these Section 12.2 and 12.3 and, in the case of any claim or any litigation brought by a third party, which may give rise to any such obligations, each party shall promptly notify the other party of the making of such claim or the commencement of such action by a third party as and when same becomes known to it.

12.5 Cure by Seller. If Purchaser notifies Seller of any claim giving rise to Seller's obligations under Section 12.2, Seller, at its option, may:

(a) cure or correct the underlying cause of such claim in a manner and within a time reasonably acceptable to Purchaser and FNMA or Private Investor (but not exceeding 60 days) as the case may be;

(b) repurchase from Purchaser the Servicing with respect to those Loans which are affected by such claim within fifteen (15) Business Days following receipt by Purchaser of written notice from Seller of such election as follows; (i) Purchaser shall assign its rights in such Loan and transfer and assign the related Servicing and all mortgage servicing records in its possession to Seller, free and clear of all liens, charges and encumbrances whatsoever, and (ii) Seller shall (x) reimburse Purchaser for the cost of purchasing such Loan, if applicable, (y) pay to Purchaser a repurchase price for the Servicing equal to .8336% of the remaining principal balance of such Loan as of the date of repurchase, and (z) reimburse Purchaser for any

advances made by Purchaser in connection with the Loan, including without limitation, any unrecovered advance reimbursements previously paid to Seller pursuant to Section 3.3; or

(c) if such Loans are in foreclosure or foreclosed, purchase the property securing such Loans at a price equal to the then outstanding fair market value or no greater than the outstanding principal balance of such Loan and reimburse Purchaser for any advances and other losses made by Purchaser in connection with the Loans, including without limitation, any

23

unrecovered advance receivable reimbursements previously paid to Seller pursuant to Section 3.3.

12.6 Cure by Purchaser. If Seller notifies Purchaser of any claim giving rise to Purchaser's obligations under Section 12.3, Purchaser shall have 60 days from the day it receives that notice to cure or correct the underlying cause of such claim.

12.7 Repurchase of Loan. If FNMA or Private Investor requests Purchaser to repurchase one or more Loans (including those from any pools, if applicable), Seller shall promptly repurchase that Loan(s) and the related servicing out of the appropriate pool(s) or promptly repurchase that Loan(s) from Purchaser and shall promptly reimburse Purchaser for any costs Purchaser incurred in handling that Loan(s); provided, however, that the requested repurchase by FNMA or Private Investor is not due primarily to an act or omission of Purchaser. Before Seller's obligation to repurchase Loans arises under this Section, Purchaser shall notify Seller in writing of the requested repurchase and Seller shall have sixty (60) days to cure the problem causing the request for repurchase or to otherwise defend against the repurchase request made by FNMA or Private Investor. The repurchase of Loans is in addition to the obligations of Seller and Purchaser to reassign and pay for the servicing on the repurchased Loan(s) under Section 12.5(b), and shall not otherwise limit Seller's indemnification of Purchaser under Section 12.2. Seller's repurchase of Loans shall not alter its rights to indemnification from Purchaser under Section 12.3. For example, if Seller is required to repurchase a Loan pursuant to this Section 12.7 and because of an act or omissions of Purchaser (such as the failure to maintain mortgage or hazard insurance or to pay applicable taxes or assessments on time), Seller suffers a loss on the Loan repurchased greater than would have occurred absent the act or omission of Purchaser, then Purchaser shall indemnify and hold Seller harmless for such excess loss.

12.8 Supplementary Information. From time to time prior to and after Transfer Date(s), Seller shall furnish Purchaser such incidental information, which is reasonably available to Seller, supplementary to the information contained in the documents and schedules delivered pursuant hereto as Purchaser may reasonably request.

12.9 Access to Information. Seller shall give to Purchaser

and its counsel, accountants and other representatives, upon receipt of written notice not less than one (1) Business Day in advance, reasonable access during normal business hours throughout the period prior to the Transfer Date(s), to all of Seller's files, books and records relating to the Servicing and Related Escrow Accounts.

12.10 Confidentiality. Each party understands that certain information which has been furnished and will be furnished in connection with this transaction, including, but not limited to, information concerning customers or business procedures, servicing fees or prices, policies or plans of the other party or any of its affiliates, and also including specifically information in which Seller has a proprietary

24

interest such as the identity of the mortgagors under the mortgages, the remaining principal balances of the Loans and purchase by such mortgagors of ordinary life, ordinary health, credit life, credit health, credit unemployment and any other forms of group or individual insurance coverage or of any other financial services of products of any nature, is confidential and proprietary, and each party agrees that it will maintain the confidentiality of such information and will not disclose it to others or use it except in connection with the proposed acquisition contemplated by this Agreement, without the consent of the party furnishing such information. Information which is generally known in the industry concerning a party or among such party's creditors generally or which has been disclosed to the other party by third parties who have a right to do so shall not be deemed confidential or proprietary information for these purposes. If the proposed acquisition is not consummated pursuant to Article 12 or otherwise, each party agrees to promptly return to the other all confidential materials, and all copies thereof, which have been furnished to it in connection with the transactions contemplated hereby.

12.11 No Broker's Fees. Except for Seller's broker, Hamilton, Carter, Smith & Co., Inc., each party hereto represents and warrants to the other that it has made no agreement to pay any agent, finder, or broker or any other representative, any fee or commission in the nature of a finders' fee or originators' fee arising out of or in connection with the subject matter of this Agreement. The Seller is responsible for all broker fees to Hamilton, Carter, Smith & Co., Inc.; provided this Agreement shall not create any rights, third party beneficiary or otherwise, in Hamilton, Carter, Smith & Co., Inc.

12.12 Survival of Representations and Warranties. Each party hereto covenants and agrees that the representations and warranties in this Agreement, and in any document delivered or to be delivered pursuant hereto, shall survive the Transfer Date(s).

12.13 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed served, given and received when personally delivered to an officer of such party, or in

lieu of such personal service or delivery, when deposited in the U.S. mail, registered or certified mail, postage prepaid, return receipt requested, and received on three days from the date of such mailing, whichever first occurs addressed as follows:

- (a) HAMILTON FINANCIAL CORPORATION  
525 Market Street, 9th Floor  
San Francisco, CA 94105  
Attn: Terry W. Malone CMB, EVP
- (b) CALIFORNIA UNITED BANK, N.A.  
16030 Ventura Boulevard  
Encino, CA 91436  
Attn: Patrick Hartman, CFO

or to such other address as Purchaser or Seller shall have specified in writing to the other.

25

12.14 Waivers. Either Purchaser or Seller may, by written notice to the other:

- (a) Extend the time for the performance of any of the obligations or other transactions of the other;
- (b) Waive compliance with any of the terms, conditions or covenants required to be complied with by the other hereunder; and
- (c) Waive or modify performance of any of the obligations of the other hereunder.

The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach.

12.15 Entire Agreement, Amendment. This Agreement and the documents, instruments and agreements to be executed and delivered herewith constitute the entire agreement between the parties with respect to the sale of the Servicing and supersede all prior with respect thereto, including without limitation, the Letter of Intent. This Agreement may be amended and any provision hereof waived, but only in writing signed by the party against whom such amendment or waiver is sought to be enforced.

12.16 Binding Effect. This Agreement shall inure to the benefit of and be binding upon parties hereto and their permitted successors and assigns. Seller may not assign this Agreement or delegate any of its duties hereunder without the express written consent of Purchaser. Purchaser may assign this Agreement at any time after the final payment to its parent corporation or any other subsidiary of its parent corporation but may not make any other assignment hereof without the express written consent of Seller. No permitted assignment or delegation of duties shall relieve the party making such assignment or delegation from its representations, warranties and the obligations undertaken pursuant to Section 12.2 or 12.3, or 12.7 hereof.

12.17 Headings. Section titles or captions to this Agreement are for convenience only and do not define, limit, augment, extend or

describe the content or scope of intent of this Agreement and shall not be deemed to be a part hereof.

12.18 Choice of Law. This Agreement shall be interpreted and construed in accordance with the laws of the state of California, provided in applying the laws of California, its conflict of law rules shall not be employed to apply the substantive or procedural laws or equitable principals of any other state. The parties agree that if any action at law or suit in equity is commenced with respect to this Agreement or any parties' obligations hereunder, that venue shall be proper in San Francisco County, California.

12.19 Incorporation of Exhibits. Exhibits "A" and "B" attached hereto shall be incorporated herein and shall be understood to be a part hereof as though included in the body of this Agreement.

12.20 Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same contract.

26

12.21 Further Acts. Each of the parties to this Agreement shall execute and deliver all documents, provide all information which is not confidential, take or forbear from all such action as may be necessary, convenient, or appropriate to achieve the purposes of this Agreement.

IN WITNESS WHEREOF, each of the undersigned parties to this Agreement has caused this to be duly executed in its corporate name by one of its duly authorized officers, all as of the date first above written.

CALIFORNIA UNITED BANK, N.A.

ATTEST:  
DOUGLAS GODDARD  
Its: Controller

By: PATRICK HARTMAN  
Patrick Hartman  
Its: Chief Financial Officer

HAMILTON FINANCIAL CORPORATION

ATTEST:  
RUSTY LACKEY  
Its: Vice President

By: TERRY W. MALONE  
Terry W. Malone CMB  
Its: Executive Vice President  
Loan Administration

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